No. 20-17

IN THE SUPREME COURT OF THE UNITED STATES

WADE ANTHONY ROBERTSON,

Petitioner,

v.

RICHARD HONN, *et. al*,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In 1948 Congress passed the federal judgment registration statute, 28 U.S.C. § 1963, which reads in relevant part as follows: "A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner. ..." The questions presented are as follows:

1. Whether a registration court, pursuant to 28 U.S.C. § 1963, has the power to amend or annul the judgment of the rendering court so registered, a question as to which the courts of appeals are in conflict.

2. If so, may a registration court refuse to assert its jurisdiction over the registered judgment when the judgment is challenged in the registration court for being void or a result of a fraud on the rendering court?

In *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423 (1982) this court extended the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), to civil enforcement proceedings, but held in relevant part that federal court abstention was only appropriate if the parallel state "proceedings implicate important state interest"; and the state proceedings will provide the federal plaintiff with "an adequate opportunity in the state proceedings to raise [Federal] constitutional challenges." *Middlesex*, 457 U.S. at 433. The questions presented are as follows:

3. Whether a "facially conclusive" claim of federal preemption precludes finding an "important state interest" in the state proceeding such that *Younger* abstention is not appropriate, a question as to which the courts of appeals are in conflict.

4. Whether the requirement of "an adequate opportunity in the state proceedings to raise [Federal] constitutional challenges" for purposes of *Younger* abstention can ever be satisfied where the first and only opportunity to raise federal constitutional challenges to a state court's action is by a single petition for review to that same court even though that state court has adopted a policy of always denying any petitions for review and also of never providing the reasons for any determinations made, or the evidence it relied on, or facts it found, or the reasons supporting the actions it was taking thereof.

LIST OF PARTIES

RICHARD A. HONN, (in his official capacity only);
CATHERINE D. PURCELL, (in her official capacity only);
JUDITH A. EPSTEIN, (in her official capacity only;)
LUCY ARMENDARIZ, (in her official capacity only);
JAMES P. FOX, (in his official capacity only;)
DANETTE E. MEYERS, (in her official capacity only);
JANET L. BREWER, (in her official capacity only);
MARK BROUGHTON, (in his official capacity only);
MICHAEL COLANTUONO, (in his official capacity only);
GLENDA CORCORAN, (in her official capacity only);
TERRANCE W. FLANIGAN, (in his official capacity only);
RENEE LABRAN, (in her official capacity only);
JASON PANG FE LEE, (in his official capacity only);
JOANNA MENDOZA, (in her official capacity only);
RICHARD RAMIREZ, (in his official capacity only);
SEAN M. SELEGUE, (in his official capacity only);
STACIE SPECTOR, (in her official capacity only);
BRANDON N. STALLINGS, (in his official capacity only);
ALAN STEINBRECHER, (in his official capacity only);
TODD F. STEVENS, (in his official capacity only);
GREGORY DRESSER, (in his official capacity only);
CYDNEY BATCHELOR, (in her official capacity only);
SHERRIE B. MCLETCHIE, (in her official capacity only);
ROBERT A. HENDERSON, (in his official capacity only);
ESTHER ROGERS, (in her official capacity only);
ELIZABETH RINDSKOPF PARKER, (in her official capacity only);
REBECCA FARMER, (in her official capacity only);
LAURA ERNDE, (in her official capacity only);
TANI GORRE CANTIL-SAKAUYE, (in her official capacity only);
KATHRYN M. WERDEGAR, (in her official capacity only);
MING W. CHIN, (in his official capacity only);
CAROL A. CORRIGAN, (in her official capacity only);
GOODWIN H. LIU, (in his official capacity only);
MARIANO-FLORENTINO CUÈLLAR, (in his official capacity only);
LEONDRA R. KRUGER, (in her official capacity only);
WALLACE E. SHIPP, JR, (in his official capacity only);
H. CLAY SMITH, III, (in his official capacity only);
WILLIAM C. CARTINHOUR, JR., (in his *personal* capacity only).

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The judgment and memorandum opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The order of the United States Court of Appeals denying the petition for panel rehearing and for rehearing *en banc* appears at Appendix E to the petition and is unpublished.

The final judgment of the United States District Court appears at Appendix B and is unpublished. The final order of the United States District Court appears at Appendix C and is unpublished. The related interlocutory orders of the United States District Court were issued orally from the bench and appear at Appendix D.

JURISDICTION

The date on which the United States Court of Appeals entered judgment in this case was October 23, 2019. Appendix A. A timely petition for panel rehearing and for rehearing *en banc* was filed and then denied by the United States Court of Appeals on February 3, 2020, and a copy of the order denying the rehearing appears at Appendix E .

On March 19, 2020, this Court entered an Order regarding "ongoing public health concerns relating to COVID-19," in which it *sua sponte* ordered that "the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing," which by operation of law extended the time for filing this petition to and until July 2, 2020. A copy of the Court's March 19, 2020 Order appears at Appendix F.

This petition is timely under 28 U.S.C. Section 2101 and Supreme Court Rules 13(1) and 13(5) because it is being filed within 150 days of the entry of the order denying rehearing and rehearing *en banc* sought to be reviewed.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **United States Constitution, Amendment VI, Clause 2,** states:

   This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. **28 U.S.C. § 1963,** states:

   A judgment in an action for the recovery of money or property entered in any court of appeals, district court, bankruptcy court, or in the Court of International Trade may be registered by filing a certified copy of the judgment in any other district or, with respect to the Court of International Trade, in any judicial district, when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown. Such a judgment entered in favor of the United States may be so registered any time after judgment is entered. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

   A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.

   The procedure prescribed under this section is in addition to other procedures provided by law for the enforcement of judgments.

STATEMENT OF THE CASE [1]

Jurisdiction of the federal courts below

The District Court had jurisdiction below based upon Title 28 U.S.C. § 2283, per the "relitigation exception" to the Act; and jurisdiction pursuant to 28 U.S.C. §1331 for an injunction pursuant to the All Writs Acts, 28 U.S.C. §1651(a).[4-ER:635(§§1-4)] It also had jurisdiction pursuant to 28 U.S.C. § 1331 because the action arises under the Fifth and Fourteenth Amendments to the United States Constitution; and under 28 U.S.C. § 1343(a)(3), in that it is brought under 42 USC § 1983. [4-ER:635(§§1-4)] It furthermore had jurisdiction pursuant to 28 U.S.C. § 1963, over a judgment registered in the District Court below. [4-ER:635(§§1-4)]. The Court of Appeals had appellate jurisdiction pursuant to 28 U.S.C. § 1291 of the District Court's judgment entered on June 28, 2018 disposing of all claims below. [1-ER:1]

Procedural history and Factual discussion

This case involves two things. First, it involves a federal civil judgment originally entered in Washington, D.C., and then subsequently registered in the Northern District of California using the federal registration statute, 28 U.S.C. 1963. Second, it involves a California state bar disciplinary action commenced against Robertson for his alleged acts of attorney-misconduct which occurred wholly in the District of Columbia where Robertson was separately licensed to practice law.

