20-691
RECORD NO. _____

In The
Supreme Court of the United States

ORIGINAL

LIH BIN SHIH,

Petitioner,

v.

NATHAN BROOKS PARNELL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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Pro se Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES

QUESTIONS PRESENTED

1. Whether the Court may deny Petitioner's First Amendment right to petition the Government for a redress of grievances? In particular when the Government had recognized the petition as credible and accepted for redress. Whether the Court may terminate Petitioner's right to communicate with Government and hinder investigation?

2. Whether the Court may make thorough omission of all dirty hands evidence by Respondents and not apply the Clean Hands Doctrine to foreclose Respondents seeking relief? Whether the Court may consider eight real-time and well-timed false 911 calls and false police reports prior to trial for retaliation not dirty enough to invoke equitable defense for Petitioner? In particular, police was not a witness at trial after Respondents' extensive involvement of police, and Respondents provided no defense to Petitioner's allegations that all 911 calls and police reports were false.

3. Whether the Court may deny Petitioner's due process guaranteed in the Fifth and the Fourteenth Amendments to silence Petitioner by refusing to accept even one page of evidence at trial, by disposing two cases without recess in 45 minutes, by depriving Petitioner's right to defend against Respondents' claim, and by eliminating the statutory compliant lawful oral record?

LIST OF PROCEEDINGS

1. The Superior Court of the San Diego County, San Diego, California. Case Nos: 37-2018-00033816-CU-HR-CTL, Complainant Nathan Parnell vs. Lih-Bin Shih, and Elder Abuse Counterclaim 37-2018-00036217-CU-PT-CTL, Complainant Lih-Bin Shih vs. Nathan Parnell and Julie Parnell. Decision Date: August 8, 2018

2. California Fourth District Appellate Court, Division One Case No. D074805 Appellant: Lih-Bin Shih vs. Nathan Parnell. Decision Date: March 25, 2020, Petition for Rehearing: Denied May 7, 2020

3. The Supreme Court of the State of California, Petition for Review, Petitioner Lih-Bin Shih vs. Nathan Parnell and Julie Parnell, Case No. S262093. Petition for Review: Denied June 17, 2020

PARTIES TO THE PROCEEDINGS

Petitioner

Lih-Bin Shih, Respondent in the Claim and Complainant in the Counterclaim, Petitioner in this Petition.

Respondents

Nathan Brooks Parnell, Complainant in the Claim and Respondent in the Counterclaim, Respondent in this Petition.

Julie Parnell[1], Respondent in Counterclaim, Respondent in this Petition.

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[1] This Petition is to appeal the above Claim only. Julie Parnell was not a "signer" of the Claim, but an actual party in the Claim and a Respondent in this Petition. Nathan Parnell was the only signer of the Claim on July 10, 2018, listing his wife Julie Parnell as the "protected" party. Julie Parnell is an adult, neither a minor nor in the guardian relationship with Nathan Parnell and not qualified as a "protected party". (CA Civ Pro Code § 527.6 (a)(2) and (v)(1) App.E). In Nathan Parnell submitted evidence, it included multiple police reports signed by Julie Parnell, Julie Parnell's email with the hate-email writer. At trial Julie Parnell answered questions relating to the secret PERT. In the Response Brief, Respondents were frequently referred together as Parnells. In the District Court Decision, Julie Parnell was treated as an actual party. Nathan Parnell and Julie Parnell are collectively referred to as Respondents or Parnells interchangeably in this Petition. The individual name is identified when associating with a specific act such as "a 911 call made by Nathan Parnell or a police report filed by Julie Parnell". Parnells, not Respondents, may be used in a particular section when an individual Parnell is mentioned in that section for the purpose of preserving continuity in that section.

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The Superior Court of San Diego County granted Respondents the Restraining Order against Petitioner on August 8, 2018, Case No. 37-2018-00033816-CU-HR-CTL. The Minute Order issued on August 22 is in (App.A)[1,2]. The order was modified by trial judge without cause nor a hearing on August 27 and again on December 13. The California Fourth District Appellate Court Division One, Case No. D074805, largely affirmed trial court's ruling with certain modifications in an unpublished decision on March 25, 2020. (App.B). The Petition for Rehearing to the District Court was denied on May 7, 2020. (App.C). The Petition for Review to the Supreme Court of the State of California, Case No. S262093 was denied on June 17, 2020. (App.D). The second and third Minute Orders are attached in the Appendix at the appropriate location when referenced.

JURISDICTION

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution

United States Constitution First Amendment on the right to petition the Government for a redress of grievances.

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[1] This Order was obtained by Petitioner going to court when first became available online on or about August 22. Petitioner paid for a hard copy and scanned and filed it. This order was to disappear from court record.

[2] App.A or B for Appendix A or B etc. in this Petition. App.H.35a for Appendix H page 35a. The original appendix at the District Court is designated as App.Vol.I or II, e.g. App.Vol.I.15 for page15 in Vol.I. References to other documents follow the same convention, e.g. OB.26 for page 26 of Opening Brief, MO for Minute Order, RB Response Brief, FB Final Brief, SS Settled Statement, PFR-DC Petition for Rehearing at the District Court, PFR-SCCA Petition for Review at the California Supreme Court.

United States Constitution Fifth Amendment on no deprivation of life, liberty without due process.

United States Constitution Fourteenth Amendment on no deprivation of life, liberty without due process and equal protection of the laws.

The Clean Hands Doctrine

"He who comes into equity must come with clean hands"

Federal Statutes

18 U.S.C. §1519, 18 U.S. C. § 1621, and Fed.R.Civ.P.15.

California Code of Civil Procedures

CCP §527.6(a)(1), (b)(1) and (i) on Civil Restraining Order. (App.E).

California Rules of Court

Rules 8.137 and 8.124 on oral record and Settled Statement in the absence of a court reporter. (App.F).

INTRODUCTION

Petitioner respectfully petitions this Court to grant review and determine two issues on the effects on a Restraining Order leading to irreparable permanent damage.

The Clear and Convincing Evidence standard is required on the issuance of a civil restraining order in CCP §527.6(i). (App.E.26a). This standard is higher than the Preponderance of the Evidence standard in most civil cases because a restraining order has severe ramifications affecting liberty with life-long consequences to the restrained. In many aspects, it is no different from a criminal conviction. The consequences include restriction on freedom and liberty of movement, the forever law enforcement records persisting long after the restraining order has expired, and the irreversible and irreparable reputation damage particularly to those who rely on reputation to conduct personal and professional lives and function in the society, in

particular when the ruling was issued in anger months post trial. In the internet society, the propagation of reputation damage is lightning fast and uncontainable. The damage is unknown, unknowable, often subtle and yet with tangible effect. The damage lasts a life-time, even after death. The restrained has no way to remedy this level of damage moving forward. This Petition seeks the High Court for guidance whether the life-long irreparable damage is meant to be part of the punishment of a Restraining Order, particularly the one in this case.

Second, it is the wearing of the military uniform in a civilian courtroom to adversely affect a fair trial. Nathan Parnell was a Marine Corps Captain at the time of trial. Marine Corps was Nathan Parnell's third military employer in 16 years since high school. From the start, Nathan Parnell and his civilian wife Julie Parnell never ceased waving the military card in false police reports, in court filing and at trial, and to anyone who would listen. Nathan Parnell insisted on using military email with rank in private communications to exert authority and credibility before the email is even read by the recipient. The military card is extremely powerful to provide access and command respect, and it can also shut off anyone immediately. No one wants to be perceived as remotely against the military. Everyone, including Petitioner, truly feels we are never doing enough for and thanking enough the military and its men and women. Nathan Parnell and his civilian wife Julie Parnell exploited the military card (and the child card and the dog card) to construct crafty false stories to gain police access and entitlement to non-stop aberrant behaviors without consequences.

Department of Defense and all military branches have clear and similar rules regulating the wearing of military uniform in civilian public environments

amounting to "not to bring discredit upon the Armed Forces" and "not to compromise the dignity of the uniform". (App.G). Nathan Parnell wore military uniform in court as a defendant facing allegations including false 911 calls, stalking and harassment. Military regulation is short of regulating the uniform in the civilian courtroom as the venue is out of military reach.

