

20-7860  
No. \_\_\_\_\_

In The  
Supreme Court of the United States

In Re MARRIAGE OF RYAL W. RICHARDS AND ALICIA MARIE  
RICHARDS

ALICIA MARIE RICHARDS

Petitioner,

v.

RYAL W. RICHARDS,

Respondent.

ORIGINAL

FILED  
APR 17 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
CALIFORNIA FOURTH DISTRICT COURT OF APPEAL  
DIVISION THREE

**PETITION FOR WRIT OF CERTIORARI**

Respectfully submitted 4/15/21

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## QUESTIONS PRESENTED FOR REVIEW (Rule 14.1(a))

In *Logan v. Zimmerman*, 455 U.S. at 436, 102 S.Ct. at 1158 this Court held that "The state, . . . had destroyed the plaintiff's property interest . . . by failing to convene a hearing within the time mandated by the same statute that had created the interest. . . ." In *Green v. Lindsay* 456 U.S. 444 (1982), ("Green") this Court stated "By failing to afford adequate notice of the proceedings before issuing final orders of eviction, the State deprived them of property without due process of law required by the Fourteenth Amendment." This Court went on to state that eviction is a "significant interest in property, and indeed, of the right to continued residence . . ." And that the "sufficiency of the notice must be tested with reference to its ability to inform" of the pendency of proceedings that affect their interests. Pp. 450-451. *Green v. Lindsey, supra*, 456 US 444, holding that those orders would be in violation of due process and equal protection of the law. In *Dusenberry v. United States*, 534 U.S. 161 (2002), the court stated that "the Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person without "due process of law." This Court "determined that individual whose property interests are at stake are entitled to 'notice and an opportunity to be heard.'" Citing *United States v. James Daniel Good Real Property*, 510 U.S. 43,48 (1993).

Is the statutory law taking of a person's property arbitrary, too broad and discriminatory under *Dusenberry v. United States*, 534 U.S. 161 (2002) and void under *Logan v. Zimmerman*, 455 U.S. at 436, 102 S.Ct at 1158?

United States Courts entered incompatible decisions on the application of California enforcement statutes under Civil Code of Procedure § 128(a)(4) and Family Law Code §§ 290 and 291. It has used California Statutes in a way that violates the California Constitution and calls for an exercise of this Court's supervisory power to settle: is application of Civil Code of Procedure § 128 and Family Law Codes §§ 290 and 291 proper without affording due process and equal protection of the law? And any sanctions against a pro se litigant who requested a family law code §2030 hearing to ensure equal rights and to have her claims adjudicated under family law code §2120-2129 is proper under Civil Code of Procedure Section 128.5 in light of *Logan v. Zimmerman*, 455 U.S. at 436, 102 S.Ct. at 1158?

This Court recognizes that it is a fundamental right to notice and a right to be heard at a meaningful time and place within the meaning of the Due Process Clause to the Fourteenth Amendment before being deprived of a property interest, but it is declined to arbitrary government action in California courts by application of the controversial, broadly defined and unrestrained statutory enforcement and sanction laws; In this Court supervisory powers is to review and protect this essential rights to all individuals, including Petitioner to this Court.

## **LIST OF PARTIES**

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### **RELATED CASES**

Case No. S265542  
California Supreme Court (denied review August  
12, 2020) 350 McAllister Street, Room 1295  
San Francisco, CA 94102-4797 tel. 415-865-7000  
(Petition denied 11/18/20)

Case No. G057803  
Fourth District Court of Appeal-Div.3 (Opinion issued October 6, 2020)  
601 W. Santa Ana Blvd.  
Santa Ana, CA92701 tel. 714-571-2600  
Written by the Honorable Justice Kathleen E O'Leary Affirmed in Full  
(Rehearing denied 10/27/2020)

Case No. 15d009634  
Orange County Superior Court  
(Orders dated 04/19/19 and 04/26/19)  
341 The City Drive, Orange, CA 92868  
The Honorable Andre De La Cruz, Judge Dept. W10/L62

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## OPINION BELOW

The decision of the Court of Appeals, Fourth District, Division Three, *Ryal W. Richards v. Alicia Marie Richards*, Court of Appeal Case No. G057803 affirming in full on October 6, 2020 is appended to this Petition. (Appendix A)

## JURISDICTIONAL STATEMENT

Petitioner Alicia Marie Richards appealed the 4/19/19 and 4/26/19 orders challenging the jurisdiction and the trial court's violation of her due process and equal protection of the law rights on August 20, 2018. (Appendix B and C)

The California Court of Appeals, District Four, Division Three entered its Opinion affirming the Trial Court orders on October 6, 2020. (Appendix A).

A timely petition for rehearing was denied 10/27/20. (Appendix D)

A timely petition for review was denied November 18, 2020. (Appendix E)

An automatic extension of time because of Covid19 to file the petition for a writ of certiorari was granted extending the deadline to file certiorari 150 days to and including 4/18/21 and because that day lands on a Sunday, the deadline is extended to Monday 4/19/21.(Appendix F)

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

Accordingly, this Petition is timely.

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review the trial court orders and the Opinion of the Court of Appeals, Fourth Appellate District, Division Three. (Appendix A, B, and C).

## **CONSTITUTIONAL AND SATUTORY PROVISIONS INVOLVED**

### **The Fourteenth Amendment to the Constitution**

"Clause says that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." "No State shall "deny to any person within its jurisdiction the equal protection of the laws, and the right to access to the courts.