The factual genesis of all these matters was a federal civil action in Washington, D.C. between Wade Robertson and William C. Cartinhour, Jr., a defendant below. All of the events pertaining to the matter in that suit occurred entirely within the jurisdiction of Washington, D.C., and Mr. Cartinhour's residence was within the District's jurisdictional reach. Mr. Cartinhour prevailed on some, but not all, of his claims in the civil action and a judgment was entered there in his favor. Mr. Cartinhour's attorneys then took that judgment and the transcripts of Mr. Cartinhour's testimony in the Washington, D.C., civil trial proceedings and solicited both the D.C. Bar and the State Bar of California to take some remedial attorney-disciplinary action against Robertson so that they could concurrently request monetary reimbursement from each state bar's "client security fund." The D.C. Bar took no action on their complaints. By contrast, the State Bar of California started disciplinary proceedings. As a consequence of the California Bar's actions, the D.C. Bar then initiated proceedings related to its client security fund, but it made factual findings that were entirely exculpatory to Robertson--- including finding a lack of any evidence to establish that there had been any attorney-client relationship between Robertson and Cartinhour.

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[1] References to the "Excerpts of Record" of district court proceedings as filed in the Court of Appeals is cited to as volume #, followed by "ER:", then page numer(s).

Notwithstanding, the State Bar of California pressed onward and attempted to use a California state statute with not extraterritorial application to discipline Robertson for his actions as an attorney in Washington, D.C..

In addition, meanwhile, Cartinhour's D.C. civil judgment was registered in the Northern District of California pursuant to the federal registration statute, 28 U.S.C. 1983, where he and the State Bar of California then sought to afford preclusive effect to it adverse to Robertson.

But while the State Bar of California proceedings were still underway, and not final, it was discovered that Cartinhour's civil judgment in Washington, D.C., had been obtained unlawfully through a criminal fraud on the federal court in D.C. Mr. Cartinhour's attorneys, however, had already managed to obtain an injunction order precluding Robertson from filing any new matter that was related to the prior judgment—thus, precluding any collateral attack or independent judgment. Mr. Cartinhour's attorneys had been directly involved in the fraud on the federal court in Washington, D.C., and as it turned out, their client, Mr. Cartinhour had been ill and legally incompetent during those proceedings. The attorneys had been manufacturing testimony for Mr. Cartinhour, and hiding from the court they incapacity of their client, Cartinhour.

Before there was a final order of attorney discipline in California, Robertson filed a *verified* civil rights action, coupled with an independent action for equitable relief, seeking to have the registered civil judgment set aside and to have the California Bar proceedings accordingly enjoined. No one, including Cartinhour, objected to the equitable action seeking to vacated the fraudulent judgment; however, the district court just sua sponte announced at the first hearing that it was dismissing that claim based on a suspected lack of jurisdiction, and secondarily, comity concerns. It then further held that it was abstaining pursuant *Younger* abstention on all of Robertson's claims seeking to prospectively enjoin the California Bar from proceeding further. Robertson objected on a number of matters regarding *Younger* abstention; in particular, that the California Bar lacked jurisdiction, was improperly attempting to relitigate a federal court judgment, and was federally preempted from an enforcement action. Robertson also objected that the California Bar proceedings were patently unconstitutional because he had no opportunity to assert his federal constitutional claims. The district court disagreed, and the Ninth Circuit summarily affirmed.

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REASONS FOR GRANTING THE PETITION

1. The Circuit Courts are divided over whether or not a federal judgment registered pursuant to 28 U.S.C. § 1963 vests the registering court with the power to amend or annul the judgment of the rendering court so registered, with a particular emphasis on whether challenges can be brought in the registration court for judgments that were either void or the result of a fraud on the rendering court.

The first and second questions presented on this petition regard the correct interpretation, and uniform application of, the federal judgment registration statute, 28 U.S.C. § 1963.

The landmark case construing § 1963 was *Stanford v. Utley*, 341 F.2d 265, 268 (**8th Cir.** 1965), which was authored by Judge (later Justice) Blackmun for the Eighth Circuit Court of Appeals. As noted at the outset by the Eighth Circuit in *Stanford*, the "legislative history affords little help." *Id.*

Nonetheless, looking to the plain language of the statute, the Eighth Circuit reasoned that § 1963 registration is the equivalent of a new judgment, and is more than a procedural device for collection on a foreign judgment. *Stanford*, 341 F.2d at 268. "To restrict registration to a procedural and collection device for the foreign judgment itself, and to have it expire with the foreign judgment, would give the words of the statute a lesser status than their plain meaning and to make registration something far inferior to a judgment on a judgment." *Id.* at 270. Moreover, "[t]he very position of the words of enforcement in the statute demonstrates that they are additive and not restrictive and that the statute has some substantive aspect and not exclusively a procedural character." *Id.* at 271.

On the limited narrow issue of the enforcement of federal judgments, other courts of appeals are now in agreement that a registered judgment per 18 U.S.C. §1963 has "the same effect as a judgment of the [registering] district court." *United States Hi Way Elec. Co. v. Home Indem. Co.*, 549 F.2d 10, 13 (7th Cir.1977) (internal quotation marks omitted); *Wells Fargo Equipment Finance, Incorporated v. Asterbadi*, 841 F.3d 237, 244 (4th Cir. 2016) ("We thus construe § 1963 to provide for a new judgment in the district court where the judgment is registered, as if the new judgment had been entered in the district after filing an action for a judgment on a judgment."); *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399, 405 (5th Cir. 2001) ("We have neither been cited to a case nor found any on our own that questions Stanford 's holding that .... registration truly is the equivalent of a new judgment of the registration court for purposes of enforcement in the registration district."); *In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 989 (9th Cir. 2008) ("[R]egistering a judgment under § 1963 is the functional equivalent of obtaining a new judgment of the registration court");

But although the courts of appeals generally agree on the narrow issue of judgment enforcement, they are otherwise divided and uncertain about the scope of jurisdiction and role of registering courts pursuant to 28 U.S.C. §1963. Arguably, the pitfalls were foreseeable even as early as *Stanford,* 341 F.2d 265, when Judge

Blackmun made the following admonitions:

> We note by way of caveat that § 1963 presents much to be answered in the future. **Does the statute's 'same effect' language apply for all purposes and embrace no exception? Does the registration court have power, under Rule 60, F.R.Civ.P., to correct the registered judgment?** .... Is a registered judgment itself subject to registration elsewhere? May a registered judgment be revived by a later reregistration? **Is a registered judgment subject to every attack which could be raised in an action on that judgment, such as fraud, lack of jurisdiction, and the like?** Is § 1963 the equivalent of the Uniform Enforcement of Foreign Judgments Act even though the latter is much more detailed in its provisions? Must full faith and credit be given to a registered judgment?

