No. _____

In the Supreme Court of the United States

SANDRA IMMERSO,

v.

U.S. DEPARTMENT OF LABOR,

UNOPPOSED EMERGENCY APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Rules

To the Honorable Sonia Sotomayor as Circuit Justice for the United States Court of Appeals for the Second Circuit:

Due to the most extraordinary circumstances, and pursuant to this Court's Rules 13.5, 22, 30.2 and 30.3, Petitioner, Sandra Immerso, respectfully requests that the time to file her Petition for Writ of Certiorari be extended 45 days, up to and including June 22, 2023. The Court of Appeals issued the attached judgment and opinion on November 30, 2022. A timely-filed petition for rehearing was denied on February 7, 2023 in the attached decision.

Absent an extension of time, the Petition for Writ of Certiorari will be due on May 8, 2023. Petitioner failed to file this Application 10 days before such date due to the most extraordinary circumstances (the timing, manner and nature of this Court's communications with Petitioner's original counsel (Jack Jordan)). This Court will have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

Despite diligent efforts, Petitioner was not able to retain current counsel until today (May 5) to file this Application. Each factual statement below is asserted by Jordan based on his personal knowledge, and each is incorporated into the attached Declaration of Jack Jordan.

Jordan is a solo practitioner. Starting in January 2019, Jordan represented Petitioner (without compensation) throughout all proceedings related to the subject

of her petition. Jordan graduated from Harvard Law School in 1996. He is admitted to practice in New York State, which was the basis for his admission to this Court.

This Application is unopposed. Jordan repeatedly requested confirmation from the Office of the Solicitor General that it will not oppose the requested extension. Jordan sent such requests by email on April 28, April 29 (with a copy of the first application for extension) and May 2 and 3. He has not received any indication of opposition from the Office of the Solicitor General.

I. The Most Extraordinary Circumstances (Beyond the Control of Petitioner or Her Counsel) Determined the Timing of this Filing.

The following circumstances caused Jordan to be unsure of his status with this Court. Such circumstances also establish that the most extraordinary circumstances (beyond the control of Petitioner, Jordan and Petitioner's current counsel) compelled the filing of this Application at this late date.

Late Friday afternoon, April 28, Jordan received written notice by U.S. mail that he had been suspended by this Court because he was disbarred six months ago by the Kansas Supreme Court (because Jordan had included in court filings statements exposing and opposing judges' knowing misrepresentations of facts and knowing violations of controlling law). But for the reasons stated below (and

based on this Court's prior decisions), Jordan believed he had not been suspended—until Jordan received confirmation by email the afternoon of May 2.

Jordan believed that he had not been suspended by this Court, but to attempt to ensure time for this issue to be clarified, on Saturday, April 29, Jordan submitted electronically and mailed to this Court (by overnight mail) a copy of Petitioner's first Application for Extension. On the afternoon of May 2, 2023, Jordan was advised by email from the Clerk's office that, in fact, he had been suspended, so Petitioner's first Application for Extension had been rejected.

On May 3, 2023, Jordan submitted his response (by email) to this Court's Rule to Show Cause (below), showing that he cannot (constitutionally) be disbarred or suspended based on judges' vague, conclusory hearsay about Jordan (or because of Jordan's filings exposing judicial misconduct).

For the following reasons, Jordan previously believed he had not been suspended. In November 2022, Jordan notified this Court that he had been disbarred by the Kansas Supreme Court. At the same time, Jordan submitted detailed analysis showing that no court could (constitutionally) take any action against Jordan based on Kansas's disbarment or for the reasons Kansas invoked (Jordan's court filings exposing and opposing judges' knowing misrepresentations

of facts and knowing violations of federal law). To again establish the foregoing, Jordan filed Petition No. 22-684 on January 19, 2023.

In January 2023, Jordan was disbarred by the Tenth Circuit based solely on the Kansas disbarment. So in Petition No. 22-1029 (filed on April 20, 2023 and docketed on April 24), Jordan again showed that Kansas's disbarment (and the Tenth Circuit disbarment) were based on knowing falsehoods and clear violations of the Constitution. No one ever has disputed or attempted to refute any statement of fact or law by Jordan in Petition No. 22-684 or No. 22-1029.

