No. 20A-_____

In The
Supreme Court of the United States

Sergei Vinkov,

Petitioner,

v.

Brotherhood Mutual Insurance Company, an Indiana Corporation

Respondent

EMERGENCY APPLICATION
TO ASSOCIATE JUSTICE ELENA KAGAN
FOR A STAY OF PROCEEDINGS
IN CASE NO. 5:19-CV-01821 SB (SP), BROTHERHOOD MUTUAL INSURANCE COMPANY, INDIANA CORPORATION VS SERGEI VINKOV IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) "Does Insurer have the lack of standing to attack the scope of religious duties of a volunteer director of a religious organization for the purposes of challenging the duty-to-defend coverage in the District Court, if:

a) no established law violations were properly alleged and determined in the Underlying Action?

b) the Insurer failed to allege that it incurred defense costs in the amount of $75,000 or more in the Underlying Action to invoke the federal jurisdiction under 28 USC § 1332?

c) the Insurer failed to allege pure secular claims to satisfy the specific and actual controversy requirement under Article III?"

(2) "Did the District Court abuse its discretion retaining jurisdiction over the Declaratory Judgment Act (28 USC § 2201(a)) in the insurance dispute with affirmative defenses identical or similar to the affirmative defenses in the Underlying Action with the same defendant?"

(3) "Does the failure of the Insurer to exhaust the arbitration clause (9 USC §§1-14) in its own contract preclude it from stating a

claim to survive dismissal under FRCP 12(b) in the declaratory relief action?"

PARTIES TO THE PROCEEDING

Sergei Vinkov ("the Applicant"), the Applicant for this request to stay, was the petitioner below and the Defendant/Counter-claimant in the United States District Court for the Central District of California ("the District Court").

The United States District Court for the Central District of California ("the District Court") is the respondent to this Application and writ proceedings in 9th Circuit below.

Brotherhood Mutual Insurance Company, an Indiana Corporation (the Insurer), is a real party in interest below and for the purposes of this Application. The Insurer is the Plaintiff/Counter-Defendant in the District Court.

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INTRODUCTION

Pursuant to Sup. Ct. Rule 22, 23, 33.2 Sergei Vinkov ("Vinkov") respectfully requests Associate Justice Hon. Elena Kagan for an emergency relief in the form of an ordered stay of proceedings in Case No. 5:19-cv-01821 SB (SP), Brotherhood Mutual Insurance Company, an Indiana Corporation ("the Insurer") in the United States District Court for the Central District of California ("the District Court") due to the filing and disposition of a petition for certiorari within this Court challenging the correctness of retaining the jurisdiction under the DJA by the District Court and authored by Hon. Judge Stanley Blumenfeld Jr. on 02/23/2021 (**App3**)[1], The Court of Appeal for the 9th Circuit ("the 9th Circuit") rejected the discretional review of the lower court's denial to dismiss on 03/11/21(**App1; App2**).

The stay aims to support the US Constitution and the public confidence in the US judiciary; to secure the fairness of the judicial process and the due process clause, eliminate the burden of repetitive and multiplied actions in the courts of lower jurisdictions, protect constitutional rights which may apply to the foreigners on the US soil and may not be determined yet by this Court.

RELATED PROCEEDINGS WITHIN THIS COURT

This Court had a pending filing petition directly related to this application, Docket No.: 20A97, Sergei Vinkov vs. United States

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[1] He is a new member of the US Government (PN1381-116: Stanley Blumenfeld, 09/15/2020 - Confirmed by the Senate by Yea-Nay Vote. 92 - 4. Record Vote Number: 172.); See also Order of the Chief Judge (#20-116) approved by Judge Philip S. Gutierrez dated 09/25/2020, creating calendar of Judge Stanley Blumenfeld, Jr.

District Court for the Central District of California, (denied by the Court on 01/11/21). Date due is 04/02/2021. The Applicant requested dismissal under Sup. Ct. Rule 46.2 on 03/22/21.

This Court denied the petition directly related to this application, Docket No.: 20-506, Sergei Vinkov vs. Mark Smith, et al. (the interim challenge of the subject matter jurisdiction was summarily denied by the Court on 01/11/21).

DECISIONS BELOW

1) The 9th Circuit denied Vinkov's requests for discretional intervention in:

a) The Ordered Denial of Petition and Stay in *Re Sergei Vinkov* Case No. 21-70559, dated 03/11/2021, the Decision is not reported, but lodged in **App. 1**.

