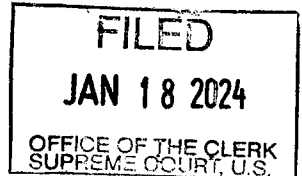


No. **23-6540**

**ORIGINAL**

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**In The Supreme Court of the United States**



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JENNIFER AGNES LOPEZ,

*Petitioner*

v.

STATE OF CALIFORNIA, ET AL.,

*Respondents*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
For the Ninth Circuit**

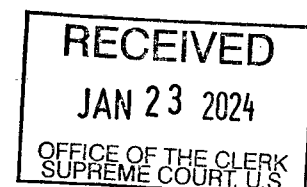
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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner, In Pro Se

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## **QUESTIONS PRESENTED**

1. Whether the State actors can deprive the individual of a fair treatment which violates the guarantees of the Fifth Fourteenth Amendment;
2. Whether the State can remove children from a fit parent by claiming the “best interest doctrine”
3. Whether a government agency can claim prosecutorial immunity when they prolong a case at the insistence of a third party;
4. Whether law enforcement officials can claim qualified immunity when they participated in a “kidnapping” in a foreign country;
5. Whether a government official is allowed to participate in a case that he is not a party;
6. Whether a government official can conspire with the government agencies for his benefit;
7. Whether a district court judge can refuse to recuse himself when respondent’s attorney was once a follow judge in the same court at the same time;
8. Whether a claim of statute of limitation violation be made when the court does not take into account the time required for the appeals both in State and Federal courts.

## **PARTIES TO THE PROCEEDING**

Jennifer Agnes Lopez, petitioner on review, was the appellant in the Court of Appeals and the Plaintiff at the District Court

State of California, Los Angeles County District Attorney, County of Los Angeles Sheriff's Department and Gary Miller, respondents on review, were appellants in the Court of Appeals and Defendants at the District Court.

## **STATEMENT OF RELATED PROCEEDINGS**

There are no related proceedings.

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## **PETITION FOR WRIT OF CERTIORARI**

Jennifer Agnes Lopez respectfully petitions for a writ of certiorari to review judgment of the Court of Appeals for the Ninth Circuit.

### **OPINIONS BELOW**

#### **Federal Court Cases**

The two opinions of the United States Court of Appeals, Ninth District, appear at Appendix A

The opinion of the United State District Court, Central District of California appears at Appendix B

#### **State Court Cases**

The Denial of Petition in the Supreme Court of California appears as Appendix C

The opinion of the Court of Appeal State of California, Second Appellate District, appears as Appendix D

The Ruling On Submitted Matter and Order Thereon of the Superior Court of California appears as Appendix E.

### **JURISDICTION**

The Ninth Circuit Court of Appeals entered judgment on October 20, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **RELEVANT CONSTITUTIONAL PROVISIONS**

1. Fourteenth Amendment: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

2. 42 U.S.C. § 1983: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”

3. Fifth Amendment: “nor shall any person be subject for the same offense to be twice put in jeopardy ...”

4. Eighth Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”.

## STATEMENT OF THE CASE

1. On April 25, 2006 Brian Gene Miller (son of Respondent Gary Miller) filed a paternity lawsuit in the California Superior Court (Pomona Courthouse), *Miller v Lopez*, (LASC) Case No. KF007458, seeking joint custody of our three children: Brian Christopher Miller born on 5/25/1999; Christian Michael Miller and Evan Matthew Miller both born on 7/3/2001. The children lived with me and rarely visited their father. We were never married nor lived together with the children. The children lived with me until April 2011.

This paternity lawsuit was in response to a restraining order that I filed on March 21, 2006 in the Los Angeles County Superior Court *Miller v Lopez* (LASC) Case No. KQ007021, against Brian Gene Miller who had assaulted me. It was granted. Brian Gene Miller had a history of domestic violence. On 1/13/2000 was convicted in the California Superior Court (*The People of the State of California v. Miller* (LASC) Case No. 99H06588) for assaulting me and Brian Christopher Miller who was only 19 months at the time. He was convicted for assault and child endangerment. He was sentenced to 4 years probation and ordered to pay restitution to a person who had his car window broken by Brian Gene Miller because that person had interfered with the assault.

In the paternity case, prior to the trial, I was to keep the children living with me and Brian Gene Miller was allowed monitored visits. At one visit Brian Gene Miller hit Brian Christopher Miller in the face and gave him a black eye. The judge ordered future visits, with the father, to be held at a safe house.

On July 18, 2006, I found my son, Brian Christopher Miller, attempting to choke himself. He said he didn't want to visit his father. I took him to UCI Medical Center. He was sent to a mental health facility for 2 weeks. He was diagnosed with ADHD and given medication. The psychiatrist later determined that he was misdiagnosed. He was suffering from Post Traumatic Stress Disorder. The child was excused from visiting his father at the safe house.

Soon thereafter, the children's therapist Scott Kambak reported to the authorities that all three children had been sexually molested by their father, Brian Gene Miller. The children's school, St. Mary's Catholic School, subsequently reported that the children were sexually molested by their father, Brian Gene Miller. The police concluded that the charges were inconclusive and that the children may have been coached by the mother. Brian Gene Miller was never indicted.

