

CASE No. 24-586

IN THE  
Supreme Court of the United States

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PEYMAN ROSHAN,  
*Petitioner,*

v.

MELANIE LAWRENCE, in her official  
capacity as Chief Trial Counsel, and in  
her personal capacity; OFFICE OF  
CHIEF TRIAL COUNSEL,  
*Respondents,*

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

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**SUPPLEMENTAL BRIEF DISCUSSING  
EFFECT OF *REDD V. GUERRERO AND HAMM*,  
*COMMISSIONER, ALA. DEPT. OF*  
*CORRECTIONS V. SMITH***

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## INTRODUCTION

This supplemental brief addresses two cases, *Redd v. Guerrero*, 84 F. 4th 874 (9th Cir. 2023), dissent and concurrence to en banc review denial December 11, 2024 and *Hamm, Commissioner, Ala. Dept. of Corrections v. Smith* 604 U. S. \_\_\_\_, U.S. Supreme Court Case No. 23-167 (Nov. 4, 2024).

In the first case an opinion was published before the filing of this petition, but a published dissental and response regarding the denial of en banc review are relevant to this petition and established grounds for review of three additional questions. The second case's opinion of this Court was entered after filing of the petition. The import of the third case was not known to petitioner until after the petition for certiorari was filed.

The first case, *Redd*, was argued to the Ninth Circuit Court of Appeals via two Rule 28(j) letters that arose after filing of Roshan's reply brief. *Redd* was relevant to the issues before the Ninth Circuit in two respects. First, it showed that just because the California Legislature grants litigants particular rights before the California Supreme Court or the administrative agencies it controls or which assist it, does not mean that the California Supreme Court will make an effort to follow them. Accordingly, the Ninth Circuit's published authority that found the facial existence of procedural rights, relied upon by the panel in the case to impose *Younger* abstention, are not dispositive to the actual existence of such rights: the California Supreme Court ignores legislative grants of procedural rights where it does not want to follow them. *See Hirsh v. Justices of*

months after the decision was published, and the panel declined to vacate the published opinion.

The dissenting justices make a vociferous argument that *Redd* merits review by this Court. This case presented one of the underlying issues to the Court of Appeal and District Court, and so is a perfect vehicle to review the following issues, the first two of which are common with *Redd*:

1. Where a State Legislature creates a procedural litigation right, under what circumstances can the denial of such right constitute a federal due process or equal protection violation?
2. Where the State Legislature creates a procedural right enforceable in litigation within a State Supreme Court's original jurisdiction that is the subject of a federal lawsuit against the *Ex Parte Young* Defendants of the State Supreme Court or its advisor, must the interpretation of the law be based on the plain meaning supplemented by the history of the state legislature's intention?
3. Does the alleged refusal of the State Supreme Court and/or its subsidiary administrative agencies to honor such a right evince a defect that eliminates *Younger* abstention?

This brief also discusses a case where last month this Court granted a petition for certiorari and remanded the decision back to the Court of Appeals for clarification of the opinion. *Hamm, Commissioner, Ala. Dept. of Corrections v. Smith* 604 U. S. \_\_\_, U.S. Supreme Court Case No. 23-167, (Nov. 4, 2024). *Hamm* sets an exemplar for addressing this case and

Roshan's petition identifies and discusses other variations of the three major categories.

In addition to the two questions presented in this petition, Roshan also endorses and joins in the petition filed by Mr. Sanai which raises three questions. The first is whether raising *Younger* abstention (or any other waivable defense) to dismiss an action where the defendants have defaulted violates the party presentation principle. The second is whether the Ninth Circuit could rely on its precedent finding that the rules and procedures in 1994, which have long since been replaced, requires imposition of *Younger* abstention even though the requirement that such procedures be judicial in nature and constitute civil enforcement proceedings was expressly rejected by subsequent California Supreme Court authority. The third issue is whether the *Younger* abstention requirement that the litigant have had opportunity to raise federal questions also requires convincing the federal court that the federal contentions would win.

