

Supreme Court, U.S.
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No. 22A718

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 STAY OR RECALL OF MANDATE OF 9th CIRCUIT
PENDING THE FILING AND DISPOSITION OF A PETITION FOR
WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit**

(No. 21-55857)

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QUESTIONS PRESENTED

1) Has the United States Court of Appeals for the Ninth Circuit (9th Circuit) correctly determined jurisdictional power of the federal court over equitable claims and denial of affirmative relief for a *pro se* party in duty-to-defend proceedings on the directly related pending state action under Article III requirements and jurisdictional statutes of US Congress?

2) Has the final judgment and related orders of the United States District Court for the Central District of California passed with violations of US Constitution (Case and Controversy, Immunities and Privileges, Free Exercise, Excessive Punishment, Due Law and Process clauses) and Acts of US Congress (28 USC § 2071-2077; 47 U.S.C. § 230(c)(2); 42 U.S.C. § 14503(a)(1); 28 U.S.C. § 2283; of 26 U.S.C. § 7428; 28 U.S.C. § 2201(a); 28 U.S.C. § 1332(a); 18 U.S.C. § 242; 28 U.S.C. § 453; 22 U.S.C. § 6401; 28 U.S.C. § 636(b)(1)(A); 42 U.S.C. § 2000bb-1; 42 U.S.C. § 2000cc) adjudicating the scope of religious duties of volunteer director and denying his protection from discovery in the federal court in duty-to-defend proceedings on the directly related pending state action?

PARTIES TO THE PROCEEDINGS

Applicant Sergei Vinkov, a Russian and American citizen (since April 2021), was the sole defendant and counter-claimant and appellant below. Respondent Brotherhood Mutual Insurance Company, an Indiana corporation, was the sole plaintiff, counter-defendant Appellee defendant and appellee below (“Insurer”).

LIST OF ALL RELATED ACTIONS

SCOTUS

1. Application No. 22A487 to extend the time to file a petition for a writ of certiorari from December 13, 2022 to February 3, 2023, submitted to Justice Kagan is granted, December 02, 2022 (*Vinkov v. Superior Court of California, Riverside County, et al.*);

2. Petition No. 21-191 for writ of certiorari to the United States Court of Appeals for the Ninth Circuit denied, October 12, 2021, (*Vinkov v. United States Dist. Court*, 142 S. Ct. 342 (2021));

3. Application No. 20A156 for stay addressed to Justice Barrett and referred to the Court denied, May 17, 2021 (*Vinkov v. United States Dist. Court*, 141 S. Ct. 2618 (2021));

4. The application No. 20A97 for stay addressed to Justice Thomas and referred to the Court is denied January 11, 2021 (*Vinkov v. United States Dist. Court*, 141 S. Ct. 1040 (2021));

5. Petition No. 20-506 for writ of certiorari to the Court of Appeal of California, Fourth Appellate District, Division Two denied, January 11, 2021 (*Vinkov v. Smith*, 141 S. Ct. 1058 (2021)).

9TH CIRCUIT

6. Bhd. Mut. Ins. Co. v. Vinkov, No. 21-55857, 2022 U.S. App. LEXIS 27542 (9th Cir. Oct. 3, 2022) (*en banc* petition filed on 10/09/2022 is denied on 01/25/2023).

7. Vinkov v. United States Dist. Court. (In re Vinkov), No. 21-70559, 2021 U.S. App. LEXIS 7223 (9th Cir. Mar. 11, 2021).

8. Vinkov v. United States Dist. Court for the Cent. Dist. of Cal. (In re Vinkov), No. 20-73264, 2020 U.S. App. LEXIS 36439, at *1 (9th Cir. Nov. 19, 2020).

9. Bhd. Mut. Ins. Co. v. Vinkov, No. 20-55687, 2020 U.S. App. LEXIS 26435, at *1 (9th Cir. Aug. 19, 2020) reconsideration is denied by Bhd. Mut. Ins. Co. v. Vinkov, No. 20-55687, 2020 U.S. App. LEXIS 34834, at *1 (9th Cir. Nov. 3, 2020).

