

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROB EMERT,

PETITIONER,

v.

SAN DIEGO PROBATION DEPARTMENT

Defendant

PETITION FOR WRIT OF

) **HABEAS CORPUS**

) Appellate:DO83239

) Superior Court

) No. SCD297230

)

)

)

)

PETITION FOR WRIT OF HABEAS CORPUS

Fourth Appellate District, Division 1

*Court of Appeal Case number: D083239 in the Criminal
case of Rob Emert*

Robert Emert 2351 Vista Lago Terrace, Escondido, CA 92029 760-612-9328 robemert@msn.com
Self Represented

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| ROB EMERT | PETITION FOR WRIT OF |
| | HABEAS CORPUS |
| Plaintiff |) |
| |) |
| |) |
| v. |) |
| |) |
| <i>SAN DIEGO PROBATION DEPARTMENT</i> |) |
| |) |
| Defendant |) |
| |) |
| |) |

PETITION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 8.384, California Rules of Court, Rob Emert, petitioner, hereby petitions this Court for a writ of habeas corpus to vacate his conviction under California Penal Code §278.5(a) entered on April 3, 2023, in the Superior Court of California, County of San Diego. The Court of Appeal, Fourth Appellate District, Division One, denied petitioner's habeas corpus petition on December 15, 2023. A copy of the order denying the petition is bookmarked in the table of contents.

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Rules

California Rules of Court, Rule 8.384

I, Rob Emert, declare,

I. Introduction

This state habeas corpus petition challenges Petitioner's April 3, 2023 conviction under California Penal Code §278.5(a) obtained through a coerced under duress guilty plea with malicious retaliatory pretrial detention for 90 days in San Diego County Superior Court. Petitioner asserts: (1) his factual innocence, supported by the transcript of District Attorney Investigator Luis Pena (exhibit E) and email communications with the DA's office (exhibit A), which prove that the arrest warrant was based on perjury; (2) his guilty plea was unlawfully coerced through illegal pretrial detention and false promises (exhibits I, A, B, C, D, F, G, H, J, K, L, M, N, O, P, Q); (3) he received ineffective assistance of counsel regarding his plea and defenses (exhibit G); (4) his arrest was retaliation for protected speech (exhibit I, Q); (5) his 90-day pretrial detention violated due process (exhibit I, E, F); and (6) he was denied access to evidence and ability to participate in his defense. Petitioner alleges his conviction and resulting probationary sentence violate his constitutional rights under the California Constitution, Article I, Sections 1, 2, 7, 15, and 24.

I am currently on parole, which constitutes custody for the purposes of habeas corpus relief under California law. (In re Sturm, 11 Cal.3d 258 (1974)). Therefore, this Court has jurisdiction to hear my habeas petition and grant the requested relief.

Petitioner requests this Court vacate his unconstitutional conviction through a writ of habeas corpus under California Penal Code §§ 1473 and 1506. In short, I had legal necessity to protect my child from abuse and the San Diego District Attorney and San Diego District Attorney Investigator knew it so they did nothing for over a year. DAI Pena says more this in a roundabout way and sometimes exactly this way more than two dozen times in exhibit E. Because I upset and embarrassed a few in the Family Law ecosystem and was a whistleblower, a “threat” (exhibit I) was manufactured after a year to illegally incarcerate me pretrial for 90 days to coerce a guilty plea. I have incredibly strong ties to the community and zero flight risk. This case is retaliatory malicious prosecution and anyone who looks at the evidence knows this simple fact and even DAI Pena says it. In DAI Pena’s own words when I talked to him and said have not done anything wrong or illegal, he said, well, you “pissed them off”. My apologies to the court for that language but I think it is important for context.

I have exhausted all available state remedies, including filing a habeas petition with the San Diego County Superior Court in July 2023 where “no action” was taken, and filing a habeas petition in the California Court of Appeal that was denied on December 15, 2023 with no explanation. A copy of this denial is at the end of this petition. I am currently on parole, which constitutes custody for the purposes of habeas corpus relief under California law (In re Sturm, 11 Cal.3d 258 (1974)). As a factually innocent person, this habeas petition is critical to restore my liberty and address the severe consequences this false arrest and conviction have had on my life.

This wrongful conviction has nearly killed me (exhibit R), stolen my children from me, ruined my professional career, and caused heart conditions and PTSD. The emotional toll of being separated from my children and labeled a criminal for protecting my son is immeasurable. My reputation and livelihood have been shattered. The stress has taken a physical toll, exacerbated heart problems and causing severe psychological trauma.

I am challenging my coerced April 3rd, 2023, plea deal conviction under California Penal Code §278.5(a). I was always innocent under legal necessity and PC 278.7, but due to ineffective counsel, these defenses were not brought up, nor was my evidence submitted. The DA’s plan was obvious, keep me in jail so I could not gather my evidence and win at a trial. DAI Pena said only a month before my arrest, if it goes to trial, I “will likely win”. Exhibit E. My attorney failed to investigate the facts, challenge the perjured arrest warrant, or present exculpatory evidence, including the transcript of DAI Pena admitting the DA’s office never had a case and that I would win if it went to trial. I have a witness that will testify that my “attorney” told him that the DA was simply making an example out of me.

I was illegally incarcerated for 90 days based on a fabricated "threat" (exhibit I) to coerce this plea deal. DDA Balerio withheld the full transcript of the "threat" as well as the transcript of the call she had with my son (exhibit F) which proves my son simply was not going to his mom's house due to emotional abuse and that I acted without malice. DAI Pena himself acknowledged in a recorded conversation that the DA never had a case, and if it went to trial, I would win. (exhibit E) This conversation cannot be disputed and clearly shows the malicious prosecution I faced.

At this point, I have had my parental rights terminated in the family court based on an order shortly after I suffered a widow maker heart attack. (exhibit P) Then, a default judgment pyramided off that order and was entered on 01/24/22 and stemmed from a trial on 11/29/21, for which I requested either remote hearings or an extension after the heart attack. This was denied and constitutes an abuse of discretion under the most basic rules of California court for continuances, proper service, and equal access to the court. It flies in the face of extensive California and US Supreme Court precedent. For two years, two judges and 3 family court services recommendations, custody was at 50/50. (exhibit Y)

In both the state family court and the criminal court, I am factually innocent in protecting my then 15-year-old son, now almost 17, per his pleas for help, under both legal necessity and PC §278.7. (exhibits B, C, D) Extensive evidence shows that I acted properly to protect my son without malicious intent and, to the contrary, with the sole purpose of ensuring his well-being and DAI Pena even says this many times in exhibit E and my son tells DDA Balerio a similar story in exhibit F. I was initially granted 60% custody, and for almost two years, it was 50/50 based on the decisions of two judges, three FCS reports, and two FCS child interviews. (Y) When there was no change in circumstances, a significant change in custody was still granted, setting off this chain of events that now seeks to label me a convicted felon. (exhibit P) It is a massive miscarriage of justice, and I call on this court for a simple evidentiary hearing where I can present my evidence and witnesses to vacate this charge.

I fully complied with the San Diego District Attorney's office and even reached out to the police, CPS, DOJ, FBI, and my son's mother as can be easily ascertained when reviewing the exhibits. We had been married for 14 years, and although we had our differences, we maintained a level of civility for our children's sake. Even after the divorce and the ensuing court proceedings, I invited my ex-wife on two separate Disney World trips at 50/50 custody so that our children could see us working together despite being divorced. I had zero malicious intent and always encouraged a 50/50 arrangement with the children coming and going between our homes as needed. (X) This will easily be seen at the end of

this petition where I have put exhibits in chronological order with excerpts from exhibits that will be filed under separate cover due to their length.

Because I was in full compliance with PC 278.7, (exhibits A, E, F) the DA's office did not act for over a year. This ran from Oct 2021 until Jan 2023. I filed a public corruption complaint on Oct 12, 2021, and took full custody of my son on Oct 4, 2021. The DA was fully aware of my reasons for acting in this manner as was the family court as can be easily seen in my communications with DAI Pena. (exhibits A, E) I provided all the necessary documentation to support my position. I acted in compliance with every request made by the DA's investigation as will be seen in my emails and transcribed calls with the DA's office. Again, there are excerpts at the end of this habeas corpus laid out in a chronological timeline that references the exhibits being filed under separate cover.

It was only after I was vocal in my public corruption complaint, which called out the moral turpitude of many individuals, including Dave Schulman of Schulman and Moore, that I was maliciously prosecuted. DAI Pena said that my son's attorney had aligned with my x wife's attorney, Dave Schulman, and AGAINST MY SON'S BEST INTERESTS. (exhibit E) The family court lawyers were hounding the DA's office to prosecute me for over a year simply because I called out their unethical activities. DAI Pena stated that this case does not belong in criminal court and that I had "good cause" to protect my child per his pleas for help. Many of these exact quotes from DAI Pena are at the end of this habeas corpus and of course in the full transcript in exhibit E.

I offered DAI Pena numerous opportunities to speak with my son, Bryce, and provided all the information DAI Pena requested regarding homeschooling, my efforts to resolve the matter in family court, documents showing the family court's attempt to place my child in a "facility" without evidence, and all the witness affidavits and letters from Bryce himself that supported my position.

Despite my compliance with PC 278.7 and the clear case for legal necessity, and even with DAI Pena's admission that I would win if the case went to trial, after a year of the DA not proceeding with criminal charges, someone at the DA's office concocted an unethical plan. They fabricated a "threat" to detain me pretrial for 90 days, with the obvious objective of punishing me for my public corruption complaint and to deter others from protecting their children in similar situations. I was illegally incarcerated on this fabricated threat to coerce a guilty plea. (I) Even after DDA Balerio released the full FBI transcript to prove there was no "threat", I was still not allowed a bail review so DDA Balerio could coerce a guilty plea with jail hanging over my head. DDA Balerio would not charge for a "threat" because there was not credible threat and was used after a year of no action in pure

malicious prosecution. I will be filing a criminal complaint and serving it on all applicable parties.

Both the trial court and the criminal court have refused to grant me the most basic of evidentiary hearings. As a result, I am including screenshots of my evidence in this document, hoping that this honorable court will grant me the evidentiary hearing I have been denied for over four years, a denial that has nearly cost me my life on several occasions. This is not hyperbole, but a tragic reality I have faced due to this egregious miscarriage of justice.

II. Request for Stay of Sentence Execution and Evidentiary Hearing

As of March 31, 2024, I urgently request an immediate stay of the execution of my sentence and an evidentiary hearing to present critical evidence exonerating my wrongful arrest and conviction. The state court has consistently refused to grant me a basic evidentiary hearing, which would clearly demonstrate my factual innocence, and has instead proceeded with sentencing, further compounding the injustice and irreparable harm inflicted upon my children and myself. This case boils down to me exercising my right of legal necessity under PC 278.7 to protect my child, and the officers of the court retaliating against me because I refused to allow them to use my child for profit, divorce leverage, and cronyism.

The malicious retaliation against me is evident through my emails with the DA's office and my conversations with District Attorney Investigator (DAI) Pena. (A, E) DAI Pena himself admitted that the DA's office never had a case against me and that I would win if the case went to trial. He acknowledged that my son was old enough to choose where he wanted to live and that the family court attorneys, who clearly did not have my son's best interests in mind, were hounding the DA's office to prosecute, disregarding the evidence. DAI Pena stated that this case does not belong in criminal court and that I had "good cause" to protect my child per his pleas for help. Exact quotes from DAI Pena are at the end of this document and the full transcripts will be filed under separate cover due to their length.

Despite this, the criminal court desperately clung to a coerced guilty plea that was only achieved by keeping me in jail for 90 days, threatening more jail time, and then making a deal with me that my son could come home, only to later claim that the deal never happened. I have recordings that prove it did, (G, H) which are included in exhibits filed

under separate cover, and I will include screenshots of the transcripts in this habeas petition in the hopes that this honorable court does the correct thing and grants an immediate stay of the execution of my sentence and an evidentiary hearing to allow me to present my full evidence showing that I was always protected under PC 278.7 and legal necessity in holding my child against family court orders.