**THIS CASE PRESENTS THE SAME QUESTION  
AS *REDD* THAT IS THE SUBJECT OF THE EN  
BANC DISSENTS**

*Redd* concerned a legislative due process right to habeas counsel for death penalty convicts that the California Supreme Court refuses to implement. The grounds for the refusal is inadequate funding, but as observed by the *Redd* panel, the California Supreme Court and other court officials have unexercised

due process rights imposed on litigants before it and it was cited to the Ninth Circuit to that effect.

Not surprisingly *Redd's* holding was not unanimously well received within the Ninth Circuit and it did Redd no good, as he died shortly after the publication of the decision. An en banc call was made to vacate the decision, but the panel declined to do so. This led to an infuriated "dissent" and response. The dissenters were particularly angry that a decision that they disagreed with was now immune to review.

However the issue presented by *Redd* can be reviewed in this case. Roshan and Sanai both fully litigated the issue of whether the refusal of the State Bar and the California Supreme Court to enforce the statutory *Brady* disclosure obligations was a sufficient impairment of the right to effectively litigate constitutional issues or an extraordinary circumstance that forced *Younger* abstention off the table. A sixth question presented could therefore be considered by this Court in the proceedings initiated by Sanai and Roshan. He proposes the following additional questions presented:

If a state legislature creates a statutory due process right enforceable against proceeding in the state Supreme Court:

- A. Is the alleged refusal by the State Supreme Court or its subsidiary administrative agencies a violation of the Due Process Clause of the Fourteenth Amendment or equal protection guaranty?

Petitioners Cyrus Sanai and Peyman Roshan were each the subject of California attorney discipline orders. Roshan filed one and Sanai filed two lawsuits against officials of the California State Bar Association, where motions to dismiss were successfully filed by the defendant. Sanai also filed an action against the justices of the California Supreme Court, who did not defend the action and had default entered against them. However, the district court dismissed the action anyway.

Each of the dismissals was based on *Younger* abstention. Where a state proceeding is “judicial in nature” it may be subject to *Younger* abstention if it constitutes a criminal proceeding or a civil enforcement proceeding, or the federal lawsuit concerns the core powers of a state to enforce its orders. *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369-370 (1989) and *Sprint Communications v. Jacobs*, 571 U.S. 69, 79 (2013). If these conditions are met, then the court must address whether the so-called “*Middlesex* factors” articulated in *Middlesex County Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 436-7 (1982), are met; conditions which require, among other things, that the state proceedings provide an effective means for litigating federal constitutional claims.

In a consolidated appeal, the Ninth Circuit panel held that *Younger* applied. However, it made no finding that California

The Ninth Circuit's decision was in contravention of this Court's precedent. As this Court explained in *Sprint*, whether a proceeding meets the factors set out in *Middlesex* is the second step in the *Younger* analysis. The first step is to determine whether or not the procedures are "judicial in nature" and meet one of the categories identified in *Sprint*. The panel failed to take this necessary first step. The Court of Appeals should also have made a de novo analysis of whether California attorney discipline procedures, as they exist at the time Mr. Sanai and Roshan were subjected to them, meet the *Middlesex* factors.

In doing so, the district or reviewing court may not evaluate the strength of the constitutional argument that the federal plaintiff wishes to present. If there is a procedural barrier to raising a constitutional claim in the state proceeding, and a federal plaintiff can articulate that claim in respect of that plaintiff's case, then *Younger* does not apply in any respect. The strength or weakness of the constitutional claim is only evaluated by the federal court once jurisdiction is established. There is no support for the Ninth Circuit panel's change in this Court's articulation of the *Middlesex* factors, and the panel presented no reasoning or citation to authority for its position.

The Ninth Circuit's judgment is therefore reversed and we remand this case,



Dated this January 10, 2025.

Respectfully submitted,

/s/ Peyman Roshan

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