10. Mark Smith, et al v. Sergei Vinkov, Case No. 20-55778, (9th Cir. Aug. 19, 2020).

US DISTRICT COURT

11. Bhd. Mut. Ins. Co. v. Vinkov, No. EDCV 19-01821-CJC(SP_x), 2019 U.S. Dist. LEXIS 231188 (C.D. Cal. 2019) (Judges Sheri Pym, Stanley Blumenfeld Jr., Cormac J. Carney).

12. Smith v. Vinkov, No. EDCV 20-01070-CJC(SP_x), 2020 U.S. Dist. LEXIS 119999, at *1 (C.D. Cal. 2020) (Jesus G Bernal, Cormac J. Carney).

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14. Vinkov v. Superior Court, No. S263745, 2020 Cal. LEXIS 6497, at *1 (Sep. 16, 2020);

15. Vinkov v. Superior Court, No. S261198, 2020 Cal. LEXIS 3397, at *1 (May 13, 2020);

16. Vinkov v. Superior Court, No. S261198, 2020 Cal. LEXIS 3066 (Apr. 30, 2020).

California Court of Appeal

17. Case No. E079115, Sergei Vinkov v. The Superior Court; Mark Smith et al., 07/25/22;

18. Case No. E075396, Sergei Vinkov v. The Superior Court; Mark Smith et al., 07/29/20;

19. Case No. E074567, Sergei Vinkov v. The Superior Court; Mark Smith et al., 03/05/20);

20. Case No. E074263, Mark Smith et al. v. Sergei Vinkov, was dismissed on 01/31/20.

California Superior Court

21. Smith v. Vinkov, MCC1900188, Superior Court, Riverside County – Southwest Justice Center, California, filed on 02/20/2019 (the full docket is available in Westlaw).

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APPLICATION TO STAY OR RECALL OF MANDATE

Pursuant to *28 U.S.C. § 2101(f), FRAP 41, Sup. Ct. Rule 22 and 23* Sergei Vinkov ("Applicant") submits his application to Associate Justice Hon. Elena Kagan for emergency relief in the form of stay or recall of mandate of 9th Circuit in case *Bhd. Mut. Ins. Co. v. Vinkov*, No. 21-55857, 2022 U.S. App. LEXIS 27542 (9th Cir. Jan. 25, 2023). Applicant expects to file petition for a writ of certiorari to review the order of 9th Circuit before or on Tuesday, April 25, 2023, which is the current jurisdictional deadline pursuant to 28 U.S.C. § 1254(1). **App.B.**

Without a stay Applicant's any further efforts to challenge the decisions below will be effectively unreviewable due the burden of costs associated with pursuing remedies from this Court and parallel post-judgment proceedings in the District Court; also, it will cause ethical dilemma for Applicant to violate the defective rulings or abide incorrect orders resulting into mootness of the issues present for review in this Court. Therefore, the lack of stay order from this Court may contribute and exonerate ongoing harms and constitutional injuries suffered by Applicant in the course of proceedings within the lower courts. For purposes to secure Applicant's right to petition for redress of grievances under First Amendment, application should be granted.

DECISIONS BELOW

The expected petition aims to challenge unpublished decision of 9th Circuit produced by Senior Judges Wallace, Fernandez, and Silverman in *Bhd. Mut. Ins. Co. v. Vinkov*, No. 21-55857, 2022 U.S. App. LEXIS 27542 (9th Cir. Oct. 3, 2022) (en banc petition filed on 10/09/2022 is denied on 01/25/2023) affirming denial of substantial rights of Appellant and disregarding the jurisdictional defects in

plaintiffs' complaint. Applicant exhausted all measures to prevent further irreparable harms, and terminate ongoing constitutional and statutory injuries. **(App.A)**.

