24-588

IN THE
Supreme Court of the United States

CYRUS MARK SANAI,
Petitioner,
v.
MELANIE LAWRENCE, et. al.
Respondents,

CYRUS MARK SANAI,
Petitioner,
v.
LEONDRA KRUGER, et. al.
Respondents,

CYRUS MARK SANAI,
Petitioner,
v.
GEORGE CARDONA, et. al.
Respondents

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NO. 21-15771 (*sub nom Roshan v. Lawrence*)
PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

Petitioner Cyrus Sanai presents the following questions:

1. Does the endorsement by the Ninth Circuit Courts of Appeals (among others) to raising *Younger* abstention sua sponte at the District Court or Court of Appeals violate the party presentation principle and is thus improper?

2. Did the Ninth Circuit Court of Appeals err when it found that *Younger* abstention applied without addressing the additional requirement of determining whether the California attorney discipline proceedings fall into one of the *NOPSI* categories, given that after this Court of Appeals found that California State Bar attorney discipline proceedings meet the *Middlesex* factors in *Hirsh v. Justices of Supreme Ct. of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (per curiam) (citing *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982)), and so are protected by *Younger* abstention, the California Supreme Court held that such proceedings are not civil enforcement proceedings nor criminal proceedings, thus avoiding the California Constitution's requirement that the California Supreme Court hear oral argument on all civil and criminal cases before it? *See In re Rose*, 22 Cal.4th 430, 440 (2000).

3. Did the Court of Appeals err in holding that the *Younger* abstention requirement of a fair opportunity to raise federal claims is ignored if the federal court does not think the federal constitutional argument is meritorious on a pre-emptive basis?

Sanai also joins in the accompanying petition for a writ of certiorari from the same decision challenged by Peyman Roshan presenting the following questions:

4. At what point or points in time should federal courts analyze the factors for application of *Younger* abstention? There are at least six views expressed in the case law, five of which are present in Ninth Circuit case law; these six views are that the federal courts:

a. Only look at the time the complaint is filed, a view set out in the Ninth Circuit's en banc authority and many other cases.

b. Look at the time the complaint is filed and perform a second check, as accepted in some Ninth Circuit case law, the panel in this appeal, and this Court in *Hawaii Housing Authority v. Midkiff,* 467 U.S. 229, 238 (1984).

c. Look at the state proceedings at the time of the district court hearing and separately upon appellate review, as the majority held in *Duke v. Gastelo,* 64 F.4th 1088, 1096 (9th Cir. 2023).

d. Look at matters as the case progresses, in the same way constitutional standing and mootness are evaluated, which is the position of the Appellants, the Eighth Circuit, the Tenth Circuit, and arguably this Court in *Middlesex, supra.*

e. Look at the time the complaint is filed and matters before, as advocated by Judge Bumatay in his dissent in *Duke, infra,* and held by the Fourth Circuit.

f. Look at the situation upon remand from the Court of Appeal, as the Ninth Circuit panel decided in the unpublished decision *Big Sky Scientific LLC, v. Bennetts*, Case No. 19-35138 (9th Cir. Sept. 4, 2019).

5. Given that *Younger* abstention's application to civil cases was premised on the availability of Supreme Court review of allegedly unconstitutional statutes which has since been eliminated and a view that 42 U.S.C. §1983 does not guarantee a federal forum for constitutional claims against state action that has now been rejected, should *Younger* abstention's application to civil cases be eliminated on grounds that it violates equal protection and access to the federal Courts?

PARTIES TO THE CASE

This petition is in respect of four federal actions with two different plaintiffs and two different sets of Defendants. The four actions were consolidated for hearing and decision, though they were litigated and briefed separately.

The plaintiff appellant and petitioner in this petition is CYRUS SANAI, an individual. It addresses the following appeals.

Sanai v. Lawrence, Ninth Circuit Docket No. 22-56215, Central District of California Case No. 2:21-cv-07745-JFW-KES, the Defendants as to which are Cynthia Valenzuela, George Cardona, W. Kearse McGill and Richard Honn, all of whom are employees of the State Bar of California and sued in their individual and official capacities.

Sanai v. Kruger, Ninth Circuit Docket No. 23-16104, Northern District of California Case No. 23-cv-01057-AMO, the defendants as to which the members of the California Supreme Court in their individual and official capacities: Leondra Kruger, Joshua P. Groban, Martin J. Jenkins, Kelli M. Evans, Carol A. Corrigan, Goodwin H. Lieu, and Patricia Guerrero, all of whom elected not to appear after valid service was made for reasons explained below.