A 730 Custody Evaluation was ordered by the Court who included a psychosexual analysis of Brian Gene Miller. The Custody Evaluation, issued February 24, 2007, recommended that I would be given full custody of the children and that Brian Gene Miller be subjected to therapy and may eventually visit the children. The doctor who completed psychosexual analysis said "There is indication of deviant sexual interest in males, the ages of his three children." The doctor wanted me to take a polygraph test to determine if I coached the children. The results of the polygraph showed that I did not coach my children to make child molestation allegations against their father and that the children told me that their father touched or fondled their genitals.



The paternity case was transferred to the California Superior Court in Los Angeles for trial. The judge, Hon. Michael Linfield, awarded me full legal and physical custody and ordered a hearing for June 18, 2007.

Instead of going to the hearing, Brian Gene Miller's attorney filed a Long Case Management Statement that very day with Hon. Marjorie Steinberg, who conducted a hearing appointing herself as judge and sets the date for new trial and mandatory settlement conference. The dates were in November, 2007.

Getting a new trial is a denial of my due process rights because it is a violation of California Code of Civil Procedures § 656 which states "A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court or referee." The loser could have filed an appeal.

The new court appointed a new custody evaluator to prepare a 733 Custody Evaluation, which is rarely done. A 733 Custody Evaluation is a review of the 730 Custody Evaluation. Dr. Joseph Kenan was the new expert.

The Court's presiding judge, Hon. Robert Schnider, presided at the Mandatory Settlement Conference. While I was waiting outside the judge's chambers, Respondent Gary Miller (U.S. Congressman) and his spouse went in to see the judge without me. When they left, my attorney and I appeared before the judge. Petitioner, Brian Gene Miller never appeared.

Judge Snider handed me a stipulation to sign that I would give my two youngest children to Respondent Gary Miller and his spouse. I refused. Judge Schnider said if I didn't sign it, he would tell Judge Steinberg to take the custody away from me.

According to California Rules of Court, Rule 3.1380, Mandatory Settlement Conference. "Trial counsel, parties, and persons with full authority to settle the case must personally attend the conference, unless excused by the court for good cause. If any consent to settle is required for any reason, the party with that consensual authority must be personally present at the conference".

My attorney and I were the only rightful parties who attended the conference. Calling this a "conference" is a farce and a violation of right to due process.

The next day my attorney said Judge Schnider called her asked for her help in convincing me to sign the stipulation. After all, she said, I could have more children. I, immediately, dismissed my attorney.

A few days later the trial commenced. I had no attorney and was denied a continuance. So, I had to proceed in pro per. I hired an attorney a few days later but he had no knowledge of the case.

The expert witness was Dr Kenan who testified that Brian Christopher Miller never sexually molested the children. I tried to bring in the children's court appointed therapists to testify but was denied. My attorney said the case was not looking good for me and urged me to settle.

According to the settlement, the father, Brian Gene Miller and I would share legal custody of the children who were to be placed in the home of Respondent Gary Miller and his

spouse on November 25, 2011. This was called a "visit" of an undetermined duration. I retained physical custody

A few before I was to deliver the children to the home of Respondent Gary Miller, I took the children to their appointments with their therapists, who had been appointed by minor's counsel. I informed the head therapist, Lynda Doi Fick about the settlement. She told me that the children are not mentally prepared for this change. She called minor's counsel and was told that the children will not be returning to the mother. I decided that I would be putting my children in jeopardy if I took them to live with the Respondent Gary Miller and be in the company of their father. This is my right having joint legal custody and full physical custody.

Furthermore, according to *Troxel v Granville* 530 U.S. (2000) There is a presumption that fit parents act in their children's best interests, *Parham v. J. R.*, 442 U. S. 584, 602; there is normally no reason for the State to inject itself into the private realm of the family to further question fit parents' ability to make the best decisions regarding their children, see, e. g., *Reno v. Flores*, 507 U. S. 292, 304. Accordingly, so long as a parent adequately cares for his or her children (i. e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to best decisions concerning the rearing of that parent's children. See, e. g., *Flores*, 507 U. S., at 304.

There was never a question as to my fitness as a parent. In Mexico, for almost four years, I homeschooled my children and, when they were tested after their return, they placed above grade level in all subjects. The children all testified that they enjoyed nice residences and adequate food. They were healthy and had the required immunizations. They visited the dentist regularly. Brian Christopher Miller read every Harry Potter novel before he was twelve. They were taught the guitar and Spanish. They participated in team and individual sports.

2. On April 11, 2011, I had been living in Mexicali, Mexico, a few months, with my three children and my husband George De Jongh when five mercenaries, with automatic weapons, entered our house and took us away in two vans. They were not police and they didn't handcuff us. Although, we were living just a few miles from the U.S. Border, we were headed to the Tijuana border which is about three hours away.

On our way to the Tijuana, we came upon a checkpoint. My son (who is fluent in Spanish) told the guards that we were being kidnapped and taken to their father who sexually molested them. The Tijuana Police Chief was called. He arrived and rerouted us to the Police Station.