9th Circuit ruling was prompted by final disposition of case *Bhd. Mut. Ins. Co. v. Vinkov*, No. EDCV 19-01821-CJC(SPx), 2019 U.S. Dist. LEXIS 231188 (C.D. Cal. Aug. 10, 2021) (Judges Sheri Pym, Stanley Blumenfeld Jr., Cormac J. Carney) pursuant to *28 U.S.C. § 1291*.

JURISDICTION

9th Circuit denied *en banc* petition on 01/25/2023 **(App.B)**, and subsequently denied motion for stay of issuance of mandate on 01/27/2023 **(App.A)**. The mandate of 9th Circuit will be issued on Wednesday, February 1, 2023. The due date for filing petition for writ of certiorari will be Tuesday, April 25, 2023 under 28 U.S.C. § 1254(1).

Additionally, the jurisdiction of this Court is warranted under *28 U.S.C. § 1651*. Court's authority may be invoked under 28 U.S.C. § 2283 exceptions to aid its own jurisdiction, and to protect or effectuate its judgments. (*Leiter Minerals, Inc., v. United States*, 352 U.S. 220, 225 (1957)). Judicial relief is authorized by 42 U.S.C. § 2000bb-1(c) and 42 U.S.C. § 2000cc(a). In the light of 28 U.S.C. § 1350, this Court also may retain jurisdiction over petition. "[T]his jurisdictional statute does not create a cause of action, ...courts may exercise common-law authority under this statute to create private rights of action in very limited circumstances. " *Nestle U.S. v. Doe*, 141 S. Ct. 1931, 1935 (2021).

CONSTITUTIONAL PROVISIONS AND STATUTES

The questions for review touch numerous provisions of US Constitution and

Act of US Congress. However, the primary sources to claim errors of law in 9th Circuit and the District Court proceedings come from Case and Controversy and (U.S. Const. art. III – “[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,”) and Privileges and Immunity (U.S. Const. art. IV, § 2 - “[t]he citizens of each state shall be entitled to all privileges and immunities of citizens in the several states”) under the federal Constitution. Additionally, Petition will rely on *First, Fifth, Eighth and Fourteenth Amendments to U.S.* The scope of main arguments can be viewed in the appendices (**Apps.G,H,K.**).

INTRODUCTION

The questions presented show that Applicant “won” a jackpot of judicial errors and nobody wants to adjudicate them (**Apps.G,H,K.,L.**). Applicant contends the judgment of the District Court must be void because the trial court acted outside its constitutional and statutory capacity, for examples, Case and Controversy, Immunities and Privileges, Free Exercise, Excessive Punishment, Due Law and Process clauses of US Constitution) and numerous provisions of federal statutes - 28 USC § 2071-2077; 47 U.S.C. § 230(c)(2); 42 U.S.C. § 14503(a)(1); 28 U.S.C. § 2283; of 26 U.S.C. § 7428; 28 U.S.C. § 2201(a); 28 U.S.C. § 1332(a); 18 U.S.C. § 242; 28 U.S.C. § 453; 22 U.S.C. § 6401; 28 U.S.C. § 636(b)(1)(A); 42 U.S.C. § 2000bb-1; 42 U.S.C. § 2000cc. 9th Circuit is not proper entity capable to extend the scope of jurisdictional power of the federal courts (**App.K.**). Applicant learned that justice in the USA depends not on the written laws, but on the vote distribution within the judicial departments (**App.A,B,C**). Nevertheless, because it is apparent from the face of the records in **Appendices**

that lower court officers failed to heed numerous binding Supreme Court precedents, there is not prejudice for Respondent to enforce lower court comply with law.

Applicant exhausts his last attempt to gain the votes in support of retaining of correctional power from reviewing courts (**App.A,B,C**). Therefore, this application is accompanied with legal points and supporting documents (See **Appendices**) to demonstrate that: (1) reasonable probability that four Justices will consider issue sufficiently meritorious to grant certiorari; (2) fair prospect that majority of court will vote to reverse judgment below; and (3) likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 130 S. Ct. 705, 175 L. Ed. 2d 657 (2010); *Indiana State Police Pension Trust v. Chrysler LLC*, 129 S. Ct. 2275, 173 L. Ed. 2d 1285 (2009). Thus, requested relief in form of stay pending the filing and disposition of a petition for writ of certiorari to this Court is proper and adequate remedy at this stage. Application should be granted.