Trial judges, upon objection by opposition at pre-trial motion, routinely banned military uniform by reason that the wearer had one purpose, and one purpose only, to use military uniform to curry favors from judge and jurors because of the intrinsic value and the authority that a uniform represents. (PFR-SCCA.p.10-13). Situation could be devastating for litigant if not knowing to raise objection. The injustice in this case was amplified as trial judge was enamored with the military and would restrict the trial time to 45 minutes for two cases without recess to avoid a military record for Nathan Parnell. The trial judge showed undue concerns on Nathan Parnell's military status which had nothing to do with the trial facts. The trial judge admonished Petitioner at trial to dare even accuse a military man on wrongful acts. In the stipulated Settled Statement, trial judge stated: "Marines Corps had codes of conduct and he (the trial judge) could not believe (Respondent) did what (Petitioner) said he did". (App.H,38a & App.Vol.II.517.SS). The trial judge replaced specific trial facts with the nebulous grand-standing "codes of conduct". These words "codes of conduct" have meaning and embody high ideals, but not replacement of trial evidence. The trial was in effect over and the facts rendered mute at that moment. Petitioner seeks the High Court's guidance whether the military uniform belongs in the civilian courtroom and its presence has a deleterious effect to a fair trial.

STATEMENT OF THE CASE

The facts and evidence are presented in some detail because all were buried by trial judge in a 45-minute/2 cases trial and not reviewed by District Court.

A. BACKGROUND

Petitioner had owned and lived in the same condo home for about 30 years at the time of trial. The condo complex has 80 units in 10 buildings, each with 4 upstairs and 4 downstairs units. Petitioner and the next door unit are on the ground floor. Unique to the rest of 78 units, both units share a wall, a short walkway and a common area at two detached garages. Petitioner's next door had been a rental for over 15 years with several sets of renters and different owners over the years.

Petitioner is a woman and a senior citizen, 71 years old in at the time of trial. Petitioner emigrated from Taiwan in 1970's and earned a Ph.D. degree in science and worked her entire life in medical product industry with responsible positions until recent retirement, but still working at home. Petitioner had lived peacefully in this community without one complaint from one neighbor and had perhaps 2 complaints (except Respondents) on neighbors in the preceding 10 years, all resolved quickly. This is a matter of record. Petitioner had never been a defendant of lawsuit, let alone a restraining order. Petitioner at no time in this community, or elsewhere in her nearly 50 years in the US, had ever contacted one landlord or one employer, military or not, to complain about anyone. This is a matter of record. The only "police record" Petitioner had, up to November 2017, was about 4 (or 5?) minor traffic violations in the past 50 years, and all erased after going to traffic school. Petitioner has walked within straight and narrow lines her entire life and maintained high personal integrity and good professional reputation.

Both Respondents are white in their mid-30 originally from Texas but, according to Respondents, had lived in various States with various military employers before relocating to San Diego. Respondents and their big dog rented the next door unit in October 2013. Respondents had a child in December 2015. Prior to renting Petitioner's next door, Respondents rented another unit in the complex but vacated after only 3 months. Right off, Petitioner found Respondents' lifestyles different on things such as trash, noise, foul smell, parking, blocking, dog leash, dog poop as if this were not a dense community with neighbors all around. Petitioner tolerated Respondents to maintain peace. Parties' interactions had always limited to chance meeting at the common garage area, and far and few in between.

In July 2016, Nathan Parnell told Petitioner at the garage area that they did not have a camera to take pictures of their 7-month old child. Petitioner immediately gave Respondents a slightly used DSL camera. Julie Parnell took baby pictures, including close-ups of child's face, and was friendly and showed Petitioner child's pictures. Respondents clearly enjoyed the camera. Petitioner asked Respondents to keep the camera. Respondents eventually paid token money before keeping it.

Except for that one friendly incident, Petitioner found Julie Parnell always condescending and quick with verbal jabs at Petitioner. Petitioner had an impression that Julie Parnell was resentful and unhappy and that she had to put down Petitioner to feel superior. Petitioner ignored it and kept a distance. Petitioner continued to be civil and kind to Respondents at chance meetings.

In late 2017, Respondents purchased a large truck not permitted in this complex and insisted on parking at a space convenient to Respondents, but shared by Respondents and three other homeowners, including Petitioner and one house-

bound homeowner living with a live-in nurse who also complained about being blocked by the big truck because of her need for quick garage access for medical reasons. Two homeowners in this complex had similar unpermitted large trucks and both trucks were garaged. One homeowner had to pay $2,000 to modify the garage to accommodate the big truck. Respondents' landlord paid $2,000 to comply with the HOA rules. Respondents pocketed the cash and continued to occupy the shared space daily as their own, and violation visible from Petitioner's home.

Between October 2013 and trial in August 2018, Petitioner never contacted, and Respondents never alleged Petitioner's contact, by phone, by text, by mail, nor by knocking on the door. In Respondents' own evidence, Parties had sparingly email contacts in prior years and zero emails between October 2016 and November 2017 when Respondents retaliated against Petitioner on a HOA trash report. Respondents never denied Respondents' trash on Petitioner's balcony, except the response was not to pick it up, but quick and vicious retaliation involving police.

B. RESPONDENTS' DIRTY HANDS BEFORE THE TRIAL

Between November 2017 and August 2018, Respondents made at least 8 false 911 calls and false police reports, all real-time and well-timed to retaliate for things Petitioner did (HOA trash report), or did not do (HOA enforcing vehicle parking rules), or had right to do (filing a Response to Temporary Restraining Order (TRO)). The complete list of evidence is in *Section II Clean Hands Doctrine* in Petition for Rehearing (PFR-DC.8-16), in this Section and in (OB.7,11,45) and (PFR-SCCA.16-19). Trial judge's Minute Orders (App.A,M & N) and District Court Decision (App.B) omitted all undisputed dirty hands evidence without one mention, as if none of the malicious retaliations ever existed.

After the HOA sent trash warning email to Respondents on November 27, 2017, the next day police knocked on Petitioner's door at night, the first time in 30 years, that Nathan Parnell called 911 identifying Petitioner "prowling on their son's bedroom window and cutting screen". Nathan Parnell did not deny calling 911, except "a direct result of Mr. Parnell seeing her outside of their home". (App.Vol.I.71). Petitioner's only walkway to and from home was about 8 feet off that window and the window was on a landscaped area. Nathan Parnell's "seeing her outside of their home" to call 911 was ridiculous because Petitioner "on the walkway" was not "outside of their home". At the exact time of 911 call, Petitioner could not be "outside of their home" because Petitioner was at home on the phone with phone record, and had been on the phone for nearly 2 hours with phone/computer records. In the 911 transcript, Nathan Parnell was in a panic voice reporting child in danger causing police to keep dispatching more vehicles. Nathan Parnell knew without the drama, the child and the military status, police might not come quickly. Nathan Parnell was a 35-year old white male Marine with a large aggressive dog and the window was about 5 feet from Parnells' front door. In one leap, Nathan Parnell and the dog could have subdued the prowling 70-year old 5'1" Asian woman trying to harm the child. Anyone, Petitioner included, would have done so when a child in danger because police may not come for 2 hours. The imagery of this false 911 call was comical, if not so terrifying and destructive.

