

FILED

APR 23 2019

FRESNO COUNTY SUPERIOR COURT

By

DEPUTY

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FRESNO COUNTY SUPERIOR COURT
CENTRAL DIVISION

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

JOAQUIN ARAMBULA,

Defendant.

) Case No.: **M19913880**

)

) **NOTICE OF MOTION AND NON-**

) **STATUTORY MOTION TO DISMISS**

) **PROSECUTION FOR**

) **UNCONSTITUTIONAL**

) **INTERFERENCE WITH RIGHTS OF**

) **PARENT TO BE A PARENT;**

) **REQUEST TO DISMISS CHARGE**

) **PURSUANT TO PENAL CODE § 1385;**

) **BAD FAITH INVESTIGATION BY**

) **FPD**

)

) **DATE: April 23, 2019**

TIME: 8:30 AM

DEPT: 12

TO THE CLERK OF THE FRESNO COUNTY SUPERIOR COURT, CENTRAL
DIVISION, AND TO LISA SMITTCAMP, DISTRICT ATTORNEY FOR THE COUNTY OF
FRESNO:

PLEASE TAKE NOTICE that on April 23 2019, at 8:30 a.m., or as soon thereafter as the
matter may be heard in Department 12 of the above-entitled court, Defendant will move this Court
to dismiss this prosecution pursuant to the Defendant's constitutional rights to parent his children, as
well as statutory and jurisprudential authorities cited below.

The Sun

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1 The motion is based on this Notice and Motion, the attached memorandum, the exhibits in
2 support, on all things properly on file at the time of the hearing, and on other such evidence and
3 further argument as may be presented to the Court on the hearing on the matter.
4

5 DATED: April 23, 2019

Respectfully submitted,

6
7 Margarita Martinez-Baly
8 Michael J. Aed
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10 BY: 
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12 ATTORNEYS FOR DEFENDANT
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1 Phebus asked [REDACTED] why she had been late to school that day. She responded that she had a
2 splinter in her finger and that her father had to get it out.

3 Phebus made several phone calls to notify Sergeant Romo about his initial finding. He
4 also spoke to Detective Sergeant Wilson and spoke to him over the phone but no further
5 assistance was provided. Additional units were requested including Officer Missel and Office
6 Sepeda. [REDACTED] mother arrived at the school and was requesting information about the
7 incident which was not provided. Phebus requested Sergeant Miller respond to the location for
8 assistance. Upon being notified that he was needed at the school, Joaquin arrived at the school.

9 Phebus advised Fithian that he was placing all three children on a WIC 300 hold and
10 would be placing Joaquin under arrest. At 1659 (4:59 PM), Phebus placed Joaquin under arrest.
11 He was transported to the Fresno Police Department Identification Bureau where he was
12 processed.

13 On December 10, 2018 at 4:42 PM, Sergeant George Wilson Jr. sent an email to Kenneth
14 Dodd advising that the injury doesn't appear to be a black eye as reported by CPS in the event.
15 (See Exhibit A, attached hereto)

16 On December 10, 2018 at 8:05 PM, Sergeant Todd Miller (Miller) sent an e-mail to Jerry
17 Dyer regarding this specific misdemeanor investigation. The subject matter of the e-mail was
18 California State Assemblyman Joaquin Arambula cited for misd child endangerment. (See
19 Exhibit B, attached hereto)

20 On December 11, 2018 at 6:52 AM, Sergeant George Wilson Jr. (Wilson) sent an email
21 to Tom Laband and Kenneth Dodd stating, "Child Abuse was in phone contact with Officer
22 Phebus throughout the even. Upon receiving a photo of the minor injury, it was determined that
23 it would be best for Phebus to proceed with his investigation in a normal fashion. We did not
24 want to give the outward appearance of the investigation being handled different than other
25 investigations of this type." (See Exhibit C, attached hereto)

26 On December 11, 2018 at approximately 11:30 Am, [REDACTED] was interviewed by Forensic
27 Interviewer Josie Roderick (Josie). The interview was videotaped. When Josie asked [REDACTED]
28 how many phalanges do you have, [REDACTED] responded, "Um, 20." [REDACTED] said, "Phalanges are

finder and toes.” Josie responded that sometimes even grownups don’t know what the word phalanges is, so, if I use a word or the question doesn’t make sense, just let me know. [REDACTED] then responded, “Like in Amelia Bedila, she doesn’t know what the word thesaurus is. She thinks thesaurus isn’t a book, she thinks it’s like a dinosaur. If you end with saurus, then you’re a dinosaur.” Josie then said, “Oh, okay. And what is a thesaurus?” [REDACTED] responded, “Um, it’s a book that helps you, um, read. It helps you figure out words that you don’t know.” Josie then asked, “Like if I said, [REDACTED] you’re a boy, and you’re 40 years old, what would you say?” [REDACTED] responded, “I would say, no, I’m actually a girl and I’m seven years old.”

Josie inquired about things that [REDACTED] likes to do. [REDACTED] responded, “I like to write, um, story-fiction stories about adventures of two little girls and the girls were name Analy and Eleanor. Eleanor is a person at my school who I’m-who I really like, and she is one of my friends. Um, and Analy, um, is a person that I knew in the first-grade, um, and me and my-her mom, um, know each other really well and same with my mom and her mom.”

Josie then said, “So, I’m going to practice this with you. Um, let’s see, I want you to tell me everything that you did today, starting from when you woke up and like tell-start telling-start with like where you were when you woke up, all the way until you left the front door.”

[REDACTED] responded:

“Um. So I was at my grandma’s house when I woke up and I was, um, and I was in my bed, um, and there was, um, there was, um, a bund of books near me, so I decided, um, that I would read one of them, but I didn’t know which one to choose, so, um, I did eeny, meeny, miny, moe, and it landed on the book with no pictures. It’s a really funny book. Um, after I read than, um, I told my grandma that I needed to go to the bathroom, and my sisters weren’t awake yet, so I crept into the bathroom, I went to the bathroom, and then I got out, and I sneaked across the floor, over to my grandpa, um, because grandma doesn’t usually let me do this, because she wants me to get a lot of sleep for like good health, um, and so, um, grandpa, um made-so then I told grandpa that I was hungry, and grandpa, um, said, okay, let’s go to the kitchen. So we went to the kitchen, um, and I had, um, and I- and I wanted to have, um, cereal, um, and I chose Cheerios, um, for the cereal, and um, I remember-and I told grandpa that he need to remember to give me, um, lactose milk-Lactaid because I am lactose intolerant. Um, so, once he poured my milk in, um, I started eating and one I was halfway done, um, [REDACTED], those are my sisters, they both, um, woke up and came into the kitchen. Um, and I was already halfway done. Um, all I need to finish was drinking my milk. Um, so after I drank my milk, um, that took about five minutes to drink my milk, um, I went down, um, and started reading my book. I was really scared, um, and I started

