

Case No. _____

**In the
Supreme Court of the United States**

In the Matter of LENORE LUANN ALBERT,
A Member of the State Bar and U.S. Supreme Court Bar,
Respondent and Petitioner for Review,

LENORE LUANN ALBERT,
Petitioner

vs.

ROXANNE GONZALEZ,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

Petition for Writ of Certiorari

Lenore L. Albert
1968 S. Coast Hwy #3960
Laguna Beach, CA 92651
Telephone (424) 365-0741
Email: lenalbert@Interactivecounsel.com
Petitioner, pro se

QUESTIONS PRESENTED

Whether a United States District Court can automatically suspend an attorney's membership to practice law in that District Court based upon a State Bar suspension by Local Rule, contrary to this Court's holding in *Theard v. United States* 354 U.S. 278 (1957); if not, whether those Local Rules are unconstitutional in violation of the Rules Enabling Act.

Whether incorporating state statutes into a federal court's local rules violates the Rules Enabling Act.

Whether federal employees are immune in licensure cases or can be sued for damages under *Bivens*.

OPINIONS BELOW AND RELATED PROCEEDINGS

The Ninth Circuit court of appeals unpublished Memorandum denying Ms. Albert relief dated August 20, 2024, appears at Appendix A to the petition which is the proceeding directly on review in this case. *Albert v Gonzalez*, Case No. 23-3322; 24-3496 (9th Cir. Aug. 20, 2024).

The United States District Court for the Eastern District of California (“Eastern District”) order dated May 24, 2024 issuing reciprocal disbarment, appears at Appendix B to the petition and is unpublished. *In the Matter of Albert*, Case No. 2:24-mc-00117-KJM, 2024 WL 1231293 (E.D. Cal., May 24, 2024) (reciprocal disbarment based on State Bar Opinion).

The United States district court for the central district of California (“Central District”) order dated October 6, 2023 dismissing the action against district court operations supervisor, Ms. Gonzalez, appears at Appendix C to the petition and is unpublished. *Albert v Gonzalez* Case No. 8:23-cv-00635-FWS-JDE (C.D. Cal., Oct. 26, 2023) (civil rights violation by Roxanne Gonzalez who changed Albert’s membership status from “active” to “inactive” in the federal court without notice under E.D.C.A. LR 180 and E.D.C.A. LR 184).

Related Cases

Albert v State Bar of California, petition for cert. Case No. 24-5498 docketed on September 10, 2024.

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I. JURISDICTION

Ms. Albert is seeking a writ of certiorari for the Ninth Circuit Court of Appeals order filed on August 20, 2024. App. A.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

The U.S. District court had jurisdiction pursuant to 28 U.S.C. §1331.

This Petition for Writ of Certiorari is filed within 90 days of the Ninth Circuit's memorandum making it timely pursuant to Local Rule 13.1.

The notification required by Rule 29.4(a) has been complied with.

II. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Amendments to the U.S. Constitution, rules, regulations, and statutes, or relevant portion thereof that are at issue in this petition are as follows: V Amend. U.S. Const., XIV Amend. U.S. Const.; the Rules Enabling Act, 28 U.S.C. §2701, 28 U.S.C. § 2072 U.S. District Court for the Eastern District of California Local Rules, E.D.C.A. LR 180, and E.D.C.A. LR 184; and portions of the California State Bar Act (Bus. & Prof. Code §§ "6124," 6125, and 6126). App D.

III. STATEMENT OF THE CASE

The State Bar disbarred Ms. Albert for filing papers in federal court while she was listed as an active member in that federal court but suspended from the California State Bar at that time. Infractions included filing a motion, declaration, and Answer. She also put her California State Bar Number ("SBN") on the papers and placed "Esq." or "attorneys for" alongside her name. Ms. Albert currently has three Bar Numbers: California SBN 210876, Michigan SBN P 85667; and U.S. Supreme Court SBN 264066.

Fourteenth Amendment due process requires both notice and a "fair" opportunity to be heard. V Amend. U.S. Const.; XIV Amend. U.S. Const.

The disbarment was premised on the Eastern District's local rules that automatically suspend a member from the practice of law in federal court based on a state bar suspension without notice or court order.

