

No. \_\_\_\_\_

---

IN THE SUPREME COURT OF THE UNITED STATES

---

*Naftalovich v. California*

---

Daniel Naftalovich,

*Applicant,*

vs.

State of California,

California Supreme Court,

California Court of Appeal, Second District, Division 4,

California Superior Court, County of Los Angeles,

and Helen Wexler,

*Respondents.*

---

On Petition for Writ of Certiorari to the California Supreme Court

---

**APPLICATION TO STAY THE EXECUTION OF THE RESTRAINING ORDER  
ISSUED BY THE CALIFORNIA SUPERIOR COURT IN NO. 21PDRO01160**

---

**REQUEST FOR COUNSEL**  
per U.S. Const., amend. VI

Daniel Naftalovich  
*Applicant, pro se*  
540 S. Madison Ave., Apt. #8  
Pasadena, California 91101  
Phone: (551) 265-8114  
Email: [dannaftalovich@gmail.com](mailto:dannaftalovich@gmail.com)

TABLE OF CONTENTS

**I. The State of California ambushed me with a *de facto* criminal prosecution. . . 1**

**II. Reasons for Staying the Superior Court’s Restraining Order . . . . . 2**

a. There is a ‘fair prospect’ that this Court will rule that restraining orders that are “criminal in nature” under *Hicks v. Feiock*, 485 U.S. 624 (1988) demand the protections to the criminally accused as guaranteed by the U.S. Constitution. . . . 2

b. There is a ‘reasonable probability’ that the Court will grant a writ of certiorari or *habeas corpus* because the Superior Court’s order is clearly “criminal in nature” under *Hicks v. Feiock* yet I received absolutely none of the protections to the criminally accused that are guaranteed by the United States Constitution. . . . . 3

c. ‘Irreparable harm’ to me will certainly result from denial of the requested stay because a multitude of my *fundamental* rights are being violated through a *prior* restraint on my speech and on my many other rights—and my parenting rights to my very young minor daughter are very severely and unjustly deprived. . . . . 5

d. The ‘balance of the equities’ supports issuing a stay since *there is no real risk* to the Real Party in Interest that justifies my restraints given the lack of actual ‘violence’ or any cause for police activity, yet *I* am suffering irreparable harm. . 10

e. The matter befits *direct involvement by this Court* since the State’s higher courts willfully turned a blind eye on the U.S. Constitution, and because the matter necessitates nation-wide condemnation of foundational legal processes . . . . . 12

**III. Conclusion . . . . . 14**

**Table of Authorities**

Cases

*Altafulla v. Ervin*, 238 Cal.App.4th 571 (2015) . . . . . 4, 7

*Cochran v. Cochran*, 65 Cal.App.4th 448 (1998) . . . . . 8

*Gideon v. Wainwright*, 372 U.S. 335 (1963) . . . . . 13-14

*Hicks v. Feiock*, 485 U.S. 624 (1988) . . . . . i, 1-4, 13

*Ingraham v. Wright*, 430 U.S. 651 (1977) . . . . . 4

*Lester v. Lennane*, 84 Cal.App.4th 536 (2000) . . . . . 9

*Maryland v. King*, 133 S. Ct. 1 (2012) . . . . . 2

*Miranda v. Arizona*, 384 U.S. 436 (1966) . . . . . 3

*Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) . . . . . 8

*Smith v. Doe*, 538 U.S. 84 (2003) . . . . . 1

*Troxel v. Granville*, 530 U.S. 57 (2000) . . . . . 6

*Washington v. Glucksberg*, 521 U.S. 702 (1997) . . . . . 5, 8, 10

California statutes and rules

Domestic Violence Prevention Act (DVPA) (Family Code §§6200, *et seq.*) . . . . . 1

Family Code §3044 . . . . . 5-6

Family Code §6211 . . . . . 8

Family Code §6320(c) .....	8, 11
Family Code §6345 .....	4
Family Code §6389 .....	4
Welfare and Institutions Code §5150 .....	12

Federal acts and statutes

28 U.S.C. § 2101(f) .....	1
Violence Against Women Act (42 U.S.C. Subchapter III) .....	13

Constitutional provisions and doctrines

U.S. Const., amend. I .....	i, 5, 9-10
U.S. Const., amend. IV .....	2-3
U.S. Const., amend. V .....	2-4
U.S. Const., amend. VI .....	2-3, 13
U.S. Const., amend. VIII .....	4, 6-7, 12
U.S. Const., amend. XIV .....	2-3, 7-8, 13



**Table of Appendices <sup>1</sup>**

**Appendix G** - Superior Court Order After Hearing issued on 11/15/2021 . . App. 420-426

**Appendix H** - Superior Court hearing transcript from 11/15/2021 . . . . . App. 427-457

**Appendix I** - Response to Req. for Domestic Violence Restraining Order . . App. 458-528

**Appendix J** - Superior Court Temporary Restraining Order on 10/22/2021 . App. 529-543

**Appendix K**- Request for Domestic Violence Restraining Order . . . . . App. 544-561

---

<sup>1</sup> The most pertinent portions of the simultaneously-filed petition’s appendices are included with this Application, consisting of the restraining order sought to be stayed (issued on November 15, 2021) and the essential proceedings at the California Superior Court leading to its issuance. For the reader’s convenience and clarity, the same page numbers and appendix letters are used as in the simultaneously-filed petition.