1 crying because my dad might go to prison or something like that. Um, or he might
2 get hurt and I wanted my mom because I haven't seen her since yesterday and she
3 was crying when she was-when I saw her yesterday. Um, so, um then, um, after I
4 finished, um after I finished, um, with, um grandma and grandpa telling me stuff
5 about like my feelings and stuff, um, then, I started, um, to get my clothes on, um,
6 because, um, I needed to like dress good. Um, 'cause like you know who when
7 people go to meetings, they dress really fancy? Well, I, um, sort of felt like this
8 was going to be a meeting, like, you know, we're talking. Um, so, I got dressed
9 like this. Um, and my sister started teasing me and I was in my-when I was
10 changing, my sister started teasing me, and, um, she said that I looked weird in this.
11 And then, um, I started to read-um, I mean, pick out an-um, two books, because,
12 um, I knew I might get bored, like, um, the last time because, um, they had to go
13 out for a half hour, and I was stuck in there, nothing to do, no one to talk to, all-and
14 all I had was a water bottle and a chair and table. That was it And, um, after, um,
15 and um, so, now, then I remembered that, um, I needed to, um, write a letter for my
16 mom and dad, so I wrote a letter, um, to them, um, and it said, Dear Mom and Dad,
17 I really hope you guys aren't under too much pressure. I hope I can see you soon.
18 Love, [REDACTED] a. Um, and then it was time to go, so I go in the car, and I started
19 reading, Junie B. Joses, um, jingle bells, batman smells. Um, and once I was
20 halfway through the book, um, we ended up here, um, and then I started, um, to get
21 hungry, so, but luckily my grandma was prepared and she, um, had three apples,
22 one for [REDACTED], one for me and one for [REDACTED]. Um, and so after I was halfway
23 though my apple, um, you came in and, um, we started to talk, and then, um, you
24 went away for a few seconds, I got to watch a little bit more of the show, um, and
25 then we ended up here."

26 Josie then said, "I want you to tell me everything that happened about the bruise. Starting
27 from the very beginning all the way to the very end, starting from like where you were when it
28 first started." [REDACTED] responded:

29 "So, where I was wa-I was in my bedroom, um, getting ready for bed, um, and my
30 sister started teasing me. So, I put her-so, I jumped onto her bed, and I took her toy
31 animals, and I put them on the ground, and when she started screaming, my dad,
32 rushed into the room once I got onto my own bed, he, um pushed me down, um,
33 when I was on my bed, and he, um, started to talk to me and he thought that I hurt
34 [REDACTED], but actual-and I tried to explain to him but he wouldn't listen to me. So,
35 um, I started screaming and then my dad hit me in the mouth and his other hand
36 was like holding my face, um, and um, that hand, like it was like this, um, because
37 he was right here. Um, and so, he, um, gave me the bruise because I was, a, um,
38 place where he had his ring finger, um, and the right hit me on that spot, um, and,
39 um, when we were done talking, um, he um, got off me, um, and tripped on a toy,
40 'cause I don't like to clean up and neither does my sister, um, so, he slipped on a
41 toy, um, and he accidentally hit me again. With his, um, ring finger. And then,
42 um, um, um, when I was, um, and we had another long talk for like about five

1 minutes, and once it was, um, 8:55, um, my dad, um, um, went out the room to go
2 check on [REDACTED], and then I started going-falling asleep. When my dad came
3 back in, um, um, I talked to him and this time he understood, um, and he said that
4 he would give me a treat in the morning, um, because of all the thing-mean things
5 that he did."

6 In response to questions by Josie about where her sister was before [REDACTED] threw her
7 [REDACTED]'s stuffed animals, [REDACTED] explained:

8 "Oh, my sister, she was lying down in bed, reading a book." "Well, first I was on
9 my bed and then I jumped onto her bed and then I threw her animals on the floor
10 because she started teasing me." "Um, she was like, wow, you don't have very
11 many toys, look at all them I have. Wow, you don't read good. And then, um, I
12 started to get angry, um, and I just lost it." "I lost my mind. Um, and I just threw
13 her toys, us, and stomped everywhere, like, (demonstrating running around), um,
14 and my dad walking into the room-run-runned into the room as fast as he c-I mean
15 dashed into the room as fast as he could, um, and saw my sister crying, and then he
16 thought I hurt her, um, like really bad because barely anything can make her cry."
17 "Um, I jumped onto my bed."

18 Josie asked about whey [REDACTED] said that she started to cry this morning. [REDACTED]
19 responded that, "I was crying, um, because, I miss my dad and my mom." "Um, I also felt really
20 sad for my mom. Um, because she doesn't usually cry often and she cried because we were
21 going with someone else who she didn't trust."

22 Josie asked [REDACTED] to talk about the not nice things that her dad had done to her. [REDACTED]
23 responded:

24 "Um, those, um, happened ten times." "Well, wait, not ten, sorry, nine. They've
25 happened nine times. Before, um, and so, one of them was he kicked me 'cause I
26 kicked [REDACTED] because [REDACTED] punched me in the nose, um, and then another time,
27 um, dad, um, squeezed me, like, right out of my brain. Um, and because, um, that
28 wouldn't-because I wouldn't get out of the bathroom because, um, mom was
yelling at me. Um, and then I have like four more to go. Do I? Like I have four
more? Um, and then, the, and then another time, um, he, um, oh, what's that word?
Yeah, um, he punched me because- I mean, sorry, he elbowed me in the stomach,
um, because, um, he, um, because, um, I was being jealous and so I got mad at
[REDACTED] and I elbowed her in the elbow. Um, and then, I'm just going to do two
more. Is that fine? Um, and then another time, um, he, uh, um, he punched me
again because, um, I almost knocked one of [REDACTED]'s teeth out, um, and then the
other time-and then another time, um, was for setting the alarm off so dad, um, and
police actually came over to our house because the alarm went off."

"Um, oh, they put, um, so what happened was they put be on a time out for five
hours. They banned, um TV away from me for a year, and they banned, um, candy
from me for a month."

1 Josie asked [REDACTED] about one of the bad times, what made it so bad. [REDACTED] responded:

2
3 "Um, because my dad squeezed me and did all the other mean things that I said he
4 did to me in my nine times" "Well, the squeezing, it's really hard. Um, have you
5 ever like hurt-no, not hurt, um, have you ever seen a person rip a book in half?"
6 "My dad, if he squeezed that book as hard as you could, a bunch of pages would
7 come flying out." "Oh, um, she squeezed me half to death."