Petitioner found out at trial from Nathan Parnell's evidence that Julie Parnell filed a police report on "numerous emails, harassment, threat, protecting child, harm to family", 3 hours after the HOA trash warning on November 27. (App.Vol.II.470). Julie Parnell later morphed this false police into "had to file" for eviction and other

things only in her head. This police report was willfully false because "numerous harassing threating emails" were, in Respondents' own evidence, 3 emails in more than 1 year complaining about Julie Parnell's public shouting offense to which Nathan Parnell apologized as "no offense intended". (App.Vol.I.71). At the "duration of harassment" in the police report Petitioner had no sighting nor any interactions with Respondents, nor for days prior to that. It was quick vindictive retaliation for daring report trash violation. A false police report was not enough because police was not "doing anything to Petitioner", Nathan Parnell followed up with a panic false 911 call the next day at night making sure police knocked on Petitioner's door. At trial in August 2018, Petitioner also found out Parnells filed a secret PERT (Psychological Emergency Response Team) report with police in January declaring Petitioner a psycho. (App.Vol.I.71) and sent police at night on January 31, 2018 for a false "welfare check" (App.Vol.I.42 & OB.13). Julie Parnell denied sending police but without Parnells' call, police would have absolutely no way to know whether Petitioner was sick or not. The PERT file was set up by Julie Parnell evidenced in her email to the hate-email writer: "wanting police to have (Petitioner) mentally evaluated". (App.Vol.II.345). Prior to trial, Parnells engineered a total stranger to send a vile hateful email to Petitioner in May. (App.Vol.II.290). Julie Parnell's email not only confirmed the PERT file was set up by Parnells, but Parnells also engineered the hate email. With full knowledge of the fact, Nathan Parnell denied not knowing the hate email writer. (App.Vol.I.73).

> "....her (Shih) belief of "defendant agent" (the hate email writer) is potentially indicative of her mental state. Mr. Jester is the sender of the email and he has never met either of the Parnells... (wrote) on its own volition...."

Nathan Parnell, when writing these words, knew fully that he was telling a bold face lie, but did it with a straight face and then venomously gaslighting into Petitioner's "mental state" in a sworn statement. Parnells used this exact malicious tactics on every single allegation. Parnells also induced Paul Jester to lie that he did not know Parnells. (App.Vol. II.363). Under U.S.C. 18 U.S.C. § 1621, "written document....willful contrary to....oath" may be fined or imprisoned.

The filing of a secret PERT file was to block Petitioner from seeking police protection or filing a police report once finding out Nathan Parnell's false 911 calls, as police cannot take report from a "mentally ill and delusional" (in quote) psycho. Blocking Petitioner's access to police served two critical purposes: (a) the only way for Parnells' lies to stay safe with police and (b) preventing Petitioner from filing a police report which would automatically enter into Nathan Parnell's military record. Julie Parnell's stepfather was a retired police sergeant in the Houston area. Without such inside knowledge of dirty tricks, ordinary people would not know how to block police protection.

Blocking Petitioner's access to police protection was paramount in late 2017/early 2018 because Nathan Parnell had advanced ""Petitioner harassment" as the excuse in early 2017 to his superiors to avoid deployment with his squadron in the fall 2017. (App.H.35a). Parnells' own evidence showed no email contact, nor any contact between October 2016 until November 2017. Under such circumstances, "Petitioner harassment" was still concocted as an excuse to avoid deployment. The PERT file served to block Petitioner, and also served to provide Parnells unlimited free false 911 calls and free false police reports without consequences.

Petitioner believed Parnells' depraved behaviors had the characteristics of a hate crime. In a hate crime, the target is a total stranger to aggressors and the infliction of violence (physical or gaslighting) is extreme, nothing to do with what the victim did or did not do, and the cold-blooded aggression and violence never stops. Just hate. Petitioner in Opening Brief alleged trial judge's general judicial biases. Respondents in Response Brief made explicit: "race, ethnicity, gender, age" not the factors of judge's decision. (RB.10). There could be no greater disparity between two sides with almost all Title VII factors in Petitioner's bucket. The explicit mention brought undercurrents to surface and meant to remind Petitioner of Respondents' superiority and that both sides were different and not equal and "you complained about bias?"

Respondents in Response Brief in June 2019, nearly a full year after trial, added new allegations that Petitioner had reported to Child Protective Service (CPS) (RB.4) and harassment pushed back from November 2017 to "starting in 2017, Shih began to harass the Parnells in earnest" (RB.7). The CPS story sprang up the same way using child as a shield and without date, time specifics, just "CPS report, harassment". The only explanation was that the concocted "Petitioner harassment" in early 2017 to avoid deployment in the fall of 2017 fell apart in the Opening Brief. Nathan Parnell had to quickly push harassment back from November 2017 to "starting 2017" and using child and an imaginary CPS report to strengthen the lies. It was difficult to believe that "a harassing neighbor" could be an excuse for avoiding deployment in highly regimented military operations. The process to avoid deployment was probably not going smoothly and Respondents' anger boiled over in the fall of 2017 leading to brutal retaliation involving police on a trash warning.

In PFR-DC.10-13, Respondents met with City Attorney on April 30 to create a criminal file on Petitioner, a direct response to HOA and landlord requiring compliance on April 22-27. Petitioner was unaware of the HOA demands until trial, but experienced physical harassment by Nathan Parnell matching these dates. Respondents' response to HOA was no compliance and gaslighting others. It was around that time, the HOA President and the decades-long HOA attorney resigned. Without Nathan Parnell waving his military card and the lies, no city attorney would deal with parking/trash violations on private property governed by HOA. On July 30, Julie Parnell testified in Declaration that: "(City Attorney has)...a pending criminal case against Ms. Shih for two charges harassment and violation of pc.166 4a) case #1290619". (App.Vol.I.81). Petitioner did not know the April 30 meeting nor the secret criminal file until trial. City Attorney denied this criminal file after trial. Lying about a non-existent criminal file with an official sounding file name and specific penal code using authority (City Attorney) went beyond perjury, it was obstructing justice. A criminal file had a greater weight than any other types of evidence. If it were true, trial judge did not have to look far to find Petitioner guilty, except this was just one more pure fabrication.

At trial, Petitioner found out Julie Parnell filed a police report on May 30. It was not coincidental that Petitioner received correspondence from Marine Corps authority on May 31 that a formal investigation had been initiated (Nathan Parnell likely found out a day earlier). This police report (App.Vol.II.471) was very long in a deranged panicky tone "destroying Nathan Parnell's military career, attacking the child, and poisoning the dog....." accusing Petitioner every crime under the sun if not more, except police took no actions. Petitioner believed Police, after 6 months of

dealing with non-stop lies and nuisance, had enough. Police balanced between pure lies and protecting a child and a dog, determined that the child and dog were not in danger. This false police report was another immediate retaliation. To Parnells, the complaint to Marin Corps was not a result of Parnells' own deviant behaviors, but just no one was allowed to complain about Parnells and retaliation was the solution. After police no longer dealing with Respondents, Julie Parnell went to councilman on June 27 (App.Vol.II.472) which was retaliation to HOA's renewed enforcement on banning unpermitted vehicles on June 21. Had trial judge allowed Petitioner to submit evidence, this email from HOA would have been submitted. (App.J.43a). This email was from new President O'Brien to "Peri (Sword), the property manager" on the "banned vehicle and enforcement". This enforcement by HOA lead to immediate harassment by Nathan Parnell (App.Vol.I.43) and Parnells' contact with councilman on June 27 (App.Vol.II.472) as police no longer dealing with Parnells. Upon receiving no response from councilman, the next step was the court. The filing of TRO as an angry and immediate retaliation for a credible Animal Control report (App.Vol.I.13), no different from retaliating an HOA trash violation with a false police report and a false 911 call. This HOA email also proved **Petitioner's complaint of violations was "legitimate** (recognized by HOA as enforceable complaint) **and "constitutionally protected" in CCP §527.6 (b)(1). (App.E.26a).**

On July 25, a few days before trial (first scheduled for August 2), Parnells made another 911 call claiming Petitioner (already) violating TRO by sending mail to Parnells. (PFR-DC.15-16). It was a mail sent by court per court procedures. The mail was Petitioner's Response to TRO. Parnells did not want to see Petitioner's Response, called 911.

On September 19, Nathan Parnell called 911 (#9) alleging Petitioner violating RO upon finding out the previous day that Petitioner filed a Notice of Appeal. (PFT-DC.17). Parnells were angry because the Appeal would expose the lies buried at the trial court. Police came and told Petitioner: "dispatcher heard it wrong" and left.