Background

On December 5, 2000, Ms. Albert became a member of the California State Bar. She acquired "a property interest in the right to practice [her] profession that cannot be taken from [her] without due process." *Conway v. State Bar* 47 Cal.3d 1107, 1113 (1989).

Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

Bell v. Burson 402 U.S. 535, 539 (1971).

In 2014, Ms. Albert was admitted to practice in the Eastern District.

On February 14, 2018, the California Supreme Court suspended Ms. Albert from the practice of law for 30 days. She petitioned for cert. in that case which this Court denied but did not issue a reciprocal suspension in this Court.

The suspension was lifted on May 5, 2021.

During her suspension, Albert filed several court documents in the Eastern District that represented she was an attorney while the federal court's website represented her membership was active. She also applied for a certificate of good standing from the Eastern District's clerk's office.

The Eastern District's operation supervisor, respondent, Roxanne Gonzalez switched Ms. Albert's status in the Eastern District after Ms. Gonzalez checked Ms. Albert's California State Bar status on its website and saw she was suspended, purporting to act pursuant to Eastern District Local

Rules 180(c) and 184(b), which impose automatic reciprocal suspensions. In May 2021, the Eastern District reinstated Albert to "active" status after her California suspension was lifted.

The State Bar then initiated disciplinary proceedings, alleging that Ms. Albert's filings in federal court were unauthorized practice of law because her license in state court was suspended at the time.

Ms. Albert was disbarred on July 16, 2024, and the Eastern District prematurely issued a reciprocal disbarment order on May 24, 2024.

No judge admonished Ms. Albert for filing the papers in the Eastern District; and no other district court in California automatically suspends an attorney without notice and opportunity to be heard based on a state bar disbarment.

The Eastern District did not adequately review the record. For example, Ms. Albert was disbarred based on a violation of Cal. Bus. & Prof. Code § 6124 – a fictitious statute. App. D.

E.D.C.A. LR 180 provides that to be admitted as a member of the U.S. District Court for the Eastern District of California, the attorney must be admitted and in good standing with the California State Bar. On the other hand, E.D.C.A. LR 184 provides that an attorney who is suspended by any court must promptly notify "the court" of his or her suspension. App. D.

After the State Bar prosecuted Ms. Albert, she filed a civil rights action against Ms. Gonzalez, but her complaint was dismissed based on *Younger* abstention and immunity. She appealed. The ninth circuit affirmed both the reciprocal disbarment and the dismissal of her action against Ms. Gonzalez. *Albert v Gonzalez*, Case No. 23-3322; 24-3496 (9th Cir. Aug. 20, 2024). App. A.

IV. REASONS FOR GRANTING THE WRIT

A. The Ninth Circuit Decided an Important Federal Question in a Way that Conflicts with *Theard v United States*

1. The Eastern District Has Determined a State Court Suspension Automatically Suspends an Attorney from Practicing in Federal Court

The Ninth Circuit has made a crucial decision on a federal issue that contradicts relevant rulings by this Court. The Ninth Circuit unequivocally affirmed the Eastern District's decision to reciprocally disbar Ms. Albert, stating that her prior state court suspension automatically suspended her from practicing law in the Eastern District. *Albert v Gonzalez*, Case No. 23-3322; 24-3496 (9th Cir. Aug. 20, 2024). App. A.

The United States Supreme Court, on the other hand, has found that attorney members in federal court must be afforded due process before that member can be suspended or disbarred from practicing in that federal court if the suspension or debarment is based on a State Bar suspension or debarment order. The United States Supreme Court in *Theard v United States*, explained:

While a lawyer is admitted into a federal Court by way of a state Court, he is not automatically sent out of the federal Court by the same route. The two judicial systems of Courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included.

Theard v. United States 354 U.S. 278, 281 (1957).

Over one century ago, this Court explained, “[w]ithout its observance no one would be safe from oppression wherever power may be lodged.” *Ex Parte Robinson*, 86 U.S. 505, 512-13 (1873).

The Eastern District affirmed its Local Rule automatically suspends an attorney without notice. The decision improperly shifted the responsibility to an

attorney to file a new case without an Order to Show Cause and request an Order to Show Cause to Issue from the court. This is a clear violation of due process and impractical because there is no such option in PACER ECF case opening. Nevertheless, the order provided, “the State Bar court specifically discussed the automatic suspension provision and noted the procedure in this court's Local Rules to challenge automatic suspensions.” *In the Matter of Albert*, Case No. 2:24-mc-00117-KJM, 2024 WL 1231293 p. 4 (E.D. Cal., May 24, 2024). App. B.