8 Josie asked [REDACTED] to describe another one of the bad times that he kicked her. [REDACTED]
9 described a kicking that happened at her cousin's house as follows:

10 "So, um, so my sister, and I were in the pool with, um, and bunch of people. Um,
11 I forgot like a bunch of them, but I know there as like [REDACTED]
12 [REDACTED] in there, um, and a bunch of guys I didn't know. Oh,
13 [REDACTED] um, and so, then, um, so my si-got-my sister,
14 um a toy shark, um, that was huge, and like, one time [REDACTED] threw it at my privates
15 and it hurt really bad. Um, so [REDACTED] di the exact same thing, and, um, but then
16 she kicked me after it, which made me go like, you know like, um, when you turn
17 over and like, like you know how to did a somersault?" "Um, and my mouth was
18 open. I swallowed a bunch of water." "And chlorine, um, and I got really sick, so
19 um, and, um [REDACTED] started crying again, fake, fakely, she started
20 crying. She's really good at fake crying, um, and that got me in trouble again, even
21 though I started throwing up in the pool. Like my face was like turning all white
22 and pale, but my dad didn't care. He thought I had hurt her again." "Then I got
23 kicked." "Like really hard." By, "My dad." "Um, on the butt." "Um, how do I
24 explain this? Like a thousand books hitting me. There was-hard is that book."
25 "Um, so, you know a thousand pages in a book. Well, if I had a thousand pages,
26 plus a thousand, plus a thousand, plus a thousand, plus a thousand, plus a
27 thousand...that's was it would feel like."

28 Josie asked [REDACTED] why she didn't tell her mom. She responded:

"I didn't tell her anything either, because then I thought she was going to call the
police on my dad. "Cause we're having-because we're having, um, children law,
that we should not be able to hurt children, injure them, or do anything like that, so
I feel like my d-that's how I felt like my dad was going to get arrested."

Josie asked about how she knows about children's laws? [REDACTED] stated:

"Oh, because, um, I was on the stage and I represented one like. One line.
Seriously. It was like one sentence. That's it. Bum-bummer. The rest of them got
like a bunch of lines." "And the older ones got the most lines." "[REDACTED] only got
two lines. I only got one like even thought I was bigger than her." "And the other

1 guy who was smaller, and one of the bigger guys, um, got to be able to perform a
2 whole speech that he wrote down.”

3 Josie then asked who makes you feel safe. [REDACTED] responded:

4 “It’s a hard choice. I have, um, I have five. Uh, I have five.” Josie asked her to
5 give her two. [REDACTED] responded, “Aunt, um, no, Uncle, um, wow, I have two boys.
6 But which one, eeny, meeny, miny, mow, catch a tiger by the toe, if he hollers let
7 him go. Eeny, meeny, miny, moe...very best one, and...So my dad and uncle,
8 okay, so my dad and Uncle Miguel.”

9 On December 12, 2018 at 12:24 PM, Shannon Peterka had already started and/or
10 completed transcripts of the forensic interviews that had been conducted on December 11, 2018.
11 (See Exhibit D, attached hereto)

12 On December 13, 2018, at 3:42 PM, Shannon Peterka contacted Detective Dodd
13 regarding obtaining the interviews for further completion of transcripts. (See Exhibit E, attached
14 hereto)

15 On December 13, 2018, at 1404 hours (2:40 PM), FPD Kenneth Dodd (Dodd)
16 interviewed [REDACTED]’s 2nd grade teacher, Shanna Del Rosario (Del Rosario) which was recorded.
17 Del Rosario told Dodd, that on December 10, 2018, [REDACTED] came in late, around 8:20 or so. She
18 looked a little bit like angry or annoyed. She complained about a splinter and her dad had
19 removed the splinter and he “gouged” her hand. It seemed like she was just trying to get out of
20 class. She went to her seat and was working like normal and participating. Del Rosario told
21 Dodd she had never seen, prior to this, any signs of anything. She had never seen any marks or
22 bruises in the past. [REDACTED] had never complained to her about that in the past.

23 Del Rosario also wrote a written statement on December 10, 2018. In that statement, in
24 addition to the splinter discussed with Dodd, [REDACTED] told her about a bruise she got the night
25 before. She told Del Rosario that she got the bruise the night before when she said she fell when
26 she was playing with her sister.

27 On December 13, 2018, at 1420 hours (2:20) Dodd interviewed Olivia Porras (Porras).
28 When asked if [REDACTED] had ever come in with injuries before, Porras responded, “No, never
before.”

1 On December 13, 2018, Dodd interviewed 2nd grade teacher Sunthai Johnson (Johnson)
2 who was on yard duty. Johnson noticed that at recess on December 10, 2018, [REDACTED] asked for
3 an ice pack and was rubbing the side of her face. She did not see any bruise on the side of her
4 face. She did see a dot, which looked like a bug bite or something. Johnson said icepacks
5 always make things better here at Dailey.

6 On December 10, 2018, Social Worker Amber Fithian (Fithian) made face to face contact
7 with [REDACTED]. [REDACTED] was appropriately dressed for the weather. Her hair was clean but messy
8 like she had been playing. Fithian observed a green bruise on the outside of her right eye. The
9 skin around the side of the eye was red and swollen. [REDACTED] stated that she was 7 years old and
10 in the 2nd grade. When asked how she is disciplined when she gets in trouble, she said her mom
11 will yell and sometimes she will spank her with a stick. She said her dad picks her up and
12 squeezes her so she can't breathe. She said that one time her dad picked her up and squeezed her
13 so hard that her mom came into the room and kicked her dad and he dropped her on the ground.
14 She said she has seen her dad hit her sister, [REDACTED], in the stomach. She has seen her dad pick
15 up her sister, [REDACTED], and shaker her. She has seen her dad hold [REDACTED] upside down and
16 shake her while she cries.

17 [REDACTED] told Fithian that on December 9, 2018, she was in her room that she shares with
18 her sister, [REDACTED]. [REDACTED] was teasing and making fun of her. [REDACTED] got mad and threw all of
19 [REDACTED] stuffed animals on the ground. [REDACTED] started screaming and yelling for their dad.
20 She stated he dad came in and told them to lay down on their bed. She tried to explain what
21 happened to her dad and he got very mad. He jumped onto her bed and held her down. When
22 she tried to tell him what happened he would pinch her cheeks so hard she couldn't talk. She
23 tried to get off of the bed and get away but he grabbed her and held her down on the bed. She
24 tried to get away again and her dapped slapped her on both sides of her head with both hands.
25 She felt his ring hit her face and it hurt really bad. He hit her a second time in the same way, and
26 tried to get off the bed. She stated her dad tripped over a toy when he was getting up and hit her
27 again on the side of the face but this time he didn't mean to hit her. Her dad got up and sat in the
28 pink chair in their room. She sat there for five minutes and then left the room.