STATEMENT OF THE CASE

I. Insurer Sought a Declaration against a *Pro Se* Party from the Pending State Proceedings in the Federal Court

Insurer declined to provide duty-to-defend coverage against a foreign director of a religious tax-exempt corporation. Applicant-insured obtained enforcement of insurance laws of California from the state agency. After involvement of California Department of Insurance, Insurer did seek a declaration to exam the scope of religious duties of volunteer director in the pending state action under insurance contract. Contract does not specify a

definition of “religious duties”, “church interests”. Liability of Applicant on defamation claims has not been established in the Underlying action, Plaintiff voluntarily requested to dismiss claims against Applicant pending appeal in 9th Circuit. Insurability of defamation claims against a board of directors is listed in the insurance contract (relevant portion can be seen in **App.G.pgs.62a-65a.**). Applicant answered and counterclaimed. Applicant’s request for affirmative relief survived several motions to dismiss. Affirmative relief seeks public published apologies and pecuniary recovery from Insurer.

II. *Pro Se* Party Lost Protection from Discovery for Failure to File Stipulation

Magistrate Judge denied protection from discovery for failure to submit stipulation **App.F.** Applicant timely objected and preserved issues for review on appellate proceedings. **App.N.**

Applicant noted in his objections that

“A *sui generis* case where a Russian citizen Vinkov attempts to enforce the compliance of American citizens with the US Constitution (federal judges cannot disregard the limits of their judicial function - *Rochin v. California*, 72 S.Ct. 205, 208–09, 342 U.S. 165, 170 (U.S. 1952)) and to comply with American laws. The District Court in its denial of Vinkov’s motion [Dkts 71; 73] created an insoluble paradox which cannot be resolved without the intervention of the courts of a higher jurisdiction.”
App.N.pg.313a[Dkt 151 filed 12/29/20]

Numerous attempts to obtain the stay of federal suit upon the resolution the Underlying Action in the state court failed (**App.E.**). Parties did not provide a consent to dispose the case be magistrate judge (**App.M**)

III. District Court has not found Jurisdictional Defects in Insurer’s Complaint

The District Court did not find any jurisdictional defects and any congressional restrictions to produce its rulings (**App.D,E,F**). These circumstances formed the grounds and clear prospect of reversal within the courts of review. (**App.G,H,K**.)

IV. 9th Circuit Affirmed Equitable Powers of the District Court and Declined to Correct the Course of Its own Conduct

Applicant sought “the reversal of the judgment of the United States District Court for the Central District of California (“District Court”) entered on 08/10/2021 in favor of BMIC (Brotherhood Mutual Insurance Company, an Indiana corporation, “the Insurer”)” in his favor from the 9th Circuit. **App.G,pg.52a** He placed numerous issues and articulated points, but 9th Circuit concluded the trial court “properly dismissed Vinkov’s counterclaims” and “properly exercised subject matter jurisdiction” (**App.C.,pg.7a-8a**). Applicant’s attempts to correct 9th Circuit’s conduct, indicating the scope of plain errors and abused discretion, failed (**Apps.B&K**). Altogether, Applicant argued he has not received the statutory remedies from 9th Circuit on interlocutory rulings of the District Court (“Panel’s judgment also contributed to statutory injuries of Appellant, because Panel declined to provide the prescribed remedies under 28 USC § 1291”, **App.K,p.252a**.)

Thus, 9th Circuit’s outcomes of review (**Apps.A,B,C**.) prompted a necessity to secure Appellant’s right to seek remedy from grievance before this Court.