2) The District Court refused to comply with the US Constitution; Acts of Congress and US Supreme Court precedents in:

a) The Denied Motion to Dismiss Plaintiff's Claims in Case No.: 5:19-cv-01821-SB-SPx, Brotherhood Mutual Insurance Company v. Sergei Vinkov, dated 02/23/2021; the Decision is not reported, but lodged in **App.3**.

JURISDICTION

The Applicant's nearest deadline to file the petition for certiorari is Sunday, August 8, 2021, and he meets the requirements of Order List: 589 U.S. 3/19/2020; Sup. Ct. Rule 14.5 of this Court (a 150-day extension due COVID-19 pandemic). This Court has jurisdiction over

the application under 28 USC §1254(1); 28 USC §§ 2101(f); 28 USC § 1651.

LEGAL STANDARD

A stay during a pending petition for a writ of certiorari is warranted upon three grounds, which this Application satisfies to the best of his ability to present the case before this Court:

(1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari";

(2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and

(3) "a likelihood that irreparable harm will result from the denial of a stay." *Conkright v. Frommert,* 556 U.S. 1401, 1402 (2009).

CASE STATEMENT

At first glance the case presents a typical duty-to-defend coverage dispute. However, the unique features of the dispute is the challenge of the scope of religious duties assumed by a foreign national volunteer residing and exercising the Lutheran religion in the State of California. The lawsuit was brought by a Mennonites-affiliated business entity against a foreign Lutheran with elements of religious persecution. Therefore, the insurance dispute has a legal intersection of free speech and religious exercise clauses, which cannot be resolved under the regular declaratory judgment proceedings within the federal jurisdiction under the current constitutional design of this Union.

The history of this Court's jurisprudence does not reveal any opinions on the scope of protecting religious freedoms for foreigners in general and in their religious practice in the digital world - social media platforms in particularly. Parties litigate the issues by Indiana Corporation Brotherhood Mutual Insurance Company (the Mennonites affiliated business entity, "the Insurer") and a California Resident, but Russian Citizen Sergei Vinkov ("the Applicant") who was a member of the Congregational Council of Lutheran Church of Hemet, California ("the Church") during the insurance period. The duty to defend coverage was triggered by filing a defamation lawsuit in the state court (the Underlying Action) against Vinkov after his use of a social media platform to review of the services of one of the Church's contractor in February 2019. Vinkov timely requested coverage in March 2019. The Insurer disclaimed the coverage without the reservation of any rights by the unverified opinions from third parties in April - May 2019. The Applicant complained to the California Department of Insurance (CDI) on the wrongdoing of the Insurer and enforced the provision of coverage. The Insurer provided the limited coverage and issued the reservation letter after the involvement of CDI in July 2019. In September 2019, the Insurer launched the lawsuit against the Applicant. The Applicant immediately terminated the representations by the attorney retained by the Insurer in October 2019 to secure its defense strategy.

After the attorney was withdrawn from the Insurer, the

Applicant appeared in the District Court and requested to dismiss the case (**App6**). The District Court denied the Applicant's motion and disregarded the requests for judicial notices (**App6**). At the same time the denial resulted in filing the Applicant's Answer (November 2019) and establishing a request for Affirmative Relief (March 2020) (**App6**). In June 2020, the Applicant moved for judgment in his favor asserting immunities, the jurisdictional and procedural defects in the Insurer's pleadings, the failure to defense counterclaim which the District Court declined (**App6**). Vinkov timely filed a Notice of Appeal, which reached this court under the emergency application for stay, which this Court denied on 01/11/21.

After the denial of this Court, the Applicant developed his arguments and presented them to a newly assigned Judge Stanley Blumenfeld in January 2021, who sided with the conclusions of his previous colleagues before whom the Applicant briefed the issues of subject-matter jurisdiction, standing and other defects. The District Court continued to resist and did not correct its own wrongdoings and the Applicant is facing irreparable injustice and religious prosecution entertained in the federal judicial system in the conspicuous violations of the Acts of Congress (28 USC § 1332; 28 USC § 2201(a)) and the US Constitution (Article III, Amend. I., Amend XIV). The District Court's conduct indicates a clear vindictive perspective toward the Applicant as he exposed the severe departure of the District Court from the governing precedents (the district court

systematically claims Vinkov's arguments as frivolous, meritless, not persuasive, etc. **App6**). This application is the last resort to fight with the wrongdoings of the District Court (*Cohens v. Virginia, 19 U.S. 264, 404 (1821)* - the appellate jurisdiction of the US Supreme Court is proper for all cases arising under national laws). The one higher is only the Life Grantor.

