No. ____

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES G. KINNEY,
Petitioner,

v.

PHILIP GUTIERREZ
Respondent,

On Petition For Writ Of Certiorari To The Ninth Circuit Court of Appeals #16-56750 (April 19, 2018 denial of petition for rehearing) [7 of 8]

U.S. District Court, Central District of Calif. (Los Angeles) #2:16-cv-07440-DMG

PETITION AND APPENDIX FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. By *simultaneously* dismissing 8 of Kinney's pending appeals, did this 3 Judge panel *abuse its discretion* to cover-up acts by federal Judge Gutierrez who violated ***Janus*** and ***NIFLA*** by using state court proceedings to circumvent bankruptcy law, "vexatious litigant" labels for a "listed" creditor, 100% directly-inconsistent state rulings, attorney's fees and/or sanctions to punish an attorney (now a *pro se* litigant) because of his "professional speech", so this Judge joined forces with others to ***compel silence*** on Kinney?

Kinney's speech was "professional speech" (for his client or himself) to Judges and/or others who did not adjudicate disputes, but acted as *prosecutors* under color of authority; and for repeat violations of bankruptcy law in favor of Chapter 7 debtor Michele Clark who listed Kinney as a creditor and of other federal law (e.g. for refusals by courts to give "honest services" and correct inconsistencies in state and federal rulings; the court's failure to rule or withdraw; and/or Hobbs Act violations)?

2. Was this dismissal an abuse of discretion by a panel acting as ***prosecutors*** under color of law?

3. Did this appeal (**7 of 8**) have "merit" because it challenged court rulings that violated federal law and a district court Judge's refusal to rule?

4. Did this 3 Judge panel abuse its discretion by ***ignoring*** Sec. 1983 federal civil rights violations and repeated violations of bankruptcy law?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those appearing in the caption to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests that a writ of certiorari issue to review the "final" April 19, 2018 "decision" denying a rehearing by the Ninth Circuit of its Dec. 28, 2017 dismissal of his pending appeal in Ninth Circuit #16-56750 as to Declaratory Judgment Act ("DJA") and other claims [e.g. refusal to rule on Kinney's counter-claim] against federal Judge Philip Gutierrez due to the dismissal of the complaint and appeal to determine if state court motions for attorney's fees filed by 2010 bankruptcy debtor Clark were valid when based on the ***now-unenforceable*** pre-petition 2005 purchase contract between buyers Kinney etc (listed as creditors) and seller Clark (debtor). [Clark and other defendants remained in USDC 16-06168-PSG and Ninth Circuit 16-56735.]

Kinney's ongoing appeals that were *simultaneously* dismissed on Dec. 28, 2017 [docket number in brackets] include these 8 appeals: 16-16689 [Dk #19-1]; 16-17255 [Dk #7-1]; 16-55343 and 16-55347 consolidated [Dk #43-1]; 16-56162 [Dk #34-1]; 16-56733 [Dk #27-1]; 16-56735 [Dk #35-1]; **16-56750** [Dk #8-1]; and 17-55081 [Dk #9-1] (in numeric order).

This petition involves appeal **#16-56750 [7 of 8]**.

In this appeal, the Opening Brief was filed 5/31/17 [Dk #5], but no other brief was filed and no appearance was made. Kinney's appeal was dismissed by the Ninth Circuit 12/28/17 [Dk #8; App. A]; and his petition for rehearing were denied 4/19/18 [Dk #10, App. B].

Within the last month, the US Supreme Court clarified that "professional speech" is just as broadly protected

as "free speech" **and** when a group *compels speech* or *silence* it violates one's First Amendment rights.

Here, the decisions threaten to ***compel silence*** so that Kinney cannot pursue his claims to redress violations of his federal constitution and civil rights by Judges and others who were acting as *prosecutors* under color of authority, rather than acting as *neutral arbitrators* of disputes. Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. __ (2018); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003).

The difference between ***compelled speech*** and ***compelled silence*** has *no constitutional significance* when applying the First Amendment's guarantee of "freedom of speech" to all citizens which includes the decision(s) by Kinney of both what to say and what not to say. Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

As to Kinney, the penalties imposed on him have almost always included ***compelled silence***.

Janus applies to the "unified" Cal. State Bar which requires all attorneys to pay for ***compelled speech*** [e.g. as to what cases or appeals the Bar thinks have "merit"; and as to what issues the Bar wants to promote or not promote] and for ***compelled silence*** [e.g. because of the Cal. Legislature's prohibition that the State Bar cannot "conduct or participate" in any

"review" of a Justice who rules against Kinney **even if** that Justice is causing public harm by that ruling {which means Cal. Bus. & Prof. Code Sec. 6031(b) becomes 100% directly-inconsistent with Cal. Bus. & Prof. Code Sec. 6001.1}; and because Kinney was willing to sue a Judge who acts as a *prosecutor* under color of authority, rather than as a neutral arbitrator of a dispute, to protect his federal civil rights].