1 Officer Phebus asked to speak with Fithian outside. Phebus stated how very surprised at
2 how smart and articulate [REDACTED] is. Fithian asked if would place a WIC 300 hold for the
3 children. The officer stated that would place a hold when he was ready and did not need a social
4 worker to tell him how to do his job. Phebus instructed Fithian to stand by while he conducts his
5 investigation.

6 [REDACTED]'s mother, Elizabeth, arrived to pick her up. Elizabeth was visibly upset and
7 asking what was going on. Fithian got up to speak with Elizabeth and inform her of the
8 allegations and disclosures of her daughter. Phebus instructed Fithian to sit-down that the
9 mother could wait. The principal then knocked and asked if someone could come speak with the
10 child's mother. She stated that Elizabeth was upset and was going to call her lawyers. Fithian
11 requested as second time to speak with Elizabeth and inform her of the allegations. Phebus
12 denied the request and stated that he would make contact with Elizabeth when he was concluded
13 his investigation. Fithian was advised that [REDACTED]'s mother, father, grandmother, grandfather,
14 and great uncle had arrived at the school.

15 At 5:30 PM, Phebus placed a WIC 300 hold on the minor children, [REDACTED]
16 [REDACTED]. Fithian explained the process to Elizabeth as Joaquin had been arrested and
17 transported to the police station. Elizabeth stated she would like for the girls to stay with both
18 her mother-in-law and father-in-law.

19 On December 10, 2018, Fithian made phone contact with Elizabeth Arambula. Elizabeth
20 was made aware of the allegations and disclosures. Elizabeth said she was shocked and floored
21 by the allegations. She stated her husband is a gentle man that she has never seen him hurt the
22 children or discipline the girls inappropriately. She stated that she is the tough parent and finds
23 herself yelling. She stated that Joaquin is so patient and understanding, none of this made sense.
24 She stated that [REDACTED] is a very stubborn child and she can be difficult to discipline because of
25 her defiance. [REDACTED] gets frustrated very easily and will throw a fit or a have a meltdown.
26 [REDACTED] has accused Elizabeth of choking her while Elizabeth was holding her in a time out on
27 her lap. [REDACTED] insisted that her mom had choked her.

1 On December 11, 2018, a face to face contact was made at the Arambula residence.
2 Joaquin stated he was happy to talk with Fithian. He stated he has nothing to hide and would
3 never hurt his children. He has spent most of his career as a healer in his medical practices. He
4 said that he was very involved in the study and implementation of ACES. He stated he knows
5 what childhood trauma can do to a child and he would never traumatize his children. In terms of
6 discipline, Joaquin stated he uses timeouts and takes away privileges. He will spank the girls on
7 the bottom with an open hand with their clothes on as a last resort. He spansks to discipline and
8 never to hurt them. He denied ever hitting the children other than an appropriate spanking.

9 It was concluded that the children could be safely returned to their parents. They were
10 informed that the referral would remain open for 30 days.

11 On January 8, 2019, [REDACTED] was interviewed by Fithian as a follow up. [REDACTED] stated
12 things have been pretty good lately. She said her uncle Diego and grandpa Juan have been
13 spending a lot of time with her. She thinks her dad was jealous because she was hanging out
14 with her uncle so much. [REDACTED] stated that she gets jealous when her sisters get attention too so
15 she must have gotten that from her dad. Fithian asked [REDACTED] if there was ever a time where she
16 hit or hurt herself because she was upset or mad. [REDACTED] stated that she has done that a couple of
17 times in the past.

18 On January 8, 2019, Fithian had a face to face contact with [REDACTED]'s teacher Ms. Del
19 Rosario. Del Rosario stated that she teaches 2nd grade. She stated that [REDACTED] is extremely
20 bright, and is much more advanced than most of the students in the class. She stated that [REDACTED]
21 can be difficult and defiant at times.

22 On February 25, 2019, elected District Attorney, Lisa Smittcamp, sent an e-mail to Jerry
23 Dyer demanding to know how confidential CPS records came into the possession of the Fresno
24 Police Department without a WIC 827 petition and authorization for their release by a court
25 order. In her e-mail she said, "In my 22 year career as a prosecutor, I have never seen this
26 happen. I need to know how those records were provided to your department." (See Exhibit F,
27 attached hereto)
28

1 On March 7, 2019, The Department of Social Services determined that there was no
2 actual evidence produced that could have substantiated General Neglect. There was insufficient
3 evidence to determine whether Physical Abuse occurred and it was recommended that the
4 Physical Abuse be closed and Intervention by DSS is not warranted.

5
6
7 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION**
8 **TO DISMISS**

9 **I. INTRODUCTION**

10 Defendant was originally charged by misdemeanor complaint with inflicting unjustifiable
11 physical pain or mental suffering on Jane Doe (CW) in violation of Penal Code § 273a(b). Mr.
12 Arambula was arraigned on March 13, 2019. The matter is set for jury trial on April 23, 2019 at
13 8:30 AM in Department 12.

14 A parent has a constitutional right to be a parent to their children. This does not mean that
15 a parent loses these protections if he is not perfect: It means that a parent has flexibility to parent,
16 and as a matter of constitutional right, the Government cannot interfere with that parenting or
17 punish her EXCEPT in cases of child abuse or extreme neglect. Yet, in this case, the Fresno
18 County District Attorney's office seeks to criminalize imperfect parenting. That is
19 unconstitutional. The prosecution cannot be sustained, and the case must be dismissed as a matter
20 of constitutional right. At a minimum, the interests of justice necessitate that this Court exercise
21 its powers under Penal Code § 1385 to dismiss this case.