**APPLICATION TO STAY THE EXECUTION OF THE RESTRAINING ORDER  
ISSUED BY THE CALIFORNIA SUPERIOR COURT IN NO. 21PDRO01160**

To the Honorable Elena Kagan, Associate Justice of the United States and Circuit Justice  
for the Ninth Federal Circuit:

I, applicant Daniel Naftalovich, respectfully seek an order recalling and staying the  
restraining order of the California Superior Court, and thus restoring to me all of my rights  
as recognized and protected by the Constitution of the United States of America, until the  
successful filing and eventual disposition by this Court of the simultaneously submitted  
petition for writ of certiorari (or a substantially similar petition for writ of *habeas corpus*),  
as per this Court's jurisdiction under the United States Code in 28 U.S.C. 2101(f).

I contend the restraining order against me is blatantly illegal under both State and  
federal law, and the interests of justice warrant its prompt deactivation and elimination.

**I. The State of California ambushed me with a *de facto* criminal prosecution.**

The State of California imprisoned me with no hearing, notice, or arrest warrant.  
Under the flag of California's Domestic Violence Prevention Act (California Family Code  
§6200, et seq.) the Superior Court issued against me an *ex parte* restraining order with no  
notice—not even minimal notice that an *ex parte* legal action was filed against me—that  
*physically confines* me in a manner that constitutes imprisonment under California law,  
and a manner that this Court recognized “resemble[s] the punishment of imprisonment”.  
(*Smith v. Doe*, 538 U.S. 84, 100 (2003).) Yet, even by the eventual hearing, I was never  
informed “that it is a charge and not a suit”. (*Hicks v. Feiock*, 485 U.S. 624, 639 fn. 10  
(1988).) Thus, the State of California ambushed me with a *de facto* criminal prosecution,  
wherein I was not afforded my right to counsel in a criminal prosecution nor any other of  
the rights to the criminally accused as recognized in the Bill of Rights.

## II. Reasons for Staying the Superior Court's Restraining Order

The restraining order against me is enormously unconstitutional and defective, both in substance and procedure. It should be vacated for numerous reasons, I contend, and until then I respectfully request its execution to be stayed in the interests of justice. Its stay is also supported by the factors in *Maryland v. King*, 133 S. Ct. 1, 2 (2012):

### A. There is a 'fair prospect' that this Court will rule that restraining orders that are "criminal in nature" under *Hicks v. Feiock*, 485 U.S. 624 (1988) demand the protections to the criminally accused as guaranteed by the U.S. Constitution.

The restraining order in this case is very clearly "criminal in nature" under *Hicks* "because the sentence was determinate and unconditional" (*Id.* at 632), since it was issued for the determinate and unconditional duration of "a year" (App. 454:15; see also App. 420:4). "An unconditional penalty is criminal in nature" (*Hicks* at 633).

Since "[t]he question of how a court determines whether to classify the relief imposed in a given proceeding as civil or criminal in nature . . . is one of long standing" (*Id.* at 631), with "its principles [having] been settled at least in their broad outlines for many decades" (*Id.*) and "[t]he distinction . . . [having] been repeated and followed in many cases" (*Id.*), it is unlikely that the Court will overrule *Hicks* in regards to this rule that "if the sentence is a determinate one, then the punishment is criminal in nature, and it may not be imposed unless federal constitutional protections are applied in the [] proceeding." (*Id.* at 637.)

Thus, there is a fair prospect—if not much more—that the Court will rule that court restraining orders that are "criminal in nature" under *Hicks* demand the protections to the criminally accused as guaranteed by the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution, and that the restraining order upon me is erroneous.

**B. There is a ‘reasonable probability’ the Court will grant a writ of certiorari or *habeas corpus* because the Superior Court’s order is clearly “criminal in nature” under *Hicks v. Feiock* yet I received absolutely none of the protections to the criminally accused that are guaranteed by the United States Constitution.**

As noted *supra*, the restraining order in this case is very clearly “criminal in nature” under *Hicks* “because the sentence was determinate and unconditional” (*Id.* at 631), since it was issued for the determinate and unconditional duration of “a year” (App. 454:15 and App. 420:4).

Yet, I was not informed “that it is a charge and not a suit.” (*Hicks* at 639, fn. 10.) In fact, I did not receive *any* of the federal protections to the criminally accused: I did not receive a proper criminal accusation or information enabling me “to know that it is a charge and not a suit” (*Id.*); I did not receive a reasonable seizure, executed by agents of the executive branch of the government and accompanied by a proper arrest warrant issued “upon probable cause” (U.S. Const. amend. IV); I was not protected with a demonstration of the use of procedural safeguards such as a statement of my rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), including my right against self-incrimination (U.S. Const. amend. V); I did not receive a “speedy and public trial” (U.S. Const. amend. VI) with a standard of proof of ‘beyond a reasonable doubt’; I did not receive a jury trial “by an impartial jury” (*Id.*), and I claim I did not even receive a trial by an impartial judge—in violation of my right to “equal protection of the laws” (U.S. Const. amend. XIV); and I did not “have the assistance of counsel for [my] defense” (U.S. Const. amend. VI).