Many federal cases allow federal civil rights claims against a state Judge or Justice under 42 U.S.C. Secs. 1983 etc (e.g. *Bauer, Consumers Union*); or as a *Bivens* claim against a federal Judge.

Federal civil rights cases are **not** precluded by *Rooker-Feldman*, res judiciata, collateral estoppel and/or *defacto* appeal doctrines **even though** these claims may involve a state court Judge or Justice who allegedly has sovereign and judicial immunity. No relevant contrary legal authority is cited.

USDC Judge Maxine Chesney (No. Cal.) has ruled that retaliation claims arise after the original proceeding, so retaliation claims cannot have been decided in a prior matter. Thus, *Rooker-Feldman* and other preclusion doctrines would not apply. In USDC No. 3:13-cv-01396 [Dk #43, 12/23/13], Judge Chesney cited *Sloman* to support Kinney's retaliation claims under 42 U.S.C. Sec. 1983. Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 911-922 (9th Cir. 2012).

Many attorneys disagree with **compelled** speech or silence imposed by the Cal. State Bar and by state and federal courts [e.g. because attorneys {or *pro se*

litigants} must disagree with a Judge or Justice {or sue them} as part of their "job" as an attorney {or *pro se* litigant}], but those attorneys are not very vocal.

Compelled speech and ***silence*** by the Cal. State Bar and Cal. Supreme Court are enforced by the threat that attorneys can be suspended or disbarred without full due process in non-judicial-court (e.g. tribunal) proceedings by the State Bar conducted by non-judicial hearing officer(s), and affirmed with a refusal by the Cal. Supreme Court to grant review of these "recommendation" of suspension or disbarment. Cal. Rules of Court, Rule 9.16(b).

A "difficult" attorney never gets before a "judicial" court (i.e. defined by the Cal. Constitution, Art. VI, Sec. 1), but he or she is still suspended or disbarred.

California attorneys cannot "practice law" for clients without: (1) belonging to the State Bar and (2) paying for the mandatory dues, so the State Bar's mandatory dues [e.g. agency-based fees imposed by a State agency with exclusive licensing power over attorneys in Calif.] are subject to an "'exacting' scrutiny standard" of review (e.g. *Janus* and *NIFLA).*

NIFLA clarified regulations of "professional speech", and gives that the *same broad protection* as given to "free speech" under the 1st and 14th Amendments.

Professional speech can occur by an attorney or *pro se* litigant when there is a challenge to improper acts by state court Judges or Justices, by bankruptcy debtors or their attorneys, and (like here) by federal judges.

Professional torts may be regulated [i.e. government may define boundaries of legal malpractice claims],

but any regulation of non-advertising, non-solicitation "speech" is subject to a "strict scrutiny standard" of review under *Janus* and *NIFLA*.

All content-based laws (which would include the unconstitutionally-vague "vexatious litigant" laws) are presumptively unconstitutional and can only be upheld if the government proves the laws are narrowly tailored to serve a compelling state interest (which was never shown by relevant facts, or proven by law, to apply to Kinney) under *Janus* and *NIFLA*.

Professional speech by an attorney or *pro se* litigant can ***also be penalized*** under an unconstitutionally-vague vexatious litigant ("VL")" law that is being improperly applied by Judges or Justices.

The VL **judicial** penalty *is in addition to* the State Bar's threat of suspension or disbarment.

These US Supreme Court opinions also apply to the "vexatious litigant" laws which are being utilized by state and federal courts: (A) to silence "professional speech"; **and** (B) to enforce their will by the threat that attorneys or *pro se* litigants will be prohibited [e.g. because only 1 Justice can deny permission to appeal] or limited from appearing in the courts [e.g. because only 1 Justice can require the posting of $175,000 in security to proceed with only 1 appeal].

It only takes 1 federal or state Judge to decide to improperly label a *pro se* litigant or attorney as a "vexatious litigant", and then other courts seem to intentionally or blindly follow that first ruling.

Kinney was first labeled as "vexatious" on Nov. 19, 2008 by LASC Judge Luis Lavin even though Kinney

was no longer a party in that case from Nov. 7, 2008 onward (as shown in the docket) and about which Kinney was never allowed to appeal due to unilateral decisions of COA2 Justice Boren from 2009 onward.

Kinney was then labeled as "vexatious" on Dec. 8, 2011 by COA2 Justice Roger Boren even though Kinney was never a party or appellant in that matter [In re Kinney, 201 Cal.App.4th 951 (Cal. 2011)]. COA2 Justice Boren labeled the appellant, Kinney's client Kempton, as a "puppet" of Kinney ***even though*** the tribunal hearing officer of the Cal. State Bar, "Judge" Pat McElroy, found no such evidence in her subsequent non-judicial-court proceedings.

In 2017, Kinney was again labeled as "vexatious" by COA2 Justices Francis Rothschild, Victoria Cheney, and Jeffrey Johnson even though Kinney was specifically "listed" as a bankruptcy "creditor" by debtor Michele Clark in her July 28, 2010 Chapter 7 bankruptcy petition, which they ignored [Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017)].

