

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

UNITED GRAND CORPORATION,

Plaintiff and Appellant,

v.

MALIBU HILLBILLIES et al.,

Defendants and Respondents;

CYRUS SANAI,

Objector and Appellant.

B283833

(Los Angeles County
Super. Ct. No. BC554172)

VERIFIED APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

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To the Honorable Elena Kagan, Associate Justice of the Supreme
Court of the United States, as Circuit Justice for the United States Court of
Appeals for the Ninth Circuit:

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Associate Justice of the Supreme
Court of the United States, as Circuit Justice for the United States Court of
Appeals for the Ninth Circuit:

Applicant Cyrus Sanai, the moving party, moves for an extension of 60 days days from January 7, 2020 to and including March 8, 2020 within which for him and United Grand Corporation to file a petition for a writ of certiorari to review the judgment of the Court of Appeal of the State of California dated May 22, 2019 (attached as Appendix A and B), as to which a petition for review with the California Supreme Court was denied on October 9, 2019. *See App. A-B; App. E.* The due date for a petition for a writ of certiorari is 90 days after the date of the order denying the petition for review, or January 7, 2019. Jurisdiction for a petition for certiorari arises under 28 U.S.C. §1257. The grounds for an extension are that this is a case involving the conflict between California's published case law for disqualification of appellate justices and this Court's decision in *Williams v. Pennsylvania*; and that in the next 60 days there will be either a deposition or trial testimony of the judge who lacks impartiality, Elizabeth Grimes. This motion is filed one court day after the normal deadline of 10 days before the deadline; the reason for the late-filing was an order of a federal district court which made one of the two opportunities to depose Grimes less likely. See Paragraph 15, below.

1. This is one of a number of pending and past actions which arise from two separate acts of Petitioner Cyrus Sanai that offended former Ninth Circuit Chief Judge Alex Kozinski, and former Los Angeles Superior Court Judge Elizabeth Grimes, now a Justice of the Second Appellate District of the

California Court of Appeal. Kozinski and Grimes, separately and in cooperation with each other, initiated decades long retaliatory campaigns against Sanai, including disciplinary proceeding in the State Bar Court that are ongoing after five years. Grimes' retaliation was due to Sanai removing her from bias from a separate litigation, *Sanai v. Saltz*. Despite the determination that she was biased in the constitutional sense, Grimes was one of the panel members in the case at issue, refusing to recuse. See App. A; App. D. As discussed below, she will be forced to testify about her relationship with Sanai, either in deposition or at trial in State Bar Court, in the next 60 days. This testimony by Grimes will be highly relevant in evaluating the petition for certiorari.

2. Grimes' campaign seeks to avoid the fate that befell and her friend, Alex Kozinski. Kozinski's campaign against Sanai helped destroy his judicial career. He was forced to resign his position as a Circuit Judge after two articles in the Washington Post demonstrated he committed perjury in denying in judicial misconduct proceedings arising from Sanai's discovery of pornography he operated at alex.kozinski.com was ever shown to third parties. M. Zapatosky, Prominent appeals court Judge Alex Kozinski accused of sexual misconduct" *The Washington Post*, Dec. 8, 201; M. Zapatosky, "Nine more women say judge subjected them to inappropriate behavior, including four who say he touched or kissed them" Washington Post, December 15, 2017. Kozinski made this testimony in famous judicial misconduct

proceedings in 2009 that Sanai was responsible for. Kozinski's conflict with Sanai begin in 2005, when Sanai wrote an article, "Taking the Kozinski Challenge" that was published in the San Francisco Recorder and its website, law.com. In that article Sanai discussed the pending change in the Federal Rules of Appellate Procedure allowing citation to unpublished appellate decisions, discussing Kozinski's fervent opposition thereto. In so doing, Sanai discussed the fact that the Ninth Circuit's unpublished case law on the *Rooker-Feldman* doctrine was directly contrary to its published case law. Kozinski erupted with a response article, "Kozinski Strikes Back" that came in two versions, a physical copy and an on-line copy linked to additional materials on the alex.kozinski.com website. In doing so Kozinski committed judicial misconduct, and Sanai filed a misconduct complaint against Kozinski that took 14 months to resolve; in the order addressing it, then Chief Circuit Judge Schroeder ruled that Kozinski apologized for his behavior (a lie) and that there was no such thing as the alex.kozinski.com website. Sanai then investigated the website (which Kozinski temporarily took down) and eventually discovered the pornography stash, tipping off the Los Angeles Times in 2008. The publication of an article about Kozinski's website caused Kozinski's filing of a misconduct complaint against himself. Sanai's pending and subsequent misconduct complaint against Kozinski, though ordered to be transferred to the Third Circuit, was illegally held by it. A complaint by

former head of the Administrative Office of the Court, L. Ralph Mecham, however, was transferred.