Moreover, I am “subject for the same offense to be twice put in jeopardy of life or limb” (U.S. Const. amend. V) because the California legislation permits the restraints

upon me to be renewed merely “upon the request of [the Real Party in Interest]” (California Family Code §6345) “*without a showing of further abuse*” (*Id.*, emphasized)—in other words, “*for the same offense*” (U.S. Const. amend. V, emphasis added). And these restraints may be renewed “*permanently*” (California Family Code §6345, emphasis added), which I contend inflicts “cruel and unusual punishment” (U.S. Const. amend. VIII) as a “punishment grossly disproportionate to the severity of the crime” (*Ingraham v. Wright*, 430 U.S. 651, 667 (1977)).

Worse still, I am being treated by the State of California like a *convicted felon* despite that I have never been afforded even a criminal *accusation*! In the California Court of Appeal’s own words: “[California Family Code] Section 6389 is analogous to a prohibition on *felon* weapon possession” (*Altafulla v. Ervin*, 238 Cal.App.4th 571, 581 (2015), emphasis added). This statement is obviously highly problematic: the State may *not* deprive my enumerated “right . . . to keep and bear arms” (U.S. Const. amend. II) on a premise that its restraints upon me are analogous to a prohibition of weapon possession by a (convicted) *felon* when I have been *neither convicted nor accused* of any crime!

There is thus a catastrophic discrepancy upon us: I am subjected to a restraining order that is *clearly* “criminal in nature” under *Hicks*, and to deprivations of fundamental rights as if I am a *convicted felon*, for a potentially *permanent* duration—yet I was not afforded *any* of the federally recognized rights to the criminally accused, including the bare minimum of receiving an accusation and being informed “that it is a charge and not a suit” (*Id.* at 639, fn. 10). Surely *this Court* will not permit the situation to remain without review (as the State’s higher courts did...), and so there is a reasonable probability the Court will grant *habeas corpus* or certiorari to review the lawfulness of my restraints.

**C. ‘Irreparable harm’ to me will certainly result from denial of the requested stay because a multitude of my *fundamental* rights are being violated through a *prior* restraint on my speech and on my many other rights—and my parenting rights to my very young minor daughter are very severely and unjustly deprived.**

The Superior Court deprived first and asked questions later. That is, it deprived my *fundamental* rights first, and asked why later. Actually, what it asked is “why not?”—expecting *me* to bear the burden of proving that my fundamental rights should *not* be deprived. This is completely backwards and illegal under the Court’s ruling that “the Fourteenth Amendment forbids the government to infringe . . . ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” (*Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (*emphasis in original*, and internal quotations and citation omitted).

This is exemplified in the fact that the Superior Court very severely deprived me of my parenting rights, granting *sole* legal and physical custody to the other party, and *restrained me to seeing my daughter only under supervision by a third party monitor* and then expected *me* to prove via months of psychiatric therapy that I *do not* pose a danger to my daughter. (1/19/2022 transcript at 15:11-16, and at 40:17-23 and 41:19-20.) When I asked the Superior Court to justify such action with a finding that I *am* a danger to my daughter, the judge replied that he was not bound to make such a finding. (1/19/2022 transcript at 56:27- 57:3.) But while California’s loosey-goosey so-called ‘civil’ domestic violence/abuse laws do not require such a finding—particularly California Family Code §3044’s unconstitutional *mandatory* presumption—the U.S. Constitution *does* mandate a State to make such a finding *before* depriving me of my *fundamental* rights, including my

fundamental liberty interest “of [a] parent[] in the care, custody, and control of [his] children” (*Troxel v. Granville*, 530 U.S. 57, 65 (2000)). Thus, I am erroneously restrained away from my very young minor child and I am suffering irreparable harm as the connection and bonding with my child is unjustly hindered.

Moreover, the eventual custody hearing was *months later!* The State of California quite literally took my baby away from me for 3 whole months *without any hearing* on the question of my parenting! All I received was a (biased) hearing on domestic abuse against the child’s mother, without any findings of child abuse or that I am a danger to our daughter, and then *suo sponte* continuances on the custody question for two months while I was already severely restrained to supervised visits with my daughter for almost a month initially *ex parte* (and without notice). (App. 421:5(c) and 12/10/2021 transcript at 18:7,15,25-26 and 19:6-8.) And then at this eventual custody hearing I was again deprived on a “temporary” basis for *another* 3 months! (1/19/2022 transcript at 52:27 and 51:27-52:3.) I thus actually *never* got a proper, relevant hearing *on the merits* of my parenting—because at this eventual custody hearing I was faced with an undefeatable (and, I contend, unconstitutional) mandatory presumption that *renewed my restraints before any discussion of the merits*, even when I satisfied *all* of the statutory factors for overcoming the presumption! (1/19/2021 transcript at 7:14-26, 8:14.)