Sanai v. Cardona, Ninth Circuit Docket No. 23-15618, Northern District of California Case No. 22-cv-01818-JST, the defendants as to which are George Cardona and Leah Wilson, employees of the State Bar of California sued in their individual and official capacities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Constitutional Provisions

=

IN THE
Supreme Court of the United States

CYRUS MARK SANAI,
Petitioner,
v.
MELANIE LAWRENCE, et. al.
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On Petition for a Writ of Certiorari to the Ninth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

The lead question presented in this petition is a question discussed but never decided by this Court which the lower courts have never resolved: whether *Younger* abstention can be raised sua sponte by a district or appellate court. The case law which suggests this is proper has been put into doubt by this Court's unanimous decision in *United States v. Sineneng-Smith,* 590 U.S. 371, 140 S. Ct. 1575, 206 L. Ed. 2d 866 (2020). In this decision this Court for the first time reversed the Court of Appeals for raising an issue sua sponte.

Disposing of the cases by raising issues sua sponte is one of the tools that the Ninth Circuit has utilized to avoid following the precedent of this Court with which circuit judges disagree. A second method, manipulation of the en banc process to avoid resolving circuit splits but instead attacking disfavored Supreme Court precedent, has been the subject of an extraordinary number of dissents from denial of en banc hearings this year. *Duarte v. United States,* 108 F.4th 786, 788 (9th Cir. 2024) (Van Dyke, J, diss. from order granting pet. for rehearing en banc) ("if a panel upholds a party's Second Amendment rights, it follows automatically that the case will be taken en banc.").

The third tool used by the Ninth Circuit is anti-precedent. For decades the Ninth Circuit operated on a consensus that three judge panels were free to depart from governing precedent if all three agreed that was the result they wanted. This has been recognized from time to time; a recent dissent from rehearing en banc suggests that the consensus may

be breaking down. *Malone v. Williams*, Ninth Cir. Docket No. 22-16671, Order Denying Petition for En Banc Review, August 15, 2024. Bybee, J, diss. (requesting Supreme Court to summarily reverse unpublished memorandum opinion and instructing other appellate courts not to follow it; noting that refusal to grant en banc review "reflects a quixotic assessment that litigants and courts will readily observe that the panel's unpublished decision is so far afield of clearly established law that it cannot possibly be read to cast doubt on our precedential AEDPA decisions."). Any inference from Judge Bybee's dissent that departure from established precedent is in any way exceptional should be cast away, as it is the standard operating procedure for the circuit.

In this case the Circuit panel rewrote the one of the so-called "*Middlesex* factors". Because the Ninth Circuit's only precedent conceded that there is no mechanism for a litigant in California state courts to disqualify an appellate justice, Sanai had a dispositive argument against its application in two of the three actions, *Sanai v. Kruger* and *Sanai v. Lawrence*. The panel simply rewrote the relevant *Middlesex* factor to add a merits requirement for constitutional arguments. App. A at A-8.

This petition, along with the accompanying petition of Peyman Roshan on the consolidated appeals, provides a guide on how the courts in the Ninth Circuit toss away meritorious lawsuits by creating new rules of law on the fly or sua sponte raising and deciding issues that have no support from the opposing side. The Court should either grant review and remand the case after summarily

reversing the panel on issue 3, or grant the petition as to all questions presented.

ORDERS BELOW

The orders of the Ninth Circuit Court of Appeals affirming the District Court and denying the petitions for rehearing and rehearing en banc are set forth in Appendices ("App.") A and G. Certain relevant orders of the District Court are set out in Apps. B-E. The California Supreme Court's letter to Sanai confirming that there is no post-judgment proceedings to reopen or challenge an attorney disciplinary order is attached as App. F.

BASIS FOR JURISDICTION

The Ninth Circuit Court of Appeals issued its decisions affirming the orders of dismissal of the District Court on January 30, 2024. App. A. Timely Petitions for Rehearing and Rehearing en Banc were denied on April 17, 2024. App. G. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES

The relevant statutory and constitutional provisions and judicial rules are set forth in App. H, and include the Fifth and Fourteenth Amendments to the United States Constitution U.S. Const., amend. XIV, and 42 U.S.C. §1983.

STATEMENT OF THE CASE

A. Procedural Background

1. Overview of Three Complaints

The Ninth Circuit consolidated three separate actions challenging two interconnected California State Bar proceedings. The first State Bar proceeding was litigated under two separate docket numbers, 10-0-09221 and 12-0-10457 ("*Sanai I*"), and was challenged in *Sanai v. Lawrence* in the Central District of California, where the defendants were employees of the State Bar, and *Sanai v. Kruger* in the Northern District, where the Defendants were the sitting justices of the California Supreme Court.

The third lawsuit, *Sanai v. Cardona*, Northern District of California Docket No. 23-15618, concerns the follow up to the disciplinary proceeding to *Sanai I*, Docket Nos. SBC-23-O-30221-DGS and SBC-23-N-31004-DGS ("*Sanai II*"). *Both Sanai v. Cardona* and *Sanai II* are still being litigated.

Sanai v. Lawrence and *Sanai v. Kruger* were both appeals from judgments of dismissal without prejudice based on *Younger* abstention. App. B; App. E. However, while the State Bar litigated *Sanai. v. Lawrence* vigorously, the California Supreme Court chose to default. The District Court judge in *Sanai v. Kruger* sua sponte dismissed the lawsuit without notice or an opportunity to be heard. App. E.