REASONS FOR GRANTING THE STAY

I. A Supervisory Power of This Court will be Properly Employed to Review this Case

Applicant in the course of all proceedings below contends that he is persistently prejudiced by the final and interlocutory decisions of 9th Circuit and the District Court. Moreover, neither 9th Circuit nor the District Court demonstrated correct employment of supervisor powers (**Apps.C&E**). It is well-settled that even a sensible and efficient use of supervisory power by federal court is invalid if it conflicts with constitutional or statutory provisions. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 108 S. Ct. 2369, 101 L. Ed. 2d 228 (1988). The conflict with Acts of US Congress and US Constitution was assigned during all proceedings (**Apps.N,G,H,K,L**), however, lower judicial officers silently washed away all Applicant's arguments (**Apps.C,G,H**), denial his substantial rights secured by federal and state laws ((CA Const. art. I, § 2; CA Const. art. I, §§ 7, 8; U.S. Const. amend. I; U.S. Const. amend. XIV; U.S. Const. art. IV, § 2; U.S. Const. art. VI, cl. 2, See details in **Apps.G&N**). Therefore, petition for writ for certiorari is the last resort to employ supervisory power of federal courts "to implement a remedy for violation of recognized rights, to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury, and to deter illegal conduct." *United States v. Hasting*, 461 U.S. 499, 103 S. Ct. 1974, 76 L. Ed. 2d 96 (1983). As seen from the lower court proceedings (**Apps.N,C,E,F**), Applicant was deprived his right on due process, free exercise, denial of immunities and privileges provided by the acts of Congress (full discussion in **Apps.G&H**). Ironically, deprivation of rights occurred on behalf officials designated to guard them and remedy infringement of individual rights. Decisions below show that every judicial error has first name and last name forever imprinting in the

official records of the United States. (**Apps.C,D,F**). Thus, probability to intervene into the lower proceedings exists and at least four judges are capable to cast the votes in support for the grant of review. Departure from the usual course of proceedings and clear failure to apply prior Supreme court decision lead to gran certiorari (*Fellers v. U.S.*, 540 U.S. 519, (2004)).

The persistent deprivation of rights of litigants by state and federal courts constitutes special and important reasons for the grant of certiorari (*Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, (1957) – a right for jury deliberation). This Court held in *Bridges v. Wixon* (1945) 326 U.S. 135 that lawfully residing aliens on US soil are entitled on the First Amendment protection. Due process protection applies to all foreigners on the US soil disregarding their status of residence (*Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). However, the lower courts contributed to Applicant's constitutional injury in many aspects (**Apps.G,H,K,N**). Due process of law is primary and indispensable foundation of individual freedom. *In re Gault*, 387 U.S. 1, (1967). This case falls into the discretions of this Court to intervene to protect the constitutional principles at stakes.

II. Applicant is Suffering Irreparable harms, and Ongoing

Constitutional and Statutory injuries

The loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" (*Elrod v. Burns* (1976) 427 U.S. 347). In his opening brief Applicant meticulously articulated the scope of wrongdoings of the District Court (**App.G&H**). After that Applicant indicated 9th Circuit's departure from the legislative directions and obligations to follow the

precedents of US Supreme Court (**Apps.K&O**) Thus, 9th Circuit created additional harms and prejudice towards Petitioner's way to pursue the corrections of the trial court's irregularities rendered in interlocutory decisions. Petitioner is still prejudiced and suffers irreparable harms preventing him from receiving his money back (the costs of litigations, a posted bond on appeal in the underlying state action; damages from the wrongdoings of Appellee, etc.), restoring his reputation, his peace, his rehabilitation on wrongful findings and conclusions of lower courts.