The case has passed the discovery cut-off and faced the following deadlines for case-dispositive motions which the Applicant actively used, but the District Court allowed the defective pleadings to be kept in its caseload (**App6**). The *Pro Se* Applicant suffers prejudice to defend the defective pleading and unreasonable burden to compel the lower courts to follow the rule of law.

REASONS TO GRANT STAY

1. *Pro Se* Applicant Exhausted All Known to Him Procedures in the Lower Courts to Cure Prejudicial Errors and Terminate Religious Prosecution

The Applicant appeared before this Court with similar arguments on discovery matter. It is well-settled that the matters of a religious organization are not subject to traditional norms of discovery because of the Establishment Clause and Free Exercise Clause of the United States Constitution[2]. *Kedroff v. Saint Nicholas Cathedral of Russian*

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[2] Although certain researchers relying on *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 565 U.S. 171 (2012)* (*Hosanna*) deem that a ministerial exception in the practical field favors discovery process in the employment of discrimination claims and cannot be purely barred on jurisdictional grounds, See . Smith, Peter J. and Tuttle, Robert W., Civil Procedure and the Ministerial Exception (2017). 86 FORDHAM L. REV. No,4 (2018).

Orthodox Church in North America, 344 U.S. 94, 116 (1952). These Constitutional Clauses guarantee religious organizations independence from secular control and manipulation. The District Court disagreed [**App6**] and this Court exercised its discretions and did not intervene to correct the District Court's wrongdoings in the course of the discovery proceedings. At the closing discovery stage, the Applicant sought the dismissal again and developed the briefing before a newly assigned judge who claimed Vinkov's arguments as "meritless". Vinkov disagreed and reported to the following agencies in the US judicial hierarchy on usurpation of judicial power by lower court (**App2**).

Historically, this Court has "[t]he power of construing the laws according to the SPIRIT of the Constitution" (Federalist Paper No. 81). The lower court's judicial officers substantially departed from the standard of good behavior (**App2**). ("The standard of good behavior for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of government.", Federalist Paper No. 78). On numerous occasions and with different degree of particularly the Applicant briefed the issues of the District Court's non-compliance with the US Supreme Court Precedents; the 9th Circuits governing case law and Acts of the US Congress (**App2; App4**). However, none of the governmental agencies

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This case is different from *Hosanna*, because only arbitration matters have a potential for retaining jurisdiction. The Insurer did not raise arbitration issues, they were introduced later as an argument for the disposition for the failure to state a claim upon Applicant's gain of the law and English. The DJA and 28 USC § 1332 do not create a subject-matter jurisdiction for the insurance dispute.

was interested to compel the law and order; the rule of law in its judicial department[3].

The Employment Div., Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595, 1607, 494 U.S. 872, 891 (U.S.Or.,1990) indicates that claims connected with communicative activity are barred by the First Amendment. The Court cannot apply neutral laws generally applicable to the Applicant's religiously motivated conduct. The Insurer's claims are barred jurisdictionally based on the interconnections of the Religious Clause and the Free Exercise Clauses. The District Court misread *Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049 (2020) (Our Lady)* ("the First Amendment does not create "a general immunity from secular laws."", quoting the order from **App3** at Page 2) and reached polar opposite decision, even disregarding, the DJA and 28 USC § 1332 does not create the liabilities itself unlike the employment discrimination laws in *Our Lady* (**App4**).[4]

Thus, the current application seeks the stay upon the filing and disposition of a petition for certiorari which will seek the reversal of

[3] The entire historical development of the USA depended on the rulings of this Court in particular (for example, racial issues for most people were resolved posthumously until the Judicial Department of the US Government were fully or substantially renewed (Brown v. Bd. of Educ. - 347 U.S. 483, 74 S. Ct. 686 (1954) overruled Plessy v. Ferguson - 163 U.S. 537, 16 S. Ct. 1138 (1896))); another example – the election results challenges 2000 vs 2020- Cases). Moreover, each denial of a petition (application) or sought remedies created a necessary step for the resolution of the matters in the future (for example, same-sex marriages).