In Declarations on July 10, Nathan Parnell mentioned police 15 times, police meeting 3 times, city attorney twice, criminal twice, and councilman once. The clear message to court was "police could not protect Parnells from harassment by Petitioner, court must help". With such broadcast of police involvement and protection, police did not come to court as Respondents' witness.

Responding to Opening Brief, Respondents in the Response Brief on June 18, 2019, **did not mention one word of "police" nor providing one scintilla of defense against Petitioner's allegations of false 911 calls and false police reports. Nor did the Response Brief mention one word "nana"** which took more than half of space in the Declaration setting up as the motive of Petitioner's harassment. The "nana story" was also gone because it never existed. The three cornerstones in Nathan Parnell's Declaration (App.Vol.I.13) were: "the nana story" as motive, "police protection" as Respondents' effort fending off Petitioner's harassment and the "over 300 unwanted emails" as means of harassment, two cornerstones were completely gone in the Response Brief. So will be the "over 300 unwanted email" as shown below.

Before entering into the courtroom on August 8, 2018, Respondents had lied to law enforcement at least 8 times, each and every time pure fabrication and immediate and well-timed retaliation against Petitioner. Respondent set up a secret PERT file on Petitioner soon after the first false 911 call blocking Petitioner from police protection, making sure Respondents' lies to police not exposed and that no

military record on Nathan Parnell's false 911 calls. Trial court and the District Court omitted all evidence in dirty hands, without even one mention.

C. TRIAL AND THE SETTLED STATEMENT

The harassment claim and elder abuse/harassment counterclaim were scheduled together in the morning session on August 8, 2018 presided by Judge Richard Whitney. The oral record of the trial is in the lawful statutory-compliant stipulated Settled Statement. (App.H).

Before trial, trial judge ordered both parties to settle out of court. After 6 hours, parties failed to settle as Respondents demanded Petitioner to never make complaint to landlord, community members and Marine Corps, just about everyone except to HOA fully knowing HOA was unable to enforce rules on Respondents. The terms required Respondents to do nothing, violations and harassment as before. The audacity to propose such lopsided terms treating both sides as unequal human beings was shocking, but fully reflecting Respondents' sense of superiority. When trial resumed in the afternoon and after Petitioner told court again that she could not sign this kind of gag to embolden bullies, trial judge ordered Respondents to pass a piece of paper for Petitioner to sign, innocuously representing it as part of court procedure. It was the "Settlement Agreement" hand-written on a torn-off notepad page clearly prepared by Respondents at lunchtime on exact terms that Petitioner had rejected three times. After rejecting the unconscionable and untenable terms again, Petitioner asked for continuance sensing something was wrong, but trial judge rejected it. (App.H.33a).

At trial, trial judge admitted 381 pages of evidence from Respondents and denied every attempt by Petitioner to submit evidence to prove her case. (App.H). Trial

judge showed inappropriate concerns and admiration in Nathan Parnell's military status. Trial judge disposed 2 cases in 45 minutes without recess (OB.26,27,40,45). District Court did not dispute the 45 minutes trial time for 2 cases (App.B.15a):

> "....which lasted only 45 minutes.....Even if we accept Shih's timeline as true, the court had time to peruse the exhibits while listening to the testimony of the parties."

In this assessment, District Court failed to recognize that 20 minutes, half of 45 minutes, was not reasonable for Petitioner to defend the claim and prove the counterclaim with 381 pages of newly admitted Respondents' evidence and 77 pages of pre-trial Declarations, and that parties had failed to settle after 6 hours. The 45-minute for two cases was that the trial and Petitioner's counterclaim would not be in Nathan Parnells' military record. The trial could not be continued because continuance would also be in Nathan Parnell's military record. At the end of 45 minutes, trial judge found Petitioner harassed Nathan Parnell, and Nathan Parnell and Julie Parnell did not harass Petitioner. Trial judge terminated Petitioner's constitutional right to petition government even after Marine Corps initiated the investigation. Trial judge issued the first Minute Order (MO) on or about August 22 and second MO on August 27 and third one on December 13. Refer to *Section E: Three Different Minute Orders* in this Petition, p.21.

Petitioner served parties with Notice of Appeal on September 17 (App.Vol.II.498) and Notice of Filing by the Superior Court of San Diego was entered on September 24 (App.Vol.II.502). Petitioner served the Appellant Designation of Record designating Settled Statement as oral record invoking Rule 8.137 on September 27. (App.E&F.27a-28a&App.Vol.II.503-504). The Proposed Settled Statement was served on October 19. (App.Vol.II.510). Respondents filed no amendments within

the statute of limitation per Rule 8.137. The Settled Statement thus became final and entered into evidence as oral record. (App.H). Respondents went on to endorse the use of Settled Statement as evidence (RB.6): "For purposes of establishing the record for the Court, Shih should be referring to the settled statement.....as (primary) evidence".

D. FABRICATED AND TAMPERED "OVER 300 UNWANTED EMAILS"

The "over 300 unwanted emails" was cited by District Court in "Factual Sufficiency" as the only evidence of harassment and authentic (App.B.16a).

> "Shih raises four questions about the sufficiency of the evidence (of 300 emails)..... We accept the authenticity of the e-mails that were admitted. There is no evidence the e-mails were not authentic. Also, there is no record that Shih contested authenticity at trial."

District Court voided the Settled Statement and muted the only voice Petitioner had at trial, then claimed "no record at trial to contest". Petitioner did raise questions at trial on email authenticity including false information in email authored by Nathan Parnell. (App.H.37a-38a). Petitioner in Opening Brief raised questions on email tampering. (OB.8,22,23). Any cursory look would reveal blank spaces, chopped up sentences and odd formatting in emails pointing to severe tampering. District Court erroneously deemed the only harassment evidence as "authentic".

First, the factual numbers were copied/direct 129 and 17 direct to Julie Parnell and 5 direct to Nathan Parnell both ending May 1. If Petitioner was allowed to submit evidence at trial, Petitioner would have submitted an accurate count. (App.K.44a). Respondents' own numbers in evidence were 149, 28 and 20 (App.K.45a & App. Vol.II.414). All these numbers are a far cry from the exaggerated "over 300 emails",

consistent with Respondents' pattern of fabrications and total disregards to truth. Respondents removed all images in the emails. It was a painstaking operation going through each and every one of the "over 300 emails" and surgically taking out images one by one. This operation was to hide the true purpose of the emails of reporting violations. Without images, Respondents conveniently forgot about violations, and made court forgetting the violations, turned Petitioner's reporting violation into harassment. Under 18 U.S.C. § 1519, knowing document and evident tampering is subject to fine and imprisonment.

If the trial judge did not deny Petitioner from submitting evidence at trial, Petitioner would have submitted documents to show the extent of evidence tampering. Appendix L (App.L.46a-52a) shows only three examples, but the tampering permeated throughout the entire set of evidence. The authentic email is presented in the format of "screen shot" to retain authenticity. In "screen shot", the text quality is compromised, but the most accurate way to represent the format of email as received. The tampered emails had large uneven blank spaces, chopped up sentences and odd formatting. In App.L:

i. Date April 18 Nathan Parnell's submitted sworn evidence (App.L.46a, also in App.Vol.I.217) and the original email with 3 images (App.L.47a);
ii. Date May 14 Nathan Parnell's submitted sworn evidence (App.L.48a, also App.Vol.II.311) and the original email with 2 images (App.L.49a) and
iii. Date June 4-5 Nathan Parnell's submitted sworn evidence (App.L.50a, also in App. Vol.II.352) and the original email, each with one image (App.L.51a,52a).

Even without accounting for the missing images, the tampering was glaring as no software could generate this kind of very odd formatting in emails.

Aside from removing images, the submitted evidence was not as received, either direct or copy. All emails are identified with an identifier header such as in App.I.42a and App.Vol.I.45. Depending on device and software, the identifier header may be different (App.L.46a), but always with an identifier header above the body of the email. The identifier header was missing in the majority of Respondents' submitted evidence (e.g. App.Vol.I.189 & 205) indicating the emails were plucked out from somewhere and patched back in and claimed as sworn evidence.