From 2008 onward, all "vexatious litigant" rulings against Kinney have been decided: (i) **without** using a "strict scrutiny standard" of review [e.g. since no review was ever allowed]; (ii) **without** fact finding by Judges or Justices via oral testimony in open court under oath and with cross-examination; (iii) **without** balancing the public benefits of Kinney's litigation versus the public harm of Kinney's litigation, if any; and (iv) **without** allowing Kinney any appeal or review rights to contest those adverse rulings [e.g. so there was no "standard" of review whatsoever].

The *Janus* and *NIFLA* decisions clearly apply to the Cal. State Bar, but also apply to the state and federal

courts that have ***compelled speech*** and/or ***silence*** against a litigant by the application or misapplication of unconstitutionally vague "vexatious litigant" laws.

Here, the Ninth Circuit's rulings are now attempting to ***compel silence*** as to Kinney's First Amendment and federal civil rights in the federal courts.

Kinney has attempted to pursue civil rights claims against Judges, Justices, debtor Michele Clark, her private attorneys (including David Marcus, Eric Chomsky and Tyson Takeuchi), and the State Bar, all of whom have intentionally and continually violated Kinney's *federal* constitution and civil rights over the last 10+ years (and for those in positions of authority, have acted as prosecutors under color of authority rather than as neutral arbitrators of disputes; and for those involved in rulings about Clark's Chapter 7 bankruptcy in 2010, have violated bankruptcy law as to "listed" creditor Kinney).

In addition, from July 28, 2010 to the present, Kinney has attempted to pursue claims against most of those listed above, all of whom have intentionally and continually violated Kinney's rights as a listed bankruptcy creditor in Michele Clark's Chapter 7 bankruptcy petition, and most of whom have engaged in bankruptcy fraud (e.g. 18 U.S.C. Sec. 152) which is a predicate act for RICO and other claims.

In response, the courts have intentionally mis-labeled Kinney's attempts under the First Amendment and 42 U.S.C. Sec. 1983 to seek redress of grievances (e.g. as *defacto* appeals; as precluded by *Rooker-Feldman* or other similar doctrines like collateral estoppel or res judicata; **and/or** as meritless or frivolous claims).

Most courts summarily or *sua sponte* dismiss Kinney's claims or appeals; and many tried to silence Kinney by not allowing him a right to file cases (e.g. counter-claims) or appeals, or remove improper state court proceedings which violate 11 U.S.C. Sec. 524.

Some refuse to rule on Kinney's counter-claim by ignoring it (e.g. Gutierrez). Levin Metals v. Parr-Richm. Term., 799 F.2d 1312, 1315-16 (9th Cir. 1986).

The **courts** have been denying Kinney's attempts to have reviews of rulings based on: (1) his vexatious litigant status; (2) ignoring the improper enforcement of unenforceable pre-petition contracts; and/or (3) ignoring violations of bankruptcy law (e.g. by LASC Judge Barbara Scheper). The rulings are violations of Kinney's First Amendment rights to "professional speech" and his federal civil rights due to the imposition of ***compelled silence*** contrary to the *Janus*, *NIFLA*, *Riley*, and *Consumer Union* decisions.

Here, the courts ignored bankruptcy law violations, but have punished "creditor" Kinney by declaring him a VL, sanctioning him, and awarding fees to debtor Clark based on a now-unenforceable contract.

As of Dec. 28, 2017, the Ninth Circuit knew that:

A. In the 1998 to 2000 time frame, ***compelled silence*** was being imposed on Kinney by the US District Court (San Francisco) and Ninth Circuit because Kinney represented commercial fisherman Van Scoy for Shell Oil's excessive toxic selenium discharges into SF Bay, but Van Scoy's claims against a state agency were never sent back to state court after the Ninth Circuit agreed a state agency had 11th Amendment immunity.

B. In the 2002 to 2006 time frame, ***compelled silence*** was being imposed on Kinney by Orange County Superior Court and the Court of Appeal, Fourth App. Dist. ["COA4"], in a 2001 case filed by Three Arch Bay Community Services District against Kinney as to Cal. Code of Civil Procedure ("CCP") Sec. 1060 rights for an encroaching fence built by Sherrie Overton [Kinney v. Overton, 153 Cal.App.4th 482 (Cal. 2007)].