The Ninth Circuit affirmed

Here, Albert has not made that concession, but she also has not made *any* showing to meet her burden to demonstrate a due process violation by clear and convincing evidence. *See In re Kramer*, 282 F.3d at 724. At best, she has offered bare, conclusory allegations. Accordingly, we conclude that the district court did not have to independently review the state court record because the local rules provided Albert with notice of the automatic suspension and an opportunity to challenge it. *See* E.D. Cal. L.R. 184(b).

Albert v Gonzalez, Case No. 23-3322; 24-3496 p. 8 (9th Cir. Aug. 20, 2024). App. A.

However, since Ms. Albert was suspended automatically from the Eastern District without notice, she did not have the opportunity to show that a reciprocal suspension was unwarranted before she was suspended.

In affirming, the Ninth Circuit erroneously dismissed the importance of a temporary suspension. “When a deprivation is irreversible — as is the case with a license suspension that can at best be shortened but cannot be undone — the requirement of some kind of hearing before a final deprivation takes effect is all the more important.” *Mackey v. Montrym* (1979) 443 U.S. 1, 21 (See, *Bell v. Burson* (1971) 402 U.S. 535 (1971) , 539, “Once licenses are issued, as in petitioner's case, their continued possession may become essential in the

pursuit of a livelihood.”). See also, *Wooten v. Roach* (E.D. Tex. 2019) 431 F. Supp. 3d 875, 899, (“Privileges, licenses, certificates, and franchises ... qualify as property interests for purposes of procedural due process.”).

The disbarment by pronouncing the Eastern District Local Rules automatically suspended Ms. Albert’s license to practice law as soon as the state court suspended her in 2018 was a legal conclusion that was incorrect as a matter of constitutional law. A reciprocal suspension or disbarment based on a State Court Bar or Court Order cannot be automatic or “forthwith.” *Theard v. United States* 354 U.S. 278, 282 (1957). (See also, *Selling v. Radford* 243 U.S. 46 (1917).).

As such, Ms. Albert was deprived of her due process rights, justifying this Court to review the Eastern District Local Rules.

2. Important Policy Reasons Exist to Keep Membership in State and Federal Courts Separate

It is of utmost importance in society to keep bar membership between state and federal courts separate for trial lawyers. For example, it took out-of-state lawyers to advocate for civil rights in federal courts in the South due to the hostility (or fear of losing their license to practice law). See Pollitt, Counsel for the Unpopular Cause: The "Hazard of Being Undone," 43 N. C. L. Rev. 9 (1964); Pollitt, Timid Lawyers and Neglected Clients Harper's Magazine, Aug., 1964 at 81-86; Frankel The Alabama Lawyer. 1954-64: Has the Official Organ atrophied? 64 Colum. L. Rev. 1243 (1964).

The out-of-state lawyers had to push through in the federal courts. See Note, Judicial Performance in the Fifth Circuit 73 Yale L. J. 90 (1963); Wright, The Overloaded Fifth Circuit: A Crisis in Judicial Administration 42 Texas L. Rev. 949 (1964); S. Fingerhood The Fifth Circuit Court of Appeals in Southern Justice 214(L. Friedman, ed. 1965).

Here, Ms. Albert was representing approximately 191,000 members of the California State Bar when it disbarred her as more fully explained in the related petition, *Albert v State Bar of California*, petition for cert. Case No. 24-5498.

Limiting federal practice based on local state bar membership infringes on the federal court's ability to regulate the practice of law in its Courts in violation of Ms. Albert's Fifth Amendment rights, Fourteenth Amendment rights, and the concept of federalism. V Amend. U.S. Const., XIV Amend. U.S. Const.

3. The Eastern District's Local Rule of "Automatic Suspension" Violates an Attorney's Due Process Rights

The Eastern District first became aware of Ms. Albert's state bar suspension on April 24, 2018. Ms. Albert also informed the Court of her suspension when she filed the motion to vacate on August 18, 2019. Yet, no one in the Eastern District told Ms. Albert she was automatically suspended based on their Local Rules before or immediately after she filed a motion to vacate for Ms. Noble and an answer for Mr. Grewal.