### **Bill of Rights**

All persons within the jurisdiction of the United States shall have the same right to every State and Territory to the full and equal benefit of all laws and proceedings for the security of persona and property.

### **Code of Civil Procedure §128**

"(a) Every court shall have the power to do all the following:

... (4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein."

### **Code of Civil Procedure §128.5**

... "If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorney, or both, for an action or tactic described in subdivision (a). In determining what sections, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay ... "

(B) If the alleged action or tactic is the making or opposing of a written motion

### **Family Law Code §290**

"A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary."

## **Family Law Code §291**

“(a) A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied.

(b) A judgment described in this section is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment.

(c) A judgment described in this section may be renewed pursuant to Article 2 (commencing with Section 683.110) of Chapter 3 of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure. An application for renewal of a judgment described in this section, whether or not payable in installments, may be filed:

(1) If the judgment has not previously been renewed as to past due amounts, at any time.

(2) If the judgment has previously been renewed, the amount of the judgment as previously renewed and any past due amount that became due and payable after the previous renewal may be renewed at any time after a period of at least five years has elapsed from the time the judgment was previously renewed.

(d) In an action to enforce a judgment for child, family, or spousal support, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment that is owed to the state.

(e) Nothing in this section supersedes the law governing enforcement of a judgment after the death of the judgment creditor or judgment debtor.

(f) On or before January 1, 2008, the Judicial Council shall develop self-help materials that include: (1) a description of the remedies available for enforcement of a judgment under this code, and (2) practical advice on how to avoid disputes relating to the enforcement of a support obligation. The self-help materials shall be made available to the public through the Judicial Council self-help Internet Web site.

(g) As used in this section, “judgment” includes an order.”

## **Family Law Code §2030**

**“(a)(l)** In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation, including access early in the proceedings, to preserve each party's rights ... ”

## STATEMENT OF THE CASE AND FACTS

This is a family law case. Petitioner is the respondent and defendant in the lower court and was sued for divorce on or about November, 2015 by Ryal W. Richards hereinafter "Ryal" in the County of Orange, Superior Court, Lamoreau Justice Center located at 341 The City Drive, Orange, CA 92868. The Honorable Judge Andre De la Cruz, presiding.

The parties entered into a hand written settlement agreement on March 2, 2017 regarding custody and June 16, 2017 regarding the family home and child support and alimony. After Petitioner uncovered that the hand written settlement agreement was entered into by mistake of fact and law, failure to disclose, perjury, undue influence, fraud, and duress, Petitioner who was not represented by counsel filed on September 13, 2017, a motion to vacate the settlement agreement pursuant to family law codes §§ 2120 through 2129 and timely requested a family law code §2030 hearing to be held before her hearing on her motion to vacate so she could be equally represented and have the aid of counsel to ensure her rights were protected to vacate the hand written settlement agreements based on family law code 2120 through 2129. The family law court ignored Petitioner's family law code §2030 request, refusing its mandatory statutory duty to make the required findings within the 15 day timeframe and instead forced Petitioner to proceed pro se in a specialized area of law and denied Petitioner's motion to vacate without allowing any of

Petitioner's evidence to be considered<sup>1</sup> denying Petitioner a fair hearing. The family law court found unilateral mistake but stated it had no remedy and instead influenced Petitioner to file her tort claims in the civil court on 4/17/18<sup>2</sup> in the civil court. See *Seymore v. Oelrich*(1909)156 Cal.782 (106 P.88] overruled on other grounds in *Sterling v. Taylor*, 40 Cal.4th 757 (Cal. 2007) [Held: Quoting from an early decision of the United States Supreme Court stated: "The vital principle is that he who by his language or conduct leads another to do what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectation upon which he acted. It involves fraud and falsehood, and the law abhors both." (See 156 Cal.p.795)

Petitioner who was unfamiliar with family law and forced to proceed pro se because the family law court refused to hold her timely requested family law code sec. 2030 hearing denying her equal rights to be represented by counsel filed an appeal on the family law court's order denying Petitioner's motion to vacate the settlement agreements of March 2, 2017 and June 16, 2017 heard on 1/26/18 at 8:30 a.m.

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<sup>1</sup> See *Arizona v. Fulminante* (1991) 499 U.S. 279, 309-310, 111 S.Ct. 1246, 113 L.Ed. 2d 302. Also *Lamps Plus, Inc. v. Varela* (2019) 139 S.Ct. 1407 1417-1419 [Structural errors occur when a party's right to due process has been violated by denying them a fair hearing.] See also *Fewel v. Fewel*, (1943) 23 C2d.431,434 [Re: Right to produce evidence and cross examine adverse witnesses.]

<sup>2</sup> The Civil Court stayed the tort litigation instead of remanding it back to the family law court who had exclusive jurisdiction of Petitioner's claims and Petitioner was mislead by the family law court. *Seymore v. Oelrich*(1909)156 Cal.782 (106 P.88]

Unbeknownst to Petitioner later in the day on 1/26/18 at 1:30 p.m. after Petitioner's motion to vacate the stipulations, Ryal's counsel submitted a typed judgment unsigned by Petitioner giving Ryal and his attorney more than authorized by law and in violation of Civ. Code of Procedure § 580 and fraud on the court and was entered without the court addressing Petitioner's objections filed on 12/20/18 and should be considered void. In *Sole Energy Co. v. Hedges* (2005) 128 Cal.App.4th 199, 210, a panel of the Fourth District, Division Three Court of Appeals explained: "Having concluded the orders entering the defaults of defendants are void, we must conclude the default judgment against defendants is also void. ""A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself all proceedings founded upon it are equally worthless."