[4] The longstanding dispute of the ministerial exception has a borderline of application to procedural laws and substantive laws. Applicant has discovered a wide range of cases of treatment of ministerial exception in the context of the substantive laws, but this Court has not indicated a clear guidance of application of the ministerial exception to procedural laws like the DJA and 28 USC § 1332. It appears that certain tests (neutrality and establishment) must be applied, see Applicant's perspective for solution in **App4**.

the District Court's irrational decision to keep the defective complaint in its caseload. All requests addressed to the lower court for stay of discovery (**App6**) or entire proceedings with amendments of the scheduling order were disregarded (**App6**). Although the California law prescribes a mandatory (*United Enterprises, Inc. V. Superior Court, 183 Cal.App.4th 1004, 1006 (Cal. Ct. App. 2010)* - factual issues are overlapping the duty-to-defend dispute and the underlying actions; the guidelines for determinations stay set forth in *Montrose Chemical Corp. v. Superior Court, 6 Cal.4th 287, (Cal. 1993)*; **App.5**) and discretional stay (*Northland Insurance Company v. Briones, 81 Cal.App.4th 796, (Cal. Ct. App. 2000)* - the absence of possibilities of inconsistent factual determinations disfavors of stay) of declaratory relief action on the duty-to-defend disputes upon the pending Underlying Action, the District Court deprived the Applicant of his lawful remedies (the magistrate judge recognized Vinkov's requests as a case-management matter (**App6**), not discovery, but the presiding judge claimed that Vinkov did not demonstrate a good cause - **App6**)[5]. The Applicant was not trained to fight with the wrongdoings of federal officials and he believes that it is almost impossible under the current settings.

It is well-settled that the complaint seeking the declaratory relief must involve a controversy that is substantial and concrete (*Aetna*

[5] It even does not amount the problem of miscommunication, because the state case law clearly directs the stay of declaratory relief action upon the resolution of the Underlying Action, wherein the factual context is determinative. See *Haskel, Inc. v. Superior Court, 33 Cal.App.4th 963, 968 (Cal. Ct. App. 1995)*; *Truck Ins. Exchange v. Superior Court, 51 Cal.App.4th 985, 986 (Cal. Ct. App. 1996)*.

Life Ins. Co. v. Haworth, 300 U.S. 227, at 240-41 (1937)), so the Insurer's challenge of Vinkov's scope and broad of religious volunteer duties appears as highly speculative for the purposes of disclaiming coverage. Moreover, the District Court as a court of limited jurisdiction cannot entertain religious matters and issue the declaration regarding the scope and boundaries of religious duties on pure neutrality principles without the conversion of the federal court into a Bible club. The District Court improperly construed *Our Lady* (the case on the employment discrimination in the religious institution, disposed under MSJ Rule 56 in the same District Court, which this Court agreed) to justify its retaining the jurisdiction over DJA. The DJA does not itself create subject matter or liabilities like federal laws of protection of employees in *Our Lady*. This ruling (App3) undermines the presumption of acting in good faith to discharge the judicial duties, because it appears as the District Court's attempt to trick the Applicant as a foreigner and not an English-native speaker on the logical fallacies (for example, red herring).

Moreover, the Insurer failed from motion to motion to produce any allegations and evidentiary material to support its claim for recoupment that it incurred $75,000 more costs of defenses in the Underlying Action for Vinkov relying on the diversity jurisdiction (28 USC § 1332). The Applicant learned that he must allege jurisdictional issues from motion to motion, because the standing issues, for

example, may be waived by the 9th Circuit's practice (Sycuan *Band of Mission Indians v. Roache, 54 F.3d 535, 538 (9th Cir. 1995)* - failure to challenge standing results in a waiver). However, the District Court considered the Applicant's procedural maneuvers for preserving arguments on appeal as frivolous and threatened him with sanctions, attempting to silence the Applicant's voice speaking of the egregious injustice which he independently discovered and made efforts to document in all jurisdictions, if something happened to him. The Applicant entertains serious worries for his safety (health, finances and the immigration status) upon the discovery of the blatant violations of the US Constitution and Acts of the Congress committed by the federal officials within the District Court. Applying to law enforcement agencies, US Congress, Judicial Council will not help protect the Applicant from the prejudicial errors of the District Court and the vindictive conduct emulated under the erroneous rulings. Following the rules of this Country, only this Court may break the vicious circle.

The Applicant's legal interests are at risk while the petition is under review and the stay is warranted. The Applicant is not capable of pursuing remedies against the lower court's officers under 42 USC § 1983, which allows for a cause of action against "[e]very person who, under color [of state law] subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities

secured by the Constitution and laws [of the United States].". Thus this Court's intervention is the only equitable remedy against the District Court's wrongful decisions.

2. Judicial Officers of Lower Courts Cannot Cancel Algebra Laws

This application requests to pay attention to the numerous acts of disobedience to the US Constitution, binding authorities and Acts of Congress by judicial officers in the District Court (See the accompanying Request for judicial notice). If the doctrine of standing and neutrality test for religious disputes may raise different opinions among the judicial community, then the evaluation of the diversity jurisdiction under the threshold amount of $75,000 is a transparent and non-debatable element, which the District Court resists to admit. All rulings of the District Court deny Vinkov's argument of the jurisdictional defects of the Insurer's complaints, the lower court officers demonstratively attempt to abandon the algebra laws and allow the Insurer to entertain the claims with the lower amount[6]. It appears that the lower court's officers improperly discharged their constitutional duties to reshape the algebra laws by its judicial power.