Stanford, 341 F.2d 265, 271 (emphasis added).

This instant case, in particular, involves an action in equity brought in a registering court to set aside a judgment that was registered there pursuant to 28 U.S.C. § 1963 on the grounds that the registered judgment had been obtained by a fraud on the court in the rendering jurisdiction. Federal Rules of Civil Procedure, Rule 60(b), contemplates two district court procedures for obtaining relief from a final judgment. The first is by motion. The second procedure contemplated by Rule 60(b) is an independent action to obtain relief from a judgment, order, or proceeding. The first saving clause specifically provides that 60(b) does not limit the power of the court to entertain such an action. Yet with both avenues, sometimes conflating one for the other, in the decades that have passed since Judge Blackmun's admonitions in *Standford*, the various courts of appeals have divided in their approaches to interpreting the remarkably straightforward language of 28 U.S.C. § 1963 when confronted with this basic scenario.

To begin with, the Ninth Circuit in *Lapin v. Shulton*, 333 F.2d 169 (9th Cir. 1964), cert. denied, 379 U.S. 904 (1964), affirmed a judgment of the District Court for the Southern District of California dismissing an independent action brought to dissolve an injunction issued by the United States District Court of Minnesota. In doing so it held that a district court must decline to assert jurisdiction over such a case "so long as it is apparent that a remedy remains available" in the court that rendered the judgment. *Id.* at 172 ("considerations of comity and orderly administration of justice **demand that the nonrendering court should decline jurisdiction** of such an action and remand the parties for their relief to the rendering court, so long as it is apparent that a remedy is available there." (emphasis added)).

Then, when subsequently confronted with a similar set of factual circumstances involving a judgment that had been registered pursuant to 28 U.S.C. 1963, the Ninth Circuit in *F.D.I.C. v. Aaronian*, 93 F.3d 636 (9th Cir.1996) held that a "a court of registration has jurisdiction to entertain motions challenging the underlying judgment," and noted that "[i]t makes no difference whether the challenge is brought via the procedure described in Rule 60, or some state law analogue to Rule 60, or under the court's inherent power to set aside a judgment in

equity, a power which Rule 60 explicitly preserves." 93 F.3d 636, 639. But then, the Ninth Circuit held that the district court's jurisdiction to entertain such challenges to a registered judgment was entirely discretionary and would ordinarily not even be reviewed "at all" by the Ninth Circuit regardless of whether the district court asserted or declined to exercise jurisdiction. The Ninth Circuit held that: "Although the registering court has wide discretion to entertain a challenge to the underlying judgment, such motions are disfavored. Registering courts generally prefer litigants to bring motions for postjudgment relief in the rendering court... **Courts of appeals review with deference a registering court's decision to defer to the rendering court, if they review them at all.**" 93 F.3d 636, 639 (emphasis added) (citations omitted).

By contrast, the Fifth Circuit Court of Appeals does not even permit any discretion whatsoever in the district court but, instead, has held that federal judgment registration pursuant to 28 U.S.C. § 1963 confers no power over the judgment itself upon the court of registration, which accordingly may not review the correctness of the judgment by the court of rendition. *In Gullet v. Gullet*, 188 F.2d 719 (5th Cir. 1951). The Fifth Circuit held that:

> **Registration of the District of Columbia judgment in Florida is purely a ministerial step in its enforcement. It confers upon the Florida court no power over the judgment itself.** Whether or not the district court for the District of Columbia properly denied full faith and credit to the Florida divorce decree **is not the concern of the Florida district court.** That question has been determined by the district court for the District of Columbia, affirmed by the Court of Appeals, and **is not subject to review by the Florida district court** in a proceeding of this nature.

188 F.2d 719, 720 (emphasis added)

Likewise, the Seventh Circuit Court of Appeals has now joined the hard-line position taken by the Fifth Circuit; that is, that 28 U.S.C. § 1963 confers no power over the judgment itself upon the court of registration, and it accordingly may not modify or annul the judgment by the court of rendition. *See Board of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031 (2000). But, notably, the Seventh Circuit's beginnings with §1963 had actually suggested a different course, arguably one that would have at least placed it closer to the Ninth Circuit's current position that district courts do, in fact, have the discretionary authority to modify or annul such registered judgments. *See Aaronian*, 93 F.3d 636, 639. The internally-inconsistent evolution of the Seventh Circuit's conclusions interpreting the statutory mandate of §1963 further highlights the reasons why this Court should intervene and clarify.

The Seventh Circuit first examined the registration statute, § 1963, in *U. S. for Use and Benefit of Hi-Way Elec. Co. v. Home Indem. Co.*, 549 F.2d 10 (1977). In *Hi-Way*, it disagreed with the "district court [holding] that a registration proceeding is merely a 'ministerial act, ancillary to the original action, and for the sole purpose of enforcing a valid and subsisting judgment of another United States District Court,'..." The Seventh Circuit held as follows:

"We do not agree with the district court's interpretation of its limited authority in a registration proceeding...We consider the district court's function with respect to a judgment registered pursuant to s 1963 to be more than a merely ministerial activity for the purposes of enforcing a judgment of another district court. **The language of s 1963 indicates that the court of registration is to treat the registered judgment as if it were an original judgment of the registering court. ... While the powers of the district court in a registration proceeding are not precisely defined ... It has yet to be determined whether a registering court can entertain a motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, or whether the rendering court is the proper forum in which to seek such relief.** ... None of the reported decisions involving s 1963 indicate that the court of registration is powerless to grant relief against the registered judgment."