Jordan repeatedly has emphasized that Kansas judges and attorneys knowingly misrepresented facts and evidence and knowingly violated Jordan's right to due process of law under Kansas statutes and the Kansas and U.S. Constitutions. *See* Pet. No. 22-684 at 3-12, 30-32. Within days, Kansas waived opposition to Petition No. 22-684. This Court denied certiorari on February 27, 2023. In five months, no one has indicated any concern with the truth or accuracy of any of Jordan's statements in any court filing, including Petition Nos. 22-684 or 22-1029 or the filings for which Kansas disbarred Jordan.

Kansas expressly disbarred Jordan solely because of his statements in court filings exposing and opposing criminal misconduct by federal judges. *See, e.g.*, Pet. No. 22-684 at 2-3; Pet. No. 22-1029 at 4 citing App. 16-35, 38-46. In such

filings in U.S. district court or the Eighth Circuit, Jordan stated that federal judges had knowingly misrepresented material facts—including about evidence that they had reviewed *in camera*—and then they committed additional federal offenses to cover-up evidence of the truth. Jordan's court filings addressed particular statements, particular conduct and particular federal offenses including in 18 U.S.C. §§ 241, 242, 371, 1001, 1512(b), 1519.

No one ever even contended that any of Jordan's filings were false or misleading. No one ever even asserted any fact that could even tend to establish that any such filing was false or misleading. *See*, *e.g.*, Pet. No. 22-1029 at 3 (Tenth Circuit vague conclusory contentions); *id*. at 5-6 (Kansas's failures and refusals to address falsity); *id*. at 7-8 (U.S. district court vague conclusory contentions).

No one ever even contended that any judge did not knowingly misrepresent any fact or did not commit any federal offense as Jordan stated. No court (or government attorney) ever even stated any fact—much less attempted to identify admissible evidence of any fact—that was material to proving that Jordan's filings violated any rule of conduct.

The analysis of controlling legal authorities (including federal law, the Constitution and many decisions of this Court thereunder) that Jordan presented in Petition No. 22-1029 (and No. 22-684) established that any action by this Court

against Jordan based on the Kansas disbarment would violate multiple provisions of the Constitution. The circumstances of the filing of Petition No. 22-1029 also caused Jordan to believe this Court already had decided to take no action against Jordan based on the Kansas or Tenth Circuit disbarments.

On April 20, 2023, Jordan attempted to submit Petition No. 22-1029 electronically, but he was unable to log on. Jordan sent multiple emails to request clarification of his status, including to eFilingSupport@supremecourt.gov with the following request and explanation:

> Please note that I have a filing due in a couple weeks, so I need to request an extension immediately if I have been suspended for any reason. If I have been suspended, please kindly provide the following information so that I may include it in my motion for an extension of time to file a petition: name and position of person who ordered suspension and date and term (if any) of suspension.

Jordan also sent the following email to ptadmit@supremecourt.gov, but Jordan received no response:

> Please kindly consider the attached at your earliest convenience. My filing privileges seem to have been suspended. I will be filing another cert. petition in about 2 weeks. If I have been suspended, I must immediately prepare and file a motion for extension of time to file the cert. petition. So if I have been suspended by this Court, please kindly apprise me of the name and position of the person(s) who ordered my suspension and the reason and duration, if any.

The only response Jordan received to any of his emails, above, was from eFilingSupport on April 21: "Your recent application for an Electronic Filing

System account at the Supreme Court of the United States has been approved. Please use the following link to activate your account." Jordan re-activated his account and submitted Petition No. 22-1029 on Friday, April 21.

To the best of Jordan's information and belief, he had not been suspended. However, late in the afternoon on Friday, April 28, Jordan learned that he had received certified mail from this Court. An order temporarily "suspended" Jordan "from the practice of law in this Court." *See* D-03109 Order dated April 24, 2023. The only reason given was the mere existence of the Kansas order disbarring Jordan. *See* D-03109 Rule to Show Cause dated April 24, 2023.

Jordan was disbarred by unidentified Kansas judges solely and expressly because he exercised "the freedom of speech" and "the right" to "petition." U.S. Const. Amend. I. According to many of this Court's prior decisions (applying the Constitution), Jordan's speech/petitions cannot be punished in any way, and Petitioner's right to petition may not be abridged, based on the mere existence of the Kansas disbarment order.