A duty to defend provision can be expressly made to end when

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[6] The Applicant compared several numbering systems and found that 75,000 in the octal numeric system equals 31,232 in the decimal system. Hence, the District Court may be not erred, but it did not mention that its threshold amount evaluation was based on the octal numeric system. It appears that the US Congress relied on the decimal numeric system enacting its statute (28 USC § 1332) and this Court's intervention is highly warranted to clarify in which numeric system the diversity jurisdiction amount of 75,000 must be evaluated. Upon the review of jurisprudence of this Court, Applicant has not discovered any cases which allow a determination of the threshold amount for diversity jurisdiction in the numeric system different from decimal.

policy limits are reached or judgment was entered in the underlyin action (*Montrose Chemical Corp. v. Superior Court, 6 Cal.4th 287, (Cal. 1993)*). The Insurer prima facie did not indicate that the limits under the insurance policy was reached or the jurisdictional threshold amount for claimed "recoupment" was achieved. Nothing in the Insurer's allegations supports the federal jurisdiction. Vinkov presented more comprehensive briefings with legal theories supporting the dismissal, which the District Court claimed as meritless (**App3**). To fight with frivolous ruling of the lower court is possible only on the appellate jurisdiction.

3. Applicant Has Probability to Prevail on the Merits

The District Court is not a Bible Club and not affiliated with the Pacifica Synod, the umbrella organization for the Applicant's former Church. Under the California laws, the "ministerial exception" precludes the judicial review of merits how the Applicant discharged his duties. (see Schmoll v. Chapman University (1999) 70 Cal.App.4th 1434 - precluding judicial examination into the merits of the discharge of a chaplain]; California Corporations Code §9241)[7]. The "the janitor" rule (Hope Int'l Univ v. Superior Court, 119 Cal.App.4th 719, 738 (Cal. Ct. App. 2004) - the discussion of the character of

[7] California does bar the defamation lawsuit against members of a religious institution (McNair v. Worldwide Church of God, 197 Cal.App.3d 363, 365 (Cal. Ct. App. 1987)). It appears that the Applicant's Underlying Action has a probability to reach this Court again to settle the longstanding split between the state's courts of the last resort on how defamations lawsuits must be treated under the ministerial exceptions. (For example, California favors to consider First Amendment as protections from liability with the application of *New York Times Co. v. Sullivan, 376 U.S. 254 (1964)*).

secular and non-secular work) is not applied to the Applicant, because the Church's Constitution prescribes that the Congregational Council discharge their duties in accord with the Bible **(App4)** and the governing position be not purely secular.

This Court's intervention is necessary to terminate and prevent the abuse of discretion in the lower courts. The excerpts of records attached to this application clearly demonstrate that the District Court exceeded its jurisdiction and failed to proceed according to the essential requirements of the law (actual controversy under the DJA, failure to exhaust arbitration clause under 9 USC §§1-14, diversity amount under 28 USC § 1332).

Moreover, the lower courts are not eligible to provide advisory opinions of the matter on a qualified immunity and other matters which were not raised in the initiated complaint, but presented in the affirmative defenses[8]. The Applicant's responsive pleadings raise the issues of qualified immunities which this court denied to clarify under *Vinkov vs. Smith and et. al* (01/11/21). This court also denied to screen the matters under the Volunteer Protections Act (42 USC § 14501 et seq) and it will be improper for the federal court to intervene with the issues which are subject to the Underlying Action (App.).

Declaratory judgment proceedings must raise a justiciable question (*Poe v. Ullman, 367 U.S. 497 (U.S. 1961)*), the Insurer's

[8] Vinkov's further legal research revealed that the qualified immunity does not apply to claims for declaratory or injunctive relief. See example in Grantham v. Trickey, 21 F.3d 289, 295 (8th Cir. 1994) ("There is no dispute that qualified immunity does not apply to claims for equitable relief."). Vinkov's volunteer immunity matters are only related to the claim for recoupment.