At the Police Station we were offered asylum and I could become a Mexican citizen because my 4 month old daughter is a Mexican citizen and the rest of my family could remain. However, my children would be placed in foster care. I felt that now that the secret is out that they were the grandchildren of a U.S. Congressman they may be subjected to kidnapping. There was a mediator brought in and explained what could happen in Mexico to my children. I decided that it would be detrimental for my children to remain in Mexico.

We were taken to the border where three cars from the Respondent Los Angeles County Sheriff's Department were waiting.

Respondent Los Angeles County Sheriff's Department actively participated in a kidnapping of my family in a foreign country. In fact, they were in a different county without jurisdiction. There was no representative from the local police.

The Border Patrol let us all cross. My daughter was allowed to cross even though she was a Mexican citizen with no birth certificate.

The Defendant Los Angeles County Sheriff's Department wrote in their report that Mexico classified my family and me as undesirable aliens.

3. I was arrested and my children were given to Respondent Gary Miller. I was charged with 3 counts of violating California Penal Code 278.5. The actual charge was "DID MALICIOUSLY DEPRIVE GARY MILLER AND CATHLEEN MILLER OF THEIR RIGHT OF VISITATION". The case was *The People of the State of California vs Jennifer Lopez* (BA332537). My bail was set at \$500,000. My husband, George De Jongh, was charged exactly like me but his bail was \$120,000. According to the Los Angeles County bail schedule, that particular crime requires a bail amount of \$40,000. With three counts, that would equal to total set for my husband. That is a violation of my rights under the 8<sup>th</sup> Amendment to the U.S. Constitution.

On November 7, 2012 my husband and I were convicted. We appealed (*Jennifer Lopez DeJongh, et al* 237 Cal.App4th 1124 (2015) 188 Cal.Rptr.3d 746) on the grounds that since I had joint legal custody and full physical custody, I could take them whenever and wherever I desire in order to protect my children. We cited *Troxel v Granville* 530 U.S. (2000) "The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law. We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno v. Flores*, 507 U. S. 292, 301-302 (1993)."

On June 18, 2015 the appeals court affirmed *The People v Jennifer Lopez De Jongh* 237 Cal.Rptr.4<sup>th</sup> 1124 (2015) 188 Cal.Rptr.3d 746.

4. On August 21, 2011, Respondent Gary Miller (with his spouse and my three children) was granted a temporary restraining order, by Hon. Stephen Blades, against me (*Miller v Lopez* in Pomona (LASC) Case No. KS015622). Respondent Gary Miller also was granted temporary restraining orders against my husband, George De Jongh, my father Jude R. Lopez and my mother Alicia Lopez. All four restraining order were sent to the Los Angeles Courthouse to be consolidated with the family lawsuit *Miller v Lopez*, Case No. KF007458.' Hon. Thomas Trent Lewis was assigned the case.

These temporary restraining orders should not have been granted because according to California Code of Civil Procedures §527.6(1) "Course of Conduct is a pattern of conduct composed of a series of acts over a period of time, however short... Civil harassment requires the ongoing continuous harassment to qualify for a restraining order." (3) "Harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct

directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” There was never any violence or threat of violence toward Respondent Gary Miller. This is a violation of my equal protection rights.

Judge Lewis ruled, after 684 day, on the temporary restraining orders, and makes them permanent. This which is in violation of California Code of Civil Procedures §527.6(f) “A temporary restraining order issued under this section, at the court’s discretion, for a period not to exceed 21 days, or, if the court extends the time of hearing under subdivision (g), not to exceed 25 days unless otherwise modified or terminated by the court”. Here again my rights to equal protection are violated.

5. On September 19, 2011, Respondent Gary Miller and his spouse filed for temporary guardianship of my three children (*In Re the Guardianship of: Brian c. Miller, Christian M. Miller, Evan Matthew Miller, Minors*, Pomona (LASC) Case No. KP014388). The hearing was on September 21, 2011, Hon. Steven Blades presiding. Judge Blades, weeks earlier, illegally granted the restraining orders against me and my family.

The hearing was conducted in a strange and illegal manner; the proposed temporary guardians, Respondent Gary Miller and his spouse were not present and neither were my three children. Donald Haslam, the proposed guardian attorney, did attend. My father, Jude R. Lopez, objected to the guardianship and was in attendance. According the clerk of the court, all children, subject to guardianship must attend the hearing if they are 4 years of age or older. All three children were over 4 years old, at the time. Furthermore, the guardianship petition form calls for any child over 12 years old must approve the guardianship. Brian C. Miller was 12 and that section was left blank. Even with all these violations of court procedures, Judge Blades approve the temporary petition and forwarded it to the Los Angeles to be consolidated with the paternity suit and the restraining orders.

I am unaware if it is illegal but it is not certainly proper procedure to have temporary restraining and temporary guardianship orders be adjudicated in Pomona and then immediately consolidated in Los Angeles where the court has jurisdiction of the children and I. Respondent Gary Miller sought out a “friendly” judge in Pomona who would overlook an improper hearing and a faulty petition.

At the guardianship trial Defendant Gary Miller brought in one witness and one expert.

