
PETITION FOR WRIT OF CERTIORARI

Petitioner, Yi Tai Shao, a duly licensed attorney by California Supreme Court in 1996, will apply for admission to this Court, with address of 560 S. Winchester Blvd., Ste. 500; San Jose, California 95128, Ph. (408) 873-3888 and fax (408) 418-4070 and respectfully submits this Petition for Writ of Certiorari to California Court of Appeal, Sixth District, in accordance with Rule 10 (b) and (c) for unsettled issues in important federal questions with public importance, related to continued violations of both her procedural and substantive due process rights and equal protection rights guaranteed under XIV Amendment, including pleading this Court's supreme power of rule-making under 28 USC §2071 to remedy the present nationwide state courts' crisis in the realm of family, the heart of a nation, by implementing children's rights to be in consistent with international treaty, standard and practice, resolving conflicts of law on the child's right to express wishes based on equal protection clause and due process clause of the XIV Amendment, setting standards of removing of child's attorney, and invalidating many parental deprival orders that were made without notice, motion nor hearing in severe violation of the XIV amendment. This Petition also pleads this Court to create second right of appeal to minimize the risk of the first appellate court's violation of procedural due process.

QUESTIONS PRESENTED FOR REVIEW

This Petition seeks certiorari on three major issues: (1) procedural due process: state courts' violation of first right of appeal by denying calendar preference, delaying appeal, failing to conduct meaning oral argument, failing to determine causes and dismissing appeal without notice by basing on an un-briefed case which is actually inapplicable, and further summarily denying rehearing despite of the statutory mandate; (2) parent's due process right: repeated willful Constitutional due process violations by parental deprival without notice, motion, nor evidentiary hearing, against the child's wishes, after having been, and (3) the child's rights to life and liberty: changing law in the US to implement international standard in view of this case where the child in tender year was forcibly taken away from mother for 4 years, locked by court for 3 hours and incarcerated at abusing psychotic parent's sole custody against her expressed wishes, with her attorney failed to function based on discrimination against mothers. To be consistent with the international standard and practice (Appx.20 and 22), child's rights should be interpreted to be included in the XIV Amendment of the Constitution.

Questions for this Court are:

1. Whether the child should have rights of liberty, including not to be forced to be separated from his/her mother, to live in the spirit of peace, dignity, tolerance, freedom, equality and solidarity, under XIV Amendment of Constitution in implementing the international standards of the child's rights accorded by the United Nations' Convention on the Rights of the Children of 1990 (Appx. 19) and Declaration of the Rights of the Child of 1959 (Appx.22)?

2. Whether California Family Code §3042 should be declared to be void for violating the due process clauses and equal protection clauses of XIV Amendment of U.S. Constitution in discriminating the child's rights for the child in the age of from 4 to 13 by requiring the Court to consider child's wish only for the children of age 14 or over, which in conflict with California Welfare and Institutes Code §§366.26(g)and 317(e)(2) where the Court is mandated to consider child's wishes from age 4?
3. Whether second or even third right to appeal should be created when Appellant was not afforded an opportunity to pursue her first right of appeal in the State's appellate courts, in consideration of the facts that (1) the policy of California Government Code §68081 mandates rehearing when litigant was not given notice to a dispositive case, (2) Republic of China in Taiwan has two rights of appeal to its highest court, Supreme Court more than 80 years' ago, (3) cries of appellants nationwide for injustice because of only one right of appeal?
4. Whether there is compelling reason to review de novo when Petitioner has not been afforded the opportunity to pursue her first right to appeal as California Court of Appeal broke the laws for appeal by (1) denying calendar preference and delaying review by 19 months, (2) denying Petitioner's right of statutory oral argument in California Rules of Court Rule 8.256(c)(2) and in California Constitution Art. VI, Clause 3, equal protection clause under XIV Amendment, (3) failing to determine crucial causes in the opinion as

mandated by California Constitution Article VI, §14, in violation of equal protection clause of the XIV Amendment (4) surprising dismissal of appeal based on an unbriefed case and further denied Petitioner rehearing mandated by California Government Code §68081.

5. Whether California Rule 5.240 (f)(2)'s "good cause" as ground for removing a child's attorney is void for vague and unenforceable and what is the standards for removing a child attorney? Should a child attorney be removed for failure to represent the child's wishes? By having a right to express their wishes in litigations that concern themselves as prescribed in Convention on the rights of the child, does a child have the right to select and remove his/her attorney who obstructs his/her wishes?
6. Whether the state court severely violates Appellant's human rights guaranteed under XIV Amendment rights by re-issuing parental deprival orders without notice, motion, nor evidentiary hearing, after the same were set aside?
7. Whether the federal remedy of habeas corpus in 28 USC §2254 should be expanded its interpretation and application to include parental deprival?

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Yi Tai Linda Shao, Petitioner-Appellant, self-represented attorney, 560 S. Winchester Blvd., Ste. 500; San Jose, CA 95128.

Tsan-Kuen Wang, Respondent-Appellee (represented by David Sussman, Esq. 95 S. Market Street, Ste. 410; San Jose, CA 95113)

BJ Fadem, Esq. 111 N. Market Street, Ste. 910; San Jose, CA 95113, child attorney for the minor.

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[1] The Supreme Court in Rice dismissed certiorari due to the state's enactment of new law to fix the original issue of discriminative burial statute.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays this Court to issue a writ of certiorari to California Court of Appeal, review the judgment below, pursuant to Rule 10(b) and (c):

OPINIONS BELOW

In violation of California Constitution Article VI, Sections 3 and 14, the Opinion of California Court of Appeal, Sixth District is very short without determination of crucial causes and is not published. It is attached as Appendix 2.

JURISDICTION

The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1257(a) where the validity of statutes, orders and appellate procedure of State is drawn in question on the ground of its being repugnant to the First and XIV Amendment of the Constitution on civil rights. See, also, Dodge v. Woolsey (1855) 59 U.S. 331. The U.S. Supreme Court has jurisdiction to review issues of **denial of due process** by the State court, e.g., Chambers v. Mississippi (1973) 410 US 284, and issues of **equal protection clause violation**, e.g., Minnesota v. Clover Leaf Creamery Co. (1981) 449 US 456.

Here, the entire issues of this case are Constitution due process and equal protection violations on the child's rights, standard of removing a child's attorney, and right to appeal, including asking the Supreme Court to interpret the XIV

Amendment and 28 USC §2254(a), to declare unconstitutional of California Family Code §3042 and California Rules of Court Rule 5.240(f)(2), to remedy long-lasting parental deprival made by the state court without notice, motion, nor preceding evidentiary hearing.

The state statutes repugnant to Constitutional due process and equal protection for this Court's review under 28 U.S.C. §1257(a) include (1) California Family Code §3042 which is discriminative against children from age 4 through 13, in conflict with California Welfare and Institutions Code §366.26(g) and §317(e)(2) as raised by Question No. 7, (2) California Rules of Court Rule 5.240(f)(4)'s ground of removal of child attorney based on "good cause",which is raised by Question No.6.

In addition, this Court is requested to exercise its rule-making power rendered by the Congress pursuant to 28 U.S.C. §2071 to create second right of appeal when first right of appeal was frustrated by the first appellate level, and resolve the conflicts of laws in the states on appeal right, to interpret habeas corpus remedy of 28 USC §2254(a) to include parental deprival, and to define the children's rights in the family courts, including discussing whether the validity of the treaties related to the child's rights, i.e., Convention on the Rights of the Child and Declaration of the Rights of the Child when the US has already signed.

Therefore, jurisdiction with this Court is clear.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, XIV Amendment, §1:

"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."