Julie Parnell swore in Declaration that she had "eventually blocked her unwanted emails in January 2018". (App.Vol.I.81). The harassment thus effectively ceased in January for Julie Parnell. Julie Parnell had failed to advise Nathan Parnell the same. Respondents failed to take basic measures dealing with "unwanted" emails. Respondents further refused to accept that HOA CC&R (Declaration of Covenants, Conditions, and Restrictions) required copying to offenders (App.Vol.I.59).

Respondents refused to abide by the community rules as if it was their birthrights, a nuisance situation unseen in this community for 30 years which may explain why Respondents vacated the first rental after only 3 months. Respondents refused to understand what "unpermitted vehicle" meant and why it was unpermitted. Respondents refused to understand why HOA had rules and that all homeowners worked together to maintain order and preserve aesthetics for all. Respondents even described space outside their home, including walkways, as "on our property'. It was not. It did not belong to Respondents.

Perhaps realizing the flaws and defects upon challenges in Opening Brief, Respondents, in Response Brief, removed the "over 300 unwanted emails" as evidence and replaced it with 8 bullet points (RB.7-8), and then proceeded to declare

that Respondents' evidence, including Declarations, not sworn statements and could not be used as evidence (RB.5-6). The "List" is as follows:

> "Throughout her appeal, Shih references declarations, various emails, and other correspondence that she sent as if it were sworn testimony. This is not proper. This evidence cannot and should not be used as suggested by Shih ....Shih should be referring to the settled statement.....as evidence of the testimony given -not relying on her own letters as primary evidence."

In this declaration, Respondents failed to set limitations and identify exceptions to "the List" as to the specific emails or other correspondence or her letters, that were not in this category of "not sworn testimony" and could be used as evidence. Thus, "the List" is all inclusive. Further, "cannot and should not be used as suggested by Shih", could only mean that "Petitioner cannot use it as evidence". If Petitioner cannot use it as evidence, nor can Respondents use it as evidence of harassment. Respondents withdrew "the List" including the "over 300 unwanted emails" as evidence, thus effectively withdrew the Complaint.

Respondents claimed that Petitioner's complaint on violation and harassment caused Parnells' "emotional distress" (RB.11). This claim was ridiculous as no one can ever attribute an "HOA trash waring" as emotionally stressful enough to file a false police report and make a false 911 call. Further, was a "HOA trash warning" more distressful than Petitioner experiencing terror and fear when police repeatedly knocking on the door at night? Was being labeled as a police PERT case with "mentally ill" in police report not emotionally traumatizing? Answers to these questions are universal without dispute. It matters not what Respondents think or want others to think. Lacking empathy is a byproduct of hate.

Respondents submitted severely tampered "over 300 unwanted emails" as evidence

of harassment and later declared that all (the List") were "not sworn testimony and could not be used as evidence". District Court treated the "300 authentic emails" as the only "factual sufficiency" evidence of harassment (App.B.16a). Respondents had effectively voided the harassment allegation and withdrawn the Complaint, thus District Court's evidence of harassment.

E. THREE DIFFERENT MINUTE ORDERS

Trial judge issued three different Minute Orders (MO) following the trial on August 8 with the last one more than 4 months post injunction on December 13. Petitioner learned that the MO was online on or about August 22 and went to court to pay for a hard copy and scanned and filed it. (App.A.1a-9a). Petitioner later received by mail an "Amended" MO dated August 27 with "Amended" written by court. (App.M.53a-59a). The amended MO only included CH-130 and the difference was Item 11, CH-130 amended to "no contact Marine Corps". Petitioner scanned and filed it. In early 2019, in preparation of Appendix for appeal, Petitioner was informed that the court record was different (App.N.60a-67a) and the first MO had disappeared. In haste (3 business days) to amend to "no contact Marine Corps", trial court produced inconsistent documents and changed court record without recognizing the first MO existed. To summarize, the 1st MO (App.A) was "without no contact", but the 2nd MO (App.M & N) meant "no contact", but was erratic in copy sent to Petitioner and in court record. Petitioner's copies of App.A & M are identified with a scanner defect lines off center to the right, some lines were fainter but they were there. The court record is App.N without scanner defect line. Apps. A, M & N were all included in the appeal's appendix.

The 3rd MO was issued on December 13 in very different format but qualified itself

as a MO (App.O.68a-73a) citing Rule 8.124 (App.O.71a). This document was neither a MO, nor an "oral testimony" as described by District Court (App.B.17a), nor in conformance of Rule 8.124. This document was written in uncontained anger and hatred by trial judge towards Petitioner for two purposes: (a) damaging Petitioner reputation to the point of no return without evidence, and (b) replacing the lawful Settled Statement.

Trial judge's lashing out at Petitioner was correlated to Respondents' vacating their rental home 3 weeks earlier on November 20. Petitioner was surprised by the sudden move with a very big moving truck and many movers and gone in one day. Petitioner believed the vacating was not voluntary and Respondents took it out on Petitioner as always, even without one iota of proof that Petitioner had anything to do with it. Trial judge believed every lie Respondents advanced at trial, this lie worked the same way. Lashing out at Petitioner was an extrapolation how trial judge humiliated Petitioner at trial. Respondents' anger transferred into trial judge's anger and trial judge amplified it.

On statutory conformance, Respondents were in error to cite Rule 8.137(g) as the basis. (RB.6). It was not. Rule 8.137 provides trial judge no authority to alter or replace a stipulated Settled Statement after Respondents raised no objections. (App.F.27a). Trial judge's citing Rule 8.124 as basis was also in error. (App.O.71a). Rule 8.124 provides trial judge no such authority after the proposed Settled Statement was uncontested and became final. (App.F.27a). Rules 8.124 and 8.137 are logically connected to create a lawful oral record in the absence of a court reporter. In the event of an appeal, trial judge had the priority to issue an oral record "within 10 days" upon Notice (September 27) per Rule 8.124. Failing to do

so, Appellant prepares a proposed Settled Statement per Rule 8.137. After service (October 19), Respondents had 20 days to object and propose amendments. In the absence of objections by Respondents, the proposed Settled Statement became final and admitted as evidence. Trial judge's only role in Rule 8.137 is to arbitrate when two sides do not agree. Rule 8.137 does not provide trial judge authority to unilaterally erase an unopposed Settled Statement. Nor does Rule 8.124 allow judge to issue an oral record after the Settled Statement had become final. Trial judge's 3rd MO was statutory defective and not admissible. The Settled Statement is the only statutory compliant lawful oral record. (App.H).

The uncontained anger and hatred emanating from this document was loud and clear aiming to shred Petitioner into pieces. Trial judge's seething words described a brain-damaged 3-year old mentally ill unable to comprehend anything and also a thug roaming outside whole day long monitoring, stalking, intruding and not leaving Respondents alone. There was no other way to read these scathing cruel words as nothing but brutal lynching. Even a convicted murderer deserves respect as a human being and is treated with decency and human dignity by court.

Trial judge's attack was based on Petitioner's "post-trial actions": (App.O.69a).

> "no ability to **abide by** the court order.... very little remorse or ability to correct her harassing actions.....not leaving them alone" .