The witness was Carmen Lopez. She was my aunt who facilitated my move to Mexico. She testified that she procured false identification for my whole family and found a place to live where we couldn’t be found. She had never been charged with a crime. She also testified that Respondent Gary Miller gave her money, several times, before she testified. Judge Lewis said of the bribery “These kindnesses by the Millers did not undermine Carmen’s credible and undisputed testimony. Of all the witnesses who testified, Carmen was indisputably and most credible”. Carmen Lopez later committed suicide.

The expert was brought in to rebut the issue that the children were sexually molested by their father. She said she did not read any of the doctors’ assessments of the father. Instead, she came to that conclusion by watching their body movements.

The expert was shown of a pornographic photo of my twins, posing nude with cowboy hats and guns, taken by their father when they were four. The expert said this is normal.

Judge Lewis used her testimony to rule that the children weren't sexually molested by their father although he ordered the father, Brian Gene Miller to have no contact with the children.

Hon. Thomas Trent Lewis granted Respondent Gary Miller and his spouse guardianship of my three children 1513 days after the original petition was filed. This took a usually long time since, according to Los Angeles County records; the average guardianship takes an average of 90 days to be adjudicated.

I understand why the guardianship issue took the amount of time as it did. It is apparent that the time was dependant on when all three of my children decided that they didn't want to live with me. On July 2, 2013, two years after my children returned to the United States and have been living with Respondent Gary Miller and his spouse, their minors' counsel testified "I don't think it is disputed that my clients' preference is to be with mom whenever they can and live with her." Hon. Thomas Trent Lewis responded "I'm sure they want to live with their mom".

On May 5, 2014, all three children were deposed. Brian Christopher Miller preferred to stay with Respondent Gary Miller and his spouse. Christian Michael Miller said he wanted to live with me. Even Matthew Miller said he wanted to stay of Respondent Gary Miller and his spouse. By June 11, 2015, Christian Miller indicated that he want to join his brother and live with the Millers.

Six days later, on June 17, 2015, Judge Lewis granted the Guardianship of my children to Respondent Gary Miller and his spouse. In the ruling *In Re the Guardianship of: Brian c. Miller, Christian M. Miller, Evan Matthew Miller, Minors*, Pomona (LASC) Case No. KP014388). Judge Lewis wrote "It is detrimental for the boys to be placed in the custody of mother because there is grave risk that the mother will abduct the children...in the face of future visitation the paternal grandparents. Here Judge Lewis is protecting the visitation rights of Respondent Gary Miller and his spouse who have no such inherent rights per *Troxel*."

Judge Lewis gave my children to a non-parent because I was at risk of not taking my children to Respondent Gary Miller for a visit. Isn't that the same crime that I was already convicted of in my criminal conviction in *The People of the State of California v Jennifer Lopez* (BA332537) which I was on probation for?

Actors of the State of California punished me three times for committing the same crime which violates the double jeopardy clause of the 8<sup>th</sup> Amendment of the U.S. Constitution. In *People v Harvest* (84 CalApp 4th 645) the court finds that a civil penalty can actually be a criminal penalty. "...since a statutory scheme may be "so punitive either in purpose or effect" (citation) as to "transforer what was clearly intended as a civil remedy into a criminal penalty" ( *People v Hanson*, supra, 23 Cal.4th 355, 361, 97 Cal.Rptr:2nd 58, 1 P.3d 650, quoting *Hudson v. United States* (1997) 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.2nd,450.) Furthermore " In making this determination, the factors listed in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169, 83.S.Ct,554,9 L.ED.2d 644 (1963) provide useful guideposts including: ...(4) 'whether

its operation will promote the traditional aims of punishment-restitution and deterrence'..." (*Hudson v. United States*, supra, 522, U.S.93 99-100, 118 S. Ct. 488, 139 L.Ed.2nd 450)"

I only committed one crime and I was convicted of that crime. But for that same crime, I was restrained from seeing my children for 10 years and I eventually lost my children. I currently have no communication with my boys.

Judge Thomas never took into account the criminal case. In his "*Ruling*" he wrote: "Regardless of the outcome of the criminal case, the court finds by clear and convincing evidence that mother knowingly, willfully, and intentionally violated the court order. She is bound by that finding in this proceeding only."

In Judge Lewis' *Ruling On Submitted Matter And Order Thereon* (LASC Case No KP014388, et al) of June 16, 2015, he transferred the case to Department 27, which included the restraining order and guardianship. Judge Lewis kept two issues, in the case, to remain with him: "the issue of mother's counsel's request for fees and costs and minor counsel's request for fees and costs related only to this trial which shall be heard in Department 309 (Judge Lewis' Courtroom) or a further application to extend the temporary guardianship pending entry of the finalizing orders and documents."

6. On July 19, 2015 the restraining orders expired. On March 9, 2016, Hon. Thomas Trent Lewis renewed the restraining order against me although he had previously ordered the case removed to Department 27. This is the order:

**RENEWAL AND EXPIRATION**

THE RESTRAINING ORDER FOR GARY MILLER WILL NOT EXPIRE. THE RESTRAINING ORDER FOR BCM, CMM, AND EMM WILL EXPIRE AT MIDNIGHT ON FEBRUARY 3, 2021. AFTER HE REACHES THE AGE OF EIGHTEEN, EACH BOY MAY MOVE TO TERMINATE THIS RESTRAINING ORDER AS FAR AT IT APPLIES TO HIMSELF."