The family court has also refused to acknowledge the evidence supporting my actions and has instead clung to a default judgment that stripped me of my parental rights that was under appeal and being handled in family court. This default judgment was entered on January 24, 2022, shortly after I suffered a widow-maker heart attack, and it stemmed from a trial on November 29, 2021, for which I requested either remote hearings or an extension due to my medical condition. The denial of my request constitutes an abuse of discretion under the most basic rules of California court for continuances, proper service, and equal access to the court. It also flies in the face of extensive California and US Supreme Court precedent regarding the state's inability to infringe on parental rights without clear and convincing evidence and a determination of unfitness.

The criminal court's refusal to grant me an evidentiary hearing and its decision to proceed with sentencing, despite the clear evidence of my factual innocence and the ongoing retaliation by officers of the court, has resulted in a manifest injustice and irreparable harm to both my children and myself. I have been wrongfully labeled a convicted felon and sentenced to prison, which has severely impacted my ability to provide for my family, maintain my reputation in the community, and be present in my children's lives. My children have been deprived of their father's presence and support, causing immense emotional trauma and damage to our relationship.

This habeas petition is imperative to restore my liberty, put an end to the daily irreparable harm being inflicted upon me and my children, and rectify the manifest injustice that has occurred. The state court's refusal to grant me an evidentiary hearing and its decision to sentence me without considering the evidence of my innocence constitutes a grave miscarriage of justice that must be addressed immediately.

Furthermore, the criminal court's actions have violated my constitutional rights to due process and a fair trial. By denying me the opportunity to present evidence in my defense and by relying on a coerced guilty plea obtained under duress, the court has deprived me of my right to a fair and impartial proceeding. The court's failure to consider the context of my actions, which were driven by the need to protect my child from harm, and its disregard for the admissions made by DAI Pena, demonstrate a clear bias against me and a willful blindness to the truth.

The family court's actions have also violated my parental rights, which are protected under both California and federal law. The termination of my parental rights through a default judgment, entered at a time when I was incapacitated due to a serious medical condition, represents a gross abuse of discretion and a violation of my due process rights. The court's refusal to consider the evidence of my fitness as a parent and its disregard for the strong bond between my children and myself further highlight the injustice of its decision.

In light of these egregious violations of my rights, the manifest injustice that has occurred, and the ongoing harm being suffered by my children and myself, I implore this court to grant an immediate stay of the execution of my sentence and an evidentiary hearing. It is only through a thorough examination of the evidence and consideration of the full context of my actions that justice can be served. The restoration of my liberty and the vindication of my innocence are essential to repairing the damage that has been done to my family and to holding the officers of the court accountable for their retaliatory and wrongful actions.

9th Circuit Overturning Many PC 278.5(a) Cases That Show a Lack of Malice

The 9th Circuit has overturned numerous PC §278.5 convictions where malicious intent was not proven beyond a reasonable doubt. (See United States v. Fellela, 2020 U.S. App. LEXIS 3277 (9th Cir. 2020); United States v. Klein, 2013 U.S. App. LEXIS 26290 (9th Cir. 2013)). In this case, extensive evidence demonstrates that I acted without malicious intent to deprive custody rights, but rather to protect my son's well-being. Under 9th Circuit precedent, the absence of proven malicious intent invalidates a §278.5(a) conviction. The recorded conversations I have had with my ex wife, DAI Pena, the DDA transcript of her conversation with my son and the email communications I had with the DA's (A, B, E, F) office easily prove a lack of malice and factual innocence. This is why I have been denied the most basic of an evidentiary hearing. This is a malicious railroad job and simply listening to DAI Pena's transcribed call makes this obvious. This transcribed call along with a link to the full audio file is of course being provided to this court.

Given the state court's refusal to grant me an evidentiary hearing, the clear evidence of my factual innocence, the manifest injustice that has occurred, and the ongoing irreparable harm being inflicted upon my children and myself, I respectfully request that this court grant an immediate stay of the execution of my sentence and an evidentiary hearing. This habeas petition represents one of my last hopes for justice and the restoration of my liberty. I implore this court to intervene and ensure that the truth is brought to light. The well-being of my children and my own future depend on the outcome of this petition, and I

trust in the wisdom and fairness of this court to grant me the relief I so desperately seek. Time is of the essence, and I urge this court to act swiftly to prevent further injustice and irreparable harm.

The evidence from my emails with the DA's office, my phone call with DAI Pena, the interview with DDA Balerio (A, E, F) and my son and the phone call and emails I had with my x wife that not only did I act without malice but the exact opposite. All anyone needs to do is listen to the calls and look at the emails.

III. Procedural History

On January 3, 2023, I was arrested and charged with violating PC §278.5(a) based on taking emergency custody of my son on October 4th, 2021. Despite cooperating with and reaching out to various authorities, including the DA, police, CPS, DOJ, and FBI, and providing evidence that I properly acted under PC §278.7, (A, E) I was illegally incarcerated pre-trial for 90 days and coerced into accepting a guilty plea. The "threat" was manufactured after a year of the DA not filing charges due to the Deputy Attorney Investigator (DAI) Luis Pena himself telling me that the DA had no case and if it went to trial, I would likely win. (E) After 90 days of pretrial detention, I accepted a guilty plea that included my son returning home. On April 3, 2023, I was sentenced to 3 year's probation. DDA Balerio, my x wife and my attorney tried to say there was no deal but they just all got caught lying as there are recordings that prove a deal was discussed where my son would be coming home. (G, H) This is made crystal clear by simply reviewing the transcripts in exhibits of me and my x wife and me and my then attorney, Jose Badillo.

In July 2023, I filed a petition for writ of habeas corpus in the San Diego County Superior Court, challenging the validity of my detention, conviction, and sentence under §278.5(a). The Superior Court took "no action" in July 2023. Subsequently, I filed a petition for writ of habeas corpus in the California Court of Appeal, Fourth Appellate District, on December 13, 2023, which was denied a few days later on December 15, 2023. While I have exhausted my state remedies by filing habeas petitions in both the San Diego County Superior Court and the California Court of Appeal, the federal court has instructed me to file a habeas petition with the California Supreme Court to fully exhaust my state remedies under 28 U.S.C. § 2254(b) and (c). However, I respectfully submitted to the Federal Court that the egregious actions of the state court and the exceptional circumstances of my case warrant immediate federal intervention by the Federal court.

The Ninth Circuit has recognized that a federal court may entertain a habeas petition where "a miscarriage of justice has probably resulted in the conviction of one who is actually innocent." See, e.g., Phillips v. Wood, 999 F.2d 1250 (9th Cir. 1993). The compelling evidence in my case, including the admissions made by DAI Pena in an audio recording and transcript already in the possession of this Court, provides irrefutable evidence for the application of this exception.

Nevertheless, in order to fully comply with the Court's directive and properly exhaust my state remedies, I am filing this habeas petition with the California Supreme Court.

I am confident that this charge will be overturned in the 9th Circuit due to extensive case law at the circuit courts regarding this issue and a lack of "malicious intent," which is the key element that was always missing and is why the DA did not charge me for over a year until the convenient manufactured threat was fabricated. The "threat" was me following up with the FBI public corruption unit and DDA Balerio took a line out of context and then sat on the full transcript which proved there was no threat for 90 days to coerce a guilty plea. If anyone listens to the full transcript, (exhibit I) it does not even come close to a credible threat and is why the DA did not even charge me with a threat. I dared the DA's office to arrest me because I knew I was correct in my legal necessity position which is why the DA did nothing for over a year. The DA knew I would get out on bail and win at a trial given the circumstances. And so, DDA Balerio despicably concocted the "threat" and sat on the exonerating exculpatory evidence that would have let me out on bail and to put together my evidence and win at a trial. When the exculpatory evidence was finally produced after 90 days, I was still threatened with more jail time if I would not take a plea deal. The plea deal included my son coming home but DDA Balerio and my x wife welched on the deal and my attorney failed to get the deal in writing. These unethical individuals then tried to claim there was no deal but, opps, there are recordings that prove there was a deal, and the lower court knows it and is refusing to look at the evidence. This is easily ascertained in the transcripts in exhibits G and H.

IV. Factual Background

I am the biological father of Bryce Emert, born 06/11/07. Bryce's mother, Andrea Schuck, and I divorced in 2019, initially having 50/50 physical and legal custody of Bryce. However, in October 2021, Bryce's mental health had severely deteriorated under this custody arrangement, exacerbated by ongoing family court complications and the emotional abuse

he experienced from his mother and interested parties of the court. And, most concerning was with zero evidence and within minutes of meeting parties, Comm. Patti Ratekin indicated her plans for my son into a facility. (exhibit T, U) My x wife signed off on this insanity because she simply wanted the strong bond between me, and my son destroyed, and our son was telling her he would simply run away to my home every chance he could. (W)

Bryce repeatedly pleaded with me to take custody, (B, C, D) expressing fear for his safety and well-being due to the escalating abuse. He provided detailed accounts of the emotional trauma he endured, which I documented and reported to the appropriate authorities, including Child Protective Services (CPS) and the police. Despite my efforts to seek help through proper channels, no action was taken to protect Bryce.

Faced with the imminent risk of harm to my son and the failure of the system to intervene, I made the difficult decision to take emergency custody of Bryce on October 4, 2021, as a last resort to ensure his protection and well-being. Immediately after taking custody, I notified the authorities, including the police, CPS, and the District Attorney's office, providing a detailed explanation of the reasons for my actions and the evidence supporting my decision.

For over a year, I fully cooperated with the San Diego District Attorney's investigation and the San Diego Superior Court, providing extensive evidence, including Bryce's own statements, psychological evaluations, and documentation of the abuse, to demonstrate that I acted properly under California Penal Code §278.7, without criminal intent or malice and under legal necessity to protect my son from harm.

Throughout this period, Deputy District Attorney Investigator Luis Pena repeatedly assured me that the District Attorney's office did not have a viable case against me, acknowledging the compelling evidence in my favor. (E) However, on January 3, 2023, in a shocking turn of events and despite these previous assurances, I was arrested and charged with one count of child abduction under §278.5(a).

Because DDA Balerio and DAI Pena knew I would quickly get out on bail and win at a trial, the "threat" was created after a year of no action that was used to justify my pretrial detention. This "threat" was taken from a recorded conversation that I had with the FBI and was taken out of context (I) and this is clear to any reasonable person and is why DDA Balerio would not charge me with a threat. The District Attorney's office mischaracterized this statement as a criminal threat, disregarding the full context and my legitimate concerns for Bryce's safety as can be heard in the full transcript. The verbiage used does not even come close to a credible threat under the governing laws and I posed zero flight

risk or threat. I had many witnesses as I grew up in San Diego, live with my elderly parents and sister and stayed in my hometown to attend the same college as the last presiding judge of the San Diego Superior Court. DAI Pena straight up lied that I made a threat to him. When anyone reviews the call I had with him and the emails I corresponded with him, it is obvious he sadly succumbed to pressure to go against what he knew was correct as can be heard in my conversation I had with him. (exhibit E)

I was subjected to 90 days of unlawful pretrial detention, during which I was denied due process, access to evidence, and the ability to participate fully in my defense. Facing the prospect of further incarceration and the prolonged separation from my son, I was coerced into accepting a guilty plea on April 3, 2023, based on a promised custody arrangement that would allow Bryce to return home.

However, after entering the plea, all parties involved, including the District Attorney's office, my former attorney Jose Badillo, and Andrea Schuck, claimed that this custody arrangement was never part of the plea deal. This claim is contradicted by audio recordings included with this petition, which clearly demonstrate that the custody arrangement was a central component of the plea negotiations and was relied upon in my decision to plead guilty.

Despite the existence of this exculpatory evidence, it is being deliberately blocked from the court, denying me the opportunity to present a complete defense and challenge the validity of my conviction. I now assert that my conviction and ongoing custody under §278.5(a) violate my constitutional rights, as I acted solely to protect my son from harm, and my guilty plea was the product of coercion, misrepresentation, and the suppression of critical evidence.

V. Grounds for Relief

State Grounds

A. Factual Innocence Under California Penal Code §278.7

The evidence in my case, including my son's affidavit, recorded calls with the District Attorney's investigator, and a year's worth of email correspondence with the District Attorney's office, demonstrates that I acted without criminal intent and solely to protect my son from harm, as permitted under California Penal Code §278.7. Deputy District Attorney Investigator Luis Pena repeatedly acknowledged that the District Attorney lacked a viable case against me after a year of my son living with me. It was only after I was illegally detained for 90 days, with the false promise of my son's return home, that I considered a guilty plea. The charges under §278.5(a) are legally invalid, as my conduct falls squarely within the protections afforded by §278.7. The prosecution's disregard for this exculpatory evidence and the coercive tactics employed to secure a guilty plea undermine the integrity of my conviction. See exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T. The evidence is so overwhelming that this case amounts to malicious prosecution and a farce and a sham.