So I do contend before this Court that I am undergoing irreparable harm, and more: I contend that I have undergone and am undergoing still *cruel and unusual punishment* because I was subjected an an *inhumane* separation from my very young child, that was both inhumanely abrupt and is inhumanely prolonged, and is unconstitutional and unjust. The whole situation is unconstitutional and *unconscionable*, and it shocks the conscience

that the State's higher courts have let it persist further. The *disproportionate and excessive* custody restraints are inhumane and rise to the level of cruel and unusual punishment.

The overall entire procedurally inappropriate and essentially criminal treatment that I received by the State of California shocks the conscience and itself rises to the level of cruel and unusual punishment, and it constitutes a fundamental miscarriage of justice. The State of California effectively imprisoned me, physically confining me from my family (my wife and child), and practically shattered my reputation in the community by responding to unfounded allegations with an official stamp of approval instead of with a proper impartial tribunal, and it literally banished me from my home, leaving me as homeless for months while trying to appeal (and without my car even). It thus *isolated me* from my daughter, from my wife, and from my community—physically and practically, by stigmatization and via a no-contact prior restraint on speech forbidding me from even speaking to my wife! This is *more than* imprisonment—it is in some few ways akin to *solitary confinement*, and I contend that in addition to constituting cruel and unusual punishment such official government stigmatization as I experienced by being labeled an “abuser” in such flawed proceedings, and being labeled as a perpetrator of domestic “violence” under a ridiculous emotional disturbance statute where there was no actual ‘violence’ *per se*, and being labeled as “analogous to a . . . felon” (*Altafulla* at 581) without a criminal conviction, is all in violation of my rights under the Fourteenth Amendment to the U.S. Constitution to be free from unwarranted government stigmatization.

\* \* \*

That I will suffer irreparable harm is also otherwise apparent generally due to the numerous prior restraints on my fundamental rights.



In the present case, there was no ‘compelling’ reason to deprive *any* of my fundamental rights because the statute used—California Family Code §6320(c)—forbids “disturbing the peace of the other party” (*Id.*), referring to conduct that “destroys the mental or emotional calm of the other party” (*Id.*). In the context of romantic relationships as specified in California Family Code §6211, including within a marriage, as in this case, emotional upsets are unfortunately certain to occur occasionally. Thus, the State may not prohibit such activity, and it certainly may not prohibit such activity so overbroadly. Essentially, this statute criminalizes upsetting one’s spouse! But emotional upsets in a marriage may occur *for any reason*—but *any reason is not a “compelling reason”* to deprive a person’s fundamental rights! This statute thus does not support deprivation of *any* of my fundamental rights.<sup>2</sup>

Moreover, California’s own Court of Appeals has very clearly recognized that “[t]here is no occasion for the law to intervene in every case where some one’s feelings are hurt. There must still be freedom to express an unflattering opinion, and some safety valve must be left through which irascible tempers may blow off relatively harmless steam.” (*Cochran v. Cochran*, 65 Cal.App.4th 448, 496 (1998), internal citations omitted.) In other words, again: protecting persons from emotional upsets within a marriage or other romantic relationship is *not* a compelling *government* interest that justifies the deprivation of people’s *fundamental* rights by government action. (*Washington* at 721.)

Therefore, *all* of the deprivations of fundamental rights that I experienced and am still experiencing are unconstitutional under the due process guarantees of the Fourteenth

---

<sup>2</sup> Furthermore, I contend this statute must be declared as void for vagueness, especially under this Court’s recent decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), where the Court clarified that the most exacting vagueness standard should apply *even to civil* statutes where results are of a “grave nature” and constitute a “particularly severe penalty”. (*Id.* at 1231.)

Amendment to the U.S. Constitution, and should be reversed—and stayed in the interim. The fundamental human right to parent my daughter, in particular, is causing me (and her) ongoing irreparable harm, as the California Court of Appeal has clearly recognized: “A noncustodial parent who seeks to obtain custody will often be at a disadvantage by the time of trial if the child has bonded with the custodial parent. The noncustodial parent’s only effective recourse is to obtain *immediate review* of any objectionable temporary custody order.” (*Lester v. Lennane*, 84 Cal.App.4th 536, 565 (2000), emphasis added.) Since the California Court of Appeal itself has refused to follow its own precedent, and its rule that such immediate review “can be done by filing a petition for writ . . . [but not] by filing an appeal which will sit in abeyance while the case works its way to trial and decision — and while the bond between child and custodial parent strengthens and deepens” (*Id.*), as apparent from its denial of my petition for writ relief with the statement that my petition “fail[ed] to demonstrate entitlement to extraordinary relief” (App. 65), despite that I referred to this very precedent and pointed out that this case involves an “objectionable temporary [child] custody order” (*Lester* at 565), and since also the California Supreme Court thereafter refused to mandate the Court of Appeal to provide me with equal protection of the laws by following its own clear precedent, I therefore now kindly ask this Court to provide the warranted “*immediate review*” (*Id.*, emphasized).