These words indicated "post-trial actions" **after** the order was issued, not relating to pre-trial, nor at trial, i.e. District Court's characterization as an "oral testimony". In pre-trial filing, Petitioner provided evidence on Petitioner's effort to avoid Respondents with "sightings" far and few, weeks even months, in between (App.Vol.I.42-44) and many sightings resulted in Nathan Parnell jumping out of

nowhere to terrorize Petitioner. Petitioner further provided image evidence (App.Vol.I.44) to show that, unless Petitioner was some 30 ft off the front door outside of an alleyway, Petitioner could not see Respondents' window, door, garage or common area, thus no means to monitor Respondents. After trial, Petitioner would return and change schedule to go out if sighting Respondents in common area from a distance, unless having to accompany guests. Petitioner avoided Respondents like plagues knowing now Respondents' lies worked with this trial judge and emboldened by trial judge. Under such restricted circumstances, trial judge, **without any evidence because no such evidence existed**, lashed out in anger describing a lunatic: **"invading privacy, stalking, invading personal space, inflicting stress, unhealthy obsession, monitoring"**. These words was a kill order serving no judicial purposes, but intended to ruin Petitioner's reputation that had taken a life-time to build, and destroy it for good, **all without one shred of evidence that Petitioner did anything wrong post trial.**

Trial judge started out by admitting: "this court has very little recollection of evidence....cannot address with specificity with many of these issues". (App.O.68a), and yet this judge could describe Petitioner's "actions" so vividly as if trial judge were right there seeing as it all happened. If any of these monitoring, obsession, stalking...actions ever took place, Parnells would have wasted no time to call 911. If trial judge believed the RO was violated, there were lawful ways to deal with it: a hearing, imprisonment or fine or more. The trial judge had lawful means to deal with RO violations, all but not by character assassination. Trial judge chose not to exercise judicial authority because **no such evidence existed. Trial judge chose angry cruel lynching instead.** These words described a lunatic thug, not a 70-year

old technical and business professional Asian woman who had lived her entire upright life straight and narrow maintaining good personal and professional reputation. The cruel lynching shredded human dignity to pieces and inflicted pain beyond description.

Trial judge also created new "evidence" to add to his narratives, accusing Petitioner "making unwarranted phone calls to Marine Command". (App.O.68a). Petitioner never called Marine Command, it was not in trial evidence, nor post-trial, and Parnells did not allege it at trial. Trial judge went further to echo Respondents' wishes with superfluous and emphatic descriptions of the rules/laws/regulations as "unfounded, unwanted, unwarranted, mundane" (App.O.68a-69a) making mockery of HOA and Marine Corps who took their organizational rules and regulations seriously. The case was originated from Parnells wanting no rules and that they were the laws. This case ended with trial judge, instead of interpreting and upholding the rules and laws, making mockery of it just like Parnells did.

Admitting "very little recollection of evidence" (App.O. 68a), trial judge went on to point out "inaccuracies" in the Settled Statement with the intent to invalidate it. The two trivial and inconsequential "inaccuracies" were addressed in the Opening Brief. One was Petitioner's numerical typo "3 vs. 5 years of RO". The other was trial judge blamed Petitioner not interpreting trial judge comment correctly on "waving flag in front the White House and that Petitioner having "too many rights". (App.O.68a). Regardless how Petitioner interpreted the exact or similar verbiage, Petitioner's interpretation bore no consequence nor effect in this trial. Trial judge did demand Petitioner to sign off all rights to contact nearly everyone, except HOA, on Respondents' daily violation and harassment. Trial judge revoked Petitioner's

constitutional right to contact Marine Corps on an on-going investigation. With only one identified "inaccuracy" of "3 vs. 5 year" trivial and inconsequential typo, trial judge "put the entire Settled Statement into question" (App.O.68a) and erased it. District Court, blind to the angry words without evidence, adopted the defective document as the oral record and cited verbatim in the Decision.

REASONS FOR GRANTING THE PETITION

The District Court largely affirmed the trial court's ruling and one exception was the first Amendment on right to petition. Petitioner addresses the issues as follows.

F. DISTRICT COURT FAILED TO CONSIDER RESPONDENTS' AMENDED COMPLAINT IN RESPONSE BRIEF

In *Foman v. Davis*, 371 U.S. 178 (1962), the High Court interpreted Fed. R. Civ. P. 15(a) as "leave to amend shall be freely given when justice so requires, and denial of the motion without any apparent justifying reason was an abuse of discretion". District court erred in not considering Respondents' amended complaint.

Respondents in Response Brief amended the Complaint in two areas: (a) declaring that Respondents' own evidence including Declarations not sworn testimony, and could not be used by Petitioner as evidence (RB.5-6), and (b) replacing the "over 300 unwanted emails" with 8 specific bullet points (RB.7-8). Petitioner provided evidence and showed Respondents had effectively voided the "300 emails" as evidence and thus withdrew the Complaint.

Outside of the emails, Respondents advanced two non-email related causes of action in the 8-bullet points (RB.7-8), to which Petitioner provided response in Final Brief, and here in this Petition again. The first non-email related harassment was the April and July Animal Control Reports. An Animal Control report per se was not a

RO offense as the agency relied on citizen reports to serve its protective functions. Petitioner made the July report on not-leashing a big aggressive dog in public space, a 5-year long offense in this community. The report was taken as credible and investigated. Respondents admitted to dog license violation for 5 years. (App.Vol.I. 75). The April Animal Control report was sprang up at trial (App.H.34a) and alleged without one scintilla of evidence. Petitioner did not make the April report. However, the April Animal Control report could not have even existed. If there was an April report, the license violation would have been identified in April, but not July.

The other non-email related harassment was "taking picture 1 ft to child's face", always child, always dog. The first question would be: "what did the parent(s) do when Petitioner was endangering the child"? One or both parents had to witness this event. Parnells provided no on date, time or any specifics again. Petitioner had no contact with the child since October 2016 to trial time in August 2018, Parnells could not show evidence of any contact. Petitioner believed it was a close-up picture Julie Parnell took with Petitioner's camera (Parnells had not paid yet) and was happy to show to Petitioner. The age of the child in this "1ft image" that Petitioner saw was 7 months old and the photograph should have the authentic and untampered "property" identifying a Canon Rebel and taken in July 2016. Julie Parnell used Petitioner's camera and took picture of their child and was happy with it, and then turned around claiming harassment. Parnells' venoms cut deep.

District Court had failed to admit Respondent's amended Complaint as evidence and failed in "Factual Sufficiency" of "300 authentic emails" as cause of harassment. Petitioner respectfully asks the High Court reverse the District Court Decision.

G. THE CLEAN HANDS DOCTRINE AS AN EQUITABLE DEFENSE

The Clean Hands Doctrine is the most venerated principle of equity jurisprudence. Courts have consistently applied the Clean Hands Doctrine as an equitable defense.

In *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240 (1933):

> "He who comes into equity must come with clean hands....This maxim applies only when some unconscionable act of the plaintiff has immediate and necessary relation to the equity he seeks in the litigation.

In *Precision Instrument Manufacturing Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806 (1945), Court stated that:

> "the (clean hands) doctrine closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief....and that "clean hands" doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith".

In *North Pac. Lumber Co. v. Oliver*, 596 P.2d 931 (Or. 1979):

> "....the iniquitous conduct which bars a right to an equitable remedy must relate to the subject matter of the suit and must involve the conscious act of the party against whom it is invoked."

The Clean Hands Doctrine is not an abstract control standard, it is an application in court by refusing to aid the unclean litigant.

Respondents came to court with 8 indefensible false police calls and false 911 calls for the sole purpose of retaliation for things Petitioner did (HOA trash report), or did not do (HOA enforcing vehicle parking rules), or had right to do (filing a Response to TRO). Each and every perceived offense led to immediate vicious retaliation involving police. The evidence of the real-time and well-timed retaliation are in *Section B, Respondents' Dirty Hands before the Trial* in this Petition, p.7, also in PFR-DC.7-16 and PFR-SCCA.8-16. Respondents' real-time and well-timed

retaliatory actions met the standards of "immediate and necessary relation, the unconscionable act, and the conscious act".

Evidence of Respondents' false 911 calls and false police reports was glaring in the pre-trial filing and at trial with repeated mentions. (App.H.36a-37a). Trial judge was tone deaf to all evidence of Respondents' dirty hands. District court echoed trial judge's bias and fortified it. Right off in District Court Decision (App.B.11a):

> "The court admitted scores of e-mails from Shih to the Parnells, Nathan's Marine Corps commanders, the Parnells' landlord, the homeowners' association (HOA), and open letters to the entire HOA community about the Parnells. Shih's e-mails to the landlord and the HOA generally copied each other and the Parnells. Shih sent numerous e-mails directly or indirectly by copy to the Parnells from November 2017 through July 2018."