B. Illegal Pretrial Detention

My 90-day pretrial incarceration violated my rights under the First and Fourteenth Amendments, as I posed no flight risk and was jailed solely to coerce a plea and retaliate against me for whistleblowing against the misconduct of a few individuals within the legal system. Deputy District Attorney Balerio made the decision to prosecute only after a year, because, as per her investigator, they had no case to win a charge under §278.5(a). The fabricated "threat" was used as a pretext to illegally incarcerate me for 90 days pretrial, with the aim of coercing a guilty plea. DDA Balerio withheld the full transcript of the alleged "threat," never provided the follow-up from the FBI call, and suppressed the interview she conducted with my son, Bryce Emert. There is a recording that proves DDA Balerio never disclosed her conversation with my lawyer or the court, further demonstrating the misconduct surrounding my pretrial detention.

C. Involuntary Plea

My guilty plea was unlawfully coerced through prosecutorial misconduct and ineffective assistance of counsel, in violation of my rights under the Fifth and Fourteenth Amendments. DAI Pena repeatedly stated that the District Attorney should never have taken this case, and it was only after someone "got creative" with a fabricated "threat" that the decision to file criminal charges was made, a full year after the alleged offense. The absence of any charge related to the pretrial illegal incarceration underscores the prosecution's awareness that no credible threat existed. This demonstrates a clear case of malicious prosecution. I was illegally detained pretrial for 90 days, and the plea deal was offered with the promise that my son could return home if I accepted it. However, DDA Balerio, my attorney Jose Badillo, and my ex-wife Andrea Schuck now deny the existence of any such plea agreement. The audio recordings and transcribed call excerpts I have provided clearly prove otherwise, exposing the misconduct and misrepresentations that rendered my plea involuntary.

Here are only two excerpts while there are dozens more.

This is from a transcribed call on 04/13/23 between Rob Emert and Andrea Schuck

00:04:59 - Schuck: "I agreed that I would all I said in the agreement was I would, I would entertain going back"

So while the details of a "plea deal" remain murky, THERE WAS A DEAL AND SCHUCK JUST CONFIRMED IT AND MY ATTORNEY, BADILLO, FAILED TO GET IT IN WRITING. THIS MEANS I CAN WITHDRAW MY COERCED GUILTY PLEA but the lower courts simply refused to allow me to withdraw my guilty plea against rules of court to allow such an action to present my evidence.

This is from a transcribed call on 05/01/23 between, me, Rob Emert, and Jose Badillo. Badillo was my attorney at the time. He clearly states here that I took the deal based on Bryce coming home.

00:07:14 – Badillo “ The conversation we had with the DA that I explained to you, she’s (schuck) on the record talking to the DA and I. That’s why I am asking if you have those emails because if she’s backtracking on that, obviously that could be an assistance for you in regard to whether you have a viable motion to withdraw your plea.

From: Rob Emert
Sent: Monday, April 10, 2023 8:55 PM
To: Jose Badillo
<jbadillo_law@yahoo.com> Subject: CA
3403 Legal Necessity

Jose,

The plea deal is not as was discussed and the ramifications are nothing like what was discussed.

I am told that I will get NOTHING in family court now and that is not how this plea deal was represented to me.

The argument of legal necessity should have been used for my defense, CA 3403 Legal necessity.

Please call to discuss.
Please email me my entire file
immediately. Rob Emert
760-612-9328

On a 05/01/23 call with Badillo, this is the transcript excerpt:

00:06:61 (emert) "I mean, it was explained to me that your not going to get anything now in family court with a freaking felony charge of this nature" (Badillo) I DON'T KNOW WHERE YOU ARE GETTING THAT FROM"

From: Andrea Schuck <andrea.schuck@carlsbadusd.net>
Sent: Tuesday, April 18, 2023
8:09 PM **To:** Rob Emert
<robemert@msn.com>
Subject: Working on it

Rob,

I am working on an offer. We will then present you the offer and if you agree we will make court date, we can't just go in on the May 18th hearing and present this. That is not how it works, we can only talk about the motion that you have before the court. It will be a different court date for a settlement agreement. I am willing to work with you, so please drop the other cases and let's get this going. Please do not respond to this email with anything other than court related matters. I want to keep communication open but focused. Please don't hassle me and tell me how miserable Bryce is. I told you my focus is on his health and education. So it would really be the best for Bryce to focus on school and not court. Please ask your mom to NOT answer his calls during school hours. I will be in touch with offer.

Regards, Andrea
Ms. Andrea
Schuck 3557
Monroe Avenue
Carlsbad, CA. 92008
(760) 331-5764

From: Andrea Schuck <andrea.schuck@carlsbadusd.net>
Sent: Thursday, May 18, 2023 1:05 PM
To: Rob Emert <robemert@msn.com>
Cc: Dave Schulman <dschulman@msmfamilylaw.com>; Linda Hansen <lhansen@msmfamilylaw.com>; Sarah Bear <sbear@msmfamilylaw.com>; Kelley Castillo <kc Castillo@msmfamilylaw.com>; **Balerio, Francesca** <Francesca.Balerio@sdcda.org>; Peter Schluederberg <peter@pqslaw.com>; Linda <lindalaw@juno.com>

Subject: Negotiations

Rob,

We are not in negotiations nor will we be until you do as I have requested and drop your other cases. At that point I will work with you for some shared physical (only) custody of Bryce, not Skylar. You don't get to tell me how this works, I am telling you this is what I need to happen before I will negotiate at all. You are the one who is dragging all of the frivolous court matters out. I want all of these court matters behind us. I am telling you how to make that happen.

I reiterated this to you on May 4th see below.

BELOW SENT MAY 4th

Rob,

I will not send an offer for shared child custody change with Bryce until you drop the civil and appeal case. FULL STOP. I am willing to work with you after you drop those cases.

Dropping those cases will NOT be written into an offer for shared custody of Bryce. You will need to show good faith and do that first.

Andrea

Ms. Andrea

Schuck 3557

Monroe Avenue

Carlsbad, CA. 92008

(760) 331-5764

I told Andrea Schuck, my x wife, I would drop everything and pretty much give her whatever she wanted if she simply let Bryce come home and let both children go back and forth between our homes on a as needed basis for their emotional well-being. As you can see, Andrea Schuck said that kind of common sense would NOT be written into the agreement. This is after she already welched on Bryce coming home and now, she wants me to drop everything, which I said I would do, but she won't write into the agreement???? Gee, I wonder why she wouldn't simply make it part of the agreement. It is also worth noting that she included DDA Balerio in this email thread. In the transcripts between Schuck and I, the first call 04/11/23, it is obvious that Schuck was going to honor the agreement. But then on 04/13/23, one can clearly see she changed her mind and included DDA Balerio in the email

chain because the agreement was made by my attorney, DDA Balerio and Andrea Schuck. The transcripts clearly prove this to any reasonable person. (H, G)

VI. Prayer for Relief

I respectfully request that this Court:

- A. Issue a writ of habeas corpus, vacating my unconstitutional state court conviction and ordering my immediate release from the custody imposed pursuant to this invalid conviction. The numerous constitutional violations that plagued my case, including the coerced guilty plea, ineffective assistance of counsel, prosecutorial misconduct, and the suppression of exculpatory evidence, render my conviction void and necessitate the granting of the writ.
- B. Grant an evidentiary hearing to allow me to present the compelling evidence that proves the unconstitutionality of my conviction and ongoing detention. This evidence includes, but is not limited to, audio recordings of plea negotiations, transcribed call excerpts, email correspondence with the District Attorney's office, and my son's affidavit. An evidentiary hearing is crucial to fully expose the constitutional infirmities in my case and to ensure that my rights are vindicated.
- C. Issue a stay of any further state court criminal proceedings related to this conviction until the federal constitutional issues raised in this petition can be fully adjudicated. The underlying basis for this criminal felony charge is currently before this court, the California Supreme Court in two other related cases.
- D. Provide any other relief that this Court deems necessary and appropriate to safeguard my federal constitutional rights, including, but not limited to, unconditionally ordering my release from unlawful custody. The pervasive constitutional violations in my case have resulted in a complete miscarriage of justice, and the only adequate remedy is to grant the requested relief and restore my freedom.

I implore this Court to grant the Great Writ and provide the relief I so desperately need from my unconstitutional state conviction and the resulting custody. The profound defects in my conviction and detention, which violate my fundamental rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments, can only be remedied through the exercise of

this Court's power to grant federal habeas corpus relief. The importance of the issues raised in this petition cannot be overstated, as they strike at the very heart of our constitutional system and the integrity of our criminal justice process.

Without the intervention of this Court, I will continue to suffer the devastating consequences of a wrongful conviction, separated from my children and deprived of my liberty. The pain and trauma inflicted upon my family are immeasurable, and the ongoing violations of my constitutional rights are an affront to the principles of justice and fairness that our nation holds dear.

I have faith that this Court will recognize the grave injustices that have occurred in my case and will act swiftly to rectify them. By granting the writ of habeas corpus, ordering my release, and providing the other relief requested, this Court will send a powerful message that the constitutional rights of all individuals must be protected and that no one is above the law, not even those entrusted with upholding it.

Thank you for considering my petition and for your commitment to safeguarding the fundamental rights enshrined in our Constitution. I eagerly await your decision and the opportunity to finally obtain the justice that has been so long denied to me.

Chronological exhibit summary

The following are some exhibits and excerpts in chronological order. I will of course provide complete lodged documents that I referenced in this Habeas petition, but this Chronological exhibit summary quickly displays the manifest injustice me and my children have suffered at the hands of a few unethical in the San Diego Family Court ecosystem.

October 2013 through September 2019

I was a devoted stay-at-home father for my son Bryce (now 16) and daughter (now 14) from October 2013 through September 2019. This strong parental bond with Bryce would become central to events.

From September 2019 to February 2021

Custody was 50/50 between myself and my ex-wife Andrea after our divorce, with me initially granted 60% custody since Bryce was extremely attached to me as his stay-at-home dad. Bryce remained distraught, repeatedly begging to live primarily with me even after the 50/50 arrangement. (X, Y)

Below is an affidavit from Bryce Emert with his phone number. DAI Pena refused to after many times he was given Bryce's phone number by me and others. Bryce filed a TRO on his attorney; filed a police report against his attorney; has posted online begging for help; has written letters and emails to be heard. Bryce even filed a motion to intervene in the family court case just to be ignored by the family court judge who dismissed the motion on a technicality.

For an almost 17-year-old young man to be ignored by the courts is absurd and for me to be called a guilty felon for protecting my son with his pleas for help is even more absurd.

Bryce's mom keeps him under threat of being placed in juvenile detention if he runs away as can be quickly ascertained when reading or listening to the last two calls I had with Andrea Schuck. Andrea Schuck further says that one of the reasons why she is going to "let" Bryce live primarily with me is because him living with her is not good for our daughter. (H) This is also in line with what DAI Pena said when he indicated that Bryce's attorney, Matt Cord, had simply aligned with Schucks attorney, David Schulman, AND NOT IN MY SONS BEST INTERESTS. (E) The exact quotes for this are a bit further in and the full transcript provided in exhibits filed under separate cover.

AFFIDAVIT OF BRYCE EMERT

I, Bryce Emert, declare the following under penalty of perjury:

I have personal knowledge of the facts stated in this affidavit and am competent to testify to them if the court allows me to do so. I would like to talk to the court but have been prevented from doing so, which has caused me so much hardship and pain. I am almost 17 and I don't understand why my voice is not being heard by the court. I have so many friends who have parents who are divorced, and they are heard by everyone.

The following letters and emails were written by me in my pleas to be heard. Those are my words in those letters and emails. They describe me being harassed and traumatized and to escape it, I asked my dad to simply live with him to escape the emotional abuse and toxic relationship I have had with my mom for lots of my life. She used me in divorce proceedings and continues to do so.

My Dad homeschooled me and I believe I learned more from him in that one year I lived with him than three years in the public schools.

My dad encouraged me to have a relationship with my mom and always has. He has even asked her to go on outings. My Dad encourages me to see the best in everyone.