Another way in which I am quite obviously experiencing irreparable harm is because the State of California issued a *prior* restraint on my speech that by no stretch of the wildest imagination can possibly be constitutional: there was no ‘compelling’ reason for its issuance when it was issued quite literally based on the Real Party in Interest’s mere desire, as evident from the exchange with the judge (“[THE COURT]: Do you wish

to remain having contact with this gentleman? [¶] [Real Party in Interest:] No” (App. 454:21 and 451:7-11)); it is not ‘narrowly tailored’ in any way, shape, or form since it is an ultra-wide blanket-restraint on *all* speech (with very tiny exceptions) and encompasses *all* content of discussion; and it was issued against me with *absolutely no notice at all* because the request for restraining order against me did not indicate the possibility of a prior restraint on my speech as an outcome. (App. 545:6(b).) It may truly be the least constitutionally permissible restraint imaginable, and I ask this Court to stay its execution.

Furthermore, not only is this prior restraint on speech unconstitutional *on its own*, it is additionally unconstitutional by the fact that it clearly interferes with my right to be married since it prevents me—via government action—from speaking to my still-to-date wife during pending divorce proceedings, and it was actually issued *before* there were pending divorce proceedings and even before she had filed a petition for legal separation. (Restraining order on 11/15/2021 (App. 420); legal separation petition filed 11/17/2021.)

In summary, my fundamental rights were deprived left-and-right without regard to the Court’s requirement of strict scrutiny in *Washington*, under which the burden is on the State to demonstrate a compelling state interest and narrowly tailored means for depriving me of any fundamental right. This irreparable harm to me is still ongoing.

**D. The ‘balance of the equities’ supports issuing a stay since *there is no real risk to the Real Party in Interest that justifies my restraints given the lack of actual ‘violence’ or any cause for police activity, yet I am suffering irreparable harm.***

As described *supra*, I am suffering numerous deprivations of my fundamental human rights, including my right to parent my daughter. On the other hand, there is

really not any legitimate risk of harm in this case to the Real Party in Interest (my wife). This case consists of out-of-proportion allegations of so-called domestic violence/abuse under the definition of an extremely overbroad ‘disturbance of the emotional calm’ statute (California Family Code §6320(c)) that were inappropriately given a stamp of approval by a biased judge in prejudiced proceedings that violated my due process rights not only under the *de facto* criminal prosecution that this was but even under a civil construction, where I still deserved a presumption of innocence that I did not receive—I contend. The allegations should have instead been recognized as inappropriate airing out of reasonable-enough martial tensions (especially under the circumstances of a young couple who has just given birth to a child *during a pandemic*). There was no police involvement of any kind and there was no actual ‘violence’ *per se* of any kind, and the Superior Court *did not* make findings of physical abuse by me despite having been presented with allegations to that effect. There was no emergency that warranted *ex parte* initiation of the proceedings without notice. There was, in fact, no danger whatsoever to the Real Party in Interest or to our daughter, and there still is none.

Yet the Superior Court in its witchhunt against ‘abusers’—by any wild legislative definition of the word—restrained me severely and obliterated my life in all directions, and ordered me to undergo *months* of psychiatric therapy in order to affirmatively prove that I am *not* a danger to my child. It is ridiculous; I do not deserve to be treated this way. I did not abuse the Real Party in Interest. (*Not even* under California’s distorted statute of “disturbing the [emotional calm] of the other party”, California Family Code §6320(c).) But *even if* I did, I did not deserve the punishment(s) that I received, and these restraints were completely unconstitutionally imposed upon me, as if I had violated the *criminal*

domestic violence laws yet without any criminal procedure. I am being treated like some ‘serial killer psychopath’ who is a danger to his wife and daughter and must be restrained for their safety!—when there is no legitimate proof to that effect. And *even if* there were proof that I am a danger to my family, California’s own procedures under the Welfare and Institutions Code §5150 would provide a way for the executive branch of government to address the matter *promptly*, i.e., within 72 hours—not by ordering me to a few *months* of unwarranted psychiatric therapy without good cause based on a showing of specific facts. The notion that I am a danger to my child, or to my wife, is a made up fiction. It is not supported by legitimate findings of fact by an impartial tribunal based on valid evidence.

As such, the balance of the equities supports staying the restraints against me, since there is no legitimate risk of harm to the Real Party in Interest whereas I am actively experiencing extreme deprivations of numerous fundamental rights.

**E. The matter befits *direct involvement by this Court* since the State's higher courts willfully turned a blind eye on the U.S. Constitution, and because the matter necessitates nation-wide condemnation of foundational legal processes**

In summary, I contend that the restraints upon me are blatantly erroneous and essentially imprison me in a manner that constitutes criminal relief yet without due process of criminal procedure, and in a manner constituting cruel and unusual punishment. I confronted the Superior Court about its erroneous application of California law, and I was ignored. I then confronted the Court of Appeal about the same and also about the constitutional violations present and I presented my claim that this was a *de facto* criminal prosecution and that my right to counsel was violated. I was worse-than-ignored: the Court of Appeal supplemented its summary denial with a short statement saying that I did

not demonstrate entitlement to extraordinary relief that the Court of Appeal itself ruled is warranted *as a matter of law* in cases with temporary child custody orders—thus I contend the Court of Appeal *willfully* turned a blind eye to my claims and effectively violated my right to equal protection under the laws. I then confronted the California Supreme Court about the situation, and that court similarly willfully summarily ignored me, *en banc*.