After finding out about the typed judgment, Petitioner who was unrepresented by counsel filed a motion to vacate the typed [stipulated] judgment that was unsigned by Petitioner on 2/7/18 because it gave Ryal and his attorney more than authorized by law and not agreed to by Petitioner and was not "word for word" as Judge Linda Miller ordered. The family law court stayed Petitioner's motion to vacate the typed [stipulated] judgment pending Petitioner's appeal of the order denying her motion to vacate the stipulations that were taken from a nonappealable order.

While the appellate court was deciding Petitioner's appeal on her motion to vacate the stipulations without appellate jurisdiction, the family law court had

stayed Petitioner's motion to vacate the typed judgment, and the civil court had stayed Petitioner's civil tort action filed against Ryal on 4/17/18, Ryal proceeded to enforce the sale of the real property in the family law court and misleading the court to obtain disbursement of the equity that is in dispute and in direct conflict with public policy causing Petitioner irreparable injury by the loss of her substantial property rights and continued residence of her home as well as being sanctioned for exerting her rights and after the fact the family law court had already violated Petitioner's due process and equal protection of the law rights to the Fourteenth Amendment when it denied her rights under the very statutes that were enacted to protect her rights. See *Haygood v. Younger*, 769 F.2d 1350 (9th Cir. 1985) [Held: "where the injury is the product of the operation of state law, regulation, or institutionalized practice, it is neither random or unauthorized, but wholly predictable, authorized, and within the power of the state to control. In such cases, the state may not take away the protected interest without a hearing in advance of the injury."] (Underlining added) citing Supreme Court *Logan v. Zimmerman*, 455 U.S. at 436, 102 S.Ct. at 1158. "The state, in *Logan*, had destroyed the plaintiff's property interest in employment by failing to convene a hearing within the time mandated by the same statute that had created the interest. The Supreme Court noted that *Logan* was not challenging the commission's error, but was challenging the established state procedure itself which destroyed his rights without giving him an opportunity to be heard." Just as in this case, the state destroyed Petitioner's property interests and continued residence in her property by

failing to convene a hearing on her timely requested family law code §§ 2030 hearing within the time mandated and adjudicating her tort claims under family law code sec. 2120 through 2129 by those same statute that established the state procedure which destroyed her rights without giving her an opportunity to be heard and all the appeals to take Richards' property happened after the injury in violation of Supreme Court precedent. (*Id.*) (Family Law Code §§ 2130 and 2120 through 2129) See also *Schnabel v. Superior Court* 5 Cal.4th 704 (Cal. 1993). The California Supreme Court stated "The Legislature has recently declared: "It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate prior to distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities upon the dissolution of marriage as provided for under California law. [¶] . . . [¶] In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of the dissolution of marriage action, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties." (Civ. Code, § 4800.10,subd. (a), eff. Jan. 1, 1993.); See also *Green v. Lindsay* 456 U.S. 444 (1982) [Holding: orders would be in violation of due process and equal protection of the law.]

For example, on November 9, 2018, the trial court scheduled an Order to Show Cause re Sanctions at the request of Ryal's attorney against Petitioner for allegedly violating the July 10, 2018<sup>3</sup> order that was stayed pending appeal because Petitioner filed a motion to deposit the listing agreement because the court clerk refused to take it. See Civ. Code of Proc. §916. At that same hearing, on November 8, 2019, the court without any notice that it intended to do so evicted Petitioner and her minor from her home, without notice, a hearing and an opportunity to oppose with counsel and without balancing the equities knowing Ryal lacked standing to request anything because he was in contempt of court by refusing to pay court ordered child and spousal support and Petitioner's tort claims were still pending in the civil court causing Petitioner irreparable harm and injury by eviction, loss of substantial property rights, and an unfair division of the community estate not to mention extreme emotional distress by the threat of eviction and having her and her children thrown out into the streets and unable to obtain adequate housing because Ryal had ruined Petitioner's credit which is one of Petitioner's tort claims pending against Ryal in civil court and was forced into bankruptcy to stop the unlawful taking of her property without due process and equal protection of the law. The family law court's *sua sponte* order of eviction was completely unsupported. See *Southern Pac. Co. v. Railroad Com*, 13 Cal.2d 125, 127-128 (Cal. 1939) [". . . not only was there no evidence to support the so-called 'findings' to the effect have not been

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<sup>3</sup>The July 10, 2018 Order was brought by the Court against Petitioner ordering her to pay Ryal's attorney fees for every motion Petitioner filed with the court at the same time it refused to hold her timely requested family law code sec. 2030 hearing. The Court of appeals reversed July 10, 2018 order – See G055626

shown to be justified. . .”, “the record herein not only sustains . . in that regard, but goes further, in that it unmistakably appears that such findings is contrary to the evidence. . .and cannot sustain the order.”]

On April 19, 2019 and April 26, 2019, Petitioner attempted to vacate the court’s orders changing exclusive possession and the writ of possession while forced to proceed pro se because the trial court refused to hold Petitioner’s timely requested family law code sec. 2030 hearing, the Court refused<sup>4</sup> to vacate its orders.