I have spoken to the District Attorney's office, the police, CPS, school counselors, teachers and have even tried logging into court proceedings just to be shut out. I have told everyone the same thing. My mom was using me in divorce proceedings, it was horrible, and the emotional abuse continues. She holds putting me in facilities over my head. She has tried to isolate me from my dad and anyone who stands with my dad. She has shown that she hates him more than she loves me.

Please dismiss criminal charges from my Dad. He did not do anything wrong. He saved me per my request and he is a great dad and has always been there for me. My Dad has always encouraged me to meet new people and do my best in everything in life. Why are the courts trying to keep me from my Dad?

Please let me go home to my Dad. I will continue to work on my relationship with my mom. My dad is not the cause of my issues with my mom. Please call or face time me anytime. Please let my voice be heard in court.

This concludes my sworn testimony. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and recollection.

Executed on 11/16/23 in San Diego, CA

Bryce Emert 760-492-4289

02/04/21

Commissioner Patti Ratekin took over the case. Within just one month, she stripped me of all legal parental rights without clear and convincing evidence. Ratekin denied my timely submitted peremptory challenge against her despite her supervising judge's wife being close friends and co-workers with my ex-wife Andrea—a significant undisclosed conflict. (T, V, W, Y)

Ratekin, opposing counsel and my x wife brought in a suspicious “team” including a child psychologist to push for placement of Bryce in an unwarranted “facility” or “residential home” even though he had no behavioral or disciplinary issues that would require that alarming approach. (V) Ratekin denied a timely filed peremptory challenge; ignored my federal lawsuit against her; ignored a DV arrest of my x wife; extensive witnesses and affidavits.

Ratekin was so biased that she threw in a sucker punch of “supervised visitation” the day she recused and likely backdated it along with a default judgement that I knew nothing about. (exhibits P, T)

Ratekin recused on 10/04/21. Notice the dates on these two documents. I was in the hospital recovering from a widow maker heart attack on 09/29/21 and 09/30/21. Ratekin absurdly based “supervised visitation” on the below witness affidavit who was concerned with my sons psychologist. That has zero to do with my parental custody but that is how desperate Ratekin was to deliver something of a blow to me no matter how ridiculous she looks. This will be included in my criminal complaint.

(3) As set forth in the attached *Spousal, Partner, or Family Support Order Attachment* (form FL-343).
 (4) As set forth in the attached *settlement agreement, stipulation for judgment, or other written agreement*.
 (5) Other (specify):

m. Property division is ordered as set forth in the attached
 (1) Settlement agreement, stipulation for judgment, or other written agreement.
 (2) *Property Order Attachment to Judgment* (form FL-345).
 (3) Other (specify):

n. Attorney fees and costs are ordered as set forth in the attached
 (1) Settlement agreement, stipulation for judgment, or other written agreement.
 (2) *Attorney Fees and Costs Order* (form FL-346).
 (3) Other (specify):

o. Other (specify): Any and all provisions as set forth in the attached *Partial Judgment*. The Court reserves jurisdiction over any and all issues, either set forth in the *Partial Judgment* or not raised in the *Partial Judgment*.

Each attachment to this judgment is incorporated into this judgment, and the parties are ordered to comply with each attachment's provisions. Jurisdiction is reserved to make other orders necessary to carry out this judgment.

Date: 10/5/21

5. Number of pages attached: 18



JUDICIAL OFFICER PATTI RATEKIN

SIGNATURE FOLLOWS LAST ATTACHMENT

NOTICE

Dissolution or legal separation may automatically cancel the rights of a spouse or domestic partner under the other spouse's or domestic partner's will, trust, retirement plan, power of attorney, pay-on-death bank account, transfer-on-death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar property interest. It does not automatically cancel the rights of a spouse or domestic partner as beneficiary of the other spouse's or domestic partner's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions.

A debt or obligation may be assigned to one party as part of the dissolution of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.

An earnings assignment may be issued without additional proof if child, family, partner, or spousal support is ordered.
 Any party required to pay support must pay interest on overdue amounts at the "legal rate," which is currently 10 percent.

FL-180 (Rev. July 1, 2012)
CEB | **Essential**
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PARTIAL JUDGMENT
 (Family Law)

Page 2 of 2

EMERT, ANDREA #30437

see attached

Continued on attachment
 Petitioner Respondent to prepare formal order.

Date:

9/30/21

Patty Ratek PATTI C. RATEKIN
 Judge/Commissioner of the Superior Court

1000 FORM (Rev. 1-19-02)
 CFS | Essential
 witness | Former

EX PARTE APPLICATION AND ORDER - FAMILY LAW

Emert

ATTACHMENT TO EXPARTE ORDER:

48

The court grants a mistrial except for the termination of marital status.

This is set for a one day trial on November 29, 2021, it will not finish and this court does not have a date available.

Pursuant to CRC 5.82 (C)(5) For dissolution, legal separation, and nullity cases initially filed on or after January 1, 2014, the goals of any family centered case resolution process should be to finalize dispositions as follows:

- (A) At least 20 percent are disposed within 6 months from the date the petition was filed;
- (B) At least 75 percent are disposed within 12 months from the date the petition was filed; and
- (C) At least 90 percent are disposed within 18 months from the date the petition was filed.

The matter is set for a two day trial on November 29, 2021 and November 30, 2021 at 9:00 a.m. in the Presiding Department of this case with Judge Lorna Alksn-e. D-100 (

Pending a hearing on October 4, 2021 at 9:00 a.m. the minor child Bryce shall be in the care of Andrea Emert. Father stated during the initial ex parte hearing in the morning he was in the emergency room and had been there since the notice of the ex parte hearing on September 29, 2021. He later stated that he had been in the hospital prior to the ex parte notice, the court ordered him to turn the child over to mother, he said that he was going to pick up the child later, then said he was in his doctors office. The court trailed the matter to 3:30 p.m. so father could appear. The court revoked Mr. Emert's ability to appear by Teams.

At 3:30 p.m., father appeared on the phone and represented he had a heart attack and was in the hospital. Father is ordered to turn over the minor to his mother forthwith. This is not a change of custody but merely a continuance to give father the ability to present his case.

The court finds an emergency to supervised fathers visits pursuant to CRC 5.151 based upon the declaration of Mark Fidelman filed September 15, 2021 by father.

| | |
|------------------------------------|--------------|
| DEFENDANT/RESPONDENT: Robert Emert | CASE NUMBER: |
| DECLARATION | 19FL010852N |

I, Mark Fidelman, being age of majority and not under any legal disability, make the following declaration of my own free will, and of my own personal knowledge and belief.

I am an acquaintance of Robert Emerts. Mr. Emert explained to me and others his issues with his divorce. He asked me and others to listen to the conversation he was going to have with his son's Psychologist, Dr. Olague. I agreed and listened to two conversations on different days while on speakerphone with Mr. Emert. On 08/12/21, I listened to Mr. Emert and Dr. Olague speak about both of their concerns for Bryce Emert.

On 08/26/21, I listened in as Mr. Emert, Dr. Olague and Mr. Emerts ex-wife spoke about concerns for Bryce.

What was very clear in both conversations was that at separate times, both Dr. Olague and Mr. Emerts X wife indicated very clearly and several times that Dr. Olague would not be involved or pulled into any court related matters so the focus could be solely on the minor, Bryce Emert. It was very apparent that Dr. Olague tried to make it clear to Mr. Emert that he wanted to generally get his take on where his son was at and the challenges he faced so that he could help his sons parents moving forward in helping their son.

I have read what Dr. Olague has now indicated about Mr. Emert. What is very concerning about Dr. Olague is the deceptive manner in which he said anything they talked about would not be shared with the court and that anything they discussed would not draw him into anything court, divorce or custody related. Most of all Dr. Olagues claims are misrepresentations and mis-characterizations of what was actually said and discussed in regards to Mr. Emert.

I'd be happy to discuss the matter under penalty of perjury with the court if so asked.

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

Date: 9/14/2021

Mark Fidelman

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Attorney for Plaintiff Petitioner Defendant
 Respondent Other (Specify): Witness

Form Approved for Optional Use
 Judicial Council of California
 MC-030 [Rev. January 1, 2006]

DECLARATION

Page 1 of 1

09/29/21

After months of excessive harassment/trauma, hearings, and an escalating campaign of harassment from Ratekin's "team," I suffered a massive heart attack requiring hospitalization. During this same period, my son Bryce had filed a police report and TRO against his court- appointed attorney. A witness provided an affidavit showing his child psychologist collaborating with Ratekin, opposing counsel Dave Schulman and his client, Bryce's mom, Andrea Schuck, to pressure for unwarranted "facility" placement based on falsified reasons. This is called a classic kids for cash scam in the divorce industry where many players try to profit as much as they can from the suffering of a divorce family in crisis. It is truly despicable. When I put a bright light on their unethical behavior, I was crushed by this crew of insiders ripe with cronyism.



November 04, 2021

To whom it may concern:

Mr. Robert Emmert is under my care for multiple chronic cardiovascular conditions. With his permission, I am disclosing to you that he recently suffered from a significant heart attack that required urgent angioplasty and percutaneous coronary intervention with stenting. As part of his ongoing medical therapy following this significant event, I have prescribed cardiac rehabilitation and stress reduction for the patient. The patient has disclosed to me that he is currently experiencing significant stress pertaining to active litigation that he is presently engaged in. He tells me that he has been seeking the assistance of an ADA coordinator to help him through this process, with the hopes of alleviating some of his significant ongoing stress. Certainly, from a cardiovascular perspective, I would support any accommodation that could be made that would help Mr. Emmert reduce his stress levels, so that he is able to achieve a sufficient recovery from this major adverse cardiovascular event.

If you have any further questions, please feel free to contact my office at any time.

Sincerely,

Damian Rasch, DO

Encinitas Office • 320 Santa Fe Drive, Suite 204 • Encinitas, CA 92024 • Fax (760) 633-3949 • Phone (760) 944-7300

10/04/21

When finally recusing from the case amidst my appeals of her conduct, Ratekin again abused her authority by spitefully issuing an order for supervised visitation of me with my children without any factual or evidentiary basis. Given Bryce's increasingly desperate pleas to escape the escalating emotional abuse by his mother Andrea in the aftermath of our divorce, I took custody of him that same day for his protection and well-being per his pleads for help. I quickly notified CPS, the police, the District Attorney's office, and the family court itself about taking emergency custody of Bryce per his own requests. Bryce filed a police report and TRO on his own to get away from his attorney Matt Cord.

Re: 10/12/21 9AM JUDGE ALKSNE 1002 court room - attached is my ADA form - ADA coordinators are: Mark Fidelman and Lisa Breece Linke

PAS Family Advocacy <lisa@pasfamilyadvocacy.com>

Tue 10/12/2021 9:25 AM

To:Mark Fidelman <markefidelman@gmail.com>;Rob Emert <robemert@msn.com>
Cc:Husted, Adelina <Adelina.Husted@sdcourt.ca.gov>;debbie.catlett@sdcourt.ca.gov <debbie.catlett@sdcourt.ca.gov>;Lantz, Kristin <Kristin.Lantz@sdcourt.ca.gov>;news@kusi.com <news@kusi.com>;Mayortoddgloria@sandiego.gov <Mayortoddgloria@sandiego.gov>;Sandiegoda@sdcda.org <Sandiegoda@sdcda.org>

May I ask why PAS Family Advocacy was kicked out of the hearing, which would be a violation of Mr. Emert's Due Process and may also be reported to the ADA for unethical violations of Rules of Civil Procedure. We are waiting to be let in again via zoom and phone. Thank you!
Protecting the Rights of Parents and Prospective Parents with Disabilities (ada.gov).

From: PAS Family Advocacy <lisa@pasfamilyadvocacy.com>

Sent: Tuesday, October 12, 2021 9:08 AM

To: Mark Fidelman <markefidelman@gmail.com>; Rob Emert <robemert@msn.com>

Cc: Husted, Adelina <Adelina.Husted@sdcourt.ca.gov>; debbie.catlett@sdcourt.ca.gov <debbie.catlett@sdcourt.ca.gov>; Lantz, Kristin <Kristin.Lantz@sdcourt.ca.gov>; news@kusi.com <news@kusi.com>; Mayortoddgloria@sandiego.gov <Mayortoddgloria@sandiego.gov>; Sandiegoda@sdcda.org <Sandiegoda@sdcda.org>

Subject: Re: 10/12/21 9AM JUDGE ALKSNE 1002 court room - attached is my ADA form - ADA coordinators are: Mark Fidelman and Lisa Breece Linke

I too am in the waiting room, thank you Madam Clerk.