28 USC §1257(a):

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

28 USC §2071 (a):

"The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title."

28 USC §2254(a):
"(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States."

California Constitution, Art. 6, §3. ¶1
"The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment."

California Constitution, Art. 6, §14.
"The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.
Decisions of the Supreme Court and courts of appeal that determine **causes** shall be in writing with reasons stated."

ADVISORY COMMITTEE COMMENT to California Rules of Court Rule 8.240, ¶1:

"Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. The motion requirement relieves the reviewing court of the burden of searching the record to determine if preference should be ordered. The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395)"

California Government Code §68081:

"Before the Supreme Court, a court of appeal, or the appellate division of a superior court renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was **not proposed or briefed** by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party."

California Rules of Court Rule 8.256(c) Conduct of argument
"Unless the court provides otherwise by local rule or order:
(1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.
(2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae--on written request--is granted permission to argue, the court may apportion or expand the time."

California Code of Civil Procedure §904.1
(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

…
(6) From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction.

California Rules of Court Rule 5.240(f)(2): "Removed on the court's own motion or

request of counsel or parties for good cause shown."

United Nations Declaration of the Rights of the Child of 1959 in Appendix 22.

California Family Code §3042:

"(a) If a child is of sufficient age and capacity to reason so as to form an intelligent preference to custody or visitation, the court shall consider, and give due weight to, the wishes of the ch in making an order granting or modifying custody or visitation.

(b) In addition to the requirements of subdivision (b) of Section 765 of the Evidence Code, court shall control the examination of a child witness so as to protect the best interests of child.

(c) If the child is 14 years of age or older and wishes to address the court regarding custody visitation, the child shall be permitted to do so, unless the court determines that doing so is in the child's best interests. In that case, the court shall state its reasons for that finding on record.

(d) Nothing in this section shall be interpreted to prevent a child who is less than 14 years of from addressing the court regarding custody or visitation, if the court determines that appropriate pursuant to the child's best interests.

(e) If the court precludes the calling of any child as a witness, the court shall provide alternat means of obtaining input from the child and other information regarding the child's preference

(f) To assist the court in determining whether the child wishes to express his or her preference to provide other input regarding custody or visitation to the court, a minor's counsel, evaluator, an investigator, or a mediator who provides recommendations to the judge pursu to Section 3183 shall indicate to the judge that the child wishes to address the court, or the ju may make that inquiry in the absence of that request. A party or a party's attorney may a indicate to the judge that the child wishes to address the court or judge.

(g) Nothing in this section shall be construed to require the child to express to the court his her preference or to provide other input regarding custody or visitation.

(h) The Judicial Council shall, no later than January 1, 2012, promulgate a rule of co establishing procedures for the examination of a child witness, and include guidelines methods other than direct testimony for obtaining information or other input from the ch regarding custody or visitation.

(i) The changes made to subdivisions (a) to (g), inclusive, by the act[1] adding this subdivis shall become operative on January 1, 2012."

California Welfare and Institutions Code §317(e)(2):

"If the child is **four years** of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child."

California Welfare and Institutions Code §366.26(g):

"(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child."

United Nations Declaration of the Rights of the Child, Principal 6 states, in relevant part that:

"…. **a child of tender years shall not, save in exceptional circumstances, be separated from his/her mother….**"

United Nations Convention on the Rights of the Child (Appendix 19)

STATEMENT OF THE CASE

The divorce was finalized in 2008 with weekly exchange 50/50 joint custody. Custody battle resumed in March 2010 because the then 5-year-old daughter complained of sexual abuse and a series of physical abuses. Mother stood up to protect her daughter but was surprisingly taken away custody on August 4, 2010, a hearing noticed for Case Management Conference, without any prior notice, nor evidentiary hearing. That night, in response to secret phone call of Appellee's counsel, Mr. Sussman, two additional orders were generated on supervised visitation with finding of "emotional abuse" and the next day, another order for sibling separation. All three were filed on August 5, 2010 without a hearing nor notice. Such orders were vacated but again re-issued without notice, motion, nor preceding evidentiary hearing. There were already four Christmases that the mother was without the daughter. Mother exhausted the state's proceeding, never had a fair trial nor a fair appeal. Mother is facing a criminal contempt proceeding instituted by Appellee for seeing the kid at church and gave her fruits. The basis of the order for Appellee's contempt is August 4, 2010's Order that had been vacated

but the court still maintains the prosecution. The state court even discharged her defense attorney without any notice nor motion on September 17, 2014[1]. Mother and daughter **dreamed of freedom and child's rights**. Mother as well as about 174's amicus curiae pray justice will prevail.

This rare judicial kidnapping involves Department of Family and Children Services ["DFCS"], State Court Judges, State Court's Family Court Services ["FCS"] as directed by Appellee and Mr. Sussman. Please see shaochronology.blogspot.com for chronology of events and linked documentary evidence. The Google News published the story on January 6, 2014 which was collected into WestLaw News (Appendix 13).

On August 4, 2010, the minor's counsel BJ Fadem stated: "The 5-year-old has expressed to me she does not want to go to Father's house. That Father hurts her. That Father and Richard, the stepbrother, hurts her. .. she was hit in her head, nose, ear, back, side, and was stepped on her toes.[2]"

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[1] On November 12, 2014, with no opposition filed, Judge Zaynor granted Mother's motion to set aside such oral order and reappointed the defense attorney, after the complaints were made to the Court's Presiding Judge and CEO.

[2] It was the only time that Mr. Fadem told the court that the minor complained of being abused by Appellee. She/he stated:

> "I think what I have to do is phrase it this way, Your Honor, pursuant to my statutory responsibility. As of July 29th, I would have to say that the preference of Lydia at this point, according to what I have, is that as of minor view of July 29, 2010, **the 5-year-old has expressed to me she does not want to go to Father's house**. **That Father hurts her. That Father and Richard, the stepbrother, hurts her**. And Richard is mean, including representing that she was hit in her head, nose, ear, back, side, and was stepped on her toes. That she hates Richard. She hates her current -- her school, TLC, which is also referred to that. She hates the director and the teacher at TLC. That they are mean. They won't let her go to the bathroom or get a drink of water. And **that her father, her stepmother, and Richard are liars.**
> So I have a statutory obligation to advise the Court that that's her preference. And given that, that I would say that the 5-year-old's preference would be to object to the

On August 4, 2010's CMC, the day the custody was taken away, FCS screener instructed Mother to bring the child to the Court with an excuse of conducting interview on Appellant's brutal physical abuses that took place from July 19 through July 23 of 2010; surprisingly, the 5-year-old was immediately locked in a room and was ordered to stay there for more than 3 hours. The court prolonged the hearing to afterhours of 5:45 p.m. and ordered parental deprival, before Mother was able to finish statement of her objection on the record. Judge Davila received FCS's recommendation and knew such plan of bringing in the child to the Court, prior to the hearing, in contravention with California Family Code §3183(a)[3].

When the hearing was over, at 5:40 p.m., the 5-year-old was crying in tears when being escorted out. Before she was escorted into Father's car, she screamed "Father, you liar!" A deputy rushed back to the courthouse reporting this to the screener but no one rendered help. On the next day evening, the police helped providing a civil standby to allow her brother Louis to say good-bye to her, without giving notice to Appellee. The child was found to exhibit 1 inches' purple swelling under each eye; she spaced out without a smile, wearing a red coat without hands in the sleeves. When her brother Louis hugged her saying good-bye, she trembled.