549 F.2d 10, 13-14.

Notwithstanding its decision in *Hi-Way*, however, twenty-three years later the Seventh Circuit recognized the existence of a circuit split on the question of whether a court of registration per § 1963 could accordingly modify or annul the judgment by the court of rendition, and it held that it had sided the "majority' of circuits that did not permit it. *See Board of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1034 (2000) ("This circuit is among the majority that require Rule 60(b) motions to be presented to the rendering court.") The Seventh Circuit's holding illuminated both the circuit split and the reasoning behind the argument that 28 U.S.C.A. § 1963 could not be properly interpreted to permit amendment or annulment of the registered judgment as the minority of circuits had otherwise concluded. The Seventh Circuit held as follows:

Logically the first question is whether a district court in which a judgment is registered under § 1963 may modify or annul that judgment under Rule 60(b). Some courts have held that the final sentence of § 1963 ¶ 1—"A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner."—means that the original judgment becomes a judgment of the court in which it has been registered, and therefore may be modified or set aside by the court of registration. See *Rector v. Peterson*, 759 F.2d 809 (10th Cir.1985); *Covington Industries, Inc. v. Resintex A.G.*, 629 F.2d 730 (2d Cir.1980). But § 1963 does not say that the original judgment becomes a local one; it says that the original judgment has the effect of a local judgment. This is a substantial difference, because the registered judgment does not lose its existence in the court that rendered the decree. Could the Southern District of Indiana tell the Eastern District of Virginia that it may not enforce its own judgment if, for example, Skylight or Lowry should have assets in Virginia? A judgment may be registered in many

districts, see Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, 11 Federal Practice and Procedure § 2787 (2d ed.1995), and it would not make much sense to allow each of these districts to modify the judgment under Rule 60(b), potentially in different ways. ***Rector* and *Covington* state a minority view.** Other circuits conclude (with the support of Wright & Miller, Federal Practice at § 2865) that requests for modification under Rule 60(b) must be presented to the rendering court. *E.g., Indian Head National Bank of Nashua v. Brunelle*, 689 F.2d 245 (1st Cir.1982); *First Beverages, Inc. v. Royal Crown Cola Co.*, 612 F.2d 1164, 1172 (9th Cir.1980). **This circuit is among the majority that require Rule 60(b) motions to be presented to the rendering court.**

212 F.3d 1031, 1034

With respect to the Seventh Circuits' canvassing of circuit law in *Board of Trustees,* 212 F.3d 1031, they were incorrect about the position of the First Circuit, in particular as announced in *Indian Head National Bank of Nashua v. Brunelle,* 689 F.2d 245 (1st Cir.1982). In *Indian Head*, the First Circuit noted two separate classes of cases that present exceptions to the general rule of deferring to the rendering court: (i.) those alleging that the judgment is void for lack of jurisdiction or because of fraud, accident or mistake, and (ii.) those asserting grounds that would support an independent equitable action. *Indian Head*, 689 F.2d at 249 n. 8 & 249–50. In those categories, according to *Indian Head*, the registration court may directly exercise its equitable jurisdiction. However, according to the First Circuit, if the 60(b) motion does not fall into those narrow categories, the registration court's determination of the matter would be an inappropriate extension of these exceptions to the general rule. *Id.* at 251. In addition to demonstrating a deeper split among the circuit courts on this legal issue, *Indian Head* is also relevant to the facts of this case.

In the instant case, had this civil action been filed in the First Circuit and governed by that circuit's rule as articulated in *Indian Head*, then because the independent action alleges an unlawful fraud on the court which rendered the judgment, the district court would have properly had jurisdiction pursuant to 28 U.S.C. § 1963 to modify or annul the judgment of the rendering court. Given the extraordinarily egregious facts in this case, it is doubtful, at best, that the district court would have had any discretion to refuse to assert jurisdiction in this case—which, by contrast, is what happened in this case in the Ninth Circuit. *See Marshall v. Holmes*, 141 U.S. 589, 599, 12 S.Ct. 62 (1891), quoting *Johnson v. Waters*, 111 U.S. 640, 667, 28 L. Ed. 547, 4 S. Ct. 619 (1884). (Where fraud is found, the party that used fraud should be deprived of the benefit of the judgment and any inequitable advantage gained and the courts should not forfeit truth for the sake of finality, nor let the technical intricacies of the law governing attachments obscure their just administration.)

In likewise manner with the First Circuit, the Second Circuit Court of Appeals has <u>not</u> adopted the hard-line position taken by the Fifth Circuit and Seventh Circuits that 28 U.S.C.A. § 1963 confers no power over the registered

judgment itself upon the court of registration such that it accordingly may not modify or annul the judgment by the original court of rendition. Instead, the Second Circuit has adopted a position that is more permissive than the First Circuit in that it has instead made a limited allowance for cases, such as those involving entry of a default judgment, in which the rendering court is no more familiar with the facts of the case than the court of registration. *See Covington Industries, Inc. v. Resintex A.G.*, 629 F.2d 730, 733-734 (2d Cir.1980).

Finally, the Third Circuit Court of Appeals somewhat recently canvassed the landscape of circuit decisions on this issue and discussed the existing split among the circuits. *See* Budget Blinds, Inc. v. White, 536 F.3d 244, 252–55 (3d Cir.2008) (collecting cases). After discussing the split among the circuits, noting that some circuits outright prohibited, while others permitted in limited circumstances, the power of the court of registration, the Third Circuit in *Budget Blinds* noted its general agreement with the other circuits regarding deference to the rendering court; however, the Third Circuit also notwithstanding held that voidness challenges, filed under Fed.R.Civ.P. 60(b)(4), could be considered by registering courts. *See Budget Blinds*, 536 F.3d 244, 252–55.

This split among the circuit courts interpreting the statutory text of 28 U.S.C. § 1963 on the question of whether or not the registration statute confers power to the registering court over the judgment such that it may modify or annul the judgment of the court of rendition has become even more important because now at least two circuits have held that registered judgments constitute new judgments in the registering courts which can be subsequently re-registered, or even registered in other districts pursuant to § 1963 even if the statue of limitations has already expired in the jurisdiction where the rendering court first entered the original judgment. This has happened with both the Ninth Circuit Court of Appeals, and also the Fifth Circuit Court of Appeals. *See Fidelity Nat. Financial, Inc. v. Friedman*, 803 F.3d 999 (9th Cir. 2015) (registration of judgment for the recovery of money or property, rendered in another district, constitutes a "judgment in an action," and has same effect as creating a new judgment issued by the registering district court, and thus qualifies as an independent judgment subject to successive registration); *Home Port Rentals, Inc. v. International Yachting Group, Inc.*, 252 F.3d 399 (5th Cir. 2001) (Once a money judgment of the rendering federal district court is timely registered in another federal district court pursuant to statute, the subsequent expiration of the rendering court's statute of limitations has no effect whatsoever on enforcement of the judgment in the district of the registration court; after registration, time of enforcement is controlled solely by the statute of limitations of the state where the registration court is domiciled.)