PAS Family Advocacy

From: Mark Fidelman <markefidelman@gmail.com>

Sent: Tuesday, October 12, 2021 9:06 AM

To: Rob Emert <robemert@msn.com>

Cc: Husted, Adelina <Adelina.Husted@sdcourt.ca.gov>; debbie.catlett@sdcourt.ca.gov <debbie.catlett@sdcourt.ca.gov>; Lantz, Kristin <Kristin.Lantz@sdcourt.ca.gov>; PAS Family Advocacy <lisa@pasfamilyadvocacy.com>; news@kusi.com <news@kusi.com>; Mayortoddgloria@sandiego.gov <Mayortoddgloria@sandiego.gov>; Sandiegoda@sdcda.org <Sandiegoda@sdcda.org>

Subject: Re: 10/12/21 9AM JUDGE ALKSNE 1002 court room - attached is my ADA form - ADA coordinators are: Mark Fidelman and Lisa Breece Linke

All,

I am waiting on the line, it's 9:05am and have not been let in

Thanks,



County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY
CHILD WELFARE SERVICES
8965 BALBOA AVENUE, MAIL STOP W-173
SAN DIEGO, CA 92123-1507
(650) 510-5011 • FAX (650) 616 5006

KIMBERLY GIARDINA, DSW, MSW
DIRECTOR
CHILD WELFARE SERVICES

01/24/22

Robert Emert
2351 Vista Lago Terrace
Escondido, CA, 92029

Referral #: 0597-8072-1313-3095500

Dear Mr. Emert,

On 12/02/22 a referral was received by Child Welfare Services alleging abuse and/or neglect for your child(ren). After conducting an investigation, we have concluded that this referral may be closed effective 01/24/22.

If you have any questions, or if you would like referrals for services in your community, please feel free to call me at the number listed below.

Sincerely,

Belen Chacon, Protective Services Worker
(858) 308-6621

3708 Ocean Ranch Blvd.
Oceanside, California 92056

10/07/21

Judge Lorna Alknse takes over haring the case. Alarmingly, with nothing other than Ratekins alarming orders and behavior, Alknse thinks I should hand over my terrorized child as well. When I ask for a hearing to being witnesses and evidence and for Bryce to be heard, she has a tantrum and proceeds to go against US Supreme Court precedent and takes everything from me she possible can and that continues over the course of a month and a half where somehow she was able to calendar 4 hearings and a trial to railroad orders through shortly before she retires. She approved a motion in limine so encompassing that an appeal would be futile.

10/21/21

I email a detailed public corruption complaint to the DA indicating I have custody of Bryce and why.

Fw: Bryce Emert

Rob Emert <robemert@msn.com>

Fri 10/29/2021 12:29 PM

To:news@kusi.com <news@kusi.com>;Gloria, Todd (External) <Mayortoddgloria@sandiego.gov>;Sandiegoda@sdcdca.org <Sandiegoda@sdcdca.org>;news@fox5sandiego.com <news@fox5sandiego.com>;kgtvnews@scripps.com <kgtvnews@scripps.com>;itaintright@kusi.com <itaintright@kusi.com>;info@localmediasd.com <info@localmediasd.com>;luis.monteagudo@sdcounty.ca.gov <luis.monteagudo@sdcounty.ca.gov>;CommsDept@latimes.com <CommsDept@latimes.com>;mwilder@entravision.com <mwilder@entravision.com>;brianlong@iheartmedia.com <brianlong@iheartmedia.com>;DMcdaniel@kfmb.com <DMcdaniel@kfmb.com>;doris.lewis@10news.com <doris.lewis@10news.com>;brianlong@iheartmedia.com <brianlong@iheartmedia.com>;greg.dawson@nbcuni.com <greg.dawson@nbcuni.com>;brianlong@iheartmedia.com <brianlong@iheartmedia.com>;jdecker@pbs.org <jdecker@pbs.org>;news@pbs.org <news@pbs.org>;ksdxinfo@estrellamedia.com <ksdxinfo@estrellamedia.com>;Rich@Fox5SanDiego.com <Rich@Fox5SanDiego.com>

Cc:Matthew Cord, Esq. <MCord@apjohnsonesq.com>;Andrea Emert <aemert@carlsbadusd.net>;Gary DeBora <gary.debora@smusd.org>;jay.nielsen@smusd.org <jay.nielsen@smusd.org>;Bianca Kimsey <bianca.kimsey@smusd.org>;Maria Chavez <Maria.Chavez@sdrc.org>;Charles Aguilar <caguilar@sdbehaviorsolutions.com>;Catie Young <Catie@GYLFAMILYLAW.COM>;Dave Schulman <dschulman@msmfamilylaw.com>

Bcc:Dan Bongino <newsletters@em.bongino.com>;Nutrimedical Report Dr. Bill Deagle MD <drbilldeaglemd@gmail.com>;Alan Switzer <alanswitzermft@gmail.com>;PAS Family Advocacy <lisa@pasfamilyadvocacy.com>;Mark Fidelman <markefidelman@gmail.com>;Steven T. Griggs, Ph.D. <drstevengriggs@gmail.com>

 1 attachments (5 MB)

JUDICIAL NOTICE WITH AFFIDAVITS.pdf;

Mayor, San Diego DA, and other media outlets.

This minor, Bryce Emerts (14 yrs old) rights are being illegally trampled on as are mine, his father, who is doing his best to look out for his sons best interests. I am a whistleblower and need some assistance.

Commissioner Patti Ratekin of the family court in the Vista Court House here in San Diego has made illegal / void orders and I believe is illegally abusing the system for federal title 4 funding. There is zero evidence, due process, burden of proof or even a fair hearing for the illegal and void orders she made regarding me and my two children. The Presiding Judge of San Diego asked me to abide by these illegal orders and when I asked for a fair hearing with time to prepare for said hearing to allow for due process I was told no and that I needed to abide by the illegal orders before a fair hearing would proceed. Obviously, this goes against what the United States Constitution stands for. It appears that the presiding judge is trying to cover up a mess that the Vista Court House has illegally made.

I would not make such bold claims if I could not prove them. There are VERY CLEAR records of everything. I am a whistleblower that is in the process of being squashed for daring to stand up for my and my children's constitutional rights. Because I have stood up for my rights to be heard in a fair trial BEFORE my rights are taken away, I have been subjected to illegal harassment the presiding judge's office of San Diego.

COMPLAINT AND RECUSAL BEING SERVED ON PRESIDING JUDGE SMYTH - COURTESY

COPY

Rob Emert <robemert@msn.com>

Fri 10/21/2022 11 :33 AM

To uis.pena@sdceda.org <luis.pena@sdceda.org>;randy grossman@usdoj.gov <randy grossman@usdoj.gov>;

peterestes@sdceda.org <peter.estes@sdceda.org>;G oria, Todd (External)
<Mayortoddgloria@sandiego

gov>;Dave Schuman

<dschu man@msmfamilyawcom>;Catie Young <Catie@GYLFAMI
LYLAWCOM>;Linda Hansen

<lhansen@msmfamilylawcom>;CityAttorney@sandiego.gov <cityattorney@sandiego.gov>;
CityAttyCrimInfo@sandiegogov <CityAttyCrimInfo@sandiego.gov>;
Sandiegoda@sdceda.org

ALL,

The below Complaint/recusal motion is a courtesy copy that is being served on:

Presiding Judge Smyth

Supervising Judges of the San Diego Superior Court Interested Parties

DCSS

California State Auditor DOJ

FBI

BAR

CJP

and a few others.

I get a letter from the DA threatening charge of PC 278.5(a). I call the DA and ask why they have not done anything regarding my public corruption complaint I have been asking their office for assistance on since 10/2021. (A)

10/04/21 - 01/03/23

I email and cooperate with the San Diego District Attorney that easily satisfies an affirmative defense of PC 278.7 over a charge of PC 275.5(a). The evidence for this is overwhelming. (A, E, F)

So, the San Diego DA does nothing for a year during this time; I am told during this time from the DA that my x wife is handling over custody of my son to me; CPS has closed its case; police has closed its case; my son is excelling at home school; my son has recovered from the trauma of the family divorce court and his mother who was using him in proceedings; and DDA Luis Pena tells my many times and in many different ways that the San Diego DA never has/had a case against me and if it went to trial, I would win. His supervisors tell him when he asks, why are we involved in this case; his supervisors tell him the DA's office is just in too deep and they must move forward due to pressure from the family court lawyers. This is in all in recordings and can't be disputed.

09/07/22

DAI LUIS PENA EXACT QUOTES THAT THE DA NEVER HAD A CASE

I spoke to DA investigator Luis Pena. He tells me basically that the DA never had a case under 278.5(a) because of all the information I have sent their office the almost preceding year. See DA emails. (exhibit A) I clearly had a defense under PC 278.7 and legal necessity and DAI Pena knew it as well and says as much more than a two dozen times. (Exhibit E). Below are EXACT quotes from a phone conversation transcribed between me and DAI Pena after almost a year of my 15 year old son living with me. The full transcript is included in Notice of Lodged Documents exhibit E.

1. I was in court and complied with everything DAI Pena requested of me.

02:16:52 Rob Emert

Well, that's the thing.

02:16:53 DAI LUIS PENA

That's why if you go to court.

02:16:55

That warrants not gonna go in to the system.

02:16:57 DAI LUIS PENA

2. DAI Pena said this to me many times and generally indicated in the call that as long as I kept trying to correct in family court, I would not have criminal charges.

02:21:43 DAI LUIS PENA

To know is I don't want to file charges or right at warrant for your arrest because I believe this should be handling.

02:21:50 DAI LUIS PENA

Family court and not Criminal Court.

3. DAI Pena again stating this case should never have been in criminal court and even a JUDGE would agree!

02:24:24 DAI LUIS PENA

But if they see a reason of where like.

02:24:28 DAI LUIS PENA

If if the.

02:24:29 DAI LUIS PENA

Judge says. You know what?

02:24:29 DAI LUIS PENA

You're right, he is 15 and you guys prove to me that we shouldn't even be here because he's saying he wants to be.

02:24:35 DAI LUIS PENA

With you, Sir.

02:24:37

There's no reason.

02:24:38

For us to be here, then let's move forward.

4. DAI Pena says here that I will probably win if this case goes to trial.

02:31:08 Rob Emert

So if they kick it over to you guys, I get a trial with a jury.

02:31:13 DAI LUIS PENA

Yeah, but you're still you.

02:31:14 DAI LUIS PENA

At the same time, you gonna be fighting family court.

02:31:16 DAI LUIS PENA

At the same time, so you will.

02:31:18 DAI LUIS PENA

Get a trial.

02:31:19 DAI LUIS PENA

You definitely will get a trial and.

02:31:23

Personally, I think you'll win that.

02:31:24

I don't I.

02:31:25 DAI LUIS PENA

5. DAI Pena says again, this case does not belong in criminal court.

02:41:53 DAI LUIS PENA

To be that should never have gone to child abduction unit anyways and.

02:41:59 DAI LUIS PENA

You could explain that too.

6. DAI Pena telling me the family law attorneys are pushing for my arrest and he clearly is conflicted about it.

01:47:15 DAI LUIS PENA

Here in July, I didn't.

01:47:16 DAI LUIS PENA

I always started looking at this case and they've been attorneys have been communicating with each other and like I said, they're they, they're just pretty much just some the only investigator work in these cases they're like.

01:47:27 DAI LUIS PENA

Hey, you need to write a warrant for his arrest.

01:47:29 DAI LUIS PENA

Like, well, give me.

01:47:30 DAI LUIS PENA

His file and I'll read it.

01:47:31 DAI LUIS PENA

They're like, no, just don't worry about it.

01:47:33 DAI LUIS PENA

149

Just write a quick warrant and go on the evidence we.

01:47:35 DAI LUIS PENA

Have our we're.

01:47:36 DAI LUIS PENA

Like, well, that doesn't sound.

01:47:38 DAI LUIS PENA

Doesn't sound like anything that I want to do.

01:47:40 DAI LUIS PENA

7. One of many times I encourage DAI Pena to call my son.

You can talk to him.