C. In the 2007 to 2010 time frame, ***compelled silence*** was being imposed on Kinney by LASC Judge Elizabeth Grimes, LASC Judge Luis Lavin, and the Court of Appeal, Second Appellate District ["COA2"] (e.g. by Justices Frances Rothschild and Roger Boren). For example, in that time, there were 100% directly-inconsistent decisions by Judge Grimes and COA2 as to the failure by seller Michele Clark to give "clean" (i.e. clear) title to buyers Kinney etc because of Clark's undisclosed and unrecorded easement to the next-door neighbor Carolyn Cooper for encroaching fences. This was done by intentional misapplication of the *Evans* case [Evans v. Fraught, 231 Cal.App.2d 698, 705 (Cal. 1965)] **and** of Cal. Civil Code Sec. 3490 [i.e. "No lapse of time can legalize a public nuisance ...", so Cooper cannot own the ROW], which the COA2 has declined to correct. Also in that time, Judge Lavin ruled Kinney was a vexatious litigant ("VL") on Nov. 19, 2008 without supporting facts (e.g. Kinney was no longer a party); and COA2 Justice Boren unilaterally denied or dismissed Kinney's appeals regarding that VL order (***even though*** Cal. Const., Art. VI, Sec. 3, requires a panel of 3 justices to make a decision; **and** a pre-filing order is a mandatory injunction under Cal. CCP Sec. 525, so it is **not final** until an appeal is completed under Cal. CCP Sec. 916(a). Paramount Pictures Corp. v. Davis, 228 Cal.App.2d 827, 837-838 (Cal. 1964)

D. In the 2010 to 2012 time frame, ***compelled silence*** was being imposed on Kinney by LASC Judge Scheper, the COA2 (including Justice Roger Boren), and US Bankruptcy Court Judge Richard Neiter. Judge Scheper granted an attorney's fee award to Clark contrary to bankruptcy law. Justice Boren of the COA2 issued *In re Kinney*, 201 Cal.App.4th 951 (Cal. 2011) in which facts were misstated. Judge Neiter issued the Oct. 18, 2012 abandonment order in which he "held" that Kinney was not a "creditor" in Clark's 2010 Chapter 7 bankruptcy which is false because Kinney was specifically listed by Clark, and Kinney's "status" as a creditor cannot be changed (e.g. by an abandonment order issued after Clark's discharge).

E. In the 2013 to 2017 time frame, ***compelled silence*** was being imposed on Kinney by LASC Judge Scheper, the COA2, the COA4, the district courts, and the Ninth Circuit (e.g. the Dec. 28, 2017 "purge" of 8 appeals).

F. After Nov. 2008, the intentional misapplication of vexatious litigant law (e.g. by imposing that law upon an attorney who was not a party) was used to "justify" the ***compelled silence*** being imposed on Kinney.

G. After 2012, the intentional misapplication of bankruptcy law by state and federal courts (e.g. by saying Kinney was not a creditor) was used to "justify" the ***compelled silence*** being imposed on Kinney.

H. Kinney's "losses" that were caused by the misapplication of law (e.g. the *Evans* case; the vexatious litigant law imposed against an attorney) and/or by the misstatements of fact (e.g. which ignored Kinney was listed as a bankruptcy "creditor" by debtor Clark and/or not a party in certain cases even though Kinney was treated as a party by Judges and Justices).

I. Kinney's "losses" have been used to "justify" the ***compelled silence*** being imposed on Kinney by the state and federal judiciary, and by Cal. State Bar.

J. No opponent or judicial officer has ever cited legal authority that 42 U.S.C. Sec. 1983 civil right claims against a state actor (e.g. acting as a prosecutor under color of authority) can be totally ***precluded*** by being labeled as a *defacto* appeal of a prior state court decision (e.g. since federal civil rights laws are separate and district from any state laws or rights).

K. No opponent or judicial officer has ever cited legal authority that 42 U.S.C. Sec. 1983 civil right claims against a state or federal actor (e.g. acting as a prosecutor under color of authority) can be totally ***precluded*** by the use of *Rooker-Feldman* or other preclusion doctrines (e.g. since there has *never* been a trial or hearing on the merits with testimony under oath and cross-examination) or by a refusal to rule.

L. The purchase of the Los Angeles Fernwood property by buyers Kinney and Kempton in 2005 from Clark was made totally irrelevant to now-ongoing retaliation by bankruptcy debtor Michele Clark and her attorneys Marcus and Chomsky (and COA Justices and Cal. Supreme Court Judges and federal court Judges) ***after*** Clark had declared Chapter 7 bankruptcy on July 28, 2010 and was discharged on Aug. 13, 2012.

M. The 2005 pre-petition contract is unenforceable by buyers Kinney or Kempton or by seller Clark because all debts and obligations of seller Clark under that 2005 real estate purchase contract with buyers Kinney and Kempton, and under her 2007 hourly-fee retainer with attorneys Marcus etc, were completely eliminated

since all pre-petition contracts are now unenforceable as of July 2010 by operation of bankruptcy law.

The Ninth Circuit knew the above by Dec. 2017.

The dismissals of Kinney's cases and pending appeals were abuses of discretion because only the district courts and Ninth Circuit can adjudicate civil rights complaints under 42 U.S.C. Sec. 1983 and for ongoing violations of bankruptcy law (e.g. 11 U.S.C. Sec. 524).

Kinney's federal civil rights are different than his state rights. Therefore, retaliation is not subject to *Rooker-Feldman* doctrine or preclusionary rules, and is not a *defacto* appeal of state decisions, especially when the lower court decisions (e.g. dismissals) were made *sua sponte* or summarily without a trial.