attempts to drag Vinkov into the federal court based on its disagreement with Vinkov's use of social media to discharge his religious duties does not create a justiciable question to exercise the judicial power to issue the declaration. It contradicts the Establishment Clause and uses the federal court as a tool in a religious dispute (the Mennonites insurance business entity challenges the manner and form of discharging religious duties by a Lutheran volunteer)[9]. The issuance of the Declaration based on the challenges of the religious duties will impermissibly affect a policy or practice of religious institutions, the federal court will retain the unconstitutional discretions as a policymaker. The declaration, regardless of the decision being made in favor of the Plaintiff or of the Defendant, will create pressure on believers to abandon their religious beliefs in social media as a public forum by modifying their behavior, impose a substantial burden on members of religious organizations regarding the use of social media platforms. A declaratory judgment must decree, not suggest what the parties may or may not do. The challenge of the scope of religious duties under the DJA is not a proper mechanism for lower courts in the federal jurisdiction. The Insurer's complaint for declaratory relief fails as matter of law and as matter of pleadings because it failed to state a pure secular complaint [**App6**.]. (See examples, W. Coast Poultry Co.

[9] As an educational researcher Vinkov is aware that the current judicial corps of federal proceedings is indoctrinated by the events of 60s ideologies to increase the role of the central government in the resolution of personal freedoms. However, such indoctrination of the current generation of judicial officers should not alter the constitutional design of this Nation.

v. Glasner, 231 Cal. App. 2d 747 (1965) - refusals of declaratory relief were properly exercised where the plaintiff sought a declaration that the defendant was not an orthodox Rabbi; *Am. Mission Army, Inc. v. Lynwood, 138 Cal. App. 2d 817, 292 P.2d 533 (1956)* - to say that a controversy exists is a mere conclusion and it is not sufficient to support a declaratory relief claim). The Insurer's complaint attacks religious freedoms and must be dispensable under the state Anti-SLAPP law (9th Circuit accepts California Anti SLAPP under FRCP 12 and 56 standard motions), which the District Court denied[10].

Religious organizations have the right to control the selection of their own religious leaders. (See *Our Lady* and other related). The Insurer attempted to override the ministerial exceptions under the First Amendment via the insurance contract. All cases on the employment discriminations clearly demonstrate that claims (*Our Lady* and *Hosanna*) are futile, and the issuance of a declaration must pass the *Lemon and Lukimi tests* for neutrality[11]. The District Court refuses to apply all these tests in **App4**. The board membership does not require religious training, but the internal policies prescribed to

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[10] Vinkov briefed the same legal arguments on Anti-SLAPP protections before three different judicial officers with the same results (the federal judges were of different age, qualifications, bench experience). It appears that the superior power of this Court is to provide directions how to treat the obvious. And prejudicial errors can not be eliminated without the intervention of this Court. If this Court is immune to the consequences of its mistakes, then the general public is not immune to judicial errors, and the lives and freedoms of an individual will be forever forfeited by erroneous decisions of the lower courts (See dissenting words of Judge KAGAN: "our life tenure forever insulates us from responsibility for our errors " in South Bay United Pentecostal Church v. Newsom, 141 S.Ct. 716, 723 (U.S., 2021))

[11] *Lukume test* - Church of the *Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, (1993)* - neutrality law; Lemon test refers to *Lemon v. Kurtzman, 403 U.S. 602, (1971)*. See more in **App4; App6**.

adhere to the Biblical provisions in discharging the governing functions for all members of the top of governing body of the Church (**App4**). Thus the First Amendment's ministerial exception bars the judicial review of the Insurer's claims on the jurisdictional grounds. Moreover, Insurer is not a proper entity to challenge the scope of Vinkov's duties under the DJA. The DJA does not create the standing for parties, like other federal statutes which this Court determined (*Our Lady* – a ministerial exception as protection from liability). The ministerial exception was applied to the law which creates liabilities in *Our Lady*. The DJA does not create liabilities itself, it is a procedural mechanism to determine a liability. As the Insurer invites to make unilateral directions to expel Holy Spirit, Jesus Christ and the God the Father from Vinkov's religious duties to touch the merits of the case, the complaint cannot be entertained in the federal courts. It is clearly barred by the ministerial exception, because the Complaint failed to establish the actual and concrete controversy which will be a pure secular in its nature. These matters are interconnected with the doctrine of a qualified immunity, but in this particular case the religion-based controversy is not constitutionally friendly, and the District Court must dismiss the Insurer's complaint without leave to amend.

4. Clear and Fair Prospect of Reversal Warrants The Intervention of This Court

The District Court decision contravenes clearly established

federal law (DJA, 28 USC § 1332; 9 USC §§1-14) and warrants the summary reversal.