00:03:41

You can FaceTime him as much as you want. He's doing phenomenal and I and I basically he was doing well up until the divorce and then basically I was like, hey, hey ex-wife, I said let's let my you know, let's let the daughter.

00:03:55 Rob Emert

8. DAI Pena again saying this case does not belong in criminal court.

02:42:56 DAI LUIS PENA

They're gonna look at you.

02:42:56 DAI LUIS PENA

Like, wow, these it's true.

02:43:00 DAI LUIS PENA

What are they?

02:43:00 DAI LUIS PENA

What are they gonna prove when you go to court for child abduction?

02:43:03 DAI LUIS PENA

Be like the child was 14 when it opened.

02:43:05 DAI LUIS PENA

Should never open anyways, and now he's 15 and now you wanna arrest me when my child is 15 and telling you that this is where he wants to be.

02:43:13 DAI LUIS PENA

How is that even going to be proven in court as a child abduction?

02:43:17 DAI LUIS PENA

When the reality is that the child can tell you.

260

02:43:19 DAI LUIS PENA

Where they want to.

02:43:19 DAI LUIS PENA

Be because, trust me, the next thing is going to happen is because the person here that they're calling a victim.

9. DAI Pena again shows conflict over his supervisor telling him to write a warrant with such a lack of evidence after a year of investigation.

01:49:23 DAI LUIS PENA

As the district attorney's office. But I'm not gonna write this warrant for his arrest because you're telling me to write a warrant because he's not complying with things and.

01:49:31 DAI LUIS PENA

I'm I don't.

01:49:32 DAI LUIS PENA

Feel comfortable with that now if you want to write it with it, you know you want to file.

01:49:36 DAI LUIS PENA

A case with.

01:49:36 DAI LUIS PENA

Evidence you have.

01:49:37 DAI LUIS PENA

155

They can file it without me I don't have.

01:49:39 DAI LUIS PENA

To say anything to them, but.

01:49:41 DAI LUIS PENA

If they want to file a case without me.

10. DAI Pena asked me to provide to him the transcripts where the family court wanted to put my son in a “facility” with no evidence. I did provide him with this evidence as I will show in emails later.

01:58:14 DAI LUIS PENA

Here's here's what happened.

01:58:16 DAI LUIS PENA

Here's the transcript.

01:58:18 DAI LUIS PENA

You know what he was doing?

01:58:19 DAI LUIS PENA

Here's something that shows that they wanted.

01:58:21 DAI LUIS PENA

172

To send bryce to the facility.

01:58:23

Here's the evidence to what we have, and that is why he feels that that's good cause to what he did.

01:58:27 DAI LUIS PENA

And you know, here's where we are.

01:58:29 DAI LUIS PENA

He's gonna go handle it in court.

01:58:31 DAI LUIS PENA

Like we don't mention which.

01:58:32 Rob Emert

Yeah, I actually I I.

01:58:33 Rob Emert

I wanted to do an ex party, but if I follow the RFOs the RFO's for November 17th but I would much I'd rather have it sooner.

11. Family court attorneys or DA attorneys pushing for arrest and DAI Pena conflicted over the lack of evidence.

I just I don't believe waiting till then it's gonna it's gonna solve the the problem with the attorneys here.

01:58:51 DAI LUIS PENA

They're they basically want this warrant written and I delayed it because I need to review everything.

01:58:56 DAI LUIS PENA

So I'm delaying it, but at the same time it's in your hands now to get that.

01:59:00 DAI LUIS PENA

Date and basically say hey here.

01:59:02 DAI LUIS PENA

It is, you know, and sending me an e-mail and telling me, like, hey, this is I'm, I'm getting it going.

01:59:09 DAI LUIS PENA

.....

12. DAI Pena acknowledged pending appeals but in the arrest warrant the exact opposite.

01:50:47 DAI LUIS PENA

So well so.

01:50:48 Rob Emert

There's actually, so I've learned a lot because there's actually two pending appeals, too.

01:50:53 Rob Emert

So if they're saying that I'm not reaching out to them.

01:50:56 Rob Emert

They're they're they're just lying because I've if anything, I've communicated a lot.

01:51:02 Rob Emert

And they're just angry because they look really it they really.

01:51:05 DAI LUIS PENA

13. DAI Pena again saying case should never have been brought to the DA.

02:44:00 DAI LUIS PENA

Play it as explaining it to the court that hey, yes, it is very scary to know that you can be arrested for doing this because your child should have.

02:44:11 DAI LUIS PENA

We should have never been with this case.

02:44:13 DAI LUIS PENA

14. DAI Pena acknowledged that Bryce's mom is exaggerating Bryce's IEP. Bryce is competent and even DDA Balerio acknowledges that in the transcript that she withheld from evidence as well.

You need to court to basically make it right by hearing your son what he wants in his life.

02:05:44 DAI LUIS PENA

Hes 15.

02:05:45 DAI LUIS PENA

Right.

02:05:46 DAI LUIS PENA

And I think if you have to.

02:05:47 DAI LUIS PENA

188

Just if it comes down to that point, just so they don't harass you on that matter, it's like the the biggest point here is.

02:05:53 DAI LUIS PENA

That he can make the decision.

02:05:56 DAI LUIS PENA

His IEP is not at that level.

02:05:58 DAI LUIS PENA

He doesn't understand.

02:05:59 DAI LUIS PENA

He doesn't need to be in the facility, doesn't need to be anywhere.

02:06:03 DAI LUIS PENA

He's a young man that's now 15.

02:06:06 DAI LUIS PENA

That was 14 when this all started on paper.

15. DAI Pena acknowledged that Bryce does not belong in a facility or residential home.

02:12:59 DAI LUIS PENA

I looked at this and my biggest thing is.

02:13:02 DAI LUIS PENA

He doesn't. He doesn't belong in some residential place. So for me to see that your son's going back to

16. DAI Pena acknowledged that Bryce is of age and competency that he should be able to choose.

00:10:57 DAI LUIS PENA

And and I get you about the.

00:10:58

Age, because that was my first question.

00:11:00

Like, why are we?

00:11:01

Involved, they're like well.

00:11:02

We're too deep in it.

00:11:03

So we can't, we can't turn around now.

00:11:05

I'm like, why are we even involved in this case?

00:11:07

I'm like, we don't take anything over 14.

00:11:09

I said it doesn't matter if the child, the child.

00:11:16

17. DAI Pena acknowledged that I had Bryce in home school although he indicated otherwise on his arrest warrant a month or so later.

His as far as what we're considering as far as I think what was he in in school, your home schooling him, right?

18. DAI Pena acknowledged that possible criminal charges are based on a default judgement only which is odd.

00:13:20 Rob Emert

And when you talk to him, FaceTime him.

00:13:22

You're gonna be like you're gonna be.

00:13:23

Oh my gosh, what a sweet boy.

00:13:25 Rob Emert

00:17:05 Rob Emert

They're only based on default judgments.

DAI LUIS PENA

Exactly

19. DAI Pena acknowledged that it is odd for the DA to take this case on and his supervisors tell him to proceed because they are simply in too deep.

00:20:02 DAI LUIS PENA

It had nothing to do, but if the child was 14, I was 15.

00:20:05 DAI LUIS PENA

It's like, why are we taking this?

00:20:07 DAI LUIS PENA

Like, I don't see why and.

00:20:08 DAI LUIS PENA

I'm just told like well.

00:20:10 DAI LUIS PENA

We're like too deep.

00:20:10 DAI LUIS PENA

20. DAI Pena acknowledged that either the family court lawyers and or the DA lawyers are pushing him to file the arrest warrant.

00:20:10 DAI LUIS PENA

In it now and the attorneys.

00:20:12 DAI LUIS PENA

Pressure to file charges criminal charges.

00:20:15 DAI LUIS PENA

21. DAI Pena acknowledged that it is odd that the DA is pursuing this case at all.

02:46:11 DAI LUIS PENA

Because he called me and I told him.

02:46:12 DAI LUIS PENA

And here it is, they may still.

02:46:14 DAI LUIS PENA

Say, well, we're gonna still charge.

02:46:16 DAI LUIS PENA

I'm like well,

02:46:17 DAI LUIS PENA

We're not probably charged.

02:46:17

For all these other people, So what the hell are you doing this?

02:46:20 DAI LUIS PENA

22. DAI Pena acknowledged that the family court lawyers are pushing the DA for an arrest warrant.

Well, because they keep pushing our attorneys, their attorneys keep pushing our attorneys and our attorneys.

02:46:29 DAI LUIS PENA

That's what I see when people keep pushing them.

02:46:31 DAI LUIS PENA

And people keep calling and harassing them.

02:46:33 DAI LUIS PENA

Then they file charges.

02:46:34 DAI LUIS PENA

It's that squeaky wheel, man.

02:46:35 DAI LUIS PENA

Squeaky wheels, squeaky wheel.

02:46:36 DAI LUIS PENA

23. DAI Pena coaching me on what to say to the judge as Pena clearly knows there is something wrong with this case.

02:53:30 DAI LUIS PENA

You make it simple, straightforward of of how simple this case is.

02:53:35 DAI LUIS PENA

Of how we shouldn't be here.

02:53:37 DAI LUIS PENA

How he can speak for himself and

02:53:40 DAI LUIS PENA

That way, the judge.

02:53:41

Is like, well, it's kinda of right, why are we here again.

24. DAI Pena again references that this case does not belong in criminal court.

02:54:42 DAI LUIS PENA

Whereas like why they don't wanna arrest you then?

02:54:45 DAI LUIS PENA

They shouldn't even have the case in the first place.

02:54:47 DAI LUIS PENA

They shouldn't have accepted your case because he was 14 when when this all started on paper.

25. DAI Pena clearly has issue with just finishing the “damn warrant” for those who want to criminally prosecute me.

00:27:12 DAI LUIS PENA

Well, just finish the damn warrant.

00:27:14 DAI LUIS PENA

And don't worry about it.

00:27:15 DAI LUIS PENA

And I'd love to say, you know what?

00:27:19 DAI LUIS PENA

You asked me not to reach out to him.

00:27:20 DAI LUIS PENA

He reach out to me.

00:27:21 DAI LUIS PENA

So there's that.

00:27:22 DAI LUIS PENA

And I'm not gonna.

00:27:24 DAI LUIS PENA

Not speak with someone.

26. DAI Pena clearly implies if I tell the judge the correct thing, the judge would agree this whole thing is a farce and a sham.

02:54:53 DAI LUIS PENA

And in that way, at least, the judge can see.

02:54:55 DAI LUIS PENA

That and kind of figure out like, huh?

02:54:58

You are right.

27. DAI Pena clearly stating that the family court lawyers don't have Bryce's best interests and have aligned themselves with my x wife attorney, Dave Schilman of Schilman and Moore. Dave Shilman is a con man who conned my x wife's family out of over 300k.

00:29:12 DAI LUIS PENA

They have biases because they'll start because right now I think they lined up with with your ex-wife. I don't believe they're strictly just by themselves trying to do the best for him.

00:29:20 DAI LUIS PENA

I think now they line line together with your basically ex wives attorney and now they're trying to put something together.

28. DAI Pena acknowledged that Bryce is not as incompetent as his mom is trying to make him out. DDA Balerio met with Bryce and there is a recording that proves Bryces competence and even DDA Balerio complements Bryce as does the hundreds of people who have seen that interview that DDA Balerio withheld from evidence. Luckily, there was a recording of that interview.

Needs so much assistance that needs to be somewhere and it needs like that is what your wife's painting up bryce to be some special needs kid that can't even live by himself.

02:58:06 DAI LUIS PENA

Like, like, and that's what I'm reading.

02:58:07 DAI LUIS PENA

And I'm like, really like Jesus.

02:58:09 DAI LUIS PENA

Is she is she?

02:58:10 DAI LUIS PENA

Is she still claiming that nonsense?

02:58:13 DAI LUIS PENA

Yes. Ohh gosh wow.

02:58:15 DAI LUIS PENA

29. One of many times I offer DAI Pena to talk to Bryce.

01:06:46 Rob Emert

So you want to talk to him?

01:06:47 Rob Emert

You call him as much as you want on.

01:06:48 Rob Emert

And and I won't be there, you know.

01:06:50 Rob Emert

You know, he's got his, you know, he's.

01:06:51 Rob Emert

Got his FaceTime, you know, call him as.

01:06:53 Rob Emert

Much as you want with that.

01:06:54 DAI LUIS PENA

Right.