All minors had reached majority age by July 2, 2019; well before February 3, 2021.

California Code of Civil Procedure Section 527.6 (j) (1) is clear, "The order may be renewed, upon request of a party, for duration of not more than five additional years..."

However, in the original Notice of Hearing to Renew Restraining Order there is a statement that says "At the hearing, the judge can renew the current restraining order for up to three years." Either way, restraining orders for a lifetime are not allowed.

Here again my rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments were violated.

The final judgment *In Re the Guardianship of: Brian c. Miller, Christian M. Miller, Evan Matthew Miller, Minors*, (LASC) Case No. KP014388) regarding the guardianship and the restraining order was filed on November 27, 2015 and signed by Hon. Thomas Trent Lewis.

The judge allowed me to visit my children. A therapist and two armed therapist had to be present for a visit. I had to pay over \$600 to see my children for one hour. And, according to Judge Lewis "All persons connected with mother who have visitation with the Minors shall be subject to being inspected "pat" down by one of the monitors prior to commencement of the

visitation. I could rarely see them because I didn't have the money. This violated my rights under the 8<sup>th</sup> amendment "cruel and unusual punishment".

On October 26, 2015, I had filed a police report because Respondent Gary Miller refused to bring my children to a visit after I already paid for the therapist and monitors. Respondent Los Angeles County Sheriff's Department took no action even after I showed them the court order. Defendant Los Angeles County Sheriff's Department wrote "I notified RP/Lopez that the District Attorney does not file family matters and this report was taken as documentation for the Family Court."

On November 21, 2020, while shopping at my local Target Store, I waited in line for the cashier. The cashier was my son Christian Michael Miller. We were both wearing masks but I thought recognized him. I haven't seen him in many years. Being aware of the restraining order, I did not speak to him nor did he speak to me.

I was ordered to go to court in Pomona for a violating a restraining order. The Judge assigned was Hon Stephen Blades. I had an attorney who had Judge Blades removed from the case.

My son, Christian Michael Miller didn't want anything to do with the case. I believe that the Defendant Los Angeles County Sheriff's Department and Defendant Gary Miller completed a falsified police report. My son was listed as the victim.

Respondent Los Angeles County District Attorney continued stalling on the case for about a year. Finally the Judge said that he was going to impanel a jury immediately and begin the trial. Respondent Los Angeles County District Attorney said they were not ready because the victim, Christian Michael Miller, refuses to cooperate. The judge asked the Respondent Los Angeles County District Attorney why they won't dismiss the case. The Respondent Los Angeles County District attorney responded that "Gary and Cathy Miller want to continue. The judge dismissed the case. Respondent Gary Miller and his spouse were not the guardians of my children because they were all adults at the time.

9. I filed an appeal, in pro per, on both issues (guardianship and restraining order), with the California Court of Appeal on Jan 11, 2016. It was assigned to the Second Appellate District, Division 1. The guardianship case was assigned Case No. B269487. The Restraining Order was assigned Case No. B271347. While I briefed both case separately, the Court ordered that the cases be consolidated for oral argument and decision. Oral argument was scheduled November 14, 2017.

According to the instructions from the Court, the oral arguments are conducted for only a few minutes. The briefs have already been read by the panel of judges and they will ask questions.

When I attended the oral hearing, I noticed that the judges began asking questions from the attorneys in the cases. This conforms to the instructions I received from the Court but it was totally different for me. The chief judge asked me to state my case. She even asked me the ages of my children and what the case was about. I provided a few salient points and judge chief said it was submitted. I told the chief judge there are two cases that were at issue. The chief judge

was unaware of this and asked the clerk if that was true. The clerk informed the chief judge that there are two cases. The judge asked me to state my points on the second case and said it was submitted.

Obviously the panel of judges did not read the brief that I submitted, which violates my right to equal protection.

The California Appeal Court affirmed the judgments from the lower court on November 27, 2017. Their main issue is that they did not have the transcripts from the lower court. I could not afford to get the transcripts because the lower court case ran for many years with dozens of hearings. The Court also wrote that the Family Court can remove children from a fit parent, which I was. They are citing the “best interest” doctrine with no concern of the parent. This type of comment is totally opposite of what the U.S. Supreme Court said in *Troxel*.

The California Appeal Court cited California Family Code 6345 that in Family Court regarding stay away. The Court claims that a stay away order “These orders may be renewed, upon the request of a party, either for five or more years, or permanently, at the discretion of the court, without a showing of further abuse since the issuance of the original order. I quoted California Code of Civil Procedures §527.6(1) which does not allow permanent restraining orders.

First of all the restraining order was not originally issued in the Family Court. Second of all, there was never any “abuse” which is required in the family court.

The California Appeal Court quoted California Family Code 3041 “Before making an order granting custody to a person other than a parent, over the objection of a parent, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child.

(b) Subject to subdivision (d), a finding that parental custody would be detrimental to the child shall be supported by clear and convincing evidence.

(c) As used in this section, “detriment to the child” includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of the child's parent, fulfilling both the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require a finding of unfitness of the parents.