The Supreme Court of the United States is now the most appropriate venue for relief, as the situation is catastrophically problematic and the matter demands supervisory review of the State's highest court. While the lower federal courts may also provide relief based on my claims of violations of the U.S. Constitution, I hope this Court appreciates the critically significant mess that this case presents and decides to provide relief directly.

Particularly, this Court is in the best position to assign counsel as it did previously in *Gideon v. Wainwright*, 372 U.S. 335 (1963) and to evaluate properly the question of whether or not, as in *Gideon*, the State(s) violate(s) respondents' Sixth Amendment right to counsel *as a matter of law* in the current paradigm of private-party restraining order proceedings. Should the Court answer this question affirmatively, such a holding would surely shake the foundations of *numerous States'* legislative schemes *and the federal* Violence Against Women Act, in an impactful manner that I contend is best carried forth by this honorable Court with consideration to the inevitable widespread restructuring of government operations and law enforcement, and for ensuring proper foundations to our legal structure. The petition claims that the legislative architecture of enabling private parties to petition a *court* for relief that is "criminal in nature" under *Hicks* constitutes a violation of the doctrine of the separation of powers, as it results in physical confinement/imprisonment of a respondent without any involvement by the executive branch and it

essentially provides the State(s) a mechanism to circumvent the issuing of arrest warrants based on probable cause and all other required criminal procedures. I contend it would not be in the Nation's best interest to submit these very fundamental and wide-reaching questions progressively through the lower federal courts and rather a decisive and authoritatively dispositive ruling from this Court is most appropriate, like in *Gideon*.

### III. Conclusion

The restraining order against me is highly illegal, and in the interests of justice its execution should be stayed until the filing and disposition of a petition for a full review. I have attempted to seek such review in the State's higher courts but to no avail due to the willful ignorance of the respondent courts. I thus petition this Court to finally provide a proper review of the merits of my claims and the legality of this horrible restraining order that has been severely depriving my numerous fundamental rights for nine months.

DATED July 11, 2022

Respectfully submitted,



---

Daniel Naftalovich  
Petitioner, *pro se*

Main appendices

Orders denying relief at the courts below:

**Appendix A** - California Supreme Court summary denial on 4/13/2022 . . . . . App. 001

**Appendix C** - Court of Appeal denial order on 3/3/2022 . . . . . App. 065

Order to be reviewed by this Court:

**Appendix G** - Superior Court Order After Hearing issued on 11/15/2021 . . App. 420-426



Orders denying relief at the courts below:

**Appendix A** - California Supreme Court summary denial on 4/13/2022 . . . . .App. 001

**Appendix C** - Court of Appeal denial order on 3/3/2022 . . . . .App. 065

SUPREME COURT  
FILED

APR 13 2022

Jorge Navarrete Clerk

S273823

---

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

---

DANIEL NAFTALOVICH, Petitioner,

v.

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR et al.,  
Respondents;

HELEN WEXLER, Real Party in Interest.

---

The "Petition for Writ of Mandate and Habeas Corpus, or Other Appropriate Relief" and application for stay are denied.

CANTIL-SAKAUYE

---

*Chief Justice*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

COURT OF APPEAL - SECOND DIST.

SECOND APPELLATE DISTRICT

FILED

Mar 03, 2022

DANIEL P. POTTER, Clerk

S. Veverka Deputy Clerk

DIVISION FOUR

DANIEL NAFTALOVICH,

B318636

Petitioner,

(Los Angeles County  
Super. Ct. No. 21PDRO01160,  
21PDRO01272, 21PDFL01989)  
(Timothy Martella, Harvey  
Silberman, Judges.)

v.

SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

ORDER

HELEN WEXLER,

Real Party in Interest.

THE COURT: \*

The oversized petition for writ of mandate, prohibition and habeas corpus relief filed on February 25, 2022, has been read and considered and is denied. The petition presents an untimely challenge to an appealable domestic violence protective order issued on November 15, 2021 and fails to demonstrate entitlement to extraordinary relief. (See e.g. *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273-1274; *Nixon Peabody LLP v. Superior Court* (2014) 230 Cal.App.4th 818, 821; *Isidora M. v. Silvino M.* (2015) 239 Cal.App.4th 11, 16 fn. 4.)

  
\* MANELLA, P.J.

  
WILLHITE, J.

  
CURREY, J.

Document received by the CA Supreme Court.

Order to be reviewed by this Court:

**Appendix G** - Superior Court Order After Hearing issued on 11/15/2021 . . App. 420-426



DV-130

Restraining Order After Hearing (Order of Protection)

Original Order Amended Order

1 Name of Protected Person: Helen Wexler

Your lawyer in this case (if you have one):

Name: State Bar No.:

Firm Name:

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):

Address: 229 S. Wilson Ave., Apt 10

City: Pasadena State: CA Zip: 91106

Telephone: 626-240-8830 Fax:

E-Mail Address: helenwexler@gmail.com

Clerk stamps date here when form is filed.