District court sanitized the evidence admitted by trial judge by omitting all evidence pointing to Respondents' violations and harassment:

> "Emails from HOA and landlord to Respondents demanding compliance, communication from Marine Corps to Petitioner, multiple police reports by Julie Parnell, Julie Parnell's communication with hate-email writer, Julie Parnell's communication with Councilman demanding retaliation against Petitioner, Julie Parnell and Nathan Parnell's emails to HOA and to landlord and to HOA attorney refusing compliance".

By sanitizing the list of the "admitted evidence", Respondents' dirty hands evidence disappeared. Respondents' dirty hands evidence was in numerous mentions in pre-trial filing (App.Vol.I.42), in Settled Statement (App.H) and in Opening Brief (e.g. OB.7,11-14). There was not one mention of the false 911 call in the District Court Decision, thus no application of the Clean Hands Doctrine.

The duty of the District Court is not to enhance biases or rubber stamping lower court's ruling, particularly when Petitioner had alleged biases and abuse of discretion. The California Supreme Court in a recent probate case made clear that

the clear and convincing evidence standard does not disappear at the appellate review, *In Re Conservatorship of the Person of O.B.* S254938 July 27, 2020):

> ""...In conducting its review, the court must view the record in the light most favorable to the prevailing party below and give appropriate deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence.", and "Where a trial court decision must be supported by clear and convincing evidence, on appeal the standard of review must reflect that heightened burden of proof ....an District court must account for the clear and convincing evidence standard of proof when addressing a claim that the evidence does not support a finding made under this standard".....the (District) court must determine whether the record, viewed as a whole, contains substantial evidence from which a reasonable trier of fact could have made the finding of high probability demanded by this standard of proof...

District court failed in review standard and intentionally omitted all dirty hands evidence. Petitioner asks the High Court to refuse to aid unclean Respondents.

H. DISTRICT COURT VIOLATED PETITIONER'S FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

The First Amendment of Constitution protects the right to freedom of expression and that no laws shall prohibit citizens from petitioning for a governmental redress of grievances. In *Terminiello v. City of Chicago*, 337 U.S. 1 (1949):

> "The vitality of civil and political institutions in our society depends on free discussion....it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected."

The First Amendment includes two clauses: freedom to speech and freedom to petition. In *Borough of Duryea v. Guarnieri*, 564 U.S. 379 (2011), the freedom to petition is "the right of the people....to petition the Government for a redress of grievances" and it does not involve public concerns. Further, the State may not infringe the Constitutional right in *Edwards v. South Carolin*a, 372 U.S. 229 (1963):

> "(the State) infringed their rights of .....freedom to petition for a redress of grievances -- rights guaranteed by the First Amendment and protected by the Fourteenth Amendment from invasion by the States."

The Supreme Court also set limitation on freedom of Petition in *McDonald v. Smith*, 472 U.S. 479 (1985) for not containing "libelous and damaging falsehoods". In *Gertz v. Robert Welch, Inc.,* 418 U.S. 323 (1974), Court established a framework on free speech and the false statement of facts is exception of free speech. In other words, the validity of the petition invoking the first Amendment freedom of petition depends on the contents of the petition meeting the standard of "not libelous, falsehood or false statement of facts".

Petitioner filed a complaint with the Marine Corps against Nathan Parnell, a Marine Corps Captain, on May 9 on harassment, false 911 calls and daily violations of community rules encroaching neighbors. Petitioner provided factual details supplemented with images and other evidence. (App.Vol.II.434-461). On May 31, Marine Corps found report credible and informed Petitioner that a formal investigation was commenced. (App.I.42a & App.Vol.I.65). Nathan Parnell filed a restraining order on July 10 asking court to order Petitioner to stop contacting Marine Corps. (App.Vol.I.19, Item 16). The trial judge, in a 45-minute/2 cases trial, complied with Nathan Parnell's request and terminated Petitioner's rights to contact Marine Corps. District court narrowed Petitioner's right from contacting Marine Corps to Nathan Parnell.

The complaint to Marine Corps was done under compelling circumstances after months of escalating harassment by Nathan Parnell (App.Vol.I.42-43), HOA's inability to enforce rules, and that police protection was blocked by Respondents with the PERT file months ago. Marine Corps was the last resort as Petitioner

believed soldiers were guided by certain behavioral codes in civilian environments. Petitioner presented at pre-trial filing an email from Marine Corps authority that an investigation on Nathan Parnell was initiated. (App.I.42a & App.Vol.I.65).

Nathan Parnell in Declaration alleged: "the 30 page document to Marine Corps ...to have me discharged or disciplined..." (App.Vol.I.13). Aside from this one-line statement, Nathan Parnell did not point out any statements in the "30 page document" that were false, fabricated or unsubstantiated. Since this document was admitted right before the trial, trial judge could not have had time to review it. Trial judge asked Petitioner whether she knew her complaint letter "may cause Petitioner to be kicked out of Marine Corps.....could destroy (Nathan Parnell's) 16-year Marine Corps career". (App.H.38a). Petitioner answered the purpose was her concerns for her safety. Aside from this biased question, trial judge did not ask Nathan Parnell nor Petitioner what was inside the letter and whether certain statements false or objectionable to Nathan Parnell. The contents of the letter were never discussed by Nathan Parnell, nor a concern of the trial judge. Trial judge, in the 45-minute/2 cases trial, revoked Petitioner's constitutional right to contact Marine Corps.

The District court upheld the "no contact Marine Corps", except providing Petitioner with a consolation prize. Essentially, Petitioner may contact Marine Corps whole day long on anything and anyone, including sending the same complaint letter so long as the name not Nathan Parnell. (App.B.10a). This consolation prize was patronizing and an insult, and District Court knew it. Providing Petitioner rights to contact Marine Corps is meaningless because the rights are guaranteed in the first place. Petitioner in her 70-year of age, had never had to exercise this right to petition, and unlikely will ever again because Nathan Parnell's behaviors were too

deviant to replicate in another person. At issue was the surgical truncation of the right to petition government on harasser Nathan Parnell. District court cited *Parisi v. Mazzaferro* 5 Cal.App.5th 1219, 1228 (2016) to support the surgical truncation. This authority was not applicable on many levels. The cited case was a free speech case and the victim a young girl and the restrained a vexatious litigant with detailed harassment evidence. In this case, the "victim" is a known false 911 caller and a rule violator and under investigation for harassment, and seeking "protection" without accounting any details of the complaint by Petitioner. District Court Decision made no mention of the Marine Corps investigation, nor mentions of the contents of complaint letter, and terminated Petitioner's first amendment right and provided Nathan Parnell immunity.

This ruling, in the absence of a determination on the contents of the complaint before terminating constitutional rights, has a chilling effect to many. It is a strong deterrent to victims who need to exercise the right for protection from deviant military personnel, but may ended up with a RO. Nathan Parnell now has the immunity card on top of the military card, truly above the law.

District court unlawfully terminated Petitioner's right to Petition. (App.B.23a). Petitioner respectfully petitions the High Court to reverse the Decision.

I. COURTS VIOLATED PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS RIGHTS ON DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

The due process clause is in both the Fifth and the Fourteenth Amendments, with the Fourteenth Amendment also an equal protection clause:

> The Fifth Amendment: No person shall ... be deprived of life, liberty, or property, without due process of law"; and The Fourteenth Amendment,

> Section 1: "...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".

The issuance of a restraining order (RO) bears certain similarities to a criminal conviction, in that a person's right and freedom of movement is restricted and the restrained carries a forever law enforcement record and reputation damage. The reputation damage continued beyond the expiration of a restraining order, life-long even after death, often irreversible and irreparable. Because of liberty and life-long consequences are at stake, the issuance of a RO requires the clear and convincing evidence standard as in CCP §527.6(i). (App.E.26a). Constitution further guaranteed the rights to due process, a fair trial and an impartial judge.