Such standby was made without knowing new secret orders filed on August 5, 2010. As testified later by the court's screener during her deposition, how the

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recommendations."[August 4, 2010 hearing transcript, *emphasis added*]

[3] Section 3183 (a) states, in relevant part, that "Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child, **if the mediator has first provided the parties and their attorneys**, including counsel for any minor children, with the recommendations in writing in advance of the hearing."

August 5's orders were made was because of a voice mail from the father's attorney to "the court," at the late evening of August 4, 2010. Mr. Sussman admitted last year in his declaration of June 17, 2013 that he did call in the court at the night but argued the contents of conversation he communicated were not new. The mother later subpoenaed the court and the attorney for the phone records, which were both blocked. Details of such ex parte communication between Mr. Sussman and the court were thereby suppressed.

Later discovery revealed that before the victim child was interviewed on Father's abuses, the court had determined that Mother should be removed of custody. On the first day when DFCS social worker Misook Oh[4] was assigned for Father's abuse, i.e., August 2, 2010, the first thing she did was to contact Father. Then she phoned the FCS screener to cause the screener to make recommended order to change custody. Then the social worker interviewed the minor and harassed her, threatening the minor to remove custody away from the mother because of the minor's complaints. (Appx. 17, Declaration of Mei-Ying Hu, teacher at Happy Childhood who witnessed part of Ms. Oh's harassment.)

According to the phone notes of the screener, on August 2, 2010, Misook Oh and the screener were discussing of how to set up Mother. Misook Oh stated that she was unable to prosecute Mother in the Child Dependency Court, and thus used the Family Court to deprive of custody, taking advantage of the loose loopholes of Family Code and its practice.

[4] Misook Oh was assigned on prior 3 referrals about abuses of Father's step-son over the minor and she closed each referral.

The phone records from the desk of Misook Oh shows that on the next day, August 3, 2010, she called Father for 8 minutes, then immediately called the screener. The screener recorded on her notes of Misook Oh's statement:

> "the bottom line
> didn't return child to mother
> father did not allow to go to vacation
> scared to leave child in ny."

Misook Oh did not document any conversations she had with Father or the screener for this kidnapping, even though she was legally required to document such contacts.

Mother petitioned the state's juvenile court to disclose the CPS files and discovered that Director of the FCS, Sarah Scofield, was behind the scene. As early as on April 7, 2010, she had made false report of parental alienation to the DFCS social worker when the police made the first report of sexual exploitation. The phone conversation took place on the eve prior to the scheduled hearing for the Father's emergency screening. Sarah Scofield, misrepresented herself as the screener of this case, even though no screening was ordered yet, and told the worker that she would talk to Judge Davila, a Judge nominated by President Obama in 2010 to be federal district court judge after this scam.

After the screening was ordered on a case management conference held by Judge Mary Ann Grilli on May 5, 2010, Mr. Sussman enlisted Ms. Scofield's name as Father's first witness for the screener to contact. It is a logical inference that the FCS screener's willing to listen to Misook Oh (who passed on Father's command) to

make custody deprival recommendation on August 2, 2010 was to follow the direction of Ms. Scofield.

Mother filed a motion to set aside these orders based on violation of Constitutional Due Process and extrinsic fraud. On July 22, 2011, Judge Grilli "granted" mother's motion but maintained in force the vacated orders without any notice, motion, evidentiary hearing for such new injunction. In re-ordering parental deprival, however, such order was not put into writing until October 31, 2011. Judge Grilli refused to sign the Order that was prepared by Mother's attorney where it contained recitation of the grounds of granting set aside--- Constitutional due process. While Item 1 of October 31, 2011 Order states that the August 4, 2011 Order is vacated, Item 2 of the same order, says that the vacated orders, denying Mother custody, should continue. (Appx.10) The entire legal system is manipulated without a leash.

On July 22, 2011, during the hearing on Mother's motion to set aside, Richard Roggia, Esq., attorney of Louis, stated in the presence of the forensic psychologist who evaluated the Plaintiff, Dr. Michael Kerner, that "I am satisfied that the psychological evaluation indicates that Ms. Shao poses no psychological risk to either my client or Lydia." (Appx.12) However, the trial court broke laws and helped Appellee to continue parental deprival, against the expressed wishes of the minor, with coalition with the minor's counsel Mr. Fadem.

They do not have any ground against Mother and could only distort Dr. Kerner's evaluation to call Mother to have mental dysfunction in order to continue

parental deprival. Such distortion was willfully made with knowledge of Mr. Roggia's statement.

After discovery revealed the fact that the August 5, 2010's orders were caused by Mr. Sussman's secret ex parte communications with "the court", Judge Theodore Zaynor and Ms. Scofield then blocked all discovery such that Mother has not been able to take the deposition of Father for what happened in the past 4 years, unable to take deposition of Ms. Scofield nor finish deposition of the screener.

The professional supervisor who had seen the mother-child interactions for three years declared no issue at all for Mother. Dr. Kerner also stated: "The mother is conscientious about the emotional and physical needs of her children". He concluded Mother's psychological evaluation by stating that:

> "Ms. Shao appears to have more than adequate psychological resources for coping comfortably with the demands in her life and she is far more capable than most people of managing stress without becoming unduly upset. Her above average tolerance for stress derives from unusually good adaptive capacities that help her to remain remarkably calm and unflustered in crisis situations. These personality strengths should facilitate considerably her being able to function effectively as a parent."

Dr. Jeffrey Kline, Diplomat at the American Forensic Psychologist Association, prior President of Santa Clara County Psychological Association, opined "All accusations against the mother are at most **speculative**."

While the court and Father tried hard to distort Dr. Kerner's report to frame Mother as if she has mental dysfunction and used that as an excuse to continue parental deprival, on September 15, 2014, a subpoena to CIGNA health insurance revealed the truth that Appellee was actually the party that has had severe DXM-

TR-IV illness (about 7 types of psychotic disorders) since 2009 but falsely accused Appellant to have mental dysfunction by distorting the psychologist's nice report about her. Appellee and Mr. Sussman have caused the court to avoid Appellee be examined his psychological evaluation in the past 4 years. The insurance claims records also revealed that the minor's therapist was actually one of the treating mental health professionals of Father who jointly concealed the mental disorders of Father from the Court in the past four years, falsely reported to Mr. Fadem that the minor was happy, and acted like a spy over the minor's complaints against Father. Despite such strong evidence, Mr. Fadem continued advocating parental deprival and allowed the minor to be under the sole custody of the psychotic abusing father.

Mr. Fadem has sexual discrimination against Appellant. There is no legal mechanism to require psychological examination of a child's attorney but a child's attorney has manipulating power at the family court[5]. Mr. Fadem was Ms. Fadem in 2010. He publicized on his/her webpage to promote the father's rights of custody, and has harmed numerous children in the County of Santa Clara by advocating against the child's wishes and requested the court to take the children away from their mothers.

Mother's child visits, even though they are supervised visits, are still at the auspice of Father as he deterred child visits numerous time for the reason that the

[5] Prior California Family Code §3151.5, which was repealed in 2012, mandates the Court to consider child attorney's recommendation on child custody.

church where Mother attends for the reason that the church allows speaking in tongues[6], in violation of the First Amendment freedom of religion.

Procedural Facts

Petitioner filed a motion to set aside parental deprival orders of August 4 and 5 of 2010 based on extrinsic fraud (judicial corruption, conspiracy with proof o ex parte communications) and violation of Constitutional due process (for lack of notice and evidentiary hearing). The motion was "granted" on July 22, 2011, but the Court simultaneously reissued identical parental deprival orders that were just vacated, and maintained such orders for years[7], without notice, motion, nor preceding evidentiary hearing, by two judges, as shown in October 31, 2011's written order (Appx.10) and November 21, 2011's oral order (Appx.11).