3. While that was ongoing, Sanai disqualified Grimes in a case in which he was the plaintiff, *Sanai v. Saltz*, for judicial bias in a pair of Court of Appeal opinions that humiliated Judge Grimes. *See Sanai v. Saltz*, 2005 WL 1515401 (Cal.App. 2 Dist.) Unbeknownst to Sanai, Grimes was then being evaluated for an appointment to the Court of Appeal by then-Governor Schwarzenegger; her reversal and disqualification caused her nomination to be placed at the back of the line. In retaliation Grimes caused her attorney, Frederick Bennett, to file a formal bar complaint against Sanai, which was investigated and found to be frivolous, and a secret bar complaint after being put in contact with opposing counsel in unrelated litigation in Washington. In 2008 Kozinski and Grimes joined forces to attack Sanai after he had tipped off the *Los Angeles Times* about Kozinski's website. Kozinski enrolled his wife, Marcie Tiffany, to attack Sanai in print for his disqualification of Grimes; other Kozinski associates, including his former clerks Larry Lessig and Ted Frank, and Tea Party Legal Blogger Patrick "Patterico" Frey joined in the scrum.

4. By 2009, Kozinski had been admonished by the Third Circuit, which accepted his testimony, without investigation, that he had never shown anyone the contents of the server. In fact, as two judicial misconduct complaints filed jointly by Sanai and Mecham explained, the

alex.kozinski.com porn server was a substitute for Kozinski's rampant downloading and streaming of pornography in his chambers, which drew the notice of court administrators around 1998. When the Administrative Office of the Courts began tracking who in the judiciary was downloading or streaming porn through its firewall software, Kozinski disabled the software, leaving the Ninth and two other Circuits open to hacker attack. Kozinski personally assaulted Mecham in print in the Wall Street Journal, and used his press relationships, gained from acting as a background or anonymous source on judicial and legal issues, to obtain favorable cover in *The New York Times*. Kozinski and the Ninth Circuit Judicial Council forced the Administrative Office of the Court to cease identifying the contents of downloaded video files and consented to the firewall being reactivated. Kozinski learned that there was no possibility of stopping system administrators from keeping and record logs of what sites judicial computers visited, as this was part of security software monitoring computers from hacking. He therefore transferred his favorite pornography to his alex.kozinski.com server, and accessed the pornography in his chambers from there. When appointed as Chief Judge, Kozinski fired the Circuit Executive who had been attempting to crack down on pornography, Greg Walters, and replaced him with a loyalist, Cathy Catterson.

5. In 2009 the Judicial Council, in retaliation for Sanai's publicizing Kozinski's porn server and filing a misconduct complaint that

drew the connection from Kozinski's takedown to censure Sanai for bringing misconduct complaints against Kozinski and others. *In Re Complaint of Judicial Misconduct (Kozinski et. al.)* 575 F.3d 279 (2009). In 2010 the Judicial Council through Catterson filed a bar complaint against Sanai. However, when requested to provide supporting documents such as the complaint Sanai had filed against Kozinski and others, Catterson **refused**. As California State Bar Court Judge Miles later wrote:

In 2010, a complaint was made to the State Bar by the Judicial Council of the Ninth Circuit regarding Respondent's purportedly frivolous complaints to it about a number of federal judges. This complaint by the Judicial Council of the Ninth Circuit subsequently formed the basis for Count 6 of the pending NDC. When the complaint was received, the State Bar opened case No. 10-0-09221 (the '10 case) and contacted Respondent about the matter. Then, after learning that the Judicial Council of the Ninth Circuit would not release to the State Bar the actual complaints filed by Respondent against the federal judges, the State Bar decided to issue a warning letter to Respondent in November 2011, and closed the case.⁷ (Ex. 1040.) That decision was explained, both orally and in writing, by the State Bar to Cathy Catterson, a representative of the Judicial Council of the Ninth Circuit, on November 8, 2011. (Ex. 1041). Thereafter, she complained of the State Bar's decision in a letter, dated January 19, 2012, directed to the then Acting Chief Trial Counsel of the State Bar.