22 **II. IT IS NOT A CRIME TO BE AN IMPERFECT PARENT**

23
24 **A. A Parent Has a Constitutional Right to Parent her Child, and That Includes
the Right to be an Imperfect Parent**

25 The First, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution, as
26 well as Article I §§ 1, 5, 6, and 10 of the Commonwealth Constitution, provide parents with a
27 fundamental right to parent their children. The United States Supreme Court has long recognized,
28 as a component of "substantive" due process, that parents have a liberty interest in familial

1 relations, which includes the right to "establish a home and bring up children" and "to control the
2 education of their own." (*Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see also Troxel v.*
3 *Granville* (2000) 530 U.S. 57, 65 [noting that the right to familial relations is "the oldest of the
4 fundamental liberty interests recognized"]; *Smith v. Organization of Foster Families For Equality*
5 *and Reform* (1977) 431 U.S. 816, 845 [noting that "the liberty interest in family privacy has its
6 source ... not in state law, but in intrinsic human rights, as they have been understood in 'this
7 Nation's history and tradition'" (citation omitted)]; *accord Brokaw v. Mercer County* (7th Cir.2000)
8 235 F.3d 1000, 1018 [emphasizing that "the right of a man and woman to marry, and to bear and
9 raise their children is the most fundamental of all rights the foundation of not just this country,
10 but of all civilization"].¹ "[T]he parent-child relationship is an important interest that undeniably
11 warrants deference and, absent a powerful countervailing interest, protection." (*Stanley v. Illinois*
12 (1972) 405 US 645, 651). Equally fundamental is the right of a child to be raised and nurtured by
13 his parents. (*Cf. Santosky v. Kramer* (1982) 455 U.S. 745, 760 [noting that "until the state proves
14 parental unfitness, the child and his parents share a vital interest in preventing erroneous
15 termination of the natural relationship"])).

16 Equally clear is that a parent's liberty interest in directing the upbringing and education of
17 her children includes the right to discipline them by using reasonable, nonexcessive corporal
18 punishment. (*Doe*, 327 F.3d at 523; *see also Ingraham v. Wright* (1977) 430 U.S. 651, 661 [noting
19 that at common law, "a single principle has governed the use of corporal punishment since before
20 the American Revolution: Teachers may impose reasonable but not excessive force to discipline a
21 child"])).² Indeed, the view that "corporal punishment serves important educational interests" is

23 ¹ The integrity of the family unit has also found protection in the Ninth Amendment of the United
24 States Constitution and the Equal Protection Clause of the Fourteenth Amendment. (*Stanley v.*
25 *Illinois* (1972) 405 U.S. 645, 651; *accord Doe v. Heck* (7th Cir. 2003) 327 F.3d 492, 519 n. 22).

26 ² The U.S. Supreme Court has even held that private schools have the right to bring claims
27 against the state for arbitrarily interfering with their patrons' (i.e., parents' and students') liberty
28 interest in familial relations. (*See Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 534-36; *see*
also Darryl H. v. Coler (7th Cir.1986) 801 F.2d 893, 901 [noting that "caretakers" of children
have derivative parental privacy interests under the Fourteenth Amendment in being free from
"unwarranted state intrusion"])). The right of a teacher to use reasonable corporal punishment

1 deeply rooted in this republic's history. (*Ingraham*, 430 U.S. at 681).³ Thus, “the fundamental
2 right of parents to direct the upbringing of their children necessarily includes the right to discipline
3 them.” (*Doe*, 327 F.3d at 522; *see also* 3 WILLIAM BLACKSTONE, BLACKSTONE'S
4 COMMENTARIES ON THE LAWS OF ENGLAND 120 (1765) [noting the legality of parents
5 and teachers giving moderate physical "correction" to the children entrusted to their care]; 2
6 JAMES KENT, COMMENTARIES ON AMERICAN LAW 169 (1826) [noting that parents have
7 "a right to the exercise of such discipline, as may be requisite for the discharge of their sacred
8 trust"]; *accord* Cal. Const. Art. I §§ 7, 15, 29 [conferring constitutional right to due process, equal
9 protection, and privacy]). If a parent has a constitutional right to use actual physical force against
10 his child in the name of discipline, then the courts must be particularly circumspect when the
11 prosecution centers around conduct that does not involve actual infliction of harm or conduct that
12 does not demonstrate extreme neglect. This is such a case.

13 **B. There Is a Basic Threshold Below Which a Complaint Must Be Dismissed to**
14 **Avoid Chilling the Exercise of Constitutional Rights of Parents to Parent**

15 Because the U.S. and California Constitutions guarantee parents the right to parent their
16 children, the Government's attempt to criminalize constitutionally-protected conduct – and force
17 a trial – is impermissible.⁴ In other words, juries do not determine what is constitutionally-

18 _____
19 derives from the rights of the parents; thus, if a teacher can use corporal punishment, then the
20 parent must necessarily have this right as well.

21 ³ The Seventh Circuit observed: “We also acknowledge that people of many faiths, and perhaps
22 some of no faith at all, genuinely believe in the truth of the oft-recited phrase: ‘Spare the rod,
23 and spoil the child.’” (*Doe*, 327 F.3d at 523, quoting JOHN BARTLETT, BARTLETT'S FAMILIAR
QUOTATIONS 263:21 (Justin Kaplan ed., 16th ed.1992)).

24 ⁴ It is well established that a court has inherent authority to protect against constitutional violations
25 occurring before it. (Cal. Const. Art. VI § 1 [“The judicial power of this State is vested in the ...
26 superior courts....”]; *accord* *Mooney v. Holohan* (1935) 294 U.S. 103, 113 [“Upon the state courts,
27 equally with the courts of the Union, *rests the obligation to guard and enforce every right secured*
28 *by that [federal] Constitution.*” [emphasis added]]). This is why appellate courts have recognized
that defendants can file nonstatutory motions to dismiss. (*See, e.g., Murgia v Municipal Court*
(1975) 15 Cal.3d 286, 293 n.4 [“Although no clear California statutory authority provides for such
a pretrial motion to dismiss [on grounds of discriminatory prosecution], we have no doubt in light
of the constitutional nature of the issue as to the trial court's authority to entertain such a claim.
[Citations].”]; *People v Fosselman* (1983) 33 Cal.3d 572, 582 [holding that a trial court has

1 permissible; rather, there is some legal threshold that must be met before such a prosecution can
2 go forward. (*Cf. Lawrence v. Texas* (2003) 539 U.S. 558, 576, 123 S.Ct. 2472 [holding
3 unconstitutional state statute that interfered with substantive due process right of consenting adults
4 to engage in homosexual conduct]; *see also id.* at 575 [“The stigma this criminal statute imposes,
5 moreover, is not trivial. The offense, to be sure, is but a class C misdemeanor, a minor offense in
6 the Texas legal system. Still, it remains a criminal offense with all that imports for the dignity of
7 the persons charged. ... This underscores the consequential nature of the punishment and the state
8 sponsored condemnation attendant to the criminal prohibition. Furthermore, the Texas criminal
9 conviction carries with it the other collateral consequences always following a conviction, such as
10 notations on job application forms, to mention but one example.”]).⁵