Without notice of the purported "automatic" suspension, setting aside the procedural due process issue, Ms. Albert's due process rights were violated based on lack of fair notice as to her current status in federal court alone.

Ms. Gonzalez's unilateral act of changing Ms. Albert's status to "inactive" on or after March 1, 2021, was made retroactive to February 14, 2018, without a Court Order.

Whether the Court characterizes the act as suspending Ms. Albert without notice in 2018 or making the suspension issued by Ms. Gonzalez retroactive, it was a serious due process violation resulting in lack of notice or opportunity for Ms. Albert to be heard **before** a reciprocal suspension took place.

The want of due process that resulted in this discipline should suffice to bar a reciprocal disbarment by this Court and granting review. V Amend. U.S. Const., XIV Amend. U.S. Const.

B. Eastern District’s Local Rules Incorporating California’s State Bar Act into Federal Practice Violates the Rules Enabling Act

California Bus. & Prof. Code § 6125 provides, “[n]o person shall practice law in California unless the person is an active licensee of the State Bar.” Id. App. D. (Bus. & Prof. Code § 6124 does not exist.).

The Eastern District purports that it incorporated this statute from the State Bar Act into its Local Rules and found that, as such, Ms. Albert’s practice while she was listed as an active member in federal court but suspended in state court was the unlawful practice of law “in California.”

Moreover, Ms. Albert argues she did not have notice the State Bar would find she committed unauthorized practice of law in federal court because the State Bar Act is meant to be limited to state court practice. *See* First Resp. at 17-19. This argument is wholly without merit. Compliance with the State Bar Act is required by this court’s local rules, which require attorneys practicing here to “comply with the standards of professional conduct required of members of the State Bar of California and contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and court decisions applicable thereto[.]” E.D. Cal. L.R. 180(e)

In the Matter of Albert, Case No. 2:24-mc-00117-KJM, 2024 WL 1231293 p. 6 (E.D. Cal., May 24, 2024).

Consequently, Bus. & Prof. Code § 6125 was unconstitutionally broadened to reach into the regulation of federal court practice through use of its Local Rules.

The California State Bar was created by state legislation known as the State Bar Act (Cal. Bus. & Prof. Code § 6000, et seq.). Shortly after the State

Bar's inception in 1927, the California Supreme Court held that the State Bar Act applies only to state court. "[t]he State Bar Act and other statutes enacted for the purpose of regulating the practice of law in this state are applicable to our state Courts only." *In re McCue* 211 Cal. 57, 66 (1930).

This holding was maintained in *Birbrower, Montalbano, Condon Frank v. Superior Ct.* 17 Cal.4th 119 (1998) ("[f]or example, section 6125 does not prohibit the practice of law before federal Courts.);" and *Benninghoff v. Superior Court* 136 Cal.App.4th 61, 74 (2006).

Thus, one could deduce the U.S. District Court for the Eastern District of California has decided that the California Legislature can govern the practice of law in its courts.

Petitioner is not aware of any case where a state legislature is allowed to govern a federal court and be in conformity with the Rules Enabling Act, 28 U.S.C. § 2072(b) which provides "[s]uch rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." *Id.*

Federal courts incorporating state law into local rules abridges federal rules. This is an issue of importance that this Court should review.

C. Ms. Albert Should Have the Right to Sue a Federal Employee Who Wrongfully Took Away Her Right to Practice Law in Federal Court

Finally, the Ninth Circuit affirmed the U.S. District Court's order dismissing Ms. Albert's case against Ms. Gonzalez on the grounds that (1) she was immune from suit and (2) there was no *Bivens* action. *Albert v Gonzalez*, Case No. 23-3322; 24-3496 p. 5 (9th Cir. Aug. 20, 2024). App. A.

1. *Bivens* Action

First, with respect to *Bivens*, although this Court limited *Bivens'* actions, it did not completely eliminate them.