⁷ The State Bar had previously notified the Judicial Council of the Ninth Circuit in May 2011 that it would be difficult to pursue any complaint that Respondent's complaints against various federal appellate justices were frivolous without having access to the actual underlying complaints. As stated by the State Bar at that time: "As you may be aware, to prevail in State Bar disciplinary proceedings, our office must prove by clear and convincing evidence that an attorney committed willful misconduct. Although the Judicial Council's order of September 30 2010, will certainly be a useful piece of evidence to establish that Mr. Sanai engaged in misconduct by filing frivolous

misconduct complaints, it would be insufficient standing alone to prove by clear and convincing evidence that Mr. Sanai engaged in misconduct warranting discipline, especially since the order does not include any specific findings of fact but rather includes only the conclusion that Mr. Sanai abused the misconduct complaint procedure.” (Ex. 1039, p. 2.)

⁸ Given the State Bar’s inability to provide this court with a copy of the actual complaints filed by Respondent against the federal judges, this court – as accurately predicted by the State Bar in May 2011 –eventually dismissed that count at trial due to the State Bar’s failure to provide clear and convincing evidence that those complaints were frivolous. The evidence was not sufficient even to enable this court to identify all of the judges against whom complaints had been filed.

Order, In Re Sanai, Case No. 10-0-09221, March 20, 2015.

6. After the politically ambitious Jayne Kim was appointed Chief Trial Counsel, was appointed, Catterson convinced her to file a complaint based not only the misconduct complaint case, but other ligation in which Kozinski had been interfering with both publicly and behind the scenes.

7. By 2014 Kim had created a strategy of bringing claims that were barred by the limitation rule and the evidence-less claim of the JC to trial. Sanai, defending himself, obtained dismissal of all but one charge when bar prosecutors rested in 2015. One charge was abated until August of 2019, however.

8. In 2010, after Grimes had served two stints as a sit-in Justice to prove her ability, Gov. Scharzenegger nominated her as a Justice to the California Court of Appeal, Second Appellate District. Anticipating that Sanai would oppose her nomination before the California Commission on Judicial Appointments, she had Bennett communicate to the opposing

counsel in the *Sanai v. Saltz* case that it should move to have Sanai declared a “vexatious litigant”, utilizing the 2009 censure order as grounds. However, Sanai was able to attack the proceedings in the Court of Appeal as void, and obtain recusal of the judge who made the attempt. Sanai then filed an opposition to Grimes nomination, pointing out that Grimes had double the average reversal rate, and that she had filed a meritless official bar complaint against Sanai (Sanai did not know about the second, secret complaint at the time) and been removed from the case for misconduct. In response, Grimes had her lawyer, Bennett, file an opposition in which Bennett claimed that Grimes had nothing to do with any bar complaint, and stating that Grimes had been removed for unconstitutional appearance of bias, not misconduct.

9. In 2014 the state bar prosecutors handed over to Sanai the secret bar complaint Bennett had made after the first, formal complaint. In the secret bar complaint, Bennett admitted that he had filed the first bar complaint on behalf of Grimes. This demonstrated that Grimes had committed fraud on the Commission on Judicial Performance to obtain her position.

10. At Sanai’s trial, he prevailed on all but one charge when the state bar rested. In addition to dismissal of the charge brought by the Ninth Circuit Judicial Council due to its refusal to furnish any documents or send any witness, the main charge arising from the *Sanai v. Saltz* case was

dismissed when the lead witness, a court clerk, recanted her prior testimony; the state bar court judge explicitly found that her prior testimony had been occurred after joint coaching from opposing counsel and Grime's successor on the case. The last charge, which related to the same *Sanai v. Saltz* care from which Grimes had been disqualified, was put on hold until August of 2019.

11. In California, judicial misconduct falls under the jurisdiction of the Commission on Judicial Performance, which is comprised of appointed panel of lay people, attorneys and judges. While the Commission has a track record of supervising trial court judges, due to the influence of the appointed judges and attorneys, appellate judges have long been off-limits to judicial discipline; only when public exposure of appellate justice misconduct arises is anything done. The Commission has refused to take any action regarding Judge Grimes, stating that it needed "additional evidence"; such evidence would consist of legal or mainstream coverage of the misconduct charge. After the failure of state bar charges to take Sanai down, Grimes, a member of the four judge Division to which the instant case was assigned, decided to utilize it to obtain Sanai's imprisonment before the state bar case was re-opened and Grimes was required to testify.