This Court found that difficulties in recovering money constitute irreparable harms. (See *Mori v. International Brotherhood of Boilermakers, etc.* (1981) 454 U.S. 1301· finding irreparable harm where money “would be very difficult to recover”; or *Philip Morris USA Inc. v. Scott* (2010) 561 U.S. 1301 at 1304 · finding irreparable harm where money “cannot be recouped”). Accordingly, retentions of powers of this Court to intervene into proceedings of the lower courts are warranted. Both the Religious Land Use and Institutionalized Persons Act and The Religious Freedom Restoration Act aim to ensure greater protection for religious exercise than is available under the First Amendment. *Ramirez v. Collier*, 212 L. Ed. 2d 262, 142 S. Ct. 1264 (2022). Thus, judicial relief is proper pursuant to 42 U.S.C. § 2000bb–1(c) and 42 U.S.C. § 2000cc(a). Applicant depends on the vote’s distribution to prevent miscarriage of justice.

III. Abuse of Discretion is at Present and Clear, and Raises Issues of Fairness of Judicial Proceedings to Effectuate Reversal

“Abuse of discretion” is a plain error, discretion exercised to an end not

justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found. *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782 (9th Cir. 2005). 9th Circuit allowed to adjudicate the scope of religious duties before the underlying action in the state action is finalized which clearly contrary to provisions of US Constitutions and jurisdictional statutes of US Congress. Besides that, senior justice declined to follow clear established precedents governing equity jurisdiction and equitable power of the federal court, but their peers in the Circuit abstained to correct the course of the conduct (**Apps.B&K**). Therefore, 9th Circuit and the District Court provided advisory opinion to the entire insurance industry on non-application of CDA and VPA immunities to defeat equitable claims. Moreover, contrary to *Bridges v. Wixon* (1945) 326 U.S. 135, 9th Circuit deprived Applicant-alien First Amendment protection without reasonable explanation and justification. The most severe reversible error of law in the conclusion of reviewing court is that adjudication of religious duties under the insurance contract presents a justiciable controversy to retain the equity jurisdiction of the federal court, disregarding a century long Article III jurisprudence of this Court (**Apps. G,H,K**).

Jurisdictional defects of Plaintiffs claims were attacked by Appellant from the first day in the federal court. However, all judges in the lower courts ignore it. If constitutional requirements from Article III requires a serious intellectual and cognitive abilities from judicial officers and comprehensive educational credentials, than statutory restrictions are plainly and unambiguously written (Read 28 U.S.C. § 2283 “[a] court of the United States may not grant an

injunction to stay proceedings in a State court”, policy of 28 U.S.C. § 2283 prohibits to decide and preempt the matter pending in the state proceedings - *Sonner v. Premier Nutrition Corp.*, 49 F.4th 1300 (9th Cir. 2022); 28 U.S.C. § 2201(a): “except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986”; 26 U.S.C. § 7428 deprives federal courts of jurisdiction. - *Kjersti Flaa, et al v. Hollywood Foreign Press Assoc., et al* (9th Circuit, No.21-55347, 12/08/2022); The Anti-Injunction Act of the Internal Revenue Code, is distinct from the better-known Anti-Injunction Act, codified at 28 U.S.C. § 2283, which generally prohibits the federal courts from enjoining proceedings in state courts. *Harper v. Rettig*, 46 F.4th 1, 3 (1st Cir. 2022), fn. 1.). Surprisingly, 9th Circuit declined to follow its own jurisprudence examines the abuse of discretions of the federal courts (*Empire Blue Cross & Blue Shield v. Janet Greeson's a Place for Us, Inc.*, 985 F.2d 459 (9th Cir. 1993) – the section 28 U.S.C. § 2283 cannot be avoided by action which seeks judgment addressed to parties in state court suit, rather than to state court itself.). See more in **App.L.**

Therefore, the clear prospect for reversal exists in support of this application. Some additional split of authorities can be supplied in the further filings. For example, 9th Circuit declines to treat VPA immunities as jurisdictional bar for lawsuit against qualified volunteers. Other courts concluded that statutory purpose of VPA is to shield eligible volunteers from lawsuits and their accompanying burdens (hiring an attorney, going to court, paying court fees, dedicating time to litigation), not merely from responsibility for monetary damages. *Am. Broad. Companies, Inc. v. Goodfriend*, 558 F. Supp.