FILED Superior Court of California County of Los Angeles NOV 15 2021 Sherri R. Carter, Executive Officer/Clerk By Walter Acuna Deputy

Fill in court name and street address:

Superior Court of California, County of Pasadena Courthouse 300 E. Walnut Street Pasadena, CA 91101

Clerk fills in case number when form is filed.

Case Number: 21PDR001160

2 Name of Restrained Person:

Daniel Naftalovich

Description of restrained person:

Sex: M Height: 5' 8" Weight: 155 Hair Color: Brown Eye Color: Brown Race: White Age: 31 Date of Birth: 01/25/1990 Mailing Address (if known): 229 S. Wilson Ave., Apt 10 City: Pasadena State: CA Zip: 91106 Relationship to protected person: husband

3 Additional Protected Persons

In addition to the person named in 1, the following persons are protected by orders as indicated in items 6 and 7 (family or household members):

Table with 4 columns: Full name, Relationship to person in 1, Sex, Age. Row 1: Noa Wexler, Daughter, F, 1

Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-130, Additional Protected Persons," as a title.

4 Expiration Date

The orders, except as noted below, end on

(date): 11/15/22 at (time): 11:59 p.m.

- If no date is written, the restraining order ends three years after the date of the hearing in item 5(a). If no time is written, the restraining order ends at midnight on the expiration date. Note: Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation, and child support orders usually end when the child is 18. The court orders are on pages 2, 3, 4, and 5 and attachment pages (if any).

This order complies with VAWA and shall be enforced throughout the United States. See page 5.

This is a Court Order.



Case Number: \_\_\_\_\_

**5 Hearings**

NOV 15 2021

- a. The hearing was on (date): \_\_\_\_\_ with (name of judicial officer): TIMOTHY MARTELLA
- b. These people were at the hearing (check all that apply):
  - The person in ①  The lawyer for the person in ① (name): \_\_\_\_\_
  - The person in ②  The lawyer for the person in ② (name): \_\_\_\_\_
- c. The people in ① and ② must return to Dept. 5 of the court on (date): 12/3/2021  
 at (time): 8:30  a.m.  p.m. to review (specify issues): child custody  
AND VISITATION

**To the person in ②:**

The court has granted the orders checked below. Item ⑨ is also an order. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

**6 Personal Conduct Orders**

- a. The person in ② must not do the following things to the protected people in ① and ③:
  - Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate (on the Internet, electronically or otherwise), or block movements.
  - Contact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail, or other electronic means.
  - Take any action, directly or through others, to obtain the addresses or locations of any protected persons. (If this item is not checked, the court has found good cause not to make this order.)
- b. Peaceful written contact through a lawyer or process server or another person for service of legal papers related to a court case is allowed and does not violate this order.
- c.  Exceptions: Brief and peaceful contact with the person in ①, and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

**7 Stay-Away Order**

- a. The person in ② must stay at least (specify): 100 yards away from (check all that apply):
  - The person in ①  School of person in ①
  - Home of person in ①  The persons in ③
  - The job or workplace of person in ①  The child(ren)'s school or child care
  - Vehicle of person in ①  Other (specify): \_\_\_\_\_
- b.  Exceptions: Brief and peaceful contact with the person in ①, and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

**8 Move-Out Order**

The person in ② must move out immediately from (address): \_\_\_\_\_

**9 No Guns or Other Firearms or Ammunition**

- a. The person in ② cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

**This is a Court Order.**



Case Number: 

- 9 b. The person in ② must:
- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
  - Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. (Form DV-800, *Proof of Firearms Turned In, Sold, or Stored*, may be used for the receipt.) Bring a court filed copy to the hearing.
- c.  The court has received information that the person in ② owns or possesses a firearm.
- d.  The court has made the necessary findings and applies the firearm relinquishment exemption under Family Code section 6389(h). Under California law, the person in ② is not required to relinquish this firearm (*specify make, model, and serial number of firearm*): \_\_\_\_\_  
The firearm must be in his or her physical possession only during scheduled work hours and during travel to and from his or her place of employment. Even if exempt under California law, the person in ② may be subject to federal prosecution for possessing or controlling a firearm.
- 10  **Record Unlawful Communications**  
The person in ① has the right to record communications made by the person in ② that violate the judge's orders.
- 11  **Care of Animals**  
The person in ① is given the sole possession, care, and control of the animals listed below. The person in ② must stay at least \_\_\_\_\_ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals: \_\_\_\_\_
- 12  **Child Custody and Visitation**  
Child custody and visitation are ordered on the attached Form DV-140, *Child Custody and Visitation Order* or (*specify other form*): \_\_\_\_\_
- 13  **Child Support**  
Child support is ordered on the attached Form FL-342, *Child Support Information and Order Attachment* or (*specify other form*): \_\_\_\_\_
- 14  **Property Control**  
Only the person in ① can use, control, and possess the following property: \_\_\_\_\_
- 15  **Debt Payment**  
The person in ② must make these payments until this order ends:
- |               |            |                  |                 |
|---------------|------------|------------------|-----------------|
| Pay to: _____ | For: _____ | Amount: \$ _____ | Due date: _____ |
| Pay to: _____ | For: _____ | Amount: \$ _____ | Due date: _____ |
| Pay to: _____ | For: _____ | Amount: \$ _____ | Due date: _____ |
- Check here if more payments are ordered. List them on an attached sheet of paper and write "DV-130, Debt Payments" as a title.
- 16  **Property Restraint**  
The  person in ①  person in ② must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, the person must notify the other of any new or big expenses and explain them to the court. (*The person in ② cannot contact the person in ① if the court has made a "No-Contact" order.*)  
Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