(Appendix B and C)

Petitioner timely filed an appeal on May 29, 2019. The Court of Appeals affirmed the court’s orders without a merits decision on Petitioner’s claims saying that it determined these issues in her prior appeal but that is not true and in fact the prior appeal the court stated that her arguments were premature and you can find not one word addressing her due process and equal protection of the law violations. The Court of Appeals stated that Petitioner’s substantial rights were not violated by eviction and that decision conflicts with this Court’s decision in *Green v. Lindsay supra*, 456 U.S. 444 (“Green”) this Court stated “By failing to afford

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<sup>4</sup> See AOB page 20. See RT Vol. 1 page 20 line 20- 26. See also Court Order at Vol. 3 P. 814 (1. April 19, 2019 Minute Order) Denying Motion to Vacate Court’s *Sua Sponte* Order for Writ of Possession filed on February 21, 2019 found at Clerk’s Transcripts Vol. 1 page 78-106; AOB at p 31, 42; 2/21/19 Motion to Vacate, Recall, or Quash Court’s *Sua Sponte* Order for Writ Vol. I p. 78, 171, 261; Vol. 2 p. 396; See Court Order at Vol. 3 p. 815 to 816 (2. April 26, 2019 Minute Order) Denying Motion to Vacate Court’s *Sua Sponte* Order Changing Exclusive Possession filed on March 11, 2019 p. Vol. 1 p. 291 to Vol. 2 p. 374; AOB at pp. 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 46, 47, 52, 58, 59, 60, 62, 64, 69; See 3/11/19 Motion to Vacate and or Set Aside Exclusive Possession at Vol. I p. 291 and Vol. 2 p. 301, 432; November 9, 2018 Order Changing Exclusive Possession Vol. 2 p. 371.) [Note: Order changing Exclusive Possession reflects a Motion that never took place. See **Exhibit A** Objection]; and (3. Denying Motion to Quash Writ of Possession Issued February 28, 2019 at Vol. 1 starting on p. 148. See AOB at p. 29, 30; See Also 3/13/19 Ex Parte Motion to Quash Writ Issued 2/28/19; Vol. I at p 148; Vol. 2 p. 409 and 3/13/19 Motion for Order to Quash Writ and Notice to Vacate Vol. I p 160 and Vol. 2 p. 421.

adequate notice of the proceedings before issuing final orders of eviction, the State deprived them of property without due process of law required by the Fourteenth Amendment." This Court went on to state that eviction is a "significant interest in property, and indeed, of the right to continued residence ... " And that the "sufficiency of the notice must be tested with reference to its ability to inform" of the pendency of proceedings that affect their interests. Pp. 450-451. *Green v. Lindsey*, *supra*, 456 US 444, holding that those orders would be in violation of due process and equal protection of the law. (Appendix A)

Petitioner's requested a rehearing with the Court of Appeals but was denied rehearing. (Appendix D)

Petitioner petitions the California Supreme Court for review of the Court of Appeals decision. The petition for review was denied on November 18, 2020. (Appendix E)

The Family Law Court's orders and Court of Appeal's Opinion conflicts with the due process clause to the Fourteenth Amendment to the Constitution. The Supreme Court stated in *Isbell v. County of Sonoma* (1978) 21 Cal.3d 61 holding: "It is settled constitutional law that "in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing"]. The Supreme Court of California stated in *Payne v. Superior Court*, (1976) 17 Cal. 3d 908 ("Payne"), that "Few liberties in America have been more zealously guarded than the rights to protect one's property in a court of law. This nation has long realized that none of our freedoms would be secure if any

person could be deprived of his possessions without an opportunity to defend them, 'at a meaningful time and a meaningful manner.'" The Fourteenth Amendment to the United States Constitution prohibits a state from depriving any person of property or their substantial rights without due process of law. This mandate has been interpreted to require, at a minimum, that "absent a countervailing state interest of overriding significance, a person forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Payne* at p. 914. In *Green v. Lindsay, supra*, 456 U.S. 444, this Court stated "By failing to afford adequate notice of the proceedings before issuing final orders of eviction, the State deprived them of property without due process of law required by the Fourteenth Amendment." This Court went on to state that eviction is a "significant interest in property, and indeed, of the right to continued residence ... ." And that the "sufficiency of the notice must be tested with reference to its ability to inform" of the pendency of proceedings that affect their interests. Pp. 450-451. *Green v. Lindsey, supra*, 456 US 444, holding that those orders would be in violation of due process and equal protection of the law. See also *Isbell v. County of Sonoma, supra*, 21 Cal. 3d 61, 72 citing *Osmond v. Spence* (1972) 359 F. Supp. 124, 127 explaining that "unless the validity .. is determined before the judgment is entered an alleged [party] will be deprived of his due process rights on every occasion when an effective waiver [or judgment] has not occurred" citing Supreme Court cases in support of "notice and a hearing on the merits" *Boddie v. Connecticut*, 401 U.S.371,91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Sniadach v. Family*

*Finance Corp.*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.ED.2d 349 (1969); and *Mullane v.*

*Central Hanover Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review the trial court orders and the Opinion of the Court of Appeals, Fourth Appellate District, Division Three. (Appendix A, B, and C).

#### **REASONS FOR GRANTING OF THE WRIT**

This Court should grant review of the Family Law Court's Orders and the Court of Appeal's decision dated October 6, 2020 for compelling reasons. The state court's decision conflicts with relevant decisions of this Court and the statutory law of taking a person's property is arbitrary, too broad and discriminatory under *Dusenberry v. United States*, 534 U.S. 161 (2002) and void under *Logan v. Zimmerman, supra*, 455 U.S. at 436, 102 S.Ct at 1158.