Since 2008, Kinney has been repeatedly and unjustly denied his right to appeal in the courts because Kinney has been falsely labeled as a vexatious litigant [e.g. after directly-inconsistent decisions from 2008 to 2010 by the state courts]. When Kinney went to federal court with civil rights claims, *Rooker-Feldman* was used to dismiss his cases **even though** Kinney was precluded from proceeding with state court appeals and **even though** courts were acting as *prosecutors* of Kinney (e.g. by refusing to rule).

This same Ninth Circuit panel knows that, if Kinney hires an attorney to pursue his cases or appeals, they will label that attorney as Kinney's "puppet" (without any proof or evidentiary hearing as the judiciary has done before in state court), and sanction that attorney (as has been done before in state courts). This means Kinney cannot obtain the services of an attorney because no attorney wants to take that risk.

Recently, one of the reasons "why" the judiciary is penalizing Kinney was discovered by attorney Cyrus Sanai (i.e. the last attorney hired by Kinney in the state courts). In March 2018, that attorney filed a complaint in the U.S. District Court, Central District of California (Los Angeles), Case No. 2:18-cv-02136-RGK in which the history of these improper judicial actions was described in detail.

According to that complaint, a scheme was created in the Los Angeles County Superior Court ("LASC") by attorneys who acted as judges' "Court Counsel" (and who previously represented LA County Sheriff Lee Baca, now in prison). They were to identify and silence certain attorneys and litigants who had been deemed "difficult" by the judges. One was deemed to be "difficult" if the judges were embarrassed by successful challenges for disqualification, and/or by frequent reversals of their trial court's decisions.

As part of the scheme, the method used to keep honest judges silent (about "difficult" litigants and attorneys) was to threaten them with "bad" judicial assignments (e.g. assign them to traffic court) in the vast Los Angeles County Superior Court system.

As part of the scheme, some state lower court judges were promoted to the state appellate court (e.g. Judge Grimes, Judge Lavin) after their "win/loss" records were improved by not having their rulings reversed.

As part of the scheme, the "difficult" attorneys and litigants would be unable to succeed in getting adverse decisions overturned. In addition, sometimes fake charges would be created to impose punitive measures on them. Furthermore, sometimes charges

would be brought by the Calif. State Bar to subject the "difficult" attorneys to disciplinary charges.

Here, all of the above has happened to Kinney.

As part of the scheme, the Court Counsel and those judges have expanded the unconstitutionally-vague vexatious litigant law to include attorneys [In re Kinney, 201 Cal.App.4th 951 (Cal. 2011) in an appeal in which Kinney was not a party or appellant] **and** represented litigants [Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017)] ***without*** Calif. Legislative approval or authority. Note *Kinney v. Clark* also identifies violations of bankruptcy law by debtor Michele Clark, by her own listed-creditor attorney David Marcus; by her own attorney Eric Chomsky; by LASC Judge Barbara Scheper; **and** by Cal. Justices Frances Rothschild, Victoria Chaney and Jeffrey Johnson.

From 2008 onward, special retaliation and vexatious litigant rules have applied to Kinney regardless of whether Kinney was an *in pro se* litigant, just an attorney for a client, a defendant **or** a non-party.

By these acts, this Ninth Circuit panel has: (1) denied Kinney his rights to appeal or seek redress of grievances [e.g. for the 8 pending appeals involving bankruptcy fraud by discharged Chapter 7 debtor Clark and her own attorneys; violations of the Clean Water Act in the ocean by Laguna Beach; and violations of the ADA due to obstructed public rights-of-way in Los Angeles]; (2) denied Kinney his inherent right to "honest services" from all state and federal judges [e.g. since Judge Gutierrez refused to rule on Kinney's counter-claim] **and** (3) interfered with Kinney's ongoing interstate commerce under color of official right [e.g. since Kinney owns property

outside of Cal.; has suppliers of products outside of Cal.; and has ongoing businesses outside of Cal., all of which have been jeopardized by these rulings].

The acts by this panel violate 18 U.S.C. Secs. 1346 and/or 1951, and give rise to new civil rights and/or RICO claims (e.g. since they acted as prosecutors of Kinney). See United States v. Inzunza, 638 F.3d 1006 (9th Cir. 2009); United States v. Frega, 179 F.3d 793 (9th Cir. 1999); United States v. Carbo, 572 F.3d 112 (3rd Cir. 2009); United States v. Stephenson, 895 F.2d 867 (2nd Cir. 1990); United States v. Burkhart, 682 F.2d 589 (6th Cir. 1982); United States v. Frazier, 560 F.2d 884 (8th Cir. 1977); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980).

As for Commerce Clause violations, when Kinney was an attorney in Calif., he was granted *pro hac vice* status in Colorado for cases about his mineral interests which is an ongoing interstate enterprise. Keith v. Kinney, 961 P.2d 516 (Colo. App. 1997); Kinney v. Keith, 128 P.3d 297 (Colo. App. 2005); Keith v. Kinney, 140 P.3d 141 (Colo. App. 2006)].