Petitioner timely filed appeal[8] (case number of H037820) and petition for writ of habeas corpus (H037833), regarding parental deprival issue, as well as petition for extraordinary writ (H037836), regarding child's attorney issue[9]. Both petitions were summarily denied by California Court of Appeal, Sixth District on Feb. 9, 2011, then summarily denied review by California Supreme Court on March 28, 2012 (Appx.8), and again, summarily denied to issue certiorari by this Court on

[6] 1 Corinthians 14:39, St. Paul wrote: "So, my brothers, eagerly seek to prophesy; and do not forbid speaking in tongues"

[7] As shown in Appendix 18, August 4, 2010's Order is still used by the Court to prosecute Appellant for contempt. The Court denied dismissal of the contempt proceeding for the reason that August 4, 2010's order is still in existence. Such contempt proceeding is still pending.

[8] Notice of Appeal was filed on January 12, 2012 with case number of H037820, the subject of this Petition.

[9] Both Petitions were filed on January 19, 2012.

October 1, 2012 with case number of 11-11119 (rehearing denied on December 3, 2012).

Regarding the appeal proceeding (H037820), the court denied Petitioner's request for calendar preference[10] on 5/8/2013 (Appx.6) in contravention with Rule 8.240 and delayed review by at least 19 months. Appellant stated on Page 5 of her Opening Brief that the basis for appeal is C.C.P.§904.1(6) which states: "From an order granting or dissolving an injunction, or refusing to grant or dissolve an injunction." (Appx.4)

The Court of Appeal never ruled on Appellant's request for temporary order.

The Opening Brief discussed at length regarding the second major issue of removing child attorney by 11 pages from Page 58 through Page 68, with at least 14 case citations, 9 statutes and a secondary authority of the American Bar Association Standards of Practice for Attorneys Who Represent Children in Abuse or Neglect Cases.

On May 13, 2014's Oral Argument, Mr. Wang's counsel did not appear. It was held in front of a three-Justice Panel, including Justice Premo who denied habeas corpus in 2012. Presiding Justice Rushing firstly tried to persuade Appellant to waive oral argument[11]. Upon hearing Appellant's response that "I would like to see if there is questions from the Bench," Presiding Justice then restricted Appellant's time for oral argument to be only 10 minutes. When Appellant presented her case in response to Justice Rushing's inaccurate description of the case, Justice Premo

[10] The Advisory Committee for California Rules of Court Rule 8.240 states that "Rule 8.240 requires a party claiming preference to file a motion for preference in the reviewing court. …..The requirement is not intended to bar the court from ordering preference without a motion when the ground is apparent on the face of the appeal, e.g., in appeals from judgments of dependency (Welf. & Inst. Code, § 395)."

[11] Appx.3, 2:13-18.

interrupted the presentation and instructed Appellant "not to repeat the arguments already stated in the Opening Brief." (Appx.3, 4:16-5:5) Then, Appellant was reminded by Justice Rushing about two minutes left. (Appx, 7:16) With this reminder, Appellant emphasized on the need to declare Family Code §3042 to be void and the need to use the ABA standards to supplement the vague "good cause" ground of Rule 5.240 for removal of child attorney. She explained that the October 31, 2011's written Order dissolved and further granted injunction was never served upon Appellant which was unknown to Appellant when the Notice of Appeal was filed, and summarized grounds for automatic reversal of these orders for appeal (Appx.3, 7:17-8:18).

Then Justice Rushing could not wait to order the matter to be submitted. Appellant asked **"Is there any question the court want to ask me about?" Justice Rushing responded: "No questions."** (Appx.3, 8:23-24)

Appellant sat through the entire session and observed that her case was the only that was restricted oral argument, and without a question from the panel. At the end of the entire session, Appellant asked to give her 2 more minutes but was rejected by Presiding Justice.

Yet, one week later, an about 4 pages' Opinion was issued. The opinion showed that the appeal was not seriously considered by the panel at all as there were numerous factual issues newly raised as well as having numerous misstatements of facts. The Court could not even locate the crucial hearing transcripts of November 21, 2011

and October 31, 2011, which were properly designated as records, but failed to ask Appellant of that question including on oral argument (Appx.2,pp.2-3).

Judge Zaynor's oral order of November 21, 2011 is the **most crucial cause for appeal**, and Appellant discussed it at length from Pages 32 through 58 in Appellant's Opening Brief; however, this cause was **not** determined in the Opinion.

An example of misstatement of fact is on Page 2, ¶2 of the Opinion. It states: "**The court eventually made temporary custody orders on August 5, 2010**" but there was **no** hearing on August 5, 2010 at all. The August 4, 2010 hearing was a Case Management Conference, **not** noticed for "emergency screening" as suggested in the Opinion.

Page 2, ¶3 of the Opinion states the appellate Court's confusion that: "It is unclear from Ms. Shao's brief what transpired in court between August 5, 2010 and April 21, 2011", but no Justice ever asked a question at the oral argument to clear the issue.

This Court further made speculative comments against Appellant which were ***not*** supported by any record on appeal. It states in Page 4 the third full paragraph that "**At the heart** of **Ms. Shao's belief** about Ms. Fadem's representation of her daughter is **Ms. Shao's continuing position** that L.W. should not be in the custody of Mr. Wang. **It appears Ms. Shao believes** that **because Ms. Fadem has not advocated this position and has not secured Ms. Shao's custody of L.W.** she is derelict in her duties as child's counsel and should be removed." [emphasis added] Appellant never stated the above and no Justice asked her this

issue during the oral argument. It is nothing but to show the bias and prejudice of this appellate panel against Appellant.

It is interesting to note the Court of Appeal even made **inconsistent statements** in the Opinion. In the second full paragraph of Page 4 of the Opinion, this court stated at least 5 reasons about Appellant's contention of the trial court's abuse of discretion in not removing Fadem, but, on the same page, in the last paragraph, it blindly stated that "Ms. Shao does not demonstrate on appeal that the trial court abuses its discretion." In fact, Appellant enlisted more the 5 grounds; she used 11 pages in the Opening Brief referencing at least 14 cases, 9 statutes and ABA standards to support Appellant's arguments that Judge Zaynor abused his discretion in denying Appellant's motion of removal Fadem and all the grounds stated by Appellant were supported by the records on appeal.

The appellate panel appeared to have decided to conduct a meaningless oral argument from the beginning of May 13, 2014 and did not pose any question that should have been asked, despite Appellant Shao stated two times (beginning and end) inviting the Justices to ask questions.

The dismissal was based on an unbriefed case of Lester v. Lennane (Appx.2, P.3); based on this, the court must granted rehearing[12] pursuant to California Government Code §68081 but the Court of Appeal denied such motion. (Appx.5) Petitioner requested California Supreme Court to transfer the cause, which was summarily denied on June 25, 2014 (Appx.8). On 7/2/2014, Appellant timely filed

[12] Appellant timely requested rehearing by her Motion to Vacate Dismissal and Opinion Dated May 21, 2014 of Change the Publication Status, which was filed on May 30, 2014.

with California Supreme Court her Petition for Review and Rule 8.504(d)(4) Application to Oversized Attachment to Petition for Review[13] (S219694).

The Rule 8.504(d)(4) application was denied on July 9, 2014 (Appx.7); Petition for Review was summarily denied on August 13, 2014 (Appx.1), after receiving about 174 amicus curiae supporters' letters (Appx.14). August 13, 2014 was the same date when California Supreme Court received notice from Plaintiff that she had to leave for Taiwan as her father passed away. When the Supreme Court denied review, Plaintiff was already in Taiwan for the family emergency and was unable to request a second rehearing.