United States Courts entered incompatible decisions on the application of California enforcement statutes under Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291. It has used California Statutes in a way that violates the California Constitution and calls for an exercise of this Court's supervisory power to settle whether the application of Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291 are proper without affording due process and equal protection of the law. And any sanctions against a pro se litigant who requested a family law code §2030 hearing before the taking of her property to ensure equal rights and to have her claims adjudicated under family law code

§2120-2129 is proper under Civil Code of Procedure Section 128.5 in light of *Logan v. Zimmerman*, *supra*, 455 U.S. at 436, 102 S.Ct. at 1158.

This Court recognizes that it is a fundamental right to notice and a right to be heard at a meaningful time and place within the meaning of the Due Process Clause to the Fourteenth Amendment before being deprived of a property interest, but it is declined to arbitrary government action in California courts by application of the controversial, broadly defined and unrestrained statutory enforcement and sanction laws; In this Court supervisory powers is to review and protect this essential rights to all individuals, including Petitioner to this Court.

The lower's court's actions were arbitrary and capricious resulting in a miscarriage of justice and deprived Petitioner of her property rights and continued residence in her property without due process and equal protection of the law in violation of the Fourteenth Amendment to the Constitution. A person's right through the judicial process must be afforded a meaningful opportunity to be heard and have their claims adjudicated according to due process of law. See *Boddie v. Connecticut*, *supra*, 401 U.S.371,377. See also *Sabariego v. Maverick* (1988) 124 U.S. 261 [60 S. Ct. 343] [Held: "A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determinate of his right and is not entitled to respect in any other tribunal."] *Isbell v. County of Sonoma* , *supra* 21 Cal.3d 61 [Held: it is settled Constitutional Law that 'in every case involving a deprivation of property within the purview of the due process clause, the Constitution requires some form of notice and a hearing"] See also *In re marriage of*

*Shimkus*, (2016) 244 Cal.App. 4th 1262, 1271. This Court should grant review of the Court of Appeal's October 6, 2020 Opinion for purposes of clarifying enforcement and sanctions statutes and to order the lower courts to follow United States Supreme Court precedent. The Supreme Court stated that: "Such procedure cannot be sustained. By it the plaintiff was denied the fair trial in open court to which she was entitled; she was deprived of the right to produce and have consideration given to material evidence; she was precluded from cross examination of adverse witnesses; and the order rests upon no evidentiary foundation whatsoever. Such errors require a reversal of the order. *See Arizona v. Fulminante* (1991) 499 U.S. 279, 309-310, 111 S.Ct. 1246, 113 L.Ed. 2d 302. Also *Lamps Plus, Inc. v. Varela*, *supra*, 139 S.Ct. 1407 1417-1419 [Structural errors occur when a party's right to due process has been violated by denying them a fair hearing.] *See also Fewel v. Fewel, supra*, 23 Cal.2d 431 [right to call witnesses and have evidence considered].

In *In re Robert G.* 31 Cal. 3d 437, 442 (1982) states: "[D]ue process requires . . . adequate notice of the charge so that he may intelligently prepare a defense." Compliance with this requirement has been held "by the Supreme Court to mandate . . . [a party] be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation." *Id* p.442. In *Dusenberry v. United States, supra*, 534 U.S. 161, the court stated that "the Due Process Clause of the Fifth Amendment prohibits the United States, as the Due Process Clause of the Fourteenth Amendment prohibits

the States, from depriving any person without "due process of law." This Court "determined that individual whose property interests are at stake are entitled to 'notice and an opportunity to be heard.'" Citing *United States v. James Daniel Good Real Property*, 510 U.S. 43,48 (1993). This Court has regularly turned to *Mullane v. Central Hannover Bank*, *supra*, 339 U.S. 306, 313-315 [94 L.Ed. 865,872-874, 70 S.Ct. 652] holding that "It is fundamental to the concept of due process that a defendant be given notice of the existence of [an action] and notice of the specific relief which is sought ... " when confronted with adequacy of the method used to give notice. See also *In re Marriage of Carlsson* (2008) 163 Cal.App.4th 281,291 [Re: "Denying a party the right to testify or to offer evidence is reversible per se."] By this Court granting this writ would settle the above important questions and conflicting opinions issued by the Fourth Appellate District, Division Three departing from the accepted and usual course of judicial proceedings calling for an exercise of this Court's supervisory power to bring back conformity to the justice system resulting in a miscarriage of justice and irreparable harm to Petitioner depriving Petitioner of substantial property rights and continued residence in her home without due process and equal protection of the law in violation of the 14th Amendment to the Constitution. In *Green v. Lindsay*, *supra*, 456 U.S. 444[Holding; holding that those orders would be in violation of due process and equal protection of the law]; See also *Haygood v. Younger*, *supra*, 769 F.2d 1350 (9th Cir.) [Held: "where the injury is the product of the operation of state law, regulation, or institutionalized practice, it is neither random or unauthorized, but wholly

predictable, authorized, and within the power of the state to control. In such cases, the state may not take away the protected interest without a hearing in advance of the injury." (Underlining added) citing Supreme Court *Logan v. Zimmerman*, *supra*, 455 U.S. at 436. "The state, in *Logan*, had destroyed the plaintiff's property interest in employment by failing to convene a hearing within the time mandated by the same statute that had created the interest. The Supreme Court noted that *Logan* was not challenging the commission's error, but was challenging the established state procedure itself which destroyed his rights without giving him an opportunity to be heard." Just as in this case, the state destroyed Petitioner's property interests and continued residence in her property by failing to convene a hearing on her timely requested family law code § 2030 hearing within the time mandated by statute and make the required findings to ensure equal rights and adjudicating her claims pursuant to family law code sec. 2120 through 2129 by those same statutes that had created the interest depriving Petitioner of due process and equal protection of the law and all the appeals to take Petitioner's property by enforcing a judgment that should be considered void still pending adjudication in the family law court and happened after the injury when the court denied Petitioner property interest to be equally represented and have her claims adjudicated in violation of Supreme Court precedent. (*Id.*)

Petitioner, Alicia Marie Richards respectfully requests that the Court grant certiorari to review the trial court's orders and Court of Appeals, Fourth Appellate

District, Division Three's Opinion in order to resolve these important constitutional questions.