In this case, Robertson had filed as part of his complaint an independent action for equitable relief from a civil judgment in favor of Defendant Cartinhour that had been previously obtained by a criminal fraud upon the Federal courts in Washington, D.C. [i.e., the rendering court] by Defendant Cartinhour and his attorneys. (4-ER:665-801).

That federal judgment from Washington, D.C., had been subsequently registered in the district court below in this case pursuant to the federal registration statute, 28 U.S.C. § 1963. [4-ER:800-801(¶683); 635-636(¶4)}

Moreover, the attorneys who committed the fraud on the court to obtain the civil judgment from the rendering court subsequently obtained a filing injunction in furtherance of their fraud such that now any equitable relief directed to that civil judgment cannot be brought in that rendering court of original jurisdiction. (4-ER:798(¶671), 800(¶682)). Thus, if relief from the judgment was to be obtained, it had to be sought in a different jurisdiction if available.

And, when Robertson commenced his independent action against the registered judgment, Cartinhour and certain other Defendants named in this action were already seeking to enforce or to otherwise assert against Robertson in California some preclusive effect of that registered judgment. [4-ER:800-801(¶683); 635-636(¶4)].

Even more notably, no defendant— including even Cartinhour himself-- objected to Robertson's claim for equitable relief against the registered fraudulent judgment. But regardless, the district court *sua sponte* dismissed entirely Robertson's equitable action against the registered judgment. [1-ER:10 (lines 6-8).] The district court questioned whether its jurisdiction even existed, a contention which it described as "doubtful." Then, separate from the question of jurisdiction, the district court alternatively based its decision to decline the exercise of jurisdiction on the basis of comity between sister Federal courts, holding that "principles of comity and efficient judicial administration weigh definitively against asking a district court to second guess the orders and decisions issued by sister courts."

On appeal, the Ninth Circuit summarily affirmed the district court's refusal to even hear the independent action claim seeking equitable relief against the fraudulent judgment that had been registered pursuant to 28 U.S.C. § 1963. The appellate panel gave no reasoned explanation, but instead described the district court's decision as one of "declining to consider for reasons of comity Robertson's claim seeking to vacate the judgment of sister courts." Memorandum, Oct. 23, 2019 at p.2. In support of affirming, the appellate panel Decision summarily cited to *F.D.I.C. v. Aaronian*, 93 F.3d 636, 639 (9th Cir. 1996), and in its explanatory parenthetical suggested that the court of appeals did not even have to review such a decision by a district court in declining to assert jurisdiction over a challenge to a judgment registered pursuant to § 1963..

Ironically, in the federal jurisdiction where the judgment was rendered-- that is, the District of Columbia— the Court of Appeals for that jurisdiction has actually held that independent actions left open by Fed.R.Civ.P 60(b) are not confined to the court that rendered the judgment, but may be brought in any other court of competent jurisdiction. *Carr v. District of Columbia*, 543 F.2d 917, 928 n.83 (D.C. Cir. 1976)). So, therefore, this district court here in the Ninth Circuit has refused to assert jurisdiction over Robertson's independent action on jurisdiction and potential "comity" grounds when the federal law in the rendering jurisdiction permits a collateral attack outside on its judgments outside of the rendering jurisdiction.

Respectfully, this Court has never substantively addressed this registration

statute, 28 U.S.C. § 1963, nor its meaning with regards to the questions noted above over which the circuit courts are divided. On three prior occasions, this Court noted the statute, which appears plain enough in meaning based on its unfettered text. *See Republic of Sudan v. Harrison*, 139 S.Ct. 1048,1055 (2019); *Bank Markazi v. Peterson*, 136 S.Ct. 1310, 1320 (2016); *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222,237 n.8 (1998). Respectfully, this is an appropriate case to resolve the above noted questions which have divided the circuit courts over the meaning and import of this statute of obviously widespread national application.

2.) The Circuit Courts are also divided over whether or not a "facially conclusive" claim of federal preemption precludes finding an "important state interest" in parallel state proceeding such that a federal court should abstain pursuant to the *Younger* abstention doctrine.

The third question presented on this petition regards Younger abstention, and in particular whether a "facially conclusive" claim of federal preemption precludes finding an "important state interest" in the state proceeding such that *Younger* abstention is not appropriate. , a question as to which the courts of appeals are in conflict.

In the instant case, the district court decided to abstain from almost all of Robertson's claims on the basis of *Younger* abstention, an abstention doctrine enunciated by this Court in *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971) ("*Younger*"). This Court's most recent review of the *Younger* abstention doctrine was in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) ("*Sprint*"). And in *Sprint*, this Court reiterated that "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.'" *Id.* (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).) "Parallel state-court proceedings do not detract from that obligation." *Sprint*, 571 U.S. at 77.

In *Sprint*, this Court noted that *Younger* abstention, however, was a "'far from novel' exception to this general rule." *Sprint*, 571 U.S. at 77 (quoting *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 364, (1989) ("*NOPSI*").) "*Younger* exemplifies one class of cases in which federal-court abstention is required: When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution." *Sprint*, 571 U.S. at 71. But the *Younger* abstention doctrine is not limited to only criminal proceedings, but instead this Court has also extended the doctrine to even "civil enforcement proceedings." *See Sprint* 571 U.S. at 79 (citing *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 433–434 (1982) ("*Middlesex*") (extending *Younger* abstention to state initiated disciplinary bar proceedings against lawyer for violating ethics rules).)