Numerous law-breaking conducts of the state courts have caused unusual burden of numerous cases pending with the Court of Appeal[14], all of them were based on violation of Constitutional due process.

COMPELING REASONS FOR GRANTING THE PETITION

The "important federal question" in Rule 10(c) to justify issuance of certiorari, was interpreted in Rice v. Sioux City Memorial Park Cemetary[15] (1955) 349 US 70, to

[13] Petition for Review only permits a maximum of 10 pages. Therefore, Appellant's rehearing motion, i.e., motion to vacate dismissal denied on June 20, 2014 was submitted in the "Rule 8.504(d)(4) Application to Oversized Attachment to Petition for Review."

[14] There are five cases pending with California Court of Appeal, Sixth Districts, which are cases numbered H039823 (appeal), H40395 (appeal), H040977 (appeal for Judge Zaynor refused to hold evidentiary hearing on remittitur which directed reversal and redetermination(, H41508 (Petition for writ re disqualification), H41549 (Judge Zaynor misused judicial power to strike disqualification).

[15] The Supreme Court in Rice dismissed certiorari due to the state's enactment of new law to fix the original issue of discriminative burial statute.

include the situation where the basis for petition was "primarily the Fourteenth Amendment, through the Due Process and Equal Protection Clause." (Id at P.72)

This Court defined the coverage of the "liberty" interest in the XIV Amendment in Meyer v. Nebraska (1923) 263 US 390, 399 by stating that: "Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

The entire issues stated in "Questions Presented for Review" are "primarily the Fourteenth Amendment, through the Due Process and Equal Protection Clause;" therefore, this petition has compelling reasons for this Court's certiorari.

A. SUPREME COURT'S INTERPRETATION OF XIV AMENDMENT OF THE CONSTITUTION TO COVER THE RIGHTS OF THE CHILD HAS PUBLIC IMPORTANCE ON CHILDREN'S RIGHTS

The third issue in "Questions Presented for Review" on children's right is a nationwide concern with **substantial public importance** as demonstrated by Appendixes 13 through 16, and 19 through 22 that the U.S. has not accorded children's rights to the international standard.

According to the Leadership Council's news release of 9/22/2008 (Appendix 16), this type of injustice is now prevailing all over the nation against protected mothers and there are estimated 58,500 American kids in a month who are

unprotected from the abusing parent. U.S. Attorney General Eric Holder further commented in 2009 about this nationwide issue: "**Why are mothers who are the victims of domestic violence losing custody of their children to the courts and to the child protection system?**" (Appx.15)

California Protective Parents Association commented (Appx.14, P.1):

> "Two thirds of the children continued to report that they were being abused, but were ignored by the court."
>
> "As citizens, children are having their constitutional rights to liberty and the pursuit of happiness violated, along with their human right to safety. In 2011, the Inter-American Commission on Human Rights found in Gonzales (Lenahan) case that **the United States was committing human rights violations by not protecting women and girls**. This mother and child exemplify the IACHR findings." (Appendix 14, first page; emphasis added)

There were about 174 amicus curiae supporting the review with 8 letters provided as samples in Appendix 14 supporting daughter's returning to Mother, child's wishes, child's right with sibling, Family Code 3042 should be declared void and the family courts should consider child's wishes from age 4, especially in child abuse situations.

International treaties call for the child's rights be covered under XIV Amendment

Appendix 20 and 21 show nationwide concerns[16] for lack of children's rights throughout the U.S. and the public was hoping President Obama to present United Nations Convention on the Rights of the Child (Appx.19) to the Senate for ratification, after it was signed by the U.S. on February 16, 1995. According to the

[16] Some called the injustice to be "court crimes", e.g., Center for Judicial Excellency in S.F., California.

international treaties that the US has signed, the child in the US should have the right to liberty, right to have their wishes considered by the Court, right to be with their mothers[17], right not to be placed in abusing parent's sole custody, right not to be abused, right to remove their attorneys who fail to advocate for them, in accordance with the international standards stated in U.N. Convention on the Rights of the Child where the treaty was signed but not ratified by the Congress since 1989. (Appx.19)

194 member States of the U.N ratified the Convention on the Rights of the Child except 3 countries, i.e., Samolia, South Sudan and the US. The Convention took effect from September 2, 1990. Even though the U.S. took the lead in drafting it; the US signed but delayed ratifying the treaty for about 25 years. Despite so, Appendix 21 indicates that U.S. does support the principals of children's rights.

Appendix 22 is United Nations Declaration of the Rights of the Child which the U.S. took the lead on such treaty of November 20, 1959 with the Charter chaired by Mrs. Eleanor Roosevelt, about 55 years ago. Principal 6 states a child's right to be with his/her mother.

According to Article 4 of the Convention on the Rights of the Child, the US by signing on the Convention, should "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." The Preamble states, in relevant, part that the child should be "brought up in the spirit of the ideals proclaimed in the Charter of the

[17] Appendix 22, U.N. Declaration of Children's Rights signed by the US, Article 6.

United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity."

Paragraph 2 of Article 25 of the Universal Declaration of Human Rights signed by the U.S. on December 10, 1948 states: "All children, whether born in or out of wedlock, shall enjoy the same social protection."

In Paragraph 2 of Article 7 of the Convention, it states that "States Parties shall ensure the implementation of these rights in accordance with their national law".

In Paragraph 1 of Article 9, it states:

> "States Parties shall ensure that a child shall not be separated from his or her parents **against their will**, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."

In Paragraph 1 of Article 12, it states:

> "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Paragraph 2 of Article 37 states "No child shall be deprived of his or her liberty unlawfully or arbitrarily."

All these appendixes for international treaties are provided to support Appellant's argument that the XIV Amendment of the Constitution should be applicable to the children and the U.S. Supreme Court has a duty to implement the 1959 Declaration of the Rights of the Child and the 1990 Convention on the Rights

of the Child by declaring the child are included in XIV Amendment, the children from age 4 are declared to have rights to express their wishes at the custody related proceeding, declaring California Family Code §3042 to violate the equal protection and due process clauses of XIV Amendment and removing the child's counsel who failed to advocate their wishes. The Supreme Court may even consider require a license to child attorney to require the attorneys take psychological evaluation to ensure no gender bias.

B. COMPELLING REASON TO RESOLVE THE CONFLICTS OF STATUTES ON CHILD'S WISHES BASED ON EQUAUL PROTECTION CLAUSE AND DUE PROCESS CLAUSE OF THE XIV AMENDMENT

This request is consistent with Article 2 of Convention on the Rights of the Child, which states in relevant part that:

> "1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, …..
>
> 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment….."

This issue is of public importance and will affect significantly numerous children in the Family Court, who are outnumbered by the children in Child Dependency Court.

California Welfare and Institutions Code §366.26 and §317(e) requires the Court to consider child's preference of choice of parent for the children who reach the age of 4 in a Child Dependency Court proceeding, but California Family Code §3042 did not state the age and only required the Court to consider child's wishes for the children of age 14 and older. In the case of In re Marriage of Heath (2004) 122 Cal.App.4th

444, 449, California Court of Appeal stated: "the court found that the family law order ignored the public policy of this state, as demonstrated by Welfare and Institutions Code sections 16002, and 366.26, subdivision (e), and was an abuse of discretion." Therefore, the policy to consider the child's wishes from age 4 in the W&IC should be applicable to the Family courts.