**This is a Court Order.**



Case Number: \_\_\_\_\_

**17**  **Spousal Support**  
Spousal support is ordered on the attached Form FL-343, *Spousal, Partner, or Family Support Order Attachment* or (*specify other form*): \_\_\_\_\_

**18**  **Rights to Mobile Device and Wireless Phone Account**  
a.  **Property Control of Mobile Device and Wireless Phone Account**  
Only the person in **(1)** can use, control, and possess the following property:  
Mobile device (*describe*) \_\_\_\_\_ and account (*phone number*): \_\_\_\_\_  
Mobile device (*describe*) \_\_\_\_\_ and account (*phone number*): \_\_\_\_\_  
 *Check here if you need more space. Attach a sheet of paper and write "DV-130 Rights to Mobile Device and Wireless Phone Account" as a title.*  
b.  **Debt Payment**  
The person in **(2)** must make these payments until this order ends:  
Pay to (*wireless service provider*): \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_  
c.  **Transfer of Wireless Phone Account**  
The court has made an order transferring one or more wireless service accounts from the person in **(2)** to the person in **(1)**. These orders are contained in a separate order (Form DV-900).

**19**  **Insurance**  
 The person in **(1)**  the person in **(2)** is ordered NOT to cash, borrow against, cancel, transfer, dispose of, or change the beneficiaries of any insurance or coverage held for the benefit of the parties, or their child(ren), if any, for whom support may be ordered, or both.

**20**  **Lawyer's Fees and Costs**  
The person in **(2)** must pay the following lawyer's fees and costs:  
Pay to: \_\_\_\_\_ For: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_  
Pay to: \_\_\_\_\_ For: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_

**21**  **Payments for Costs and Services**  
The person in **(2)** must pay the following:  
Pay to: \_\_\_\_\_ For: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_  
Pay to: \_\_\_\_\_ For: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_  
Pay to: \_\_\_\_\_ For: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Due date: \_\_\_\_\_  
 *Check here if more payments are ordered. List them on an attached sheet of paper and write "DV-130, Payments for Costs and Services" as a title.*

**22**  **Batterer Intervention Program**  
The person in **(2)** must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department under Penal Code § 1203.097. The person in **(2)** must enroll by (*date*): \_\_\_\_\_ or if no date is listed, must enroll within 30 days after the order is made. The person in **(2)** must complete, file and serve Form 805, Proof of Enrollment for Batterer Intervention Program.

**23**  **Other Orders**  
Other orders (*specify*): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**24** **No Fee to Serve (Notify) Restrained Person**  
If the sheriff or marshal serves this order, he or she will do it for free.

**This is a Court Order.**



Case Number: 

## Warnings and Notices to the Restrained Person in 2

### If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

### You cannot have guns, firearms, and/or ammunition.



You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a \$1,000 fine. Unless the court grants an exemption, you must sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

## Instructions for Law Enforcement

### Start Date and End Date of Orders

The orders *start* on the earlier of the following dates:

- The hearing date in item ⑤ (a) on page 2, or
- The date next to the judge's signature on this page.

The orders *end* on the expiration date in item ④ on page 1. If no date is listed, they end three years from the hearing date.

### Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

### Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Fam. Code, § 6383.)

Consider the restrained person "served" (notified) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; *or*
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Order System (DVROS). (Fam. Code, § 6381(b)-(c).)

### If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

This is a Court Order.



Case Number:

**Child Custody and Visitation**

The custody and visitation orders are on Form DV-140, items ③ and ④. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.

**Enforcing the Restraining Order in California**

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, in the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

**Conflicting Orders—Priorities for Enforcement**

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *EPO*: If one of the orders is an *Emergency Protective Order* (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
2. *No-Contact Order*: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence in enforcement over any other restraining or protective order.
3. *Criminal Order*: If none of the orders includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
4. *Family, Juvenile, or Civil Order*: If more than one family, juvenile, or other civil restraining or protective order has been issued, the one that was issued last must be enforced.

(Clerk will fill out this part.)

**—Clerk's Certificate—**

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: JAN 13, 2022 Clerk, by \_\_\_\_\_, Deputy

*E. Ruiz-Cabral*

Clerk's Certificate

[seal]



This is a Court Order.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**