11 Because a parent’s right to parent his child is a fundamental right of constitutional
12 magnitude, (*see Ingraham*, 430 U.S. at 661), the Government may only impair that right if the
13 statute is narrowly tailored to serve a compelling governmental interest. (*See, e.g., Roe v. Wade*
14 (1973) 410 U.S. 113, 155, 93 S.Ct. 705, 728 [reaffirming that governmental regulation limiting
15 fundamental rights of individuals may be justified only by a “compelling state interest” and that
16 such enactments “must be narrowly drawn to express only the legitimate state interests at stake”]);
17 *accord Virginia v. Black* (2003) 538 U.S. 343, 359 [holding that the First Amendment allows states
18 “to ban a ‘true threat.’”]). Moreover, the Government cannot, through its legislation or through
19 the threat of criminal prosecution, effectively chill the exercise of a fundamental right. (*See People*
20 *v. Rodriguez* (1998) 66 Cal.App.4th 157, 170 n.11 [“Consistent with the federal overbreadth
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24 inherent authority to consider a statutory motion for a new trial on the nonstatutory ground of
25 ineffective assistance of counsel]; *People v Vasilyn* (2009) 174 Cal.App.4th 443 [nonstatutory
26 motion brought in 2007 to vacate 1994 judgment of conviction was proper procedural vehicle to
27 raise lack of subject matter jurisdiction on ground statute did not define criminal offense, but was
28 instead sentence enhancement; judgment of conviction and plea of nolo contendere vacated;
remanded with directions to amend or dismiss the information]).

⁵ The U.S. Supreme Court also observed that “[the defendants’] right to liberty under the Due
Process Clause gives them the full right to engage in their conduct without intervention of the
government.” (*Lawrence*, 539 U.S. at 578).

1 doctrine, these exceptions are also designed to avoid ‘chilling’ the exercise of fundamental
2 constitutional rights.”).

3 There is an inherent tension between the privacy and sanctity of the family, including the
4 freedom to raise children and to be imperfect parents, and the interest of the State in protecting
5 children from wanton violence or extreme neglect.⁶ But the State has no legitimate interest in
6 prosecuting parents for being imperfect given the constitutional dimension of this right to parent.
7 Again, the recognition that due process protects core rights is designed to protect individuals from
8 the tyranny of the community’s in-the-moment values. (*See Lawrence*, 539 U.S. at 579 [“[The
9 Founding Fathers] knew times can blind us to certain truths and later generations can see that laws
10 once thought necessary and proper in fact serve only to oppress. As the Constitution endures,
11 persons in every generation can invoke its principles in their own search for greater freedom.”]).
12 Absent evidence of extreme neglect or actual abuse, the community does not have a right to judge
13 someone else’s parenting skills. The law does not – and cannot – criminalize imperfect parenting
14 or disagreements between good parenting and better parenting.

15 In this case, Mr. Arambula is a father who was disciplining his seven-year old daughter
16 (CW) at the time she was self admittedly going through a meltdown. The father’s discipline was
17 brought to the attention of her school the following day. Interviews with school officials revealed
18 that no teacher noticed anything unusual related to an injury until CW brought it up late in the day.
19 Further interviews with school officials revealed that teachers and administrators knew Mr.
20 Arambula, his wife, CW, and her other family members. School officials had no prior information
21 to lead them to believe that any abuse had occurred with CW in the past. Protocol required Child
22 Protective Services (CPS) to place a hold on CW and her other siblings pending an investigation
23 related to abuse in the household. CW and her siblings were placed in the custody of Mr.
24 Arambula’s parents. Less than 48 hours later, CW and her siblings were returned to the custody
25

26
27 ⁶ The compelling governmental interest is protecting children from violence, not simply
28 protecting children. This is because a child’s parents, not the State, are presumed to act in the
best interests of the child. (*See Troxel*, 530 U.S. at 68, 120 S.Ct. 2054 [recognizing a
constitutional presumption that “fit parents act in the best interests of their children”]).

1 of Mr. Arambula and his wife without restriction. Thereafter, CPS closed its investigation without
2 need for further intervention. Mr. Arambula's conduct is simply not criminal, and if it could even
3 be argued that this conduct is criminal, the statute is plainly overbroad.

4 **III. THIS COURT HAS AUTHORITY TO DISMISS THE COMPLAINT IN THE**
5 **INTEREST OF JUDGMENT UNDER PENAL CODE § 1385**

6 A court may, on its own motion, dismiss a prosecution or an allegation in the interests of
7 justice. (*People v. Superior Court (Romero)* (1994) 13 Cal. 4th 497; Penal Code § 1385). Penal
8 Code § 1385 permits a trial judge to dismiss an action in its entirety:

9
10 The judge or magistrate may, either on his or her own motion or upon the
11 application of the prosecuting attorney, and in furtherance of justice, order an action
12 to be dismissed. The reasons for the dismissal must be set forth in an order entered
13 upon the minutes.

14 (Penal Code § 1385(a)). This is because a criminal action, once instituted, "is not solely the
15 prerogative of the Attorney General or the district attorney as the representative of the People, but
16 . . . the defendant who has been charged has an equal interest in the resolution of the action."
17 (*People v. Belknap* (1974) 41 Cal.App.3d 1019, 1034 (Molinari, P.J., concurring)). Accordingly,
18 it may be in the interests of justice to dismiss a case when the actions of government officials have
19 infected the proceedings with unfairness. (*See, e.g., People v. Truer* (1985) 168 Cal.App.3d 437;
20 *People v. Davis* (1971) 20 Cal.App.3d 890; *People v. Superior Court* (1921) 53 Cal.App. 185).

21 In this case, the Court should exercise its discretion to dismiss in the interest of justice.
22 First, parents have constitutional rights to parent their children. This requires vigilance among
23 justice sector participants to ensure that their own ideas of parenting are not supplanting the
24 decisions of the actual parent: Parents should be allowed to be imperfect parents so long as they
25 have not injured their children or the circumstances do not manifest extreme neglect. Second,
26 prosecutors and courts should be particularly cognizant that their attitudes on parenting do not
27 reflect a bias against men, or single parents, or a particular race. That is why child
28 abuse/endangerment cases should not be instituted in questionable cases such as the one at bar.

1 Third, the court should consider the effect of prosecution of a parent upon the children. In this
2 case, dismissal of the complaint is appropriate, necessary, and in the interest of justice.