(d) Notwithstanding subdivision (b), if the court finds by a preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary.”

There was never any preponderance of evidence, or any evidence whatsoever, of any harm to the children. All I did wrong was not take the children to a visit and the judge feared that I would not take them to a visit to Respondent Gary Miller.

10. On January 25, 2018, I filed, in pro per, a petition for review with the California Supreme Court. My petition for review was denied on February 21, 2018.



11. On May 30, 2019, I filed a complaint, in pro se, *In Forma Pauperis*, in the United States District Court, Central District of California, and *Lopez v Xavier Becerra et al* Case No. 2:19-CV-04702-DOC. The case was assigned to Hon. David O. Carter.

On June 7, 2019, the case was dismissed. The judge wrote that it was barred by the Rooker-Feldman doctrine. Also, instead of the State of California as defendant, I named the California State Attorney General as defendant.

On July 17, 2019, I filed a new complaint, in pro se, *In Forma Pauperis*, in the United States District Court, Central District of California, and *Lopez v State of California. et al* Case No. 2:19-CV-06140-DOC. I change the Defendant to the State of California and the case was, again, assigned to Hon. David O. Carter. I made some changes and addressed the issue regarding the Rooker-Feldman doctrine.

On July 22, 2019 it was denied on procedural issues. There was not one mention on any constitutional issue that was brought up.

12. When it seemed that I had no way to proceed because a new complaint would just be dismissed. I asked an attorney at a legal aid clinic. He advised me to pay for the filing fee which would mean that the Defendants would be required to answer the complaint. It took me awhile to raise the filing fee of about \$500 but I did it.

On March 2, 2021, I filed a complaint in pro se, in the United States District Court, Central District of California, and *Lopez v State of California* Case No. 2:19-CV-1947-DOC. The Defendants were all served and responded. The Complaint was for: Conspiracy; Violation of 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendment of the U.S. Constitution, Civil Rights Act of 1964 and 42 U.S.C. §1983. Hon. David O. Carter was assigned to the case. Magistrate Sheri Pym authored the *Report and Recommendation of United States Magistrate Judge*. Judge Carter accepted those recommendations and dismissed the case.

All defendants filed a response and I replied to each response. All defendants basically claimed the same thing except for the State of California added the restriction in the 11<sup>th</sup> amendment. They all claimed immunity. They did not comment on the numerous violations of the U.S. Constitution, State law and court procedures.

Magistrate Sheri Pym in her *Report and Recommendation* writes, in her Discussion regarding Respondent Gary Miller and the State of California subject to suit under §1983 The “Supreme Court developed four tests to aid in identify state action. “Plaintiff relies on the joint action test. The test asks whether the government has so far insinuated itself into a position of interdependence with a private entity that the private entity must be recognized as a joint participant in the challenged activity.” *Pasadena Republican Club*, 985 F.3d at 1167 (quotation marks and citation omitted).

Magistrate Pym goes on to write “Here, plaintiff alleges no facts indicating an agreement, connection, or coordination between Miller and the State of California.”

The District Court also had issue with the 11<sup>th</sup> Amendment which, according to them, bars claims against the state. While I realize that is the current interpretation of the 11<sup>th</sup> Amendment but however, I believe that interpretation is incorrect. According the 9<sup>th</sup> District

Court of Appeals, “judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state.”

Why did the author of the amendment not delete “of another state” to match the current interpretation?

The District Court claimed that both Respondents, Los Angeles County Sheriff’s Department and Los Angeles County District Attorney, are separately entitled to Qualified Immunity and Prosecutorial Immunity.

There can’t be Qualified Immunity when, among other things, the Los Angeles County Sheriff’s Department participated in a kidnapping in a foreign country.

There can’t be Prosecutorial Immunity when, among other things, when you proceed with a case for the benefit of a third party when it is against the victim’s wishes.

The District Court wrote that my claim is untimely. They quote *Fink v Shedler*, 192 F.3d 911, 914 (9<sup>th</sup> Cir. 1999) As such, “[f]or actions under 42 U.S.C. § 1983, court’s apply the forum state’s statute of limitation for personal injury actions , along with the forum state’s law regarding tolling, including equitable tolling, except to the extent any of these laws is inconsistent with federal law.” *Jones v. Blaanas*, 393 F.3d 918, 927 (9<sup>th</sup> Cir. 2004; *Owens v. Okure*, 488 U.S. 235, 240041, 109 S Ct. 573, 102 L. Ed. 2d 594(19890. In California, the stature of limitations for personal injury claims is two years. California Civil Procedure Code § 335.1.”

Applying a two-year statute of limitation violates my equal protection rights. If I were a resident of Maine, I would have 6 years to file a claim according to Maine’s Title 14; Court Procedure-Civil 205 Limitation of Actions, General Provisions §752. Six years. “All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a justice of the peace in this State, and except as otherwise specially provided.” There are at least nine other states that have a longer statute limitation than California.

Regardless, if it the court applies that statute of limitation of California, I have never exceeded the two year statute of limitation except for the time involved in seeking justice within the different courts.