## **ARGUMENT**

California courts have the power to compel obedience to its judgments, orders and process under Civil Code of Procedure § 128. "This statute has codified the principle of '[t]he inherent power of the trial court to exercise reasonable control over litigation before it, as well as the inherent and equitable power to achieve justice and prevent misuse of processes lawfully issued. . . ' [Citation]" citing *Blueberry Properties, LLC v. Chow* (2014) 230 Cal.App.4<sup>th</sup> 1017, 1021, 179 Cal.Rptr. 3d 145. The question here is did the court's order evicting Petitioner and her children out of their property without notice, and opportunity to respond at a meaningful time and meaningful place with the assistance of counsel to protect Petitioner's property rights and continued residence in her home achieve justice? while the other party sits in an attitude of contempt by refusing to comply with the lawful orders of the court to pay child support and alimony or any of the mortgage payments in furtherance of his scheme to deprive Petitioner of her fair share of the community estate and at the same time her due process rights had already been violated when the family law court refused to hold Petitioner's timely requested family law code sec. 2030 hearing depriving her of counsel and all the injury occurred after Petitioner's due process and equal protection of the law rights were violated when the court refused to follow procedural due process taking away Petitioner's protected interest to be equally represented and have her claims

adjudicated pursuant to the family law code statutes [2120 through 2129] in violation of *Haygood v. Younger, supra*, 769 F.2d 1350 (9th Cir.) [Held: "where the injury is the product of the operation of state law, regulation, or institutionalized practice, it is neither random or unauthorized, but wholly predictable, authorized, and within the power of the state to control. In such cases, the state may not take away the protected interest without a hearing in advance of the injury."]

(Underlining added) citing Supreme Court *Logan v. Zimmerman, supra*, 455 U.S. at 436, 102 S.Ct. at 1158. "The state, in *Logan*, had destroyed the plaintiff's property interest in employment by failing to convene a hearing within the time mandated by the same statute that had created the interest. The Supreme Court noted that *Logan* was not challenging the commission's error, but was challenging the established state procedure itself which destroyed his rights without giving him an opportunity to be heard."

After notice and a reasonable opportunity to respond, the court may impose an appropriate sanction upon the party for an action or tactic described in subdivision (a)<sup>5</sup> and shall be separately from other motions and shall describe the specific alleged action or tactic made in bad faith that is frivolous or solely intended to cause unnecessary delay. Civil Code of Procedure Section 128.5. As in this case,

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<sup>5</sup> "(a) A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10 ) of Title 3 of Part 3."

there was no notice, no hearing, and no opportunity to oppose with counsel and the court failed to follow the statute.

A judgment or order made or entered pursuant family law code § 290 may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary. The family law Court enforcing a [stipulated] judgment that has yet to be adjudicated and should be considered void on its face is violates Petitioner's due process and equal protection rights depriving her of her substantial property interests and continued residence.

A judgment for possession or sale of property that is made or entered under family law code §291 is enforceable until paid or satisfied. The family law Court enforcing a [stipulated] judgment that has yet to be adjudicated and should be considered void on its face is violates Petitioner's due process and equal protection rights depriving her of her substantial property interests and continued residence.

The family law court's change of possession order signed on November 9, 2018 without notice, a hearing and an opportunity to oppose at a meaningful time and manner and the writ of possession issued on 2/28/20 enforcing that order to change exclusive possession of the family home and evict Petitioner and her children out of their lawfully owned property deprives Petitioner of a substantial property interest and continued residence in her home without due process and equal protection of the law. See *Sabariego v. Maverick, supra*, 124 U.S. 261 p. 293

(1888) [Held: A judgment of a court without hearing the party or "or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. ..." See also Supreme Court precedent *Gray v. Hall*, 203 Cal. 306 (Cal. 1928) [void and voidable judgments made without jurisdiction.]

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review the trial court orders and the Opinion of the Court of Appeals, Fourth Appellate District, Division Three. (Appendix A, B, and C).

**Application of Civil Code of Procedure Section 128, 128.5 and Family Law Code 290 and 291 are too Broad and Arbitrarily Applied in Violation of the Due Process Clause to the Fourteenths Amendment to the United States Constitution and Should be Declared Unconstitutional**

Given a determination as to the governing jurisdiction, a court is "bound" to follow a precedent of that jurisdiction. If the question of due process and equal protection of the law resolved in the precedent case is the same as it to be resolved in Petitioner's case, the Court of Appeals was to follow Court precedent. *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, where the State Supreme Court case instructing lower courts to follow previous decisions and respect precedence so that consistent principles applied to similar facts yield similar outcomes. Under California Rules of Court, rule 5.440 "court should identify cases related to a pending family law case to avoid issuing conflicting orders. . ." The decisions of the lower courts are in conflict with the principles governing court orders. If a party is

entitled to due process and equal protection of the law in one case on appeal then Petitioner is entitled to due process and equal protection of the law.