A short and simple solution to terminate the religious persecution toward Applicant it is his death (A dead person may not sue, be sued, or be joined as a party to a lawsuit - *LN Management, LLC v. JPMorgan Chase Bank, N.A., 957 F.3d 943 (C.A.9 (Nev.), 2020)*). However, the wrongdoings of the lower court will not be resolved and the interventions of this Court will not be necessary in case of the Applicant's death. Moreover, other foreigners being under the religious persecution within this Country will lose the opportunity to be free from persecution under the current generation of the US Supreme Court justices without this application.

The lower court's decision is wrong because the judicial decision is not consistent with the Article III standing requirements and First Amendment Restrictions (**App4**). The failure to provide lawful rulings in a case brought with a jurisdiction is "treason to the constitution." (*Cohens v. Virginia, 19 U.S. 264, 404 (1821)*). The final say of this Court is a pure discretional remedy (In *National Football League v. Ninth Inning, Inc.* 592 U. S. ____ (2020) Justice Kavanaugh, respecting denial, clarified: "the denial of certiorari should not necessarily be viewed as agreement with the legal analysis of the Court of Appeals";. If the members of this Court are protected from their mistakes, then thousand litigants who face the abuse of discretions in the lower courts on a daily basis will be forever

prejudiced by the erroneous rulings of the lower courts without the interventions of this Court. The current US Government has not resolved this problem of inequality in the American jurisprudence where the litigants are not protected from wrongful acts of the courts which designated to consider the wrongdoings of others. Employees of the courts are protected for a wide range of wrongdoings. As usual all corrections on the pretrial stage fall into the discretional remedies, and does not impose the higher courts to intervene to terminate the wrongdoings of the lower courts until the case will be fully dismissed. This presented case is specific because the District Court is unwilling to dismiss the case which it is not capable of resolving under the US Constitution, because the complaint is based on highly speculative matters - the challenges of the manner and scope of discharging religious duties with the use of social media[12]. The District Court puts itself above the law deciding unilaterally which US Supreme Court's decision it will apply or not, despite the fact that the Applicant meticulously briefed and delivered his points as to why the Insurer's complaint is not friendly to the US Constitution and cannot be entertained in the federal courts[13].

In *Hosanna* this Court declared that the ministerial exception

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[12] In the secular context pending Case No. 20-197, Biden, et al. vs Knight First Amendment Institute at Columbia University, et al. may be related to distinguish the use of social media for individual and business purposes. The Bible and US Constitution were written at the time when social media did not exist. Social clubs, religious orders and temples distributed information and knowledge without the Internet. Linguistic and other barriers precluded the information distribution in a speedy manner with the global coverage.

[13] The Insurer also failed to demonstrate possible amendments to cure non-secular matters. Thus the jurisdictional matters in favor of retaining jurisdiction are not curable under the artful pleading doctrine.

operates as an affirmative defense to employee's discriminatory claims. That decision is highly-cited, but it is silent as to how ministerial exception operates in the context of the DJA for the insurance dispute. The application of the ministerial exceptions to the declaratory relief claims of the Insurer are uncertain under this Court's jurisprudence for a regular member of public. The reasoning raise from *Employment Div., Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595, 1607, 494 U.S. 872, 891 (U.S.Or.,1990).* The well-developed decisions on the doctrine of justiciability, standing, subject-matter jurisdiction provide a clear prospect of reversal of the District Court's decision retaining the jurisdiction under 28 USC § 1332 and DJA. The Applicant's case demonstrate that the ministerial exception in the context of DJA must be operated as a jurisdictional bar (*Employment Div., Dept. of Human Resources of Oregon v. Smith, 110 S.Ct. 1595, 1607, 494 U.S. 872, 891 (U.S.Or.,1990)* - claims based on the religious controversy with a clear connection of communicative activity are barred by the First Amendment). Certain doctrines (qualified immunity and ministerial exception) altogether bring the legal effect of a jurisdictional bar for entertaining non-pure secular claims, attacking the manners, forms, places of discharging of religious duties by the Insurer. The insurance contract itself is not a proper instrument for creating subject matter jurisdiction and support standing for its author in the federal court. The existence of the insurance contract itself does not open a road to the federal court.

Insurer must satisfy the constitutional and procedural requirements embedded in the federal law before the bringing its case in the District Court (Details in **App4**).

5. Public Interests and Public Policy will be Damaged without Court's Interventions

It is well-known that free exercise and establishment clauses of the First Amendment apply to the state through the due process clause of the Fourteenth Amendment. (*California v. Grace Brethren Church, 457 U.S. 393 (U.S.Cal.,1982)*). The presented case fits into these procedural maneuvers if the state law is considered to govern the insurance business upon the constitutional outlets.