Here are the dates:

- A. November 10, 2015 - The State Court issued judgment
- B. January 11, 2016 – Filed California Court of Appeal
- C. November 27, 2017 – Affirmed California Court of Appeal
- D. Jan 25, 2018 – Appeal to California Supreme Court
- E. February 25, 2018 – Reject California Supreme Court
- F. May 30, 2019 – Filed United State District Court
- G. June 7, 2019 – Dismissed United States District Court
- H. July 17, 2019 – Filed United States District Court
- I. July 22, 2019 – Dismissed United States District Court
- J. November 21, 2020 – All respondents violated my Fourteenth Amendment rights

K. March 2, 2021 - Filed United States District Court

L. March 15, 2022 - Dismissed United States District Court

13. On April 6, 2022, I filed an appeal with the 9<sup>th</sup> District Court of Appeals.

The 9<sup>th</sup> Circuit of Appeals affirmed the decision of the lower court on October 20, 2023. *Lopez v State of California, et al* Case No. 22-55352.

On October 26, 2023, I filed a motion to vacate and set aside the judgment of the court because an apparent conflict existed on the part of Hon David O. Carter.

Respondent has recently discovered that attorney, Stephen G. Larson, was himself a federal judge and a colleague of the Honorable David O. Carter for the Central District of California, who presided in my federal case.

Stephen G. Larson, along with other members of his law firm, Larson LLP, represents Respondent Gary Miller. Furthermore, each of the other Respondents is connected with Respondent Gary Miller. Respondent Gary Miller is the main Respondent because this appeal is based partly on Respondent's conspiracies with Respondent State of California, Respondent Los Angeles County District Attorney and Respondent County of Los Angeles County Sheriff's Department. Respondent State of California, Respondent Los Angeles County District Attorney and Respondent County of Los Angeles County Sheriff's Department violated my constitutional rights and other regulations because of the relationship with Respondent Gary Miller.

The Honorable David O. Carter should have recused himself from the case because he was a colleague of Stephen G. Larson, both serving, at the same time, as federal judges for the Central District of California.

*In Re James J. Bulger* in the United States Court of Appeals, For the First District, 12-2488, 2013. "In sum, despite our respect for Judge Stearns and our belief in his sincerity, we are nonetheless bound to conclude that it is clear that a reasonable person might question the judge's ability to preserve impartiality through the course of this prosecution...the petition is granted, and the case shall be reassigned to a judge whose curriculum vitae does not implicate the same level of institutional responsibility described herein."

Judge Norman A. Mordue, Chief U.S. District Judge (Northern District of New York) said in *Leader v Onondaga County* (5:09-CV-0493) (2009) "Because I have had a long and personal acquaintance with defendant Kevin Walsh, I find it necessary to consider *sua sponte* whether recusal under 28 U.S.C. section 455 is proper. Although none of the circumstances found in Section 455 (b) is applicable, the objective "appearance of impropriety" standard embodied in Section 455 (a) requires my recusal. Under the standard:

Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's "impartiality might reasonable be questioned" is a basis for the judge's disqualification. Thus, an impropriety or the appearance of impropriety...that would reasonably lead one to question the judge's impartiality in a given proceeding clearly falls within the scope of the general standard, as does participation by the judge

in the proceeding if [s]he thereby creates the appearance of a lack of impartiality.

“Consequently, while I am confident that I could preside over this case impartially, I conclude that I must recuse myself from its consideration nonetheless to avoid the appearance of a lack of impartiality”.

Chief U.S. District Court Judge Mordue goes on to quote *United States v. Pepper & Potter, Inc.*, 677 F. Supp. 126 (E.D.N.Y. 1988). “Thus, because the appearance of impartiality and actual impartiality are of virtual equal importance, recusal can be necessary even where no actual bias exists.”

It is abundantly clear that The Honorable David O. Carter should have recused himself from this case.

On November 1, 2023, my motion was denied.

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

The Respondents, in this case have violated my rights guaranteed me by the 5<sup>th</sup> 8<sup>th</sup> and 14<sup>th</sup> amendments, plus 42 U.S.C. § 1983. However, I lost all State appeals. The Federal District Court dismissed my case and the 9<sup>th</sup> Circuit Court of Appeals affirmed.

My hope rests on the Supreme Court in order to get a trial and let the jury decide if I have been mistreated by a corrupt court system. It seems no court wants to deal with a party in pro se. But, I have no alternative.

This case has national importance because States, especially California, don't understand that when it comes to parental rights, regarding third parties, are clearly embodied in *Troxel*.

California Family Code § 3041 is unconstitutional. It says “Before making an order granting custody to a person other than a parent, over the objection of a parent, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child.”

This California statute is opposite of the ruling in *Troxel*. “Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there is no normally no reason for the State to inject itself into the private realm of the family to further question the ability of the parent to make the best decisions concerning the rearing of that parent”. The California Court places the best interest determination solely in the hands of the judge.

Even if the detriment of the children were an issue it doesn't apply here. There was never any proof that I was an unfit parent or caused any detriment to my children. That State Court gave custody of my children to a non-parent because according to Judge Lewis “It is detrimental for the boys to be placed into the custody of the mother because of her insistence that they were molested by father when the reliable professionals conclude the children were not molested. Moreover, there is a grave risk that the mother will abduct the children again in the face of future access by father and any post-guardianship visitation for the grandparents. Father has abdicated his role entirely so an award of custody to him is untenable although there may be a path for him to have visitation in the future.” *Ruling on Submitted Matter and Order Thereon*.