Before dismissing Kinney's 8 pending appeals and issuing a global pre-filing review order on Jan. 19, 2018 [#17-80256], the Ninth Circuit ***knew the entire history*** of the ongoing punishment and retaliation against Kinney because almost all these issues were briefed by Kinney in the Ninth Circuit's reciprocal disbarment matter [#15-80090] and at the hearing before the Ninth Circuit Appellate Commissioner for which Kinney has the oral proceedings transcribed on paper and provided that to the Ninth Circuit (e.g. except for the issues that arose after about 2016).

These issues were also briefed by Kinney in Ninth Circuit appeals on many occasions. For example, prior Ninth Circuit appeals include [in no particular order]: (1) Kinney v. State Bar of California, Ninth Circuit Appeal No. 15-55329 [civil rights violations; currently SCOTUS #17-219]; (2) Calif. Supreme Court v. Kinney, Ninth Circuit Appeal No. 15-16184 [civil rights violations]; (3) Kinney v. Lavin, Ninth Circuit Appeal No. 14-17357 [exceptions to judicial immunity; previously SCOTUS #15-5260]; (4) Kinney v. Clark, Ninth Circuit No. 13-55126 [2012 remand in spite of Clark's 2010 bankruptcy, previously SCOTUS #15-5942]; (5) Kempton v. Clark, Ninth Circuit Appeal No. 15-55546 [2015 remand in spite of Clark's 2010 bankruptcy]; (6) Kinney v. Chomsky, Ninth Circuit Appeal No. 14-56757 [extortion based on unenforceable pre-petition contracts]; (7) Kempton v. Clark, Ninth Circuit Appeal No. 14-60081 [Clark's 2010 bankruptcy without any relief-from-stay order, no reaffirmation or assumption; bankruptcy fraud by falsely amending schedules as to unenforceable prepetition contracts]; **and** (8) Toste v. County of El Dorado, Ninth Circuit Appeal No. 14-17025 [intentional concealment of the County's 2006 grading plan and permit to benefit plaintiffs Smedberg in their 2007 state court trial against defendants Toste and their attorney Kinney].

There have been many Ninth Circuit appeals by Kinney since 2015. For example, these include [in no particular order]: (1) Kinney v. State Bar, Ninth Circuit Appeal No. 16-16689 [Sherman Act violations by the State Bar]; (2) Kinney v. Gutierrez, Ninth Circuit Appeal Nos. 16-56735 and 16-56750 [improper refusal to rule on Kinney's counterclaim in regards to Kinney's removal of Clark's state court motion for more attorneys fees based on unenforceable pre-petition contracts after her 2012

Chapter 7 bankruptcy discharge]; (3) Kinney v. Takeuchi, Ninth Circuit Appeal No. 16-56733 [intentionally-false amendments of Clark's Chapter 7 bankruptcy schedules under penalty of perjury based on unenforceable pre-petition contracts, which is bankruptcy fraud under 18 U.S.C. Secs. 152 and 157 and predicate acts under RICO]; (4) Kinney v. Clark, Ninth Circuit Appeal No. 16-56162 [attempts by listed unsecured creditors of debtor Clark to collect on unenforceable pre-petition contracts from listed unsecured creditor Kinney after Clark's 2012 bankruptcy discharge which violates the FDCPA]; (5) Kinney v. Clark, Ninth Circuit Appeal Nos. 16-55343 and 16-55347 [attempts by Chapter 7 debtor Clark and her listed unsecured-creditor attorneys Marcus to obtain state court attorney fee orders against listed unsecured-creditor Kinney based on unenforceable pre-petition contracts for which attorneys Marcus never satisfied state or federal law requirements for enforceability as to their 2007 hourly-fee retainer that had a charging lien]; (6) Kinney v. Clerk of Cal. Court of Appeal, Ninth Circuit Appeal No. 17-55081 [improper and ongoing refusal to assign an appellate number to Kinney's 2012 appeal as a "defendant" for ongoing ocean pollution nuisance case in Laguna Beach, and one of the matters falsely characterized in *In re Kinney*]; (7) Kinney v. Three Arch Bay Comm. Serv. District, Ninth Circuit Appeal No. 17-55899 [Clean Water Act case for ongoing ocean pollution in Laguna Beach, and one of the matters falsely characterized in *In re Kinney*]; **and** (8) Kinney v. Rothschild, Ninth Circuit Appeal No. 17-56356 [vexatious litigant ruling by Cal. Court of Appeal against represented appellant Kinney, contrary to limitations in the Calif. vexatious litigant statute].

OPINIONS BELOW

On Dec. 28, 2017, a three judge panel of the Ninth Circuit issued simultaneous dismissals of 8 pending appeals by Kinney, including the one being addressed in this petition. [Appendix A, 1[1]].

On April 19, 2018, the same three judge panel of the Ninth Circuit issued simultaneous denials of the petitions for rehearing on each appeal [App. B, pg. 3].