Nevertheless, the Ninth Circuit found that:

Congress is in a better position to assess the social costs of litigation that would potentially inhibit public officials from performing their duties, *see id.* at 499, and that Albert had alternative ways to challenge the decision to change her admission status from active to inactive, *see id.* at 497-98; *Mejia v. Miller*, 61 F.4th 663, 669 (9th Cir. 2023) (noting that the plaintiff had "alternative administrative remedies"), including by "written motion to the Chief Judge" of the Eastern District of California. E.D. Cal. L.R. 184(b). Thus, the district court did not err in dismissing her *Bivens* claim.

Albert v Gonzalez, Case No. 23-3322; 24-3496 p. 5-6 (9th Cir. Aug. 20, 2024). App. A.

Petitioner's position is that a court is better positioned to determine the costs to the integrity of its operations compared to the legislature when an operations supervisor wrongfully suspends an attorney's membership in that court without due process. Therefore, the case for damages against Ms. Gonzalez was wrongfully dismissed.

The court, as opposed to Congress is better suited to weigh the costs and benefits of allowing the damages action to proceed because this concerns court operations. *Egbert v. Boule*, 596 U.S. 482, 498 n.3 (2022).

The harm was caused by an operations supervisor within a federal court using her ECF case management system privileges.

Furthermore, the alternative remedial structure the Ninth Circuit suggested is inadequate because the process pointed to is not an alternative where Ms. Albert is able to seek money damages against Ms. Gonzalez for violating her due process rights. *Davis v. Passman* 442 U.S. 228, 245 (1979).

Like *Passman*, "[r]elief in damages would be judicially manageable, for the case presents a focused remedial issue without difficult questions of valuation or causation." *Davis v. Passman* 442 U.S. 228, 245 (1979).

“Litigation under [Theard and Selling] has given federal courts great experience evaluating claims for” due process violations when a district court automatically suspends an attorney without due process. *Davis v. Passman* 442 U.S. 228, 245 (1979) .

Like *Passman*, “deference to state-court adjudication in a case such as this would in any event not serve the purposes of federalism, since it involves the application of the Fifth Amendment to a federal officer in the course of his federal duties. It is therefore particularly appropriate that a federal court be the forum in which a damages remedy be awarded.” *Davis v. Passman* 442 U.S. 228, 246 (1979) , fn. 23.

Finally, the policy reason for limiting *Bivens* actions does not exist here because no separation of powers issue is at play. *See Ziglar v. Abbasi*, 582 U.S. 120, 133-34 (2017); *Egbert v. Boule*, 596 U.S. 482, 498 n.3 (2022).

The Court has yet to clarify when the second step would apply in federal matters concerning events or transactions that occurred in court. Therefore, the Court should grant the petition for review.

2. Circuit Split on Immunity

There is a circuit split on absolute immunity when it comes to licensure.

The Seventh circuit finds the actors take on a political role stripping them of immunity. *Brunson v. Murray* 843 F.3d 698, 712 (7th Cir. 2016)

The Ninth circuit, on the other hand, found Ms. Gonzalez was immune because she “was performing a ministerial action integral to the judicial function when she followed the district’s local rules and changed Albert’s status to inactive.” *Albert v Gonzalez*, Case No. 23-3322; 24-3496 p. 6 (9th Cir. Aug. 20, 2024). App. A.

U.S. Supreme Court precedent has generically held that ministerial acts create liability, not immunity. (See, *Pierson v. Ray* 386 U.S. 547, 567, fn. 6 (1967), “A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function,” citing, *Ex parte Virginia*, 100 U.S. 339, 346-347 (1880)).

The U.S. Supreme Court has also taken a broader view on accountability, finding “[t]he Constitution constrains governmental action “by whatever instruments or in whatever modes that action may be taken.” *Lebron v. National Railroad Passenger Corp.* 513 U.S. 374, 392 (1995) citing *Ex parte Virginia*, 100 U.S. 339, 346-347 (1880)

However, this Court has never decided the scope of immunity when it comes to the licensure of attorneys.

This Court should grant review and find that the Seventh circuit view is the better position. *Brunson v. Murray* 843 F.3d 698, 712(7th Cir. 2016)

V. CONCLUSION

Ms. Albert respectfully requests this Court grant her petition for a writ of certiorari.

Dated: September 26, 2024

Respectfully Submitted,
/s/ Lenore Albert
 LENORE L. ALBERT
 Petitioner, pro per