Where is the detriment to my children in Judge Lewis' ruling? First of all, I do believe my children were sexually molested by their father because (1) they told me they were sexually molested (2) their therapist alerted the police that they were sexually molested (3) their school reported to the police they were sexually molested (4) court appointed psychiatrist said "There is indication of deviant sexual interest in males. The ages of his three children", and (5) Judge Lewis, himself, had ordered, at the very first hearing, that the father have no contact with my children. That order stands today although he frequently is allowed to see my children by Respondent Gary Miller. Furthermore, the judge takes away my children because I may commit a crime and abduct the children. What the judge is really saying here is that I probably won't take them to visit Respondent Gary Miller. My children would be in jeopardy if I took them for a visit to Respondent Gary Miller with a chance of seeing their father. In his *Ruling*, Judge Lewis admonishes Respondent Gary Miller for exposing the children to their father.

While the Court erred, there are still many other issues that violated my rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendment. I need to address the issue of judicial interference by Respondent Gary Miller. I framed it in my complaints as a "Conspiracy" between Respondent Gary Miller and the other Respondents. The Appeal Court says there is no conspiracy if I have no concrete evidence. What I do have is a preponderance of actions between the parties that any reasonable person would conclude that there existed a relationship between Respondent Gary Miller and the other Respondents. These are a summary of some of the issues which are already included in the Statement Of The Case. All are for the benefit of Respondent Gary Miller.

1. Court violates state statute and calls for a new case after losing a previous case, instead of appealing the case;

2. Respondent Gary Miller attends the Mandatory Settlement Conference in a case where he is not a party;

3. A judge pressures me to sign a stipulation giving two of my children to Respondent Gary Miller;

4. A judge pressures my attorney to convince me to give my two children to Respondent Gary Miller;

5. Respondent Gary Miller is granted Temporary Restraining Orders, by Judge Blades (Pomona), against me, my husband, my father and mother. There was no violence or threat of violence which the statute requires. The reason that the Respondent Gary Miller gave for the Temporary Guardianship was I didn't take the children to visit him. Plus, where do my parents fit in?

6. Judge Blades (Pomona) grants a temporary guardianship to Respondent Gary Miller when Respondent Gary Miller and the minors do not appear at the hearing which is required under State Procedures. How does a judge rule without seeing the parties involved?

7. California statute requires that a 12 year old must sign the petition for guardianship. That was left blank but that didn't bother Judge Blades (Pomona);

8. Since the court in Los Angeles has the case in Family Court, it is procedure that all cases regarding the children are required to be filed in that court. Instead Judge Blades rules on

these cases and immediately sends them to Los Angeles. In fact, when Respondent Gary Miller was granted a temporary restraining order against my brother in the Pomona court and sent to Los Angeles, Judge Lewis admonished Respondent Gary Miller for taking that route;

9. Judge Lewis delays the ruling on the Temporary Restraining Order case for almost two years which is both uncommon and violates State statutes.

10. Judge Lewis delays the ruling on the Temporary Guardianship Order case for almost four years which is very uncommon. According to the State's website, the average time is 90 days.

11. Judge Lewis placed a cruel burden for me to visit my children in a way that would discourage me and my children. Judge Lewis wanted me to pay over \$600 per one hour visit. That was the cost for a therapist and two armed monitors. This order was in place for years. Sometimes I would pay and the kids wouldn't show up. The visits would always take place in the therapist office. Eventually the visits stopped because the children didn't want to see me anymore. I haven't seen my children (except for Evan at the mall and Christian at Target) in 8 years.

I tried every court available to hear my case to no avail. The California Court of Appeals affirmed the actions on all the above issues. The California Supreme Court denied my petition. The Federal District Court dismissed my case and the Ninth Circuit Court of Appeals affirmed their decision even after I pointed out that the Federal judge should have recused himself for the appearance of impartiality.

Without question, my rights guaranteed by the 5<sup>th</sup> and 14<sup>th</sup> amendments have been violated. But no court wants a trial to hear the evidence.

I am a Hispanic single mother (I have two other children) and no means for having an attorney plead my case. My nemesis, Respondent Gary Miller, is politically powerful, wealthy and white. I live in Los Angeles County where 45% of the residences are Hispanic. However, all the attorneys, experts and judges in my cases were white.

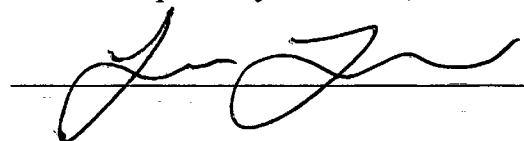
I admit I broke the law by violating a court order by not taking my children to a visit. I know it was the right thing to do to protect my children. Even though I had a good reason for disobeying that order, I had no problem with my conviction. But there was no reason to take my children from me. I am a good mother. Now, I have no relationship with my children. They tell their friends I am dead.

All I am asking for is my day in court. Being poor and a member of a minority group shouldn't preclude from seeking justice.

## CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Miller', written over a horizontal line.

January 17, 2024