The Court of Appeals decision's application of Civil Code of Procedure Section 128(a)(4) conflicts with the due process clause to the Fourteenth Amendment to the Constitution and application of Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291 are too broad and unconstitutionally applied if it denies a party notice, a hearing and a meaningful opportunity to oppose. And if an appeal is afforded, the State must not so structure it as to arbitrarily deny to some persons those rights or privileges under state law and deprive those persons due process to the Fourteenth Amendment the same privileges available to all citizens to the United States of America. *See Lindsey v. Normet*, 405 U.S. 56 @ 67(1972) [“Due process requires that there be an opportunity to present every available defense.” Citing *American Surety Co. v. Baldwin* 287 U.S 156 168 (1932) see also *Nickey v. Mississippi*, 292 U.S. 393, 396 (1934).

Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291 if it allows the state court to apply it *sua sponte* violates the due process clause to the Fourteenth Amendment and is contrary to court precedent in violation of the equal protection clause of the federal Constitution (U.S. Const. Amend XIV § 1) and the provisions of the state Constitution against special laws (Art. I, § 21). And further is in conflict with procedural due process to give notice of the ground and evidence that would support the ground, an opportunity to respond and an opportunity to be heard with an opportunity to be represented with counsel (family law code sec.

2030) to ensure Petitioner's property rights are protected in the family law court against Ryal who is represented by counsel. See *Dusenberry v. United States, supra*, 523 U.S. 161 [Due Process Clause of the Fourteenth Amendment prohibits the States, from depriving any person without "due process of law."]

Civil Code of Procedure § 128, and Family Law Code §§ 290 and 291 should be declared unconstitutional to be applied without due process and equal protection of the law in violation of the Fourteenth Amendment to the Constitution and are very broad and inconsistent with the statutory right to notice, a right to be heard and an opportunity to oppose. See *Boddie v. Connecticut, , supra*, 401 U.S. 371; *Sniadach v. Family Finance Corp., supra*, 395 U.S. 337, 89 S.CT. 1820, 23 L.ED.2d 349; and *Mullane v. Central Hanover Trust Co., supra*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865

The statutory law Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291 allowing the taking of a person's property arbitrary, too broad and discriminatory and inconsistent with *Dusenberry v. United States, supra*, 534 U.S. 161 and void under *Logan v. Zimmerman, supra*, 455 U.S. at 436, 102 S.Ct at 1158 where the state court failed to follow its own procedural due process by failing to hold Petitioner's timely requested family law code § 2030 hearing and adjudicate her tort claims pursuant to family law code § 2120 through 2129 and taking away a property interest without due process of law.

The Civil Code of Procedure § 128, 128.5 and Family Law Code §§ 290 and 291statutes are too broad to allow courts with inherent power and

unconstitutionally applied without affording litigants due process and equal protection of the law and are so vague that they fails to meet the constitutionality requirement of certainty. Section 128(a)(4) provides “. . .the trial court to exercise reasonable control over litigation before it, as well as the inherent and equitable power to achieve justice and prevent misuse of processes lawfully issued . . .,” arguing that the words “reasonable control over litigation before it” are fatally uncertain and its vague rule of Civil Code of Procedure §128(a)(4) is open to a wide interpretation by the courts, and it is arbitrarily applied to any litigant in California courts, as shown herein.

Civil Code of Procedure 128.5 "If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorney, or both, for an action or tactic described in subdivision (a). In determining what sections, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence" has been incorrectly applied to conform to due process and equal protection of the law. In arguing the words “an appropriate sanction upon the party, the party's attorney, or both” are fatally uncertain and its vague rule is open to a wide interpretation by the courts, and it is arbitrarily applied to any litigant in California courts, as shown herein.

Family law Code §290 states: “A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines

from time to time to be necessary" arguing the words "by any other order as the court in its discretion determines from time to time to be necessary" are fatally uncertain and its vague rule of Family Law Code §290 is open to a wide interpretation by the courts, and it is arbitrarily applied to any litigant in California courts, as shown herein.

Family Law Code § 291 states: "(a) . . . judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied" arguing the word "enforceable" is fatally uncertain and its vague rule of Family Law Code §291 is open to a wide interpretation by the courts, and it is arbitrarily applied to any litigant in California courts, as shown herein.

The classification of the group of litigants under Civil Code of Procedure §128, 128.5 and Family Law Code § 290 and 291 are too broad and open to a judiciary discretion to proclaim that the state court has authority over and above the Constitution's due process clause and contrary to court precedent. See *Boddie v. Connecticut, supra*, 401 U.S. 371

Petitioner, Alicia Marie Richards respectfully prays that a Writ of Certiorari issue to review the trial court orders and the Opinion of the Court of Appeals, Fourth Appellate District, Division Three. (Appendix A, B, and C).