II. Suspension Based on Kansas's Disbarment Would Violate Jordan's Rights Secured by the Constitution, Amendments I and V.

Kansas's purported "application" of its "Rule[s]" clearly and irrefutably "violate[d] the First Amendment" because Jordan's speech "neither in law nor in fact created any threat of real prejudice to" any administration of justice. *Gentile*

v. State Bar of Nev., 501 U.S. 1030, 1033 (1991). No court did or can prove that Jordan's exposing and opposing the lies and crimes of judges threatened to prejudice justice. No court did or can prove that the government (the public) has any interest in enabling presiding judges to abuse their positions and powers to knowingly misrepresent facts, evidence or legal authorities or knowingly violate controlling statutes, U.S. Supreme Court precedent and the Constitution.

Prior judges (or attorneys) retaliating against Jordan for his speech/petitions were illegally "attempt[ing] directly to control speech" exposing and opposing federal employees' criminal misconduct, not "to protect" something that was "shown to be" an "interest clearly within the sphere of governmental concern" from "an evil" that was "shown to be grave." *Speiser v. Randall*, 357 U.S. 513, 527 (1958) (emphasis added).

Whenever "the constitutional right to speak is sought to be deterred by" any "general" rule (as it is here and it was by Kansas judges and attorneys), "due process demands that the speech be unencumbered until the" government "comes forward with sufficient proof to justify its inhibition." *Id*. at 528-29. This Court "clearly has no such compelling interest at stake as to justify" any "short-cut procedure" (*e.g*., suspending Jordan and issuing a Rule to Show Cause) because

Kansas judges abused their order expressly and solely for "suppressing protected speech." *Id*. at 529. *See also id.* at 520-21.

"Content-based laws" (or court rules or rulings) are "presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Clearly, Kansas targeted the content and viewpoint of Jordan's speech/petitions. *Cf. id*. at 163-64 (identifying types of "content-based" restrictions). This Court's suspension can be "be justified only if" this Court "proves that" its conduct was "narrowly tailored to serve" public "interests" that are "compelling." *Id*. at 163.

This Court must "demonstrate that" any "differentiation between" Jordan's speech/petitions and other lawyer, litigant or judicial speech/petitions "furthers a compelling governmental interest and is narrowly tailored to that end." *Id*. at 171. Each application of any rule or ruling "must" be able to "satisfy strict scrutiny." *Id*. at 163-64. No court did or can do so.

Courts "may not prohibit" any "modes of expression and association protected by the First[, Fifth] and Fourteenth Amendments" by merely invoking the mere general "power to regulate the legal profession." *NAACP v. Button*, 371 U.S. 415, 428-29 (1963). "[I]t is no answer to" Jordan's "constitutional claims asserted" that "the purpose of" any "regulations" or rulings "was merely to insure high professional standards." *Id*. at 438-39. Courts "may not, under the [mere]

guise of prohibiting professional misconduct, ignore" or knowingly violate lawyer or litigant "constitutional rights" (as Kansas did). *Id*. at 439.

Courts "cannot foreclose the exercise of constitutional rights by mere labels," regardless of whether the label is applied to the law, the oppressor or the oppressed. *Id*. at 429. No "regulatory measures" (court rule, ruling or opinion), "no matter how sophisticated," can "be employed in purpose or in effect to stifle, penalize, or curb" Jordan's "exercise of First Amendment rights." *Id*. at 439.

In "First Amendment cases," each "court is obligated to conduct an "independent examination of the whole record" to "make sure that" any purported "judgment does not constitute a forbidden intrusion on the field of free expression." *Snyder v. Phelps*, 562 U.S. 443, 454 (2011) (Roberts, C.J., writing for the Court). Jordan's "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Id.* at 452 *quoting Connick v. Myers*, 461 U.S. 138, 145 (1983) (pertaining specifically to government attorney speech) (cleaned up).

Jordan's "speech concerning public affairs" is "the essence of self-government" and "debate on [such] issues should be uninhibited, robust, and wide-open," and it "may well include vehement, caustic," and "unpleasantly sharp attacks on government and public officials." *Garrison v. Louisiana*, 379 U.S. 64,

74-75 (1964) (protecting government attorney's speech criticizing eight judges, including implying they were criminally corrupt). *Accord Snyder*, 562 U.S. at 452.