12. Because Grimes had been determined in the *Sanai v. Saltz* case to be biased against Sanai in the Constitutional sense by her personal attacks against Sanai and the legally and factually nonsensical basis for her rulings against Sanai, her presence on Division Eight of the Second

Appellate District and signature on the instant decision rendered the instant case a violation of due process. *Williams v. Pennsylvania*, 579 U.S. ___, 136 S.Ct. 1899, 195 L.Ed.2d 99 (2016). A motion to disqualify Grimes and her colleagues was separately denied; the order attached hereto as Appendix D. In denying the motion, the Court of Appeal relied upon California case law, *Kaufman v. Court of Appeal*, 31 Cal.3d 933 (1982) that precedes and conflicts with *Williams, supra*. But this case added a new twist: the statements about the procedural history of the action were, in this opinion and prior opinions, fraudulent, in that they explicitly misrepresented the procedural history of the litigation. Federal review of “unreasonable” factual determinations by state courts arise with some frequency in habeas review of state court criminal proceedings; however, the extent to which a manifestly false characterization of the record by a state appellate court violates the due process right to be heard has never been addressed except by Judge Kozinski in *Taylor v. Maddox*, 366 F.3d 992, 1001, 1007-8.

13. Sanai will by February of 2020 have the opportunity to depose Grimes or examine her at trial. The opportunity which is certain to occur is her examination at Sanai’s bar trial, which resumes at the end of February, 2020. Grimes was served a trial subpoena and she never contested it. She is required as a matter of judicial ethics to comply. In addition, a motion to take her deposition before trial is currently pending before the State Bar

Court. While granting a pre-trial deposition is not required, Sanai has a statutory and constitutional right to call her at this trial.

14. The second potential proceeding in which a deposition of Grimes might occur is in *Sanai v. Villaneuva*, a habeas proceeding in the Central District of California Superior Court, Case 2:19-cv-02231-RGK-MRW. This proceeding was filed prior to Sanai appearing at oral argument in the appeal at issue. At the oral argument, Sanai explained that he had just filed a habeas petition and surrendered to be sent to jail. Grimes then released him on his own recognizance—capture on audio—but denied this ever occurred in the opinion. *See* App. A. This has lead to the unusual situation where Grimes and her colleague have labeled Sanai a “fugitive from justice” but he continues to appear in civil and criminal courts, passing regularly through court security, due to the secret no-arrest order issued by Grimes. Sanai filed a motion to take Grimes deposition that was UNOPPOSED by opposing counsel, relying on *Bracy v. Gramley*, 520 U.S. 899, 908-909, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997). However, on December 26, 2019 this unopposed motion was denied by the Magistrate Judge on legally erroneous grounds. On December 26, 2019 Sanai was finalizing this motion. The denial of his deposition motion in *Sanai v. Villanueva* required him to refrain from dispatching this motion, as it would not have accurately explained the procedural situation regarding Grimes’ upcoming deposition or trial

appearance, and it required Sanai to change his request from 30 days to 60 days, given that the unopposed motion to take Grimes deposition was denied.

15. Because the Magistrate Judge in *Sanai v. Villaneuva* denied the motion to take Grimes' deposition just before Sanai was about to send this motion for filing, he pulled the filing and rewrote this motion to account for the new facts and extend the requested extension from 30 to 60 days. This is the reason that the motion is being filed one court day after the December 29, 2019 cut off of ten days before the certiorari deadline. This last minute change in the facts requiring a substantial rewrite of the motion constitutes extraordinary circumstances meriting the acceptance and grant of this motion.

16. The extension will in no way injure or prejudice the other side, since no stay of mandate has been requested. The availability of new evidence that will be obtained in the next 60 days merit the extension for filing the petition.

17. Appendix A hereto is a true and correct copy of the Court of Appeal opinion at issue. Appendix B is the publication order. Appendix C is the order denying the timely petition for rehearing. Appendix D is the order denying, *inter alia*, the recusal of Justice Grimes. Appendix E is the docket from the Supreme Court case showing the denial date for the petition for review; I did not receive a copy of the denial order itself.

CONCLUSION

For the foregoing reasons, applicant Cyrus Sanai respectfully requests that the Court extend the time within which to file a petition for a writ of certiorari in this matter for Sanai and United Grand Corporation to and including March 8, 2020.

Respectfully submitted,



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I declare that under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this December 27, 2019 at Beverly Hills, CA



CYRUS SANAI