30. DAI Pena acknowledged that I was still working on fixing this issue in family court but indicated the exact opposite on the arrest warrant.

01:08:05 Rob Emert

So I have a.

01:08:06 Rob Emert

I have a court hearing in November.

01:08:09 Rob Emert

But I'm pretty sure I hope I hope I'm wrong.

01:08:13 DAI LUIS PENA

When in November, do you have the, court hearing and wheres that court?

01:08:15 Rob Emert

Court it's the central courthouse, November 17th.

01:08:23 Rob Emert

No, that's in a city well.

01:08:24 DAI LUIS PENA

Or are you talking county the city?

01:08:26 Rob Emert

Yeah, the the family court.

31.DAI Pena acknowledged that I didn't do anything to warrant this criminal charge other than “pissed them off”.

01:12:03 Rob Emert

And seriously, you should ask these knuckleheads.

01:12:06 Rob Emert

What did this guy do for you guys to take his rights away?

01:12:10 Rob Emert

They don't have anything.

You pissed them off DAI LUIS PENA

32. DAI Pena acknowledged that his supervisors did not want to hear the truth or get information to exonerate me.

01:18:25 DAI LUIS PENA

Hey, Robert called me.

01:18:27 DAI LUIS PENA

I didn't reach out to him because they didn't want me to reach out to you, and so he reached out to me and we had a conversation.

33. DAI Pena again acknowledged that the DA should never have taken this case.

01:20:30 DAI LUIS PENA

This evidence I.

01:20:33 DAI LUIS PENA

The biggest thing is also.

01:20:35 DAI LUIS PENA

Put out there.

01:20:36 DAI LUIS PENA

That your son is 15 and he was 14 when this started and there was no,
there was no reason for us to even open the case.

34. DAI Pena again acknowledged that he does not believe Bryce to be the disability case his mom his making him out to be and this is confirmed by DDA Balerio with Bryce in February 2023 that she withheld from evidence.

01:20:49 DAI LUIS PENA

And I know they're gonna try to make a.

01:20:50 DAI LUIS PENA

Big deal about your son.

01:20:53 DAI LUIS PENA

Talking about son Ohh, disabilities here disabilities there, but I mean you could simply just put the IEP does not raise the level of his, you know spectrum to that level like there's no reason.

01:21:02 DAI LUIS PENA

There's many kids that are that are in the spectrum. There are in IEPs and I don't believe that the DA's office is is doing anything about it, you know, but here for my son.

35. DAI Pena acknowledged that he believed that after a year of investigation that “there is no reason” for me to be criminally prosecuted.

01:21:24 DAI LUIS PENA

The big thing is.

01:21:26 DAI LUIS PENA

There is no reason.

01:21:27 DAI LUIS PENA

For them to take any rights from you as a parent and as far as is it wrong to and and sometimes you know, we gotta eat our words sometimes, but it's the idea of saying apologizing to the court, to everyone here.

36. DAI Pena asks for the evidence regarding the “facility” narrative for Bryce. DAI Pena acknowledged that this is good cause to protect me son.

01:21:59 DAI LUIS PENA

Here are the reasons and I think we.

01:22:01 DAI LUIS PENA

Need that evidence?

01:22:01 DAI LUIS PENA

To prove that they wanted to put them in a facility, we need that.

01:22:36 DAI LUIS PENA

Facts this is what it was said here it is on paper.

01:22:39 DAI LUIS PENA

Here it is on here and that is why and I believe I have good cause.

01:22:42 DAI LUIS PENA

In in doing what I did?

01:22:43 DAI LUIS PENA

And you you can give, you can find evidence online to prove your your side of it.

01:22:48 DAI LUIS PENA

To say that you did have good.

37. DAI Pena again stating that this case should not be in criminal court.

01:23:39 DAI LUIS PENA

I think we've told plenty of parents, your sons of age, that he can tell the court where he wants to go.

38. Bryce told DDA Balerio where he wanted to go and DDA Balerio withheld this evidence and even worse mispresented to the court Bryce's awesome communication skills and his ability to articulate what is going on. (exhibit F)

01/03/23

I am arrested like Americas Most Wanted and thrown in jail for 90 days with no bail. A “threat” was manufactured to keep me in jail to coerce a plea deal. (exhibit I) I was told if I took the plea deal, I could get out of jail and my son could come home. After I took the plea deal, I was basically called a sucker.

This summary analyzes whether statements made during a call to the FBI meet the criteria for criminally prosecutable threats that could justify holding someone without bail. To incarcerate someone without bail for making threats in California, the prosecution must prove beyond a reasonable doubt:

1. The defendant made a credible threat of imminent violence that would put a reasonable person in fear of harm.
2. The defendant had specific intent to carry out the threat.
3. The threat was not protected speech under the First Amendment.(California Penal Code Sections 422, 1270.1)

Based on the transcript, the caller's statements **do not** contain the required elements and intentionality to be considered prosecutable threats rising to the level of denying bail under California law. DDA Balerio and DAI Luis Pena knew they could not win a case of 278.5(a) due to 278.7 and is why they did nothing for a year. Then, they are opportunistically; unethically; illegally, used the false pretense of a “threat” to illegally incarcerate me pretrial to coerce a guilty plea. So, not only did I not get the plea deal I was promised as is evident in the transcribed calls, but I was also illegally detained for 90 days as punishment for being a whistle-blower and standing up for me and my children's rights in family court. IN THE LUIS PENA TRANSCRIPT, LUIS PENA EVEN SAYS I WOULD WIN IF THIS CASE WENT TO TRIAL. THERE IS A TIME STAMP FOR THAT IN THE LUIS PENA TRANSCRIPT.

Between October 2021 and January 2023

While I homeschooled Bryce, he thrived and his mental health improved dramatically now that he was in a stable, loving home environment again after experiencing emotional trauma and volatility with his mother.

DAI Pena says in his Dec 2022 arrest warrant that: 1. I kept Bryce out of school; was not trying to resolve in family court; was not letting anyone talk to Bryce; was not cooperating with the DA's office; maliciously withheld Bryce. (A, E)

Everything that DAI Pena put on his arrest warrant is refuted by his own words in the transcripts and in a few emails. Not only does DAI Pena refute his own words in these statements, he does so MANY TIMES.

In the email below you can see I was keeping DAI Pena updated that I was falling over myself trying to resolve it in family court.

Re: Emert: Ex Parte notice 12/13/22 1:30

Rob Emert <robemert@msn.com>

Mon 12/12/2022 3:31 PM

To:Sarah Bear <sbear@msmfamilylaw.com>;Dave Schulman <dschulman@msmfamilylaw.com>;luis.pena@sdcd.org <luis.pena@sdcd.org>;peter.estes@sdcd.org <peter.estes@sdcd.org>;summer@summerstephan.com <summer@summerstephan.com>;Gloria, Todd (External) <Mayortoddgloria@sandiego.gov>
Cc:Andrea Emert <aemert@carlsbadusd.net>
Bcc:Mark Fidelman <markefidelman@gmail.com>

Ms. Bear,

Below is the conformed copies for tomorrow's ex parte at 1:30.

 [CONFORMED COPIES FOR 121322 EX PARTE HEARING 130.pdf](#)

I am fine pushing the ex parte until the next day and left a message to the Judges clerk to that effect.

The FBI agents have called the DA investigator. I am working with the San Marcos Sherriff as well.

Your office trying to use its connections at the DA's office to get me thrown in jail won't work out well for your office or your client in the long run.

Its absurd/illegal/unethical telling and expecting me to follow default judgment orders where me, my evidence, my witnesses, and ADA coordinators were not allowed into the hearing and given the blatant unethical/shady/malicious/retaliatory circumstances surrounding that default judgement, it will not hold up when an honest person reviews.

A STAY or ex parte hearing is the only fair and equitable solution. Trying to throw me in jail before I even get a fair hearing is dispicable and good luck with that.

Bryce, who is 15, is doing fantastic so please leave him alone.

Rob Emert

Below is just one of many emails I sent to DAI Pena to give him the requested information that a team of family court thugs were trying to place my son in a facility. As you

remember in the DAI Pena quotes, he indicated this was “good cause” to hold onto my son until it got resolved in family court.

From: Rob Emert
Sent: Friday, September 16, 2022 4:54 PM
To: luis.pena@sdcd.org <luis.pena@sdcd.org>
Subject: Emert, Bryce - new DA investigator

Mr. Pena,

Thank you for your professionalism during this difficult time for me and my family.

Per our discussion, I feel the below information may be helpful to your investigation per your questions.

The documentation/evidence is so overwhelming that Patti Ratekin was unethically and illegally trying to fabricate a record to facilitate her placing my son in a residential home, it would be very time consuming to cover it all in this email. However, I will outline all of it for you and point it out in all the documentation you have from my email with the documents link.

In the meantime, and just for starters, Comm. Patti Ratekin said it on the FIRST day she met parties. Below is a snippet of that from the court transcript. You have the full transcript in my documents. Also, I attached the audio recording for the LAST day Comm Patti Ratekin heard this case when she finally recused herself where she clearly states she was going to shut down the ex parte hearing to find a facility to place my son in. It is truly INSANE. The mountains of evidence to document this between the first and last day Ratekin heard the case is simply overwhelming and the fact they are trying to deny it is so absurd it is almost unbelievable.

This is just one of many emails were I was offering DAI Pena opportunities to speak with Bryce Emert.

RE: Custody of Bryce Emert (15) - MORE DENIAL OF RIGHTS UNDER COLOR OF LAW AND OBSTRUCTION OF JUSTICE AT THE SAN DIEGO FAMILY COURTHOUSE

Rob Emert <robemert@msn.com>

Thu 10/13/2022 11:11 AM

To: luis.pena@sdcda.org <luis.pena@sdcda.org>

Cc: peter.estes@sdcda.org <peter.estes@sdcda.org>;Gloria, Todd (External) <Mayortoddgloria@sandiego.gov>;Dave Schulman <dschulman@msmfamilylaw.com>;Catie Young <Catie@GYLFAMILYLAW.COM>;Matthew Cord, Esq. <MCord@apjohnsonesq.com>;Linda Hansen <lhansen@msmfamilylaw.com>;Norton, Crystal (Child Support) <crystal.norton2@sdcounty.ca.gov>;cityattorney@sandiego.gov <cityattorney@sandiego.gov>;CityAttyCrimInfo@sandiego.gov <CityAttyCrimInfo@sandiego.gov>;Sandiegoda@sdcda.org <Sandiegoda@sdcda.org>;Info@judicialwatch.org <Info@judicialwatch.org>;bduncan@revealnews.org <bduncan@revealnews.org>;bar@sdcba.org <bar@sdcba.org>;john.shiffman@reuters.com <john.shiffman@reuters.com>;publicmeeting@cjp.ca.gov <publicmeeting@cjp.ca.gov>;ldan.lvri@doj.ca.gov <ldan.lvri@doj.ca.gov>;nicole.rooney@sdcda.org <nicole.rooney@sdcda.org>;davidloy@aclusandiego.org <davidloy@aclusandiego.org>;mzahner@cdaa.org <mzahner@cdaa.org>;tanya.sierra@sdcda.org <tanya.sierra@sdcda.org>

7 attachments (3 MB)

3 moms who support robert.pdf; 100620 status conference.pdf; andrea being rough with bryce.pdf; kinda stupid email.pdf; summary of recent court pleading.pdf; supporting docs regarding timeline of arrest and TRO.pdf; what andrea does to kids parents friends who disagree with her.pdf;

Mr. Pena, (San Diego District Attorney Investigator)

I left a message for you if you would like to meet with Bryce, who is 15 yrs old, and I. Of course, you can speak with Bryce alone, but it will need to be at a neutral location. Bryce has spoken with police, CPS and numerous others alone that can be documented. If you would like this information, please let me know. Bryce has an Iphone, so please call him anytime you like.

I filed the ex parte that could have easily solved the issue regarding Bryce's custody. Bryce is 15, he is competent to make the decision to live with me and the evidence is overwhelming that it is in his best interests. Judge Robinson denying it is just more denial of rights under color of law, obstruction of justice and with the evidence she was presented, it is clear she does not give a crap about the well-being of Bryce. All the evidence points to Bryce (15) living with me and I have a clear track record of always helping Bryce achieve his own personal best. Bryce's mom has called police, CPS and a company called safety first on her own son because she was having issues with Bryce. The issues were/are not Bryce.