In the context of noncriminal judicial proceedings-- such as "civil enforcement proceedings"— this Court has held that the "policies underlying *Younger* are fully applicable" only if three conditions are met: (1) the state proceedings are currently pending; (2) the "proceedings implicate important state interest"; and (3) the state

proceedings will provide the federal plaintiff with "an adequate opportunity in the state proceedings to raise [Federal] constitutional challenges." *Middlesex*, 457 U.S. at 433–434 (emphasis added). On the peculiar, extraordinary facts of this case, Robertson objected below that the *Younger/Middlesex* requirement of an "important state interest" was lacking because the state of California's attempted regulatory actions were plainly preempted by federal law; and, in any event, California lacked basic subject matter jurisdiction to assert its own California state statute over the District of Columbia matters at issue in this case. [2-ER:279, 280 (lines 1-3, 18-28), 281 (lines 1-6)]; [2-ER:302, 303 (lines 15-28), 304 (lines 1-3)] Robertson likewise objected that the "important state interest" was missing because California's attempted regulatory actions were an improper attempt to relitigate matters already settled by a prior federal judgment entered in the District of Columbia. [2-ER:280 (lines 4-18)]; [2-ER:303 (lines 1-15)] At a minimum, Robertson's federal preemption claim should have been dispositive against any application of the *Younger* abstention in this case.

But the district court failed to directly address any of Robertson's arguments based upon the factual particulars of this instant case that demonstrated clear federal preemption. (Appendix C) Instead, it just summarily cited to a twenty-five year old prior Ninth Circuit decision in which, on facts completely inapposite here, the Ninth Circuit had summarily held that "California's attorney disciplinary proceedings implicate important state interests." *Hirsh v. Justices of Supreme Court of State of Cal.*, 67 F.3d 708 (9th Cir. 1995) (Appendix C; see also 1-ER:5(lines 21-22)(same).] And on review, the Ninth Circuit Court of Appeals likewise failed to address any of Robertson's preemption arguments even though Robertson cited numerous prior holdings of that circuit court regarding federal preemption; instead, it too just summarily cited to *Hirsh*, 67 F.3d 708. (Appendix A, E)

The federal preemption issue in this case should be dispositive, but the state of federal law on this issue remains to be settled by this Court, and the circuit courts below are divided. This Court has never squarely addressed the development of the preemption exception to *Younger* abstention. The closest it has come was thirty-one years ago in *NOPSI*. *See NOPSI*, 491 U.S. 350, 366-67. But the Court in *NOPSI* did not fully resolve the issue.

The federal preemption exception to *Younger* abstention first appeared in the Eleventh Circuit Court of Appeals in *Baggett v. Department of Professional Regulation, Board of Pilot Commissioners*, 717 F.2d 521 (11th Cir. 1983). The *Baggett* court stressed that preemption is different from other constitutional claims because the assertion of preemption went to the jurisdiction and power of the state administrative agency to proceed at all, and therefore the state had no legitimate "state interest" to justify federal court abstention. *Id.* at 524. The *Baggett* court duly noted *Middlesex*, but emphasized that on the facts presented in *Baggett*, the state was attempting to regulate conduct plainly under the exclusive domain of federal regulations, and therefore it determined that, because the statutes were preempted by federal regulations, the state's administrative agency could not proceed. *Id.* at 523-524. The *Baggett* court concluded that, "[w]hen preemption is

readily apparent . . . abstention can serve no principle of 'our federalism,'" and it therefore reversed the district court's decision to abstain. *Id.* at 524.

Prior to *NOPSI*, several conflicting variations of the preemption exception existed throughout the lower federal courts. *See* Patrick J. Smith, Note, The Preemption Dimension of Abstention, 89 Colum. L. Rev. 310, 314-16 (1989) (describing the three divergent pre-*NOPSI* approaches to abstention cases where preemption was invoked). Furthermore, the Fourth Circuit Court of Appeals refused to treat preemption as different from any other constitutional claim. *See*, e.g., *Potomac Elec. Power Co. v. Sachs*, 802 F.2d 1527 (4th Cir. 1986), vacated on other grounds, *Potomac Elec. Power Co. v. Curran*, 484 U.S. 1022 (1988).

NOPSI was a case in which an electric utility asked a federal court to grant injunctive and declaratory relief against the state's ratemaking authority. The utility (NOPSI) claimed that the state's regulations were preempted, and therefore that *Younger* abstention should not apply. *NOPSI*, 491 U.S. at 357-58.

This Court characterized NOPSI's request to suggest that federal courts asked to invalidate a state action on preemption grounds should quickly review the merits and determine if the claim is substantial, and if so, should resolve it. *Id.* at 364. But this suggestion was rejected, the Court explaining that "[t]here is no greater interest in enforcing the supremacy of federal statutes than in enforcing the supremacy of explicit constitutional guarantees, and constitutional challenges to state action, no less than pre-emption-based challenges, call into question the legitimacy of the State's interest in its proceedings reviewing or enforcing that action." *Id.* at 365 Then, this Court went on to further examine the question of whether a facially conclusive constitutional claim could warrant refusal to abstain. *NOPSI,* 491 U.S. at 366-67. Referring to *Younger*, the *NOPSI* Court explained that a party can show the type of irreparable injury recognized as an exception to *Younger* "by showing that the challenged state statute is flagrantly and patently violative of express constitutional prohibitions." *Id.* at 366. Of particular note, this Court left open the possibility that although a "substantial" claim of preemption is not enough to bypass *Younger* abstention, perhaps a "facially conclusive" claim is. *Id.* at 367 ("NOPSI argues, even if a substantial claim of federal pre-emption is not sufficient to render abstention inappropriate, at least a facially conclusive claim is. **Perhaps so**." (emphasis added)). At end, however, the Court determined that the statute in *NOPSI* did not meet this standard, and furthermore determined that *Younger* abstention did not even come into play in *NOPSI* because the state administrative proceeding at issue was not judicial in nature. *Id.* at 370.

Apparently because the Court in *NOPSI* never made a strong determination regarding the preemption exception, lower federal courts have continued to apply the preemption exception, but with inconsistent standards. *See Woodfeathers, Inc. v. Washington County*, 180 F.3d 1017 (9th Cir. 1999) (holding that the district court should have abstained under Younger because preemption was not readily apparent); *Chaulk Servs., Inc. v. Mass. Comm'n Against Discrimination*, 70 F.3d 1361 (1st Cir. 1995) (holding that the district court erred in abstaining because express preemption was readily apparent); *Norfolk & W. Ry. v. Pub. Util. Comm'n*,

926 F.2d 567, 573 (6th Cir. 1991) ("'[F]acially conclusive' claims of federal preemption may be sufficient to support federal jurisdiction in a case in which abstention would otherwise be appropriate under Younger."); *Gartrell Constr. Inc. v. Aubry*, 940 F.2d 437 (9th Cir. 1991) (declaring summarily that the district court properly declined to abstain where federal law preempted the state action); *Nat'l R.R. Passenger Corp. v. Florida*, 929 F.2d 1532, 1537-38 n.12 (11th Cir. 1991) (concluding that *Baggett* is still good law even after *NOPSI*).