The rulings violated Kinney's "federal" constitutional rights (e.g. First Amendment) and civil rights under color of authority or official right (e.g. 42 U.S.C. Sec. 1983), so all immunity was eliminated. Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 102-106, 123 n. 34 (1984); Patrick v. Burget, 486 U.S. 94, 101-104 (1988); Pennsylvania v. Union Gas Co., 491 U.S. 1, 57 (1989); F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 631-638 (1992).

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code ("U.S.C."), Secs. 1254(1), 1257(a), and/or 2101(c).

This Ninth Circuit panel has violated Kinney's First Amendment rights by ***compelling silence*** and by acting as ***prosecutors*** of Kinney under color of official right which resulted in losses to Kinney's interstate commerce businesses and/or loss of "honest services" from the state and/or federal judiciary. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18

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[1] Citation method is Appendix ("App."), exhibit letter, and sequential page number.

(1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to address violations of state and/or federal law by the state judicial courts (e.g. Cal. Court of Appeal and Supreme Court), by the federal district courts, and/or by the Ninth Circuit.

The federal courts have exclusive and original jurisdiction under 28 U.S.C. Sec. 1331, 1441 and/or 1443 and under 42 U.S.C. Sec. 1983 etc to consider violations of federal constitutional rights (e.g. First Amendment rights) and other federal statutes (e.g. violations of the Commerce Clause, "honest services" law, the Hobbs Act, and bankruptcy law).

The federal courts have exclusive and original jurisdiction under 28 U.S.C. Sec. 1331, 1441 and/or 1443 to consider violations of federal civil rights.

STATEMENT OF THE CASE

This petition involves the same Ninth Circuit panel who summarily dismissing 8 of Kinney's ongoing appeals and denying petitions for review to ***compel silence*** and to punish him for attempting to enforce his federal constitutional and civil rights.

The petition also involves **compelling silence** as to ongoing bankruptcy law violations in the state courts since Kinney was a "listed" bankruptcy creditor who is being made liable for attorney's fee awards under unenforceable pre-petition contracts regarding Chapter 7 discharged debtor Michele Clark.

There have been other petitions filed by Kinney in this Court. These include but are not limited to: (A) No. 15-5260, Kinney v. Lavin et al, regarding unauthorized state court rulings made in the complete absence of subject matter jurisdiction against Kinney; (B) Nos. 15-6896, 15-6897 and 15-7133, Kempton v. Clark and her attorneys Marcus et al, regarding ongoing bankruptcy fraud both before and after debtor Clark was discharged as to unenforceable pre-petition contracts; (C) No. 16-252, Kinney v. Cal. Supreme Court et al, regarding violations of Kinney's federal rights by the Cal. State Bar and others, and Kinney's removal of that matter to the federal district courts; (D) No. 17-219, Kinney v. State Bar regarding civil rights violations by the State Bar and others; and (E) In re Kinney, Ninth Circuit No. 17-80256 which involved an order to show cause on Dec. 28, 2017 to limit Kinney's rights to redress of grievances in the Ninth Circuit.

SUMMARY OF LOWER COURT PROCEEDINGS

On Dec. 28, 2017, Kinney had pending appeals in the Ninth Circuit including the 8 pending appeals that were suddenly and simultaneously dismissed by the Ninth Circuit panel including the appeal in this petition. [App. B, 3].

Kinney timely filed petitions for rehearings in each of those 8 dismissed appeals, including the appeal here.

On April 19, 2018, this same panel of the Ninth Circuit denied those petitions [App. A, 1].

This petition is being filed to address the ongoing prosecution of Kinney by ***compelling silence*** and other means, and the ongoing federal law violations

to the detriment of Kinney (e.g. to his interstate commerce businesses; to his rights as a listed bankruptcy creditor in Clark's 2010 bankruptcy).

STATEMENT OF FACTS

In July 2010, seller Michele Clark filed a Chapter 7 bankruptcy petition, and listed Kinney as a creditor. As a result, all pre-petition contracts (e.g. the 2005 real estate purchase contract between seller Clark and buyers Kinney etc) are unenforceable. The state courts have completely ignored these facts and law; see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017).

After Clark's discharge in 2012, the state courts kept granting attorney's fee awards to debtor Clark and against listed creditor Kinney based on the now unenforceable 2005 real estate purchase contract.

Debtor Clark and her attorneys Marcus and Chomsky continued to file state court motions for attorney's fees based on a now unenforceable 2005 pre-petition real estate purchase contract.

Kinney filed this DJA case to have the federal court determine the legal relations as to unenforceable pre-petition contracts and his rights as a listed creditor.

Judge Gutierrez removed himself to USDC 16-07440, but dismissed all claims in USDC 16-06168.

Judge Gutierrez dismissed the claims *even though* Kinney was a "listed" creditor who was a victim of intentional violations of the *discharge injunction* by debtor Michele Clark, by listed-creditor attorney Marcus and Chomsky; by state Judges and Justices,

and by federal Judges, all of whom *ignored* violations of bankruptcy law and Kinney's federal civil rights

District court Judge Gee dismissed Kinney's DJA case. Kinney appealed that to the Ninth Circuit.