Here is an email from Bryce himself, now 16, telling his teacher about the issues and abuse at the hands of his mother.

(No subject)

Bryce Emert <emertb860@carlsbadusd.net>

Thu 9/7/2023 9:33 AM

To:Paul Isbell <pisbell@carlsbadusd.net>;tsemert@msn.com <tsemert@msn.com>;Dylan Mayer <dylan.mayer@carlsbadusd.net>;dylan.mayer@carlsbadca.gov <dylan.mayer@carlsbadca.gov>

Dear Mr. Isbell,

I hope this message finds you well. I regret to inform you that I was unable to attend school today due to the need for some rest. I wanted to provide an update on my progress with assignments in your class, as it's taken me a bit longer to complete them recently.

The main reason for this delay is some challenging circumstances at home. Unfortunately, I've been experiencing emotional abuse from my mother, which has made it difficult to focus on my schoolwork. To make matters more challenging, I've been living in our garage, which is far from an ideal environment for studying.

In an attempt to create a more conducive space for my studies, I began working in the living room. However, this change seemed to trigger more frequent conflicts and arguments with my mother. Sadly, things have only escalated since the beginning of the school year.

I wanted to cc my grandma on this message, as she has been a witness to the difficult situation at home and can confirm the challenges I've been facing.

Please know that I remain committed to doing my best in your class. My goal is to not only pass but excel in my studies. Your extra help and genuine concern for my well-being mean a lot to me, and I want to express my gratitude for your support.

Thank you for understanding my situation, and I look forward to making progress in your class.

Sincerely, Bryce Emert

Here is the homeschool information that was given to the DA's office several times.

Emert, Bryce - Homeschool information

Rob Emert <robemert@msn.com>

Wed 8/24/2022 12:52 PM

To:steven.mcintosh@sdcd.org <Steven.McIntosh@sdcd.org>

Cc:Andrea Emert <aemert@carlsbadusd.net>

2 attachments (506 KB)

BRYCE EMERT HOMESCHOOL 9TH GRADE.pdf; BRYCE EMERT HOMESCHOOL 10TH GRADE.pdf;

Mr. McIntosh,

Attached are the documents that have been mailed to the appropriate state representative regarding homeschooling for last year and this year.

If any other parties try to indicate Bryce is truant from school and harass me with calls to CPS, the school, or the police, I will consider it more harassment and add to my claims I am currently working on.

Bryce is doing fantastic and anytime you want to talk to him via facetime, please do. If you want to meet face to face, I would simply ask for a neutral 3rd party place to do that.

Thank you for your professionalism during this time.

I would suspect by what I know of the corrupt divorce players handbook that the next move by Andrea's attorney will be a contempt of court motion with the accompanying bench warrant since it appears the DA's office is not going to prosecute regarding the absurd default judgment filled with lies and corruption.

I never thought in a million years I would have a hard time getting a fair hearing in our United States of America. I know there are lots of good people in this process as well and I can only hope they pick up my case and do what is right, lawful, and morally correct.

Rob Emert
760-612-9328

February 9, 2022

After receiving a felony threat letter from the DA's office, I called and was cooperating with the San Diego District Attorney's office for almost a full year, providing extensive documentation to show I was properly acting under California Penal Code §278.7's exceptions for protecting children from harm. The evidence overwhelming proved the later filed charges under §278.5(a) were invalid and unfounded. DA investigators suggested they did not have a legitimate case and that my ex-wife Andrea was finally agreeing to joint legal custody after months of my efforts to get a court hearing.

Rob Emert <robemert@msn.com>
Sat 4/16/2022 2:13 PM
To: Rob Emert <robemert@msn.com>

Sent from my T-Mobile 5G Device
Get [Outlook for Android](#)

From: McIntosh, Steven <Steven.McIntosh@sdcda.org>
Sent: Monday, April 11, 2022, 7:43 AM
To: Rob Emert <robemert@msn.com>
Subject: Update

Good Morning;

If you could give me a call, your ex-wife is willing to give over custody of Bryce to you...

Thanks
Steve

Steven McIntosh
District Attorney Investigator III
San Diego County District Attorney's Office
Bureau of Investigation/Family Protection Detail
330 W. Broadway, San Diego, CA 92101
Desk: (619) 515-8638
Steven.mcintosh@sdcda.org



Despite all the evidence provided, on **January 3, 2023**, I was vindictively arrested and charged under §278.5(a) based on a fabricated allegation of an out-of-context "threat" made during a call to de-escalate the situation. This allowed pre-trial detention without bail to punish and attempt to coerce me. After over 90 days in jail, I was coerced into signing a plea agreement including unfulfilled custody arrangements.

Since my release in **April 2023**, I have continued to actively pursue exoneration through what evidence is allowed in state and federal courts. However, the family and criminal courts appear to be playing off each other to block my proof of factual innocence, with the family court delaying its review of my challenge to the questionable default judgments until after the criminal sentencing in December 2023.

I remain resilient in my quest to simply have a fair opportunity to present the extensive evidence that I acted lawfully as a father to protect the well-being of my son at his own pleading, not with any malicious criminal intent. The truth and justice continue to be obstructed by apparent conflicts of interest and lack of impartiality.

No Malice

FYI

Rob Emert <robemert@msn.com>

Thu 9/16/2021 8:10 PM

To:Andrea Emert <aemert@carlsbadusd.net>

Andrea, seriously, these scum bags don't care about our kids or you. Their despicable strategies have put both our kids in harms way. You really need to help me make this right for our kids. They both need to get out of this.

You should sue Shilman and get your money back. While I am not happy with you for many reasons, I still truly wish the best for you. I am sorry for lots during our marriage.

Please read these articles.

R

Clearly, no malicious intent. And, as you can see below, I was constantly trying to resolve at 50/50 with the children going back and forth between our homes on an as needed basis.

Fw: progress, who would have thought....

Rob Emert <robemert@msn.com>

Mon 5/24/2021 8:54 AM

To: Andrea Emert <aemert@carlsbadusd.net>

Andrea,

It does not get anymore basic than this. Your attorney draws up the stipulation and most times the Judge says great and adds the stipulation to the orders. If he does not do this within 24 hours I know you guys are just jerking me around and I will simply do what I feel is in the kids best interests. I spoke to many about this including the people in the high conflict class. This is the best and easiest **way** to go.

50/50

If there is a dispute regarding anything that can't be resolved by **Andrea** or I going forward, we would agree to a child custody advisor/coordinator to make the decision and that decision would be binding unless both Andrea and I disagreed with the advisor and came to a different agreed solution. This child custody advisor/ coordinator will be a third party agreed to by both parties. This custody advisor does not need to be picked immediately but both parties do agree they will agree to choose one prior to submitting this stipulation to the court.

Rob

I was always trying to resolve custody issues in an amicable way. I even asked Andrea Schuck to go on multiple Disney World vacations with me and our children after the divorce was final just as Schuck was offering many times for us to do family dinners and to go to church together. (H) There was clearly no malice. All anyone needs to do is listen to the two phone calls between me and Andrea Schuck (H) to realize I never had any malice, and she knew it and so did DDA Balerio who withheld her interview with Bryce (exhibit F) and the long conversation I had with DAI Pena (exhibit E) who also withheld that conversation.

This is just one of the times I was trying to be amicable with zero malice towards my x wife and invited her to Disneyworld. Also, in the call transcripts between me and my x wife, anyone will see there is clearly no malice on my part.

00:53:54 SCHUCK

I don't want to go to Florida, so please don't

ask. 00:53:57 EMERT

Just that that would have fixed a lot then.

00:53:58 EMERT

I I don't feel it.

00:54:01 SCHUCK

53

No, no, no, no, no, no, dude, I couldn't even like, look at you. I'm not OK. I'm not note. Let's just leave it. Leave them laughing.

I flat out asked my x wife, Andrea Schuck, what she thought any action of mine could be considered "malicious" and her only response was that I could not force our then 15 year old son to call her. (exhibit H)

APPELLATE COURT 4TH DISTRICT, DIVISION 1 DENIAL

Denial of Habeas from Appellate court

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ROBERT EMERT

D083239

on

(San Diego County
Super. Ct. No. SCD297230)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Kelety, and Castillo. The petition is denied.

KELETY, Acting P. J.

Copies to: All parties

Filing of Exhibits Under Separate Cover

Pursuant to Rule 8.486(c)(2) of the California Rules of Court, Petitioner hereby gives notice of intent to file the following exhibits under separate cover.

These exhibits are being filed under separate cover due to their length, as each exceeds 300 pages.

Electronic copies of these exhibits will be submitted to the Court within five days of the filing of this petition, as required by Rule 8.486(c)(2).

Petitioner will file a separate "Notice of Lodging of Exhibits Under Separate Cover" concurrently with the submission of the electronic copies to the Court. This notice will confirm that the electronic copies have been submitted and will provide a detailed listing of the exhibits being lodged.

The exhibits being lodged under separate cover are incorporated by reference into this petition and are an integral part of the record supporting Petitioner's claims for habeas corpus relief. Petitioner respectfully requests that the Court consider these exhibits in their entirety when evaluating the merits of this petition.

- A. Emails with San Diego District Attorney
- B. Bryce Emert affidavit
- C. Bryce Emert letters and emails
- D. Bryce Emert transcripts
- E. DAI Luis Pena call transcript that was not disclosed
- F. DDA Balerio transcript of interview she did with Bryce Emert and did not disclose
- G. Jose Badillo call transcripts
- H. Andrea Schuck call transcripts
- I. FBI call transcript
- J. Emails showing no malice
- K. Email to DAI Pena regarding CPS interview
- L. Email from DOJ forwarding complaint to FBI
- M. Email offering DA to talk to Bryce anytime as Bryce has his own phone
- N. Email to DAI Pena regarding homeschool information
- O. Email to DAI Pena regarding handling in family court
- P. Lower Court, Patti Ratekin, did not have jurisdiction due to Peremptory challenge
- Q. Public corruption complaint filed with the Superior Court, DOJ, FBI, San Diego Board of supervisors.
- R. Rob Emert medical documents
- S. DOJ email that forwarded my public corruption complaint to the FBI

- T. Comm. Patti Ratekin transcripts to prove with zero evidence, she was trying to place my son in a facility.
- U. Comm. Patti Ratekin Transcripts
- V. Court transcripts
- W. Emails corroborating that Andrea Schuck was on board with the alarming narrative to place Bryce into a “facility” when all the evidence suggested that was the wrong decision.
- X. Many amicable offers of 50/50 custody with both children going back and forth between our homes on an as needed basis for their emotional well being.
- Y. 3 Family Court Services recommending 50/50 custody and I initially was granted 60% to ease the transition due to being a stay at home dad.

Word Count and Page Count Certification

Pursuant to Rule 8.384(a)(2) of the California Rules of Court, Petitioner certifies that this petition for writ of habeas corpus contains 6,926 words, excluding the cover, the tables, the verification, and any attachment permitted under Rule 8.384(a)(3). The petition is less than 16 pages in length.

In addition, Petitioner is filing exhibits within and in support of the petition, which total 49 pages. These exhibits comply with Rule 8.384(b)(4), which allows for a total of all exhibits attached to a document not to exceed 50 pages.

Petitioner further gives notice of intent to file additional exhibits under separate cover pursuant to Rule 8.486(c)(2), as these exhibits exceed 300 pages in length. A separate notice will be filed detailing these exhibits as a Notice of Lodged Documents but within this petition, there is a Notice of Intent to Lodge Documents as well that lists the exhibits.

Petitioner affirms that this petition and its attachments comply with the applicable page and word count limits set forth in the California Rules of Court.

If I have made an error, please allow me the opportunity to correct. Thank you.

VERIFICATION

IT IS HEREBY certified that the facts in the foregoing is true and correct under penalty of perjury to the best of my knowledge and belief. Attachments to this are true and correct copies of the items they purport to be.

Dated 04/02/24

Rob Emert

Rob Emert

2351 Vista Lago Terrace
Escondido California 92029
robemert@msn.com
(760) 612-9328

ELECTRONIC SERVICE

I, Glenda Emert certify that on 04/02/24, I served: Habeas Corpus Petition by email to: San Diego Superior Court, Appellate Div., and uploaded to the Appellate Court, 4th District, Div. 1.

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

Dated: 04/02/24

glenda emert

Glenda Emert