Mother asked this Court to declare Family Code §3042 to violate due process and equal protection rights of the children from age 4 through age 13, and that the age 4 in W&IC should be equally applied to family court setting according to Heath, which should not have a different criteria; the family court should be required to respect the expressed wishes of a minor of 4 years old or more, especially when the order is adversely affecting the minor's life and liberty guaranteed under the XIV Amendment of the Constitution, such as in custody deprival situations.

1. California **Welfare and Institutions Code is required to be considered by California Family Courts including § 366.26(h)(1) and §317(e)(2)**

In re Marriage of Heath (2004, Second District) 122 Cal.App.4th 444 is an appeal from a custody order that changed the temporary order where mother has primary custody over both children, to an order that separated two children, with one of the children given to husband under his sole custody. The key issue for this appeal is sibling separation. On this issue, the Court of Appeal "found that the family law order ignored the public policy of this state, as demonstrated by Welfare and Institution Code § 16002, and § 366.26 subdivision (c)" See i.d., at page 449.

According to the Heath case, the Court of Appeal held that the W&I Code,

including § §16002 and 366.26 should have been adopted by the Family court's judge. The court of appeal made such a holding even though the statutory language of subdivision (a) of § 366.36 stated that the section is exclusively for the special dependency proceeding.

2. Case law's application of § 366.26 on children from age 4

Section 366.26, subdivision (g) provides:
"(g) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child."

Section 317, subdivision (e) provides, in relevant part, that :
"(1) Counsel shall be charged in general with the representation of the child's interests. ...
(2) If the child is four years of age or older, counsel shall interview the child to determine the child's wishes and assess the child's well-being, and shall advise the court of the child's wishes. Counsel shall not advocate for the return of the child if, to the best of his or her knowledge, return of the child conflicts with the protection and safety of the child."

The above statutes has been confirmed consistently by all case laws. In the Juvenile Dependency Court proceedings, the Court is mandated to follow the wishes of the child of age 4 or more as long as such wishes are ascertainable. What constitutes ascertainable child wishes, though, have some variations before October 1992.

In all precedents after November 1, 1992, under 366.26, the Courts must follow the child's wishes, which include child's own repeated statements (In re Michael D. (1996), 51 Cal.App.4th 1074), child's direct statements (In re Diana G (1992) 10 Cal.App.4th 1468) and child's implied wishes of agreeing to adoption by not recognizing the parents who have physical abuse history (In re Leo M. (1993) 15 Cal,App.4th 1983). *Cp.*: Before November 1, 1992, child attorney's advocating

termination of parental rights is presumed to have followed the child's wishes for children of age 2 and 4 in In re Jesse B. (June 1992) 8 Cal.App.4th 845.

When the family court function overlaps with juvenile dependency court's function in that both have authority to do parental deprival, the standards however are different. The children in juvenile court proceeding is luckier than those in the Family court proceeding but the majority of children are involved with the family court setting, not juvenile court proceeding when child abuses are asserted. Therefore, as the custody affects the liberty interest of both the child and the parents, and the two groups of children should not be treated differently, there is compelling reason for the Supreme Court to resolve the conflicts of statutes.

C. Compelling reason for review regarding the issue of need to make laws to correct procedural injustice prevailing throughout the U.S. by creating second or even third right to appeal (Rule 10(c))

Supreme Court has the rule making power to promulgate the F.R.C.P. Rule, e.g., Murphree v. Mississippi Pub. Corp., C.C.A.5 (Miss.) 1945, 149 F.2d 138, certiorari granted 66 S.Ct. 44, 326 U.S. 702, 90 L.Ed. 414, affirmed 66 S.Ct. 242, 326 U.S. 438, 90 L.Ed. 185; **28 U.S.C. §2071.**

This rare judicial kidnapping case signifies many system problems that require Supreme Court to use law-making power to correct. Petitioner suggests this Court to consider promulgating law and rule to establish second right of appeal. Republic of China in Taiwan already has the right to appeal[18] up to the highest court,

[18] Republic of China Code of Civil Procedure §464 authorizes appeal to the second level appellate court, where, in Taiwan, is the Taiwan Supreme Court, unless the appeal is frivolous without identifying how the first appellate court's decision may conflict with the prevailing law. Supreme court has no discretion on refusing to review.

Supreme Court, since 1930.

Only one right to appeal will facilitate judicial corruption. In this case, apparently the Presiding Justice Rushing of the Court of Appeal was helping Judge Zaynor, Judge Grilli and even maybe Judge Davila, without fear, to suppress the injustice that was taken place in the trial court, by first trying to talk to Appellant to waive oral argument, and later, as Appellant insisted oral argument to take place, Judge Rushing then arbitrarily cut short the oral argument time from the statutory 30 minutes in Rule 8.256 of California Rules of Court to only 10 minutes. In the entire morning of oral argument, this case was the only case that no Justice asked a question.

The Opinion which was issued one week later proves that the oral argument of May 13, 2014 was not seriously conducted; no meaningful oral argument and the opinion was not made out of deliberation as it even mistook August 5, 2010 to be a date of hearing. This is what happened in the first level appellate court. The Justices would dare to break laws is apparently attributable to the current system of only one right of appeal.

The state's supreme court, like this Court, only reviewed less than 1% of petitions submitted. The little chance of review encouraged injustice to take place in the first level of appellate court and discourages litigants from taking their cases to appeal.

Why would the appellants take time and money to do the petitions with only 1% of chance to be reviewed? It is more likely than not that they think the injustice

suffered at the Court of Appeal level is so tremendous that substantially outweighs the time, money and efforts to be worthy to try this only 1% chance to be reviewed by the Supreme Court. Therefore, it is more likely that these petitions for review from the first appellate decision have genuine issues for appeal. However, the present discretionary review system in the second (state's first appellate) and third appellate levels (state's Supreme Court), denied 99% of the appellants' genuine claims to contest the first appellate court's decisions. Such crying for injustice may be seen from this court's discussion in Fay v. Noia (1963) 372 US 391, 437 (partially overruled by Wainwright v. Sykes (1977) 434 US 72 on state's contemporaneous-objection rule, which is irrelevant to this discussion):

> "The goal of prompt and fair criminal justice has been impeded because in the overwhelming number of cases the applications for certiorari have been denied for failure to meet the standard of Rule 19. And the demands upon our time in the examination and decision of the large volume of petitions which fail to meet that test have unwarrantably taxed the resources of this Court."

As US proclaims itself being leader in civil rights, this injustice nationwide may cause it to lose the leadership position. Even Republic of China affords its litigants second right to appeal about 84 years ago.

California Government Code§68081's mandatory rehearing situation shares some burden of the injustice but it is limited to opinions that were not those that are summarily denial. In applying to this case, California Court of Appeal did not bother to break the mandatory rehearing requirement in §68081, and California Supreme Court does not need to grant review and thus as a result, injustice for violation of due process--- not given opportunity to have a fair hearing—is resulted.

If the mandatory rehearing of §68081 is extended to upper appellate courts, such as California Supreme Court and US Supreme Court, then the appellants' suffering from procedural due process violation will be cured and on the other hands, the first appellate court is less willing to break the procedural due process.

As for the issue of whether right of appeal covers oral argument, the laws and practices are conflicting among jurisdictions that needs Supreme Court to resolve under Rule 10(b). F.R.A.P. Rule 34 appears to require oral argument but the present practice of the local rules for the federal court of appeal and the states vary. Some held that oral argument is not required, some required, like in California—in Rule 8.256 of Rules of Court.

Nevertheless, as California has statute requiring oral argument of 30 minutes, and the Constitution Art. 6, Clause 14 mandates written opinion, at least Appellant should be afforded her rights of oral argument and written determination on causes to be made guaranteed under the Equal Protection Clause of the XIV Amendment.