3 Most importantly, after the initial arrest, DSS conducted their own detailed investigation
4 regarding allegations of Neglect and Physical Abuse. This investigation included interviewing
5 the children, parents, grandparents, teachers, performing home inspections, as well as a few
6 follow-up interviews on January 8, 2019. After this thorough investigation, Social Worker
7 Amber Fithian determined there was insufficient evidence to substantiate that physical abuse had
8 occurred and recommended the CPS referral for physical abuse case be closed as inconclusive.
9 Social Worker Fithian recommended that the referral for General Neglect be closed as
10 unfounded as there was no actual evidence produced that could have substantiated General
11 Neglect. She reviewed her findings with CPS Program Manager Rita Bohanon and County
12 Counsel, who concurred, and approved closing the CPS case. The case was officially closed on
13 March 7, 2019.

14 **IV. THE COURT SHOULD DISMISS THE CASE DUE TO FRESNO POLICE**
15 **DEPARTMENTS BAD FAITH IN OBTAINING CPS/DSS RECORDS WITHOUT**
16 **COURT ORDER**

17 Fresno Police Department obtained CPS/DSS without first obtaining a court order. Before
18 confidential CPS/DSS records can be obtained, an WIC 827 petition must be properly noticed.
19 The party seeking the records must make a showing that the documents should be released and the
20 parties must be provided an opportunity to object to the release of those record. A court must then
21 hold an in-camera review of the records to determine what, if any, redactions must be made prior
22 to release of any records the court deems appropriate.

23 In *US v. LaSalle National Bank* (1978), 437 US 298, the Supreme Court established several
24 requirements for the issuance of a valid summons by the IRS. Initially, the summons must be
25 issued before the IRS makes a criminal referral or recommendation for prosecution to the
26 Department of Justice. In addition, the IRS is required to use its summons authority “in good faith
27 pursuit of the its congressional authorized purposes...” In *US v Dahlstrum* (1980), 493 F. Supp.
28 966, the court found that the “information gathering” form of abuse was relevant to that case.
Relying on *La Salle*, the court noted that the Service (IRS) does not enjoy inherent authority to

1 summon production of the private papers of citizens. It may exercise only that authority granted
2 by Congress. Due to the government misconduct, the case was dismissed with prejudice.

3 In this case, Fresno Police Department sent reports to the DA's as part of their
4 recommendation to file charges. In those reports, FPD included confidential CPS/DSS records
5 that were not legally obtained. FPD did not file an WIC 827 petition and obtain those records
6 through a court order as required by law. In fact, the elected DA, Lisa Smittcamp, sent an email
7 to Dyer relating to the CPS records. She said, "In my 22 years as a prosecutor, I have never
8 seen this happen. I need to know how these records were provided to your department. Pursuant
9 to law, any and all CPS records are confidential."

10 Even DA Smittcamp appears to agree that these CPS records were illegally
11 obtained. We know this. What we don't know is how they were obtained. The fact that we do
12 not know how these documents were illegally obtained by the Fresno Police Department is a
13 Brady violation. This is evidence of extreme bias.

14 Bias in the investigation has been apparent since the initiation of the call for service.
15 Phebus noted that Joaquin Arambula's driver's license came back as "CA Legislature." FPD
16 supervisors were sending e-mail updates directly to Chief Jerry Dyer on December 10, 2018 at
17 8:05 PM, less than 3 hours after Joaquin Arambula had been arrested a cited for a misdemeanor
18 violation of Penal Code section 273a(b). On December 11, 2018 at 6:52 AM, Sergeant Wilson
19 sent an e-mail to Tom Laband and Kenneth Dodd, less than 12 hours after the citation, advising
20 that, "We do not want to give the outward appearance of the investigation being handled
21 different than other investigations of this type." On December 12, 2018 at 12:24 PM, FPD had
22 already finished at least one transcript of the forensic interview conducted on December 11,
23 2018. On December 13, 2018, further communications show that efforts were being made to
24 finalize transcripts of the interviews that had taken place. Finally, Lisa Smittcamp wrote in an e-
25 mail to Chief Dyer on February 25, 2019 that she was concerned about how FPS had obtained
26 confidential records without court order.

1 All of this evidence, when viewed as a whole, shows that this investigation was treated
2 anything other than a normal investigation and in fact was handled so far out of the ordinary that
3 this court should conclude that it was conducted in bad faith. The case should be dismissed.

4 **V. CONCLUSION**

5 WHEREFORE, for the foregoing reasons and any others that may appear to this Court at
6 the hearing, the defense respectfully request this Court dismiss the case.

7 Respectfully submitted,

8 MICHAEL J. AED
9 MARGARITA MARTINEZ DALY

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11 DATED: April 23, 2019

12 ATTORNEYS FOR DEFENDANT
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Exhibit A

Kenneth Dodd

From: George Wilson Jr
Sent: Monday, December 10, 2018 4:42 PM
To: Kenneth Dodd
Cc: Tom Laband
Subject: FW:
Attachments: IMG_0092.jpg; IMG_0090.jpg; IMG_0091.jpg

Doesn't appear to be a black eye as reported by CPS in the event.

RP NEEDS ASSISTANCE W/300 HOLD, CHILD REPORTED THAT HER FATHER STRUCK HER ACROSS THE FACE, CHILD HAS BLK EYE. CHILD IS [REDACTED], HOME ADDR [REDACTED], SUSP IS DAD JOAQUIN ARANEULA 051777, MOM IS ELIZABETH ARANEULA 030882.

SGT. GEORGE WILSON, JR. #S133
FRESNO POLICE DEPARTMENT
FAMILY JUSTICE BUREAU
CHILD ABUSE & MISSING PERSONS UNIT SUPERVISOR
OFFICE - (559) 621-2470



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From: [REDACTED]
Sent: Monday, December 10, 2018 3:56 PM
To: George Wilson Jr
Subject:

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Exhibit B

Kenneth Dodd

From: Tom Laband
Sent: Tuesday, December 11, 2018 6:38 AM
To: George Wilson Jr; Kenneth Dodd
Subject: FW: California State Assemblyman Joaquin Arambula cited for misd child endangerment.

From: Todd Miller
Sent: Monday, December 10, 2018 8:05 PM
To: Jerry Dyer; Patrick Farmer; Michael Reid
Cc: Phillip Cooley; Tom Laband; Jerardo Chamalbide
Subject: California State Assemblyman Joaquin Arambula cited for misd child endangerment.