**Civil Code of Procedure Section 128, 128.5 and Family Law Code §290 and §291 are Impermissibly Vague and Overbroad and Violates Due Process**

The definition of the court's authority under Civ. Code of Proc. Section 128, 128.5 and family law code §§ 290 and 291 are impermissibly vague and overbroad

that it does not put a person on notice of what constitutes abuse. In *NAACP v. Button*, 371 U.S. 415, 432-33 (1963) “The danger is tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Because First Amendment, government may regulate in the area only with narrow specificity” if the statute turns on a subjective interpretation, it is more likely to be declared impermissibly vague. See *Coates v. City of Cincinnati*, 402 U.S. 611, 616, (1971) finding as unconstitutionally vague a statute that turned on a subjective standard of “annoyance”. Civil Code of Procedure Sec. 128, 128.5 and family law code sec. 290 and 219 are challenged, that they specifically violate Due Process, and they are overbroad. These impermissibly vague laws that the State has a right to deprive a party their right to a notice, a hearing and an opportunity to oppose are without doubt unconstitutional.

As in this case, the State’s authority under Civil Code of Procedure § 128, 128.5 and family law code sec. 290 and 291 allowing it to take away a party’s substantial property rights and continued residence in their home without due process must be circumscribed, not global, and narrowly focus on the issues.

In this instance, Civil Code of Procedure § 128, 128.5 and family law code sec. 290 and 291 are the key to deny the right to notice, a hearing, an opportunity to be heard at a reasonable time and warrants reversal or change in decision.

Under US Constitution Amendment VIII there is: “no excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The family law court’s order evicting Petitioner without due process and equal protection of the law is cruel and unusual punishment and violates the due process clause to the Fourteenth Amendment to the Constitution.

“The words “due process of law” in the Fourteenth Amendment of the Constitution of the United States do not necessarily require an indictment by a grand jury in a prosecution by a State for murder”. In *Twining v. New Jersey*, 211 U.S. 78, 101 (1908) “The words due process of law were intended to secure the individuals like Petitioner from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.” See also *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 244 (1944).

A State “is free to regulate procedure of its courts in accordance with its own conception of policy and fairness unless in so doing it offends a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *West v. Louisiana* 194 U.S. 258, 263 (1904); *Chicago, B&Q R.R. v. Chicago*, 166 U.S. 266 (1987); *Jordan v. Massachusetts*, 225 U.S. 167, 176 (1912). See also *Boddie v. Connecticut*, *supra*, 401 U.S. 371. But, at least in those situations in which the State has monopolized the avenues of settlement of disputes between persons by prescribing judicial resolution, and where the dispute involves such a fundamental interest as property and continued residence in a home, no State may deny to those persons

due process of law. *Boddie v. Connecticut, supra*, 401 U.S. 371 denying rights to due process and equal protection of the law by broad and very vague Civil Code of Procedure statutes §128 and §128.5 and family law code sec. statutes 290 and 291 and are unconstitutional.

There's a second privilege and immunities clause found in the Fourteenth Amendment to the Constitution. This clause states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Definitely Civil Code of Procedure § 128, § 128.5 and family law code sec. 290 and 291 are those laws. Under 42 U.S.C. § 1983 (1994) "Every person who under color of any statute. . . of any state. . . subjects or causes to be subjected any citizen . . . the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured. . ." Because, the rights of life, liberty, and property (which includes all civil rights that men have) are protected by the Fourteenth Amendment can't be denied by the State to any persons by statutory laws. As we see in this case, Civil Code of Procedure Sec. 128, 128.5 and family law code sec. 290 and 291 are the laws in question and cannot be sustained by any grant of legislative power made to Congress if they violate the Constitution. *United States v. Harris*, 106 U.S. 629. Petitioner has been denied under color of authority her rights under state law [family law code sec. 2030 and 2120 through 2129] and has been subjected to the arbitrarily taking of her property in violation of the United States Constitution and cannot enforce those rights

[family law code sec. 2030 and 2120 through 2129] because she is being discriminated by the state court because she is a pro se litigant who is a woman.

Civil Code of Procedure Sec. 128, 128.5 and family law code sec. 290 and 291 brings purposeful discrimination, that discriminate between citizens based on deprivation of equal rights to due process and involve fundamental procedural due process rights to notice, a hearing and an opportunity to be heard and 128.5 incorrectly applied because it clearly states that notice must be given.

Civil Code of Procedure sec. 128, 128.5 and family law code sec. 290 and 291 are too vague and the courts are abusing their authority by not following procedural due process and the statute's *sua sponte* application is violative of the Constitutions' due process clause to the Fourteenth Amendment.

Therefore, the laws in question, without any reference to adverse State legislation on the subject, declares that all person shall be entitled to equal protection under the law and it supersedes and displaces State legislation on the same subject.

## **CONCLUSION**

Civil Code of Procedure § 128, 128.5 and family law code sec. 290 and 291 deprives Petitioner her right to due process and equal protection of the law. The Constitution protects the rights of every citizen against discriminative and unjust laws of the State by prohibiting such laws. The State must not so structure it as to arbitrarily deny to one person or group of litigants the rights or privileges available to others. This denial of rights for which the State alone is responsible is the great

seminal and fundamental wrong. The coercive remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for the evil or wrong actually committed rests upon State law or State authority for its excuse and perpetration.

All of Petitioner's federally couched claims brought in the lower courts were ignored by the state courts resulting in a denial of Petitioner's federally protected rights and in violation of United States Supreme Court precedent. In other words, the state courts abused the issue of comedy and failed to recognize the Supremacy Clause of the United State Constitution and for the reasons set forth in this petition, Petitioner respectfully urges this Court to grant Certiorari to ensure certainty and consistency in the application of laws by California State under the United States Constitution.

For the foregoing reasons, Petitioner respectfully requests the United States Supreme Court grant Petition for Writ of Certiorari.

Dated: April 15, 2021

Respectfully submitted,



Alicia Richards  
Alicia Marie Richards