On Dec. 28, 2017, Kinney had pending appeals in the Ninth Circuit including but not limited to 8 pending appeals all of which were simultaneously dismissed by the same Ninth Circuit panel, including the appeal in this petition [App. B, 3].

On April 19, 2018, the Ninth Circuit simultaneously denied Kinney's petitions for rehearing in all 8 appeals including the appeal here [App. A, 1]

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because The Courts are Compelling Silence Which Violates Kinney's First Amendment Rights; And The Method and Application of Alleged Due Process by the Ninth Circuit Severely Impairs Meaningful Review of Important Questions of Federal Law, And Severely Impairs Rights Guaranteed Under The First, Fourth, Fifth And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals.

This Ninth Circuit panel (and the district courts and state courts) are ***compelling silence*** on Kinney in violation of the *Janus, NIFLA* and *Riley* decisions (and in violation of bankruptcy law given Kinney's status as a listed bankruptcy creditor. [App. A, 1; App. B, 3] Janus v. American Federation of State, County and

Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. ___ (2018); Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

This panel also acted as *prosecutors* of Kinney, not neutral arbitrators of disputes, when they dismissed his appeal(s) and denied his petition(s) for rehearings; and violated Kinney's federal constitutional and civil rights, the "honest services" law, and the Hobbs Act. [App. A, 1; App. B, 3] Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir. 1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

This panel's acts were discriminatory retaliation against Kinney (e.g. see *In re Kinney,* and *Kinney v. Clark*) to the detriment of Kinney, his cases, his appeals, his interstate businesses, and/or his prior clients. 42 U.S.C. Secs. 1983 and 1985.

This panel's acts were done to restrict Kinney's First Amendment rights (e.g. as to his appeals), to restrict his fair access to the courts, **and** to retaliate against him. Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986); United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d

1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" including a right to a review by appeal (which is being routinely denied to Kinney in both the state and federal courts); and that First Amendment Right is "one of the most precious of the liberties safeguarded by the Bill of Rights". BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)].

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in appellate courts, which chill or penalize the exercise of First Amendment rights, and act to limit direct review by a higher court. "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense." NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

Fundamental to the Fourteenth Amendment's right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

When a person is deprived of his rights in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 86-87 (1988).

Although a particular state is not required to provide a right to appellate review, procedures which adversely affect access to the appellate review process, which the state has chosen to provide, requires close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956). This should apply to all courts.

An appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961).

Certiorari should be granted to provide guidance on the method and manner in which both the federal and state courts apply, restrict or summarily deny the right of access to the courts, and to compel silence on "difficult" attorneys and *pro se* litigants.

As to the acts of this panel of the Ninth Circuit, an appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. "A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955).

While claims of bias generally are resolved by common law, statute, or professional standards of the bench and bar, the Due Process Clause of the Fourteenth Amendment "establishes a constitutional floor." Bracy v. Gramley, 520 U.S. 899, 904 (1997).

This court has repeatedly held that due process requires recusal not only where there is proof that a judge is actually bias, but also where an objective inquiry establishes a probability of bias. Given prior rulings by this panel, it can be argued that this panel is biased against Kinney. Caperton v. A. T. Massey

Coal, Co., Inc., 129 S.Ct. 2252, 2259-2263, (2009); Tumey v. Ohio, 273 U.S. 510, 532 (1927); Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 825 (1986); Withrow v. Larkin, 421 U.S. 35, 47 (1975).

This panel that ignored prior orders were "void" (e.g. *In re Kinney*) and "void" orders cannot support subsequent decisions. Sinochem Intl. Co. v. Malaysia Intl. Ship Corp., 549 U.S. 422, 430 (2007); Plaza Hollister Ltd. Ptsp v. Cty of San Benito, 72 Cal.App.4th 1, 13-22 (Cal. 1999); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14, 19-23 (Cal. 2009).

Besides **compelling silence**, this panel has ignored the: (1) anti-competitive nature of their rulings; (2) adverse impacts on Kinney's interstate commerce businesses; (3) adverse impacts on Kinney as a "listed" bankruptcy creditor in debtor Clark's 2010 Chapter 7 bankruptcy; and (4) Kinney's DJA rights, all subject to review by federal courts who had an obligation to determine the issues. Goldfarb v. Virginia State Bar, 421 U.S. 773, 777-792 (1975); F.T.C. v. Phoebe Putney Health Systems, Inc., 133 S.Ct. 1003, 1015 (2013); State Board of Dental Examiners v. F.T.C., 135 S.Ct. 1101, 1110-1112 (2015); 28 U.S.C. Secs. 2201-2202; McCarthy v. Madigan, 503 U.S. 140, 146 (1992); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-818 (1976).

CONCLUSION

This petition should be granted.

Dated: July 18, 2018

By:___/s/_____
Charles Kinney, petitioner in pro per