3d 161 (S.D.N.Y. 2021) (absorbing authorities and noticing the split, including 9th Circuit practice). That reasoning comes from the fact that the VPA does not define or restrict “liability” to “liability” for certain remedies, which allows to seek the broad protection, including jurisdictional. In *Lynch v. Crawford*, 483 Mass. 631, 135 N.E.3d 1037 (2019) Supreme Judicial Court of Massachusetts also concluded VPA provides qualified immunity from suit, not just liability, even though VPA spoke only of liability and did not specifically spell out immunity from suit. Accordingly, this case presents important issues for interventions from this Court.

**IV. Allegations of Misconduct Intertwined with the Merits of the Case
are not Reviewable outside of the Court**

Without intervention of this Court, Applicant in deadlock. The 9th Circuit silently declined to adjudicate disbarment offence of attorneys for Appellee and review the issues of judicial misconduct (**Apps.B,C,I,J,N**). Moreover, there's no effective measures to prevent this repetitive conduct among attorneys and judges. California State Bar don't accept Applicant's complaint involving merits of the case, Judicial Council doesn't review misconduct involving legal errors. Appellant cannot sue judges due the absolute immunities (*Stump v. Sparkman*, 435 U.S. 349, 356 (1978)), as well as supervisory entities do not review the misconduct involving the legal errors (*In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982) – complaints on judicial misconduct tackling the merits of the case are not reviewable; 28 USC § 352(b)(1)(A)(ii)). Correctional power of this Court is the last of resort for Applicant to seek remedies.

Research of the practice of this Court doesn't reveal any clear standards how to distinguish intentional and non-intentional legal errors, guidance on ignorance by judges of disbarment offences by licensed attorneys and harassing a *pro se* party with a litigation without probable cause (See denied motion for sanctions in **Apps.I&J**). Although there is a reasonable justification exists to explain denial of 9th Circuit to follow the law as a predicate for creating a landmark decision giving more clear and detailed guidance how to treat cases seeking equity jurisdiction in the federal courts, some available tools for certification of issues for Supreme Court doesn't allow to support such reasoning (28 U.S.C. § 1254). Therefore, only intervention of this Court may restraint attorney and judges to generate intentional legal errors in the future and recover Applicant's rights. Thus, the presented case contains significant and important issues for the grant of review.

Applicant zealously fought for his constitutional and statutory rights. He has never waived his objections and reviewability of all assigned errors (**App.N**). A voidable judgment, entered by court with the lack of subject-matter jurisdiction or procured by fraud, can be attacked at any time, in any court, either directly or collaterally (*Milliken v. Meyer* (1940) 311 U.S. 457 [61 S.Ct. 339, 85 L.Ed. 278]). The cert-worthy of this case is impeccable.

CONCLUSION

Applicant asks the emergency relief to stay or recall of mandate of 9th Circuit in case No. 21-55857 up to and Tuesday, April 25, 2023, and then a stay pending the filing and disposition of a writ of certiorari. Applicant does not oppose if this Court employs a discretion to rephrase the questions and to

construe this application as a petition for certiorari, and grant review.

Respectfully submitted,

Sergei Vinkov



Pro Se

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(951) 380 53 39, vinkov@gmail.com

January 30, 2022

No. _____

In the
Supreme Court of the United States

Sergei Vinkov,
Petitioner,

v.

Brotherhood Mutual Insurance Company, an
Indiana corporation,
Respondent

Proof of Service

I, Sergei Vinkov, do swear or declare that on this date, **January 30, 2023**, as required by US Supreme Court Rule 29 I have served the enclosed paper copies and an electronic version of the documents:

- (i) EMERGENCY APPLICATION TO ASSOCIATE JUSTICE ELENA KAGAN FOR STAY OR RECALL OF MANDATE OF 9th CIRCUIT PENDING THE FILING AND DISPOSITION OF A PETITION FOR WRIT OF CERTIORARI (with appendices);
- (ii) PROOF OF SERVICE;
- (iii) CERTIFICATE OF COMPLIANCE.