"Truth may not be the subject of" any type of content-based "sanctions" "where discussion of public affairs is concerned," so "only" demonstrably "false statements" may be punished with "either civil or criminal sanctions." *Id.* at 74. The Constitution "absolutely prohibits" any type of content-based "punishment of truthful criticism" of any public official's official conduct. *Id*. at 78. *Accord Pickering v. Board of Ed*., 391 U.S. 563, 574 (1968) (precluding discharge of government employee).

Any "statement of opinion" by Jordan "relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection." *Milkovich v. Lorain Journal Co*., 497 U.S. 1, 20 (1990). Jordan's speech cannot be punished without proof that it at least "impl[ied] a false assertion of fact." *Id*. at 19 (emphasis added).

"[T]he law" (including the First and Fifth Amendments) "gives judges as persons, or courts as institutions" absolutely "no greater immunity from criticism" (or the Constitution) "than other persons or institutions." *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839 (1978) (cleaned up). "The operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Id*.

So "speech cannot be punished" merely "to protect the court as a mystical entity" or "judges as individuals or as anointed priests set apart from the community and spared the criticism to which" all "other public servants are exposed." *Id*. at 842.

III. Suspension Based on Kansas's Disbarment Would Be Inconsistent with Jordan's and Petitioner's Rights Secured by the Constitution.

"Discipline" does not mean mere action against an attorney. Discipline must be "designed to protect the public" (not judges injuring the public by committing crimes against them). *In re Ruffalo*, 390 U.S. 544, 550 (1968). Disbarment must be used only "for the purpose of preserving the courts of justice" and protecting the public from "persons" who have been proved (by clear and convincing evidence) to be "unfit to practice" therein. *Ex Parte Wall*, 107 U.S. 265, 288 (1883).

Jordan is "an officer" of this Court and, as such, is "an instrument or agency" of the public "to advance the ends of justice." *Theard v. United States*, 354 U.S. 278, 281 (1957). So every court's "power of disbarment" is limited to "protection of the public." *Id*. Moreover, "the responsibility that remains" with this Court regarding any potential reciprocal discipline was "authoritatively expounded in *Selling*." *Id.* at 282.

This Court's justices have "the duty" to "determine for [them]selves" Jordan's "right" to "be a member of" this Court's "Bar." *Selling v. Radford*, 243 U.S. 46, 50 (1917). Jordan's "admission to the Bar of" this "court is secured" by

federal law and the Constitution, so such "right may not be taken away" based on the mere existence of another court's disbarment order. *Id*. at 48.

Jordan cannot "be deprived" of the "liberty" and "property" at stake "without" all "due process of law." U.S. Const. Amend. V. Federal "judicial Power shall extend to all Cases, in Law and Equity, arising under" the "Constitution." Art. III. Federal courts considering disbarment of an officer have an "absolute duty" to actually "decide" such "cases within their jurisdiction." *United States v. Will*, 449 U.S. 200, 215 (1980). Jordan's client (Petitioner) also cannot "be deprived" of the "liberty" at stake "without" all "due process of law." U.S. Const. Amend. V. Petitioner is entitled to petition this Court to exercise "the freedom of speech" and "the right" to "petition." Amend. I. Suspending Jordan (and not lifting such suspension at least to permit this Application and Motion) will deprive Petitioner of her right to file her petition without due process of law.

This Court's justices are bound by their "duty" not "to abdicate" their "own functions" (duties) "by treating" any prior court's purported "judgment" as "excluding all inquiry" by this Court. *Selling*, 243 U.S. at 50. "[B]efore sanction is given" by this Court to any other court's mere "prayer for disbarment," this Court must conduct its own "investigation." *Id*. at 48-49. "[T]he character and scope of" this Court's "investigation" necessarily "must depend upon" the

purported "acts of misconduct and wrong" and "the nature of the proof" purportedly "relied upon" to "establish" such "misconduct." *Id*. at 49. Regarding the Kansas disbarment, this Court must acknowledge that at least "one" of the "conditions" below "appear[ed]." *Id*. at 50-51.