In facing the situations where the state court did not follow the laws in prejudice of the first right of appeal when the subject matter was involving personal liberty, a due process guaranteed under the XIV Amendment, Appellant proposed to (1) modify Rule 10's discretionary review, (2) promulgate second right to appeal and/or (2) expressly expand 28 USC §2254(a)to include parental deprival, to authorize federal control over the family court crimes complained nationwide at this time.

Only this Court has the power to make law to make general rule and practice to correct the injustice under Rule 10(c), with the power given by the Congress by way of 28 USC §2071 (a). Therefore, there is compelling reason to grant review regarding the issue of procedural injustice.

D. There is compelling need for Supreme Court to review de novo on Petitioner's being prejudiced of her rights to appeal by California Court of Appeal

Appellant requests this Court to invalidate the Court of Appeal's Opinion of May 21, 2014 as "Orders that violate Constitutional Due Process are void. County of San Diego v. Gorham (2010) 186 Cal.App.4th 1215; Boykin v. Alabama (1969) 395 U.S. 238.

In California, the parties are entitled to present oral argument as a matter of right in any appeal, considered on the merits, and decided by a written opinion as stated in California Constitution where Article VI, section 3 guarantees oral argument and Article VI, Section 14 guarantees opinion determining causes of appeal. Moles v. Regents of Univ. of Calif. (1982) 32 C.3d 867, 871–872. See also, People v. Medina (1972) 6 Cal.3d 484, *overruled by Kowis v. Howard (1992) 3 Cal.4d 888 on other ground.* The 30 minutes right for oral argument is promulgated in California Rules of Court Rule 8.256(c)(2).

California Constitution Article VI, Section 14 is designed by the legislation **to insure that reviewing court give careful thought and consideration to case** and that statements of reasons indicate that appellant's contentions had been

reviewed and **consciously, as distinguished from inadvertently, rejected**. People v. Rojas (App. 2 Dist. 1981) 174 Cal.Rptr.91, 118 Cal.App.3d 278.

Here, as discussed in the procedural fact sub-section in Statement of Case, the Court of Appeal raised many issues and misstatements of facts which could have resolved in oral argument if it was meaningfully conducted. Material causes for appeal were left undecided, including constitutionality and validity of the re-issuing of parental deprival orders as contained in October 31, 2011's written order and other oral orders of October 21, 2011, and November 21, 2011, and the cause that a child attorney should not proceed the case in contrary to the expressed wishes of the child. The issues specifically highlighted in Appellant's oral argument about invalidating Family Code §3042 and standards to remove child attorney were not determined. The court's mistaking August 5, 2010 to be a hearing date indicates that the state's Court of Appeal "did not give careful thought and consideration to case." August 5, 2010's orders were secretly made and not even served, and August 4, 2010's Order was made at a CMC.

THE OPINION VIOLATES PROCEDURAL DUE PROCESS

Moreover, as discussed above, the Opinion raised new dispositive issue of Lester case and further refused to grant rehearing that violated due process in failing to give notice and opportunity for Appellant to rebut under G.C. §68081.

1. The appeal is properly made based on California Code of Civil Procedure §904.1(6)

In misrepresenting to Appellant that the appellate panel had no question for her during the oral argument (Appx.3, 8:23), the Court of Appeal surprisingly dismissed

the appeal based on a case of Lester vs. Lennane (2000) 84 Cal.App.4th 536, 556-565 while in fact this case does not apply.

The appealability was stated in the Brief as C.C.P. §904.1(6): order dissolving or granting injunction. Temporary restraining order is separately appealable. McLellan v. McLellan (1972) 23 Cal.App.3d 343. Order dissolving temporary restraining order is appealable. U.S. Hertz, Inc. v. Niobrara Farms (1974) 41 Cal.App.3d 68. An order denying a motion to vacate was in substance an order refusing to dissolve an injunction and was therefore appealable. City and County of San Francisco v. Muller (1960) 177 Cal.App.2d 600.

In the Matter of the Application of Robert M. FROST,134 Cal.App.2d 619 (1955) for a Writ of Habeas Corpus, the Court of appeal held that Order awarding mother temporary custody of child, which had previously been placed under custody of father by court order, and directing that matter be continued to a certain future date, was an order changing existing custody status of child and was appealable, and father was not in contempt for having disobeyed the order pending appeal.

Likewise, in an adjudicatory hearing, if the court makes a finding of neglect, abuse, or dependency and if temporary custody is granted to the county, **a parent's temporary loss of custody** would qualify as a final appealable order. R.C. § 2505.02(B)(4).In re A.C., 160 Ohio App. 3d 457, 2005-Ohio-1742, 827 N.E.2d 824 (8th Dist. Cuyahoga County 2005)

Numerous cases mentioning temporary injunctive orders are immediately appealable. E.g. Christopher v. Jones (1965) 231 Cal.App.2d 408; McLellan v. McLellan (App. 2 Dist. 1972) 23 Cal.App.3d 343.

Here, similar to Frost, custody was joint between the parties as a final judgment and then on August 4, 2010 the custody was suddenly deprived of; after Appellant pursued an order to dissolve injunction on July 22, 2011, Judge Grilli granted the dissolution of injunction but issued new injunction without notice nor evidentiary hearing. Judge Zaynor again ordered new parental deprival without evidentiary hearing. Such orders are at issue for this appeal, with appealability well justified under §904.1.

2. Lester is factually distinguishable

Lester is a case where both parties have custody of the child but mother had primary custody pending a hearing. It is a pure temporary custody order pending judgment and no prior judgment ever in existence. It does **not** have custody deprival but was a joint custody setting. Lester does not involve dissolving or granting injunction at all. There is no significant substantive due process right of life or liberty at issue in Lester as no parent was deprived of custody from a permanent judgment. Lester does not involve an injunction, nor a motion to set aside. It is factually different from this case.

In Northan v. Sweet No. F053812. | (Super.Ct.No. VFL218159). Aug. 25, 2008, where there was a temporary parental deprival pending judgment, the Court of Appeal denied the argument of non-appealability. Therefore, being a temporary

custody order alone is not a determinative factor. Lester is factually completely different from this case that is not applicable. It is erroneous for the Court of Appeal to use Lester to counter the applicability of §904.1(b).

As what was affected is a right to appeal on matters complained of violation of Constitutional due process, there is compelling reason under Rule 10(b) and (c) to issue certiorari.

E. REMOVING CHILD ATTORNEY IS AN UNSETTLED ISSUE OF PUBLIC IMPORTANCE THAT REQUIRES THE SUPREME COURT'S CERTIORARI UNDER RULE 10(c)

It is an unsettled issue nationwide on lack of law and standards of removing a child attorney after appointment by the Court, which satisfies Rule 10(c).

Los Angeles County Dept. of Children and Family Services v. Superior Court (1996) 51 Cal.App.4th 1257, upheld the ABA Standards that "calls upon the courts to take affirmative steps to ensure the independence and quality of legal representation for children in dependency proceedings." See, id, 51 Cal.App.4th 1257 at P. 1271 [emphasis added].

California Assembly Bill 939 published California legislative policy as 2010's legislation history for California Family Code §215 by stating that

> "SECTION 1. The Legislature finds and declares all of the following:
>
> (a) Family law touches the most central aspects of Californians' lives, such as where, when, and how often a parent will see his or her child, the personal safety of the parent and child, how much child and spousal support one person will receive and the other will pay, and how the assets that the family has accumulated will be divided between the separating parties. These decisions can have a dramatic and lasting impact on people's lives.
>
> …….