on parties' counsels, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Postal Service by first-class mail (including express or priority mail), postage prepaid. The names and addresses of those served are as follows:

Rachel B. Kushner,
Robert W. Brockman, Jr.,
Brockman Quayle Bennett,
12481 High Bluff Drive, Suite 301,
San Diego, CA 92130
Attorneys for Plaintiff-Appellee: BROTHERHOOD
MUTUAL
INSURANCE COMPANY, an Indiana corporation

I declare under penalty of perjury that the
foregoing is true and correct. Executed on **January
30, 2023**.



Sergei Vinkov.

Appendix A. 9th Circuit Denial of
Stay of Mandate in Case 21-55857
dated 01/27/2023.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 27 2023

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

BROTHERHOOD MUTUAL INSURANCE
COMPANY, an Indiana corporation,

Plaintiff-Appellee,

v.

SERGEI VINKOV, an individual,

Defendant-Appellant.

No. 21-55857

D.C. No.

5:19-cv-01821-SB-SP

Central District of California,
Riverside

ORDER

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Appellant's motion to stay the mandate is **DENIED**.

Appendix B. 9th Circuit Denial of
En Banc Petition in Case 21-55857
dated 01/25/2023.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 25 2023

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

BROTHERHOOD MUTUAL INSURANCE
COMPANY, an Indiana corporation,

Plaintiff-Appellee,

v.

SERGEI VINKOV, an individual,

Defendant-Appellant.

No. 21-55857

D.C. No.

5:19-cv-01821-SB-SP

Central District of California,
Riverside

ORDER

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Judges Wallace, Fernandez, and Silverman recommend to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is **DENIED**.

Appendix C. 9th Circuit Unpublished
Memorandum in Case 21-55857 dated
10/03/2022.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 3 2022

FOR THE NINTH CIRCUIT

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

BROTHERHOOD MUTUAL INSURANCE
COMPANY, an Indiana corporation,

Plaintiff-Appellee,

v.

SERGEI VINKOV, an individual,

Defendant-Appellant.

No. 21-55857

D.C. No.

5:19-cv-01821-SB-SP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Submitted September 30, 2022**
San Francisco, California

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Sergei Vinkov appeals from the district court's summary judgment and motions to dismiss order in favor of Brotherhood Mutual Insurance Company (BMIC) in BMIC's action alleging it does not have a duty to defend or indemnify

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Vinkov in a separate lawsuit. We have jurisdiction under 28 U.S.C. § 1291. We review summary judgment de novo and a district court order under Federal Rule of Civil Procedure 37(b)(2) for abuse of discretion. *Edgerly v. City & Cnty. of San Francisco*, 599 F.3d 946, 960 (9th Cir. 2010); *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir.1985). We affirm.

The district court properly granted summary judgment in favor of BMIC because Vinkov failed to establish a triable issue as to whether he is covered by BMIC’s insurance policy. Vinkov failed to genuinely dispute any material fact that his social media posts were not “leadership activity undertaken on the church’s behalf,” as required to be a covered person under BMIC’s policy. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (holding that a conclusory affidavit lacking detailed facts and any supporting evidence is insufficient to create a genuine issue of material fact).

The district court properly dismissed Vinkov’s counterclaims for insurance bad faith and prompt payment. The district court did not abuse its discretion because when a party fails to obey an order to provide discovery, a trial court may, in its discretion, “make such orders in regard to the failure as are just.” *David v. Hooker, Ltd.*, 560 F.2d 412, 418–19 (9th Cir. 1977). The district did not abuse its discretion in concluding that by disregarding multiple court orders and providing only evasive responses, Vinkov sufficiently failed to abide by discovery orders and

that such obstructive behavior warranted dismissal of his counterclaims. *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

The district court properly exercised subject matter jurisdiction. The action is between citizens of different states and the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332.

All pending motions are denied.

AFFIRMED.

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