First, "there was such an infirmity of proof as to facts" purportedly "found" purportedly "establish[ing]" that Jordan's speech/petitions violated a rule of conduct "as to give rise to a clear conviction" that this Court cannot "consistently with" its "duty" (to the Constitution, this Court, the public, Petitioner and Jordan) "accept" Kansas judges' purported "conclusion" that Jordan's speech/petitions violated rules of conduct. *Id*. at 51. Kansas failed to even state any fact—much less identify any evidence of any fact—material to proving that Jordan's speech violated any rule of conduct. It was not done and it cannot be done.

Second, at least one "other grave reason existed which should convince" this Court that any action against Jordan for his speech/petitions "would conflict with" this Court's "duty" under "the principles of right and justice." *Id*. Jordan's speech/petitions were very strongly protected and secured by the Constitution and federal law. Retaliating against Jordan therefor was so gravely unjust to Jordan, the public, this Court, Congress and the Constitution that Congress made such conduct criminal. *See, e.g.*,18 U.S.C. §§ 241, 242, 371. Jordan's right to provide

any federal "judge" any "information relating to" judges' "possible commission of" any "Federal offense" was specifically secured. 18 U.S.C. § 1512(b).

In prior litigation (in a different case) under the Freedom of Information Act, Jordan filed motions to reconsider and then a motion to recuse the district court judge because the judge knowingly violated federal law and the Constitution. The judge also knowingly misrepresented the content of evidence that he reviewed *in camera*. Refusing repeated requests that he correct his misrepresentations, the judge (and another judge) fined Jordan for exposing and opposing the judge's lies and crimes.

The judge granted summary judgment based, specifically on his personal hearsay about the content of an email. *Cf.* Fed. R. Civ. P. 56; Fed. R. Evid. 802, 1002. He personally "confirmed" with "in camera review" that the "email" was marked "Subject to Attorney Client Privilege" and it "seeks counsel's *advice*," so it "is protected by the attorney-client privilege." *Talley v. United States Dep't of Labor*, 2020 U.S. Dist. LEXIS 122434 at (Mo. W.D. 2020) (emphasis added).

Agency employees and their counsel also disclosed that the email was marked "Subject to Attorney Client Privilege," but they represented that it was sent to "*explicitly* request" only "the attorney's *input* and *review*." *Id*. at *40 (emphasis

added). They never even argued anything about the email requesting *advice*, much less *legal* advice.

Moreover, no one ever explained why the government wanted to conceal evidence of such words. Any such privilege notation (which was quoted) and non-commercial words such as "please advise regarding" or "please review and provide input" clearly were not commercial or privileged or confidential. Moreover, the judge and agency counsel knew the D.C. Circuit already had ruled that any "parts of" such "email" marked "attorney-client privilege" or "an explicit request for legal advice" were merely "disjointed words" with "minimal or no information content." *Id*. at *9. Such evidence could not possibly suffice to entitle the government to summary judgment that the email was protected by the attorney-client privilege. *Cf*. Fed. R. Civ. P. 56; U.S. Const. Amend. V.

In court filings, Jordan stated the judge committed federal offenses, including in 18 U.S.C. §§ 241, 242, 371, 1001, 1519. Without any due process for criminal contempt, such judge and another judge fined Jordan $1,000 and $500 for filings including such statements. *Cf*. 18 U.S.C. § 401; Fed. R. Crim. Proc. 16, 42. The foregoing two judges also sought to have Jordan disbarred by Kansas state court because he included such statements in federal court filings.

The foregoing conduct was affirmed by the Eighth Circuit, which also, *sua sponte*, disbarred Jordan for stating that judges had lied about the content of evidence and legal authorities and committed federal offenses. The foregoing fines and disbarment were the subject of Petition No. 21-1180. The Office of the Solicitor General waived opposition, but certiorari was denied. In connection with Petition No. 21-1180, no one said even one word to indicate that Jordan's speech in or at issue in such petition might be false or misleading or violate any rule of conduct.

For the foregoing reasons, Petitioner respectfully requests an extension of time up to and including June 22, 2023 (or such other period as the Court deems appropriate) to file her petition for writ of certiorari.

DATED: May 5, 2023

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