> (e) Courts appoint minor's counsel to provide representation for a child and to meet the need the court may have for additional information on which to base a difficult child custody decision. To be responsive to the complexities inherent in the cases that involve minor's counsel and the challenges attorneys, parties, and children may face when these appointments are made, **the role of minor's counsel must be more clearly delineated** and the responsibilities of minor's counsel more clearly defined so that there is greater transparency and clarity in order to provide the best possible representation for children in these matters." [emphasis added]

However, California Rules of Court Rule 5.240(f) is the only statute dealing with removal of the minor's counsel where the only ground of removal is "good cause" which is unconstitutionally vague and overbroad and unable to enforce, such that there were no boundaries of the conducts of minor's counsel. The fact that there is no transparent and clear standards to remove the minor's counsel which has resulted in injustice as the parties' substantive due process rights of custody has been dominated by minor's counsels for decades and there is no recourse to remove improperly behaved minor's counsel.

A motion to remove counsel has been disfavored by the courts as it asks the Courts to remove the child attorneys appointed by themselves. The 5 grounds enlisted on Page 4 of the Opinion in Appendix 2 did sustain sufficient causes of removing Ms. Fadem as they are regarding "independence" and "quality of legal representation for children" that the Court should have "taken affirmative steps to ensure". As substantive due process rights are involved in selecting and removing child's attorney, there is compelling reason under Rule 10(c) for the Supreme Court to issue certiorari.

F. Compelling reason exists under Rule 10(b) for correcting parental deprivation as State courts violated Constitutional due process by maintaining vacated parental deprival orders in force and repeatedly

ordering parental deprival without notice, motion nor preceding evidentiary hearing

Important federal question exists as this issue involves violations of both procedural and substantive due process guaranteed by the XIV Amendment of the Constitution. Appellant respectfully requests this Court to issue certiorari to declare that these parental deprival orders are void, including August 4, 2010, August 5, 2010, October 31, 2011, and November 21, 2011 for lack of notice, motion, preceding evidentiary hearing in violation of due process and to immediate resume 50/50 custody pursuant to the parties' stipulated judgment pending final resolution of the court's determination.

To declare the August 4, 2010's order to be void is material as Appellee is still using that Order to prosecute Appellant for contempt (Appx.18) and Judge Zaynor refused to dismiss the proceeding.

Failure to accord a party litigant his constitutional right to due process is **reversible per se**, and not subject to the harmless error doctrine. E.g., *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 677. Child custody is liberty interest in XIV Amendment. See, e.g., Moore v. East Cleveland, supra, 431 U.S. 494, 499. Preceding evidentiary hearing is required for parental termination. In Jinny N. v. Superior Court (1987) 195 Cal. App. 3d 967, 972-973. The erroneous denial of a hearing is reversible per se. In re Cyndie(1999)74Cal.App.4th 43. A vacated order is effectively null and void and without legal effect. See e.g., Tri–S Corp. v. W. World Ins. Co., 110 Hawai'i 473, 135 P.3d 82 (Haw.2006); 7–Eleven, Inc. v. Dar, 363 Ill.App.3d 41, 299 Ill.Dec. 521, 842 N.E.2d 260, 264 (Ill.Ct.App.2005);

Brown v. Brown, 181 N.C.App. 333, 638 S.E.2d 622 (N.C.Ct.App.2007); D'Elia v. Folino, 933 A.2d 117 (Pa.Super.Ct.2007); see also Black's Law Dictionary 1688 (9th ed.2009) (defining "vacate" as "to nullify or cancel; make void; invalidate.")

The substantive effect of invalidate these orders is to restore the parties to their original status. See, e.g., Kelch v. Watson, 237 Ill.App.3d 875, 877 (1992). However, after vacating the parental deprival order on July 22, 2011, Judge Grilli and Judge Zaynor both refused to restore the 50/50 custody but issued new injunction—continued parental deprival-- without a motion, notice nor evidentiary hearing.

While a judge has a duty to declare an order to be void in Thompson v. Cook, 20 Cal. 2d 564, 127 P.2d 909 (1942), no judge in the state court has ever done so.

Parental deprival orders should be determined by the writ of habeas corpus as parental deprival should be determined as expeditious as possible. E.g., In re Kristin W. (1990) 222 Cal. App. 3d 234;Zenide v. Super. Ct. (1994) 22 Cal.App.4th 1287, 1293; Polin v. Cosio (1993) 16 Cal.App. 4th 1451, 1457; In re Reyne(1976) 55 Cal.App.3d 288; Adoption of Alexander S. (1988) 44 Cal.3d 857, 866-867; In re Croze (1956) 145 Cal.App.2d 492, 493-495.

In Duchesne v. Sugarman (1977) 566 F.2d 817, the Court held that the fact that the state remedy of habeas corpus was always available was not sufficient to present a due process violation.

This is a nationwide issue, as shown in Appendixes 15, 16, 20 and 21. Appellant respectfully requests the Supreme Court to codify habeas corpus for parental

deprival in the FRCP, or expand 28 USC §2254's habeas corpus proceeding to include parental deprival, the 4 years' unjustifiable delay in parental deprival that have prejudiced the little child in her tender years to have no human right to live with her mother, in deprivation of her happy childhood in contravention with Principal 6 of Declaration of the rights of the child. Such law making will conform to Convention on the Rights of the Child, Paragraph 1 of Article 10, where it states "In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and **expeditious manner**.

CONCLUSION

Duchesne is the longest custody deprival case in the U.S. which is 23 months. Here, this case is already 50 months! Appellant prays the Supreme Court to take action. This terrible loss of mother's consortium to the little child from age 5 to 9 against her expressed wishes signifies the important federal questions for this Court to tackle. As stated, this case presented legal problems and issues of value of public importance, both procedural and substantive due process, including whether the US may delay implementation of the international treaties on the rights of the Child for so many years, including the 1959's Declaration of the Rights of the Child. Appellant respectfully requests the Court to issue a writ of certiorari to California Court of Appeal, Sixth District and to order the minor to return to the mother prior to the fifth Christmas after the unconstitutional parental deprival.

I, Yi Tai Shao, declare under the penalty of perjury under the laws of the US that the foregoing factual statements are true and accurate to her best knowledge.

Dated: November 12, 2014 Respectfully submitted,

_____

Yi Tai Shao, Mother/Appellant

PROOF OF SERVICE

I, Eileen Chang, declare that:

I am over age of 18. I am employed in the County of Santa Clara. My business address is 560 S. Winchester Blvd., Ste. 500; San Jose, CA 95128, I served the foregoing Petition for Writ of Certiorari on the interested party in this action by placing a true copy thereof enclosed in a sealed envelop and delivering it as follows:

-x (By first class mail) By sealing the envelop, posted sufficient postage and put into mail in the post office at San Jose, California.

David Sussman, Esq., 95 South Market Street, Suite 410, San Jose, CA 95113, Attorney for Appellee/Father

B.J. Fadem, Esq., 111 N. Market Street, Ste. 910; San Jose, CA 95113, Attorney for Minor Lydia Wang

Administration, Superior Court of California, 191 N. First Street, San Jose, CA 95113 in care of Family Court located at 605 West El Camino Real, Sunnyvale, CA 94087

Clerk of Court of Appeals, 6th District, 333 W. Santa Clara Street, 10th Floor, San Jose, CA 95113

U.S. Attorney General, Mr. Eric Holder, U.S. Department of Justice; 950 Pennsylvania Avenue, NW Washington, DC 20530-0001

California Attorney General, Kamala Harris, 1300 "I" Street Sacramento, CA 95814-2919

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 12, 2014

_____

Eileen Chang