At approximately 1347 hours, officers responded to 3135 N. Harrison (Dailey School) for a possible child abuse. Officer S. Phebus #1251 conducted the investigation and spoke to the victim. He received a very clear and detailed statement in which the victim she said her father slapped her face several times after she and her sister were playing in another room. She said the ring on her dads hand caused the injury to her face. The victim had a bruise and red mark on her right temple where she said she was struck by her father's left hand. Her father, (Joaquin Arambula) later came to the school accompanied by his lawyer who advised him not to give a statement. Mr. Arambula was wearing a wedding ring on his left hand which could have possibly caused the injury to the victims face. Child abuse Sgt. was advised of the call but detectives were not sent out to the scene. Mr. Arambula was transported to IB where he was cited out for PC. 273 A (b) misd child endangerment. The victim and her two younger siblings were placed on a 300 hold and placed with CPS who was the original RP. After talking to everyone involved, they all understood this was happening for the safety of the children. I answered all of their questions and gave each of them my business card. When they left, they thanked me for taking the time to explain exactly what the process was. The kids all had smiles on their faces as they were being put into car seats. The mother (Elizabeth Arambula) smiled and shook my hand as she was walking to her car. Although it was an emotional incident, everyone left with an understanding of what happened and why. The PIO was notified and IB responded for photos. Please refer to incident 18-CA2900 and case 18-82057.

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Exhibit C

Kenneth Dodd

From: George Wilson Jr
Sent: Tuesday, December 11, 2018 6:52 AM
To: Tom Laband
Cc: Kenneth Dodd
Subject: RE: California State Assemblyman Joaquin Arambula cited for misd child endangerment.

Child Abuse was in phone contact with Officer Phebus throughout the event. Upon receiving a photo of the minor injury, it was determined it would be best for Phebus to proceed with his investigation in normal fashion. We did not want to give the outward appearance of the investigation being handled different than other investigations of this type.

*SGT. GEORGE WILSON, JR. #S133
FRESNO POLICE DEPARTMENT
FAMILY JUSTICE BUREAU
CHILD ABUSE & MISSING PERSONS UNIT SUPERVISOR
OFFICE - (559) 621-2470*



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Sent: Tuesday, December 11, 2018 6:38 AM
To: George Wilson Jr; Kenneth Dodd
Subject: FW: California State Assemblyman Joaquin Arambula cited for misd child endangerment.

From: Todd Miller
Sent: Monday, December 10, 2018 8:05 PM
To: Jerry Dyer; Patrick Farmer; Michael Reid
Cc: Phillip Cooley; Tom Laband; Jerardo Chamalbid
Subject: California State Assemblyman Joaquin Arambula cited for misd child endangerment.

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Exhibit D

Kenneth Dodd

From: Shannon Ashley Peterka
Sent: Wednesday, December 12, 2018 12:24 PM
To: Kenneth Dodd
Subject: Interview of Witness [REDACTED]
Attachments: 18-082057 [REDACTED]

Attached is the transcript for [REDACTED] I left her name and her sisters' names as were stated in the interview. Let me know if you would like me to do a "find and replace" to make their names confidential and how you would like them identified (ex. Witness-1, Witness-2, Witness-3).

Thanks,

S. Ashley Peterka
Police Transcriptionist
Fresno Police Department
Shannon.peterka@fresno.gov
(559) 621-2532

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Exhibit E

Kenneth Dodd

From: Shannon Ashley Peterka
Sent: Thursday, December 13, 2018 3:42 PM
To: Kenneth Dodd
Subject: RE: Interview of Witness [REDACTED]

Hi Det Dodd,
I need these interviews burned in an mp3 format or Wav so that I can transcribe them...let me know if that possible. You can also email them to me in that format. Thanks!

From: Kenneth Dodd
Sent: Wednesday, December 12, 2018 1:26 PM
To: Shannon Ashley Peterka
Subject: RE: Interview of Witness [REDACTED]

Thank you

From: Shannon Ashley Peterka
Sent: Wednesday, December 12, 2018 1:20 PM
To: Kenneth Dodd
Subject: RE: Interview of Witness [REDACTED]

Corrected transcript is attached with the names removed and marked confidential.
Thanks.

From: Kenneth Dodd
Sent: Wednesday, December 12, 2018 1:05 PM
To: Shannon Ashley Peterka
Subject: RE: Interview of Witness [REDACTED]

Thank you so much, we do need to take their names out. Please make [REDACTED] as V-1, [REDACTED] would be W-1, I hope this helps

From: Shannon Ashley Peterka
Sent: Wednesday, December 12, 2018 12:24 PM
To: Kenneth Dodd
Subject: Interview of Witness [REDACTED]

Attached is the transcript for [REDACTED]. I left her name and her sisters' names as were stated in the interview. Let me know if you would like me to do a "find and replace" to make their names confidential and how you would like them identified (ex. Witness-1, Witness-2, Witness-3).

Thanks,

S. Ashley Peterka
Police Transcriptionist
Fresno Police Department
Shannon.peterka@fresno.gov
(559) 621-2532

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Exhibit F

To: George Wilson Jr
Subject: FW: Arambula, Joaquin FPD 18-82057

From: Patrick Farmer
Sent: Tuesday, February 26, 2019 8:26 PM
To: Tom Laband
Subject: Fwd: Arambula, Joaquin FPD 18-82057

Tom can you please find the answer to the chief's question and then email to the chief and I once you find out, tks, PF

Sent from my iPhone

Begin forwarded message:

From: Jerry Dyer <Jerry.Dyer@fresno.gov>
Date: February 26, 2019 at 7:31:20 PM PST
To: Patrick Farmer <Patrick.Farmer@fresno.gov>
Subject: Fwd: Arambula, Joaquin FPD 18-82057

Pat

Can you please look into this and respond to me via email as to how those particular records got into our possession. I will discuss the reasons for this when I get back. Thank you

Safety, Service, Trust

Begin forwarded message:

From: "Smittcamp, Lisa" <lsmittcamp@fresnocountyca.gov>
Date: February 25, 2019 at 5:54:59 PM PST
To: "jerry.dyer@fresno.gov" <jerry.dyer@fresno.gov>
Subject: Arambula, Joaquin FPD 18-82057

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Chief:

In the discovery packet on this case, the CPS records were included when it was sent over from your department.

In my 22 year career as a prosecutor, I have never seen this happen.

I need to know how those records were provided to your department.

Pursuant to the law, any and all CPS records are confidential. In order for them to be released to law enforcement, there has to be a showing and a petition under WI 827 for the Juvenile Court to order such release.

To my knowledge, this did not happen in this case, and the records were sent to FPD and then sent to our office in the filing packet.

Should this case have criminal charges filed, I have instructed my staff NOT to provide these records to defense counsel until the proper 827 petition has been filed. However, before we go much further, and I inquire with CPS / DSS I want to know how they came into the possession of FPD and if FPD did any such motion for release in the Juvenile Court.

Please inquire and let me know as soon as possible.

Thank you,
Lisa