The lower courts repeatedly violated Vinkov's constitutional freedoms and rights (US Const., amend. XIV; US Const., amend. V; US Const., amend. I; *Bridges v. Wixon*, 326 U.S. 135 (1945) - non-citizens living in the US are entitled to free speech protection and due process - *Zadvydas v. Davis, 533 U.S. 678, 693 (2001)*). The violation of constitutional freedoms is a sufficient proof of irreparable harms and reversible error. The continuous wrongdoings of the lower courts will not be separately reviewable if the case is dismissed at further stages of the litigation and the standard which is different from the governing standard prescribed for FRCP 12 motions and the offences of the US Constitution by judicial officers of lower courts are not redressed to the Applicant. The only available remedy against the wrongdoing of the lower court is discretional corrections of the lower

court by the higher courts. Therefore the Respondents and the Real Party in Interest – the Insurer will not suffer any prejudice to correct their conduct.

6. Applicant Will be Prejudiced by Being Prosecuted on Religious Grounds

The Insurer is a private corporation interconnected with religious organization possesses different views on the faith of the Christ (for example, Mennonites exercise the faith not friendly to gay people, wherein Applicant's denomination are friendly to all people regardless their sexual identity and attitudes, See attachment to Vinkov's Answer in the District Court). Insurer initiated the lawsuit (**App6**). The US agency is a Respondent allowing a suit with the violation of the US Constitution and federal laws. There is no prejudice for the Respondent from staying the case in its entirety during the pending challenge of lawfulness of the decisions of the lower court under the anticipated Petition. However, the Applicant will suffer prejudice to be prosecuted for his faith and his religiously motivated conduct.

The Applicant Vinkov is already suffering prejudice from the acts of the judicial officers of lower courts, who refused to follow the decisions of the courts of a higher jurisdiction, comply with the due process clause ("[T]he right to procedural due process is "absolute". *Carey v. Piphus, 435 U.S. 247, 259, 266 (1978)*) and failed to adhere to the rule of law (*US Const., amend. XIV*). Moreover, the

improper decisions of the lower courts put at risk an immigration status of Vinkov, and it is still unknown how much more financial resources will be necessary to reach justice. Vinkov faces a risk of violation of the lower court orders and deadlines without a stay (Trial Set on 07/06/2021).

Vinkov is also substantially prejudiced to maintain several actions simultaneously in different jurisdictions without holding any legal degree and while using English as a second language. Vinkov needs additional time and a temporary stay relief to conduct additional research to present the review of the inter-Circuits practice with analogous or closely related circumstances. Due to the COVID-19 restrictions imposed by the California Government, most nearly located law libraries are preparing for re-opening and offer limited access to work with legal resources (Riverside, Temecula (1 hour per day which is absolutely insufficient to maintain comprehensive legal research), San Diego). The remote accesses to the electronic subscription to legal databases do not provide useful and highly valuable secondary materials which may optimize the researching strategy despite the fact that Vinkov discovered his own method of studying the case law of this Court.

CONCLUSION

The Insurer could not state pure secular claims and cannot entertain the federal jurisdiction to disclaim the coverage. The Respondent must dismiss the case and should not issue

the declaration on the merits of a religious controversy based on the communicative activity. The Applicant uses this application as the last opportunity to correct the lower court's decision [**App3**], which conspicuously conflicts the US Constitution (Art III, Amend. I, Amend XIV), Acts of Congress (DJA, 28 USC § 1332) and substantially departed from the governing precedents of this Court (Lemon test, Lukumi test, DJA). Based on the foregoing, the Court should order a stay in the lower court until the final disposition of a petition for certiorari.

Respectfully submitted,

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March 30, 2021

CERTIFICATE OF COMPLIANCE WITH RULE 33

I, Sergei Vinkov, Applicant *Pro Se*, hereby certify that the foregoing motion to stay proceedings does not exceed the 9,000 words limitations set in *Sup. Ct. Rule 33.*

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March 30, 2021

APPENIDICES

Appendix 1. 9thCircuit Order denying petition for writ and emergency motion for stay of in case 21-70559 dated 03/11/2021.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 11 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: SERGEI VINKOV.

SERGEI VINKOV,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE,

Respondent,

BROTHERHOOD MUTUAL INSURANCE COMPANY, an Indiana Corporation,

Real Party in Interest.

No. 21-70559

D.C. No.
5:19-cv-01821-CJC-SP
Central District of California,
Riverside

ORDER

Before: M. SMITH, BADE, and BUMATAY, Circuit Judges.

Petitioner has not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

Petitioner's motion for a stay (Docket Entry No. 2) is denied as moot.

No further filings will be accepted in this closed case.

DENIED.

Additional material from this filing is available in the Clerk's Office.