In *Moore v. Dempsey*, 261 U.S. 86 (1923) where the trials took a matter of minutes before defendants were sentenced to death. The Court ruled:

> "....the accused are hurried to conviction under mob domination without regard for their rights is without due process of law and absolutely void... court must find whether the facts so alleged are true, and whether they can be explained".

Further, a judge's extreme biases can be subject of disqualification. In *Caperton v. A. T. Massey Coal Co., Inc* 556 U.S. 868 (2009):

> "the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable... (the) degree or kind of interest ... sufficient to disqualify a judge".

Petitioner in the Opening Brief alleged trial judge's biases (OB.36-39), abuse of discretion (OB.24-25) and violation of Petitioner's due process (OB.39-40). Also *see Section C Trial and the Settled Statement* p.15 and *Section E Three Different Minute Orders* p.21, in this Petition.

District court adopted all biases and enhanced it as shown below. The appellate

review started with District Court eliminating the lawful Settled Statement (App.H). District Court cited two case laws to support the elimination: *Cross v. Tustin,* 37 Cal.2d 821, 826 (1951) and *Burns v. Brown*, 27 Cal.2d 631, 634–635 (1946). Both cases were not applicable. Both cases were contested Settled Statement and trial judge was unable to broker an agreement between parties. The "proposed" Settled Statement remained "proposed" and could not be used as oral record. The Settled Statement in this case was statutory compliant and unopposed and endorsed by Respondents. Trial judge rejected Petitioner from submitting any evidence at trial, this was the only Petitioner's voice. By voiding the Settled Statement, silencing Petitioner became complete.

District Court proceeded to replace the Settled Statement with trial judge's angry 3rd MO as "oral testimony" citing as "independent judgment" and satisfy "legal sufficiency". (App.B.17a). The serious deficiencies of the 3rd MO are described in *Section E The Three Minute Orders,* p.21. This document was not even qualified as an "oral testimony" as it describing post-trial ("not abiding by RO) actions. And it also failed to describe the progression of a trial from the beginning to the end with parties arguing on evidence and exchanges between parties and court. This document only meant for cruel lynching and shredding Petitioner's dignity to pieces. The adoption of this angry unlawful document as "legal sufficiency oral testimony" determined District Court's Decision.

District court asserted that the basis of its Decision was (a) reliance on trial court's ruling and statement (App.B.15a-16a) and (b) an "email quick review" (App.B.15a). By "reliance" and "quick review" in the presence of Petitioner's strong challenges on biases and abuse of discretion, District Court fell far short of the review standard

for clear and convincing evidence, see *in re Conservatorship of the Person of O.B.*, Cal. No. S254938 (July 27, 2020).

When strong biases existed, the review and opinion were the consequences of the biases. District Court' consequential biases included: elimination of all dirty hands evidence, elimination of lawful Settled Statement, silencing on all evidence pointing to Respondents' guilt, silencing Marine Corps investigation, refusal to consider Respondents' Amended claim, and adoption of the statutory defective angry 3rd MO as "oral testimony". The following two examples might seem trivial and innocuous, they were in fact profound to show a fair review could not be expected.

First, instead of using the correct number in evidence, District court used "300 emails" throughout the Decision, then qualified itself as: "there were probably fewer than 300 e-mails, but we find the exact number immaterial". (App.B.16a). The greater than 100% difference in the only evidence was not immaterial and District Court knew the correct evidence existed, but not using it. Second, District court was annoyed by minutia of Petitioner's email: "single-spaced and typed in a small font" (App.B.15a) while blind to the super-micro-font in Nathan Parnell's Declaration and that the same annoying "small font single spacing" also in Parnell's own email (App.Vol.II.345). District Court was unaware that "small font single spacing" was the default standard in emails. District court, while being annoyed, failed to see, in the same emails, the big elephant in the same emails, i.e. the large blank spaces, chopped up sentences and the odd formatting, pointing to severe evidence tampering. The nitpicking was not innocuous but a strong indication of actual and consequential biases. Petitioner did not get a fair trial, nor a fair review.

District court went on to recite and repeat disparaging and insulting words in the Decision describing a lunatic walking in public area monitoring, stalking, intruding but not a 70-year old upright professional with her full life straight and narrow. The information was in the internet in no time and produced uncontainable and irreparable damage, all without one shred of evidence (App.B.12a):

> "....reaching a level of unhealthy obsession in monitoring almost every movement and action taken by [the Parnells] and was clearly invading [the Parnells'] privacy through stalking, harassment and the filing of unwarranted complaints with the HOA and the Marine Corps."

In a relatively short Decision, District judge recited **"invading Parnells' personal space" 5 times** (App.B.12a,17a,21a) and **"intentionally inflicting emotional pain" 6 times** (App.B.13a,18a,21a), **all without evidence.** Damaging Petitioner's reputation for life was as simple as a stroke of the pen. The cruel lynching inflicts indescribable emotional pain.

On Parnells' emotional distress, District court must believe that an "HOA trash warning" was so emotionally distressful to merit an immediate a false police report and a false 911 call. District court must believe an "HOA trash warning" was more distressful than the terror of seeing police knocking on the door at night repeatedly. District court must believe it was more defaming in an internal HOA trash complaint than the lies: "night prowler, psycho, delusional, mentally ill, child attacker, criminal file, poisoning dog....." in police reports, in court filing and in public domain. District Court overt biases on all aspects of the review unambiguously suggested that both sides were not equal human beings and Petitioner did not deserve equal protection of the laws, *in re Brown v. Board of Education*, 347 U.S. 483 (1954).

Petitioner admits that Petitioner's emails reporting violation and harassment were in the tone of frustration, helplessness, sometimes anger and often sarcastic to diffuse pain and abuse. There was no known standard or playbook to "fight back" under the suppressed conditions, i.e. physically inferior and devoid of all protection (police, HOA and landlord) and completely unable to engage in public jabbing and shouting like Parnells. Petitioner believed Parnells' depraved behaviors and brutal tactics had other victims and some may have fought back in a more vigorous way and be permitted as self-defense. Courts never recognized once, not even one, Respondents' terrifying behaviors and the lies to police as if none ever existed. Without such recognition, courts could not and would not recognize Petitioner's complaint, no matter in what shape or form it came, as legitimate and protected by the Constitution in CCP §527.6 (b)(1). Courts' strong biases tinted every aspect of the case. Petitioner asks the High Court to overturn the District Court Decision.

CONCLUSION

This case was an unparalleled miscarriage of justice at every turn on every level. The trial started with two sides of litigants lopsided in all demographic factors, and the military status, and ended with even more lopsided injustice. Respondent Nathan Parnell's military status played a key role and the demographic disparity was too obvious to be ignored as a contributing factor. Military represents an established reputable organization that commands credibility, authority, respect and embodies high virtues of courage and sacrifice. Nathan Parnell exploited this powerful image to access law enforcement and as a shield to his and his wife Julie Parnell's unlawful actions. The exploitation was amplified by Parnells' innate ability to fabricate stories and cunning skills to manipulate the criminal justice

system. Without flashing the military card (and the child card and the dog card), police may have arrested Nathan Parnell and Julie Parnell on 2 or 3 false 911 calls and false police reports, but not 8 still without consequences, and may not have set up the PERT file at Parnells' command. The courts may be less likely to conduct the trial to this level of irregularity, callously deprive Petitioner's constitutional rights and angrily damage Petitioner's reputation.

Courts' unjust action of a Restraining Order casts a very long shadow and leaves life permanently and adversely changed, and without means to remedy. Trial judge was unconscionable to take 45 minutes, or half of it, to determine the right and the life of a human being and lashing out 4 months later to obliterate Petitioner in uncontained anger without evidence. To some, reputation is life, often more important than life. Reputation damage is not an incidental effect of a ruling, it should be an integral part of a ruling upon considered, just and fair punishment.

This trial was hurried and evidence buried from the start. Petitioner presented facts, laws and case laws to request a review. Petitioner respectfully asks High Court reverse the District Court Decision.

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Respectfully Submitted

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