Moreover, the open questions left unanswered in *NOPSI* have led to further new conflicts of law among the circuit courts on the issue of federal preemption in the context of *Younger* abstention. Just after *NOPSI*, the Sixth Circuit Court of Appeals decided *CSXT, Inc. v. Pitz*, 883 F.2d 468 (6th Cir. 1989). In CXST, an interstate railroad system sought a declaratory judgment against the enforcement of state regulations requiring toilets on locomotives on the basis that when Congress passed the Locomotive Boiler Inspection Act and the Federal Railroad Safety Act it preempted the state agency from making such regulations. *CXST*, 883 F.2d at 470 (citing 45 U.S.C. §§ 22-43 and 45 U.S.C. §§ 421-444). It argued that because the case was one of federal preemption, *Younger* abstention should not apply. *Id.* at 471. The Sixth Circuit rejected this claim and cited *NOPSI* for the proposition that preemption cases are treated the same as a claim based on any other constitutional provision for the purposes of *Younger* abstention, holding that: "we do not see any reason to analyze abstention cases involving a preemption claim differently than other abstention cases." *Id.* at 473. The court reasoned that because the state had the judicial jurisdiction to hear the case, abstention applied regardless of whether preemption prevented the legislature from exercising jurisdiction over the disputed area and creating the law in the first place. *Id.* at 474.

But less than two years later, the Sixth Circuit was faced with a very similar claim in *Norfolk & Western Railway Co. v. Public Utilities Commission of Ohio*, 926 F.2d 567 (6th Cir. 1991). Yet, by contrast, in *Norfolk* the Sixth Circuit refused to abstain, instead reaching the merits of the preemption issue. *Id.* at 569. It held that the Federal Railroad Administration preempted the Ohio regulations and therefore granted the requested relief. *Id.* (citing 45 U.S.C. § 434 (1970)). In reaching its conclusion about the preemption exception, the *Norfolk* court cited *NOPSI* for the proposition that facially conclusive preemption claims are sufficient to bypass *Younger* abstention. *Id.* at 573. The *Norfolk* court did not explain the reasoning behind this exception. It only stated that *NOPSI* allows federal courts to consider the preemption issue without any findings by the state courts and pointed out that consideration of a preemption claim does not require interpreting state law. *Id.* Thus, in the wake of *NOPSI*, the Six Circuit decided two different preemption cases but with contradictory holdings on the applicability of federal preemption to *Younger* abstention claims. In *CXST*, it had declared that abstention applied to preemption with equal force as it applied to all other constitutional claims. But, by contrast, subsequently in *Norfolk* it applied the preemption exception to avoid *Younger* abstention without any mention of an exception articulated by this Court to justify special *Younger* treatment in preemption cases. *See Norfolk*, 926 F.2d at

573.

The Eleventh Circuit confronted *NOPSI* head on in *Hughes v. Attorney Gen.*, 377 F.3d 1258, 1264 (11th Cir. 2004), cert. denied, No. 04-526, 2005 WL 35945 (U.S. Jan. 10, 2005). The *Hughes* court began its comparison of *Baggett* and *NOPSI* by pointing out the *NOPSI* court's declaration that "there is not any distinction between a claim of federal preemption and any other constitutional challenge to state action as it relates to a state's interest in its own proceedings enforcing or reviewing state action." *Id.* It then conflated the two standards of preemption exception analysis, stating that: "[r]egardless of the differences in semantics between the terms 'facially conclusive' and 'readily apparent,' their import is the same: only the clearest of federal preemption claims would require a federal court to hear a preemption claim when there are underlying state court proceedings and when that claim can be raised in the state forum." *Id.* at 1265.
The Eleventh Circuit then officially dropped the "readily apparent" standard in favor of this Court's terminology of "facially conclusive." *Id.*

Accordingly, unlike the Sixth Circuit which as noted above had eventually adopted a standard of special treatment for preemption claims in the context of *Younger* abstention, the Eleventh Circuit retreated from its earlier more expansive view to the much narrower view that only the clearest of federal preemption claims— those that were "facially conclusive"— would preclude *Younger* abstention.

Adding to the circuit split is the position taken by the Second Circuit Court of Appeals, which holds— contrary to the above-noted circuit courts-- that there is actually a "presumption against abstention" when a case involves federal preemption issues, particularly in the bankruptcy context, and that notions of comity are not strained when a federal court cuts off state proceedings that entrench upon the federal domain. *See In re Pan American Corp.* 950 F.2d 839, 840-846 (2d. 1991) As the Second Circuit held: "Although the Supreme Court has developed several distinct abstention doctrines .... [t]hese concerns, however, are not implicated when federal questions are presented since supremacy clause questions are 'essentially one [s] of federal policy.'" ... We therefore have observed that '[a]bstention ... is not appropriately invoked in a preemption case.'" *Id.* at 846.

This is an appropriate case to resolve these splits among the circuit courts on an issue of law of widespread national importance. So much so, in fact, that this Court has previously construed such abstention issues as warranting the exercise of its supervisory powers. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1 (1983) It also implicates the substantial federal concerns of the Supremacy Clause of the Federal Constitution. And, furthermore, the court in this case got the result plainly wrong. In both the district court below, and again on appeal, Robertson objected that the clear federal preemption precluded any "important state interest" in this case to warrant *Younger* abstention. (*See*, e.g. Appellant's Opening Brief on appeal at pp.47-55). The lower courts in this matter had to look no further than three prior cases of this Court which Robertson cited to in the proceedings below.

As a matter if indisputable law, by constitutional decree the District of

Columbia is exclusively a Federal territory, unique as a constitutional Federal enclave under the exclusive jurisdiction of the Federal government. *See* Constitution of the United States, Article 1, §8, clause 17. Consequently, because the District of Columbia is within the exclusive jurisdiction of the Federal government, no state— including California— may apply its local "state law" to acts and events wholly occurring within the District of Columbia. *Paul v. United States*, 371 U.S. 245, 263, 83 S.Ct. 426 (1963) (holding that "[t]he power of Congress over federal enclaves that come within the scope of Art. I, § 8, cl. 17, is obviously the same as the power of Congress over the District of Columbia" and "by its own weight, bars state regulation without specific congressional action."); *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, 318 U.S. 285, 63 S.Ct. 628 (1943) (refusing to permit the enforcement of a California state law to a contract entered into and performed on a federal enclave to which jurisdiction had been ceded to the United States and holding that because the matter was within the exclusive jurisdiction of the United States, California law could not, and did not, apply.); *Mayo v. U.S.*, 319 U.S. 441, 447 at n.11 (1943) (holding that "[t]he state is powerless to punish its citizens for acts done in exclusively federal territory." (citing *Pacific Coast Dairy*, 318 U.S. 285)).

Yet in the facts of this case, the state agency of California insisted that it had the authority to use a California state law--- one which, in fact, had no extraterritorial mandate beyond California— to try to regulate Robertson's conduct in Washington, D.C., where Robertson was separately licensed by that jurisdiction, in order to impose a penalty on Robertson. Years before, in *Pacific Coast Dairy*, 318 U.S. 285, California had tried something analogous and been rebuked. Nothing is different this time. The courts below were in error to invoke *Younger* abstention. And, it is noteworthy that if Robertson's case had been brought in the Second Circuit Court of Appeals, then in accordance with that circuit's holding in *In re Pan American Corp.*, 950 F.2d 839, *Younger* abstention would not have been permitted.

This case is an excellent case to resolve this important question of law of which the circuit courts are in disagreement.

3.) *Younger* abstention was not appropriate in the California proceedings because the underlying state court procedures were unconstitutional, and expressly so per this Court's prior holdings.

With regards to the fourth question presented, in *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423 (1982) this court limited *Younger* abstention[2] in non-criminal civil enforcement proceedings to only those circumstances where the state proceedings would provide the federal plaintiff with "an adequate opportunity in the state proceedings to raise [Federal] constitutional challenges." *Middlesex*, 457 U.S. at 433.

But this Court has also made clear that any such state court opportunity must be constitutionally "adequate." *Moore v. Sims*, 442 U.S. 415, 431, 431 n. 12, (1979)

[2] Younger v. Harris, 401 U.S. 37 (1971)

(the state court opportunity must be constitutionally "adequate," and must afford an "opportunity to fairly pursue their constitutional claims in the ongoing state proceedings.".)

This Court's prior holdings also indisputably hold that Federal Constitutional Due Process requires a written statement by the actual decision-maker-- the factfinder with the authority to take action-- as to the evidence relied on, the facts found, and the reasons supporting the action thereupon to be taken even in noncriminal proceedings where the full panoply of rights due a defendant in such proceedings does not apply but instead only the minimum requirement of procedural due process. *See Wolff v. McDonnell*, 418 U.S. 539, 556-565 (1974); *accord Morrissey v. Brewer*, 408 U.S. 471, 480-489 (1972) (holding that in parole revocation proceedings, even though "the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply," *id.* at 480, the "minimum requirements of due process" notwithstanding included "a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.." *Id.* at 489); *accord Goldberg v. Kelly*, 397 U.S. 254, 256, (1970) (holding that because a decision on the withdrawal of welfare benefits must "rest solely on the legal rules and evidence adduced at the hearing," *id.* at 271, due process requires that the decision-maker "demonstrate compliance with this elementary requirement" by "stat(ing) the reasons for his determination and indicat(ing) the evidence he relied on." *Id.* at 271)

In the facts of this case, the federal district court below invoked *Younger* abstention and refused to permit Robertson to adjudicate injunction claims against the State Bar of California prior to any actual attorney-discipline being imposed against Robertson. As objected to below, and undisputed, the California Constitution precludes the State Bar of California's administrative "court" from even considering federal constitutional claims. *See* California Constitution art. III, § 3.5. In addition, under established California law, the State Bar of California possesses no state judicial authority whatsoever in California but instead is only empowered to make advisory recommendations to the California Supreme Court in matter of California attorney-discipline. *See In re Rose,* 22 Cal.4th 430 (Cal. 2000) ("*Rose*"). In *Rose,* the California Supreme Court confirmed yet again that the "the State Bar's [factual] determinations are advisory only," *id.* at 442, and that the Bar's disciplinary recommendation to suspend or disbar an attorney are wholly, and "merely recommendatory in character." *Id.* at 442 And the Court further confirmed that it, and it alone, makes the first and only judicial order in all California State Bar Court matters, *id.* at 438-454; and that, consequently, it exercises only original and not appellate jurisdiction. *Id.* at 454. Well, fair enough.

However, as alleged below, it is a fact that the California Supreme Court, who is the first, and only, decision-maker— and, therefore, the only possible opportunity in any California state court that an attorney facing adverse state bar action might have to litigate their federal constitutional claims— no longer grants any review in State Bar cases for attorneys claiming error in attorney-disciplinary proceedings by the State Bar of California. [4-ER:806-807(¶706)] The California

Supreme Court has simply adopted a policy of *carte blanche* accepting whatever may be the recommendations of the State Bar of California in every matter involving any imposition of attorney-discipline.

Moreover, even if a California attorney attempts to litigate their federal constitutional claims with the California Supreme Court by filing a "petition for review," as of the year 2000 when the California Supreme Court announced in *Rose* that the new policy that it had adopted for its handling of attorney petitions for review was not unconstitutional (over objections) it did so in contravention of this Court's notable prior holdings cited above regarding the requirements of minimum due process. Spoke the California Supreme Court::

> **We conclude**, after analyzing and balancing the relevant factors, **that the due process clause does not require that we hear oral argument or issue a written opinion** before denying an attorney's petition for review of a State Bar Court decision recommending disbarment or suspension.

Rose, 22 Cal.4th at 458 (emphasis added).

Then Justice Janice Brown, before she was elevated to Circuit Justice of the D.C. Court of Appeals, interjected a vigorous dissent that was telling, to wit: "[T]he attorney facing suspension or disbarment from the right to practice her profession gets no hearing, no opportunity for oral argument, and no written statement of reasons – from this or any other [California state] court. ... Instead, she gets a summary denial of review, the one-line order." *Rose*, 22 Cal.4th at 466.

Accordingly, the district court below was in error to invoke *Younger* abstention in this case ,and these structural errors with the California proceedings impact courts across the country because of the interlocking sets of "reciprocal' disciplinary orders—including with this Court— with the attorney-licensing mechanisms in California. Because of the national importance of this matter, and because the California is clearly operating in contravention of this Court's prior holdings, the Court should resolve this matter with this case.

CONCLUSION

Respectfully, the petition for a writ of certiorari should be granted so that this Honorable Court can consider the merits of the questions for review.

Respectfully Submitted,

Date: July 2, 2020

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