In *Sanai v. Cardona* the appeal was from a denial of a motion for a preliminary injunction. App. C. *Younger* abstention was only raised when Sanai

filed a motion to stay pending appeal, again raised sua sponte by the District Court. App. D.

Because the appeals were from judgments of dismissal and from preliminary injunction motions as to which no opposition on the merits had been filed, the allegations of Sanai must be presumed to be true. The theories of the case developed over time. However, in consolidating the case, the Ninth Circuit panel made no distinction in who alleged what and when. In addition, because *Sanai v. Cardona* resumed after issuance of mandate, Sanai was able in that case to bring motions which resulted in further admission by the California State Bar that California attorney discipline proceedings are not "civil enforcement actions" that would fall into the *NOPSI* category professional discipline has previously been slotted into for purposes of *Younger* abstention. Shortly before filing this petition Sanai and Roshan filed a joint motion to recall the mandate raising the new facts, which was denied. *See* App. H.

Citations to the docket and Excerpts of Record with respect to an action are to the district court proceedings in those actions, unless otherwise stated. Thus in Section 3 below all citations to the Docket are to the District Court docket in *Sanai v. Lawrence.*

2. Procedural History *Sanai v. Lawrence*

Sanai filed a Complaint, Dkt. 1, and the FAC, Dkt. 41. On March 21, 2022, the district court dismissed FAC without prejudice and leave to amend on grounds of *Younger* abstention grounds. *See* Dkt.

80. The court did not enter a separate judgment, and thus the entry of judgment did not occur until 150 days later on August 18, 2022. Fed. R. Civ. P. 58(c)(2)(B). From March 21, 2022 to August 16, 2023 Sanai filed a succession of post judgment motions under Fed. R. Civ. P. 60(b) all of which were denied without analysis. Sanai filed a notice of appeal on December 21, 2022 that appealed the order of dismissal (now deemed the entered judgment) of March 21, 2022 judgment and all of the post-judgment orders listed above. See Dkt. 178.

Even after judgment was entered, Sanai's California State Bar discipline case continued to progress, so Sanai filed a post-judgment motion for indicative ruling upon remand to bring all arguments created or augmented by subsequent events before the trial court. Dkts. 196-198. The motion was denied on June 20, 2023, Dkt. 202, and an amended notice of appeal was filed two days later, Dkt. 203. On August 16, 2023 Sanai filed his last indicative Rule 60(b) motion. Dkt. 206-7. This was denied and Sanai filed an amended notice of appeal, Dkt. 209-10.

The parties extensively litigated the issue of whether Sanai's successive Rule 60 motions exhausted the post-judgment tolling. The motions panel held that it did not but the hearing panel held that the *Sanai v. Lawrence* appeal was only of certain post-judgment motions, but that this made no difference because all issues had been raised. App. A at A-7 fn2.

3. Procedural History - *Sanai v. Kruger*

While proceedings were ongoing before the California Supreme Court, Sanai filed this action. The Defendants, despite personal service on their Clerk's office and follow-up first class mail service, did not respond. *See* Dkt. 17-1 C. Sanai Decl., Dkt. 17-2 Roshan Decl., Dkt. 17-3 M. Sanai Decl. Default was entered by the Clerk. Dkt. 18. Six days after this lawsuit was filed, on March 15, 2023 Sanai's Petition for Review before the Supreme Court of California was denied. Dkt. 21-7.

Because default was entered against the Defendants, all allegations relevant to the federal causes of action (i.e., "well-pleaded" allegations) are deemed true. *TeleVideo Systems, Inc. v. Heidenthal,* 826 F.2d 915, 917 (9th Cir. 1987); *see also Geddes v. United Fin. Grp.,* 559 F.2d 557, 560 (9th Cir. 1977) ("upon default[,] the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true."). The Complaint includes allegations of the actual bias of the second State Bar Court Judge, Cynthia Valenzuela, in Sanai's attorney discipline proceedings. *See* "Docket" at 1; Complaint Dkt. 1 at 20-21 (alleging State Bar Court Judge Valenzuela "is in actuality biased against Sanai and any victim of judge/opposing counsel (unless the victim was Girardi and his cabal)"). The District Court Judge in this matter refused to address an *ex parte* motion for entry of default for more than a month. An amended motion for default was filed on July 10, 2023, followed by an *ex parte* motion for preliminary relief, including a preliminary injunction. Dkt. 32; Dkt. 34. At the end

of July 2024 the District Court Judge still declined to rule on the merits, but instead sua sponte dismissed the complaint on *Younger* abstention grounds on a facial, *i.e.*, pleading, basis; however, she failed to read or acknowledge the allegations against Judge Valenzuela. Dkt. 35. Also, she dismissed the complaint with prejudice, when *Younger* requires dismissal without prejudice. *See, e.g. State Farm Mutual Automobile Insurance Co. v. Metcalf,* 902 F. Supp. 1216, 1220 (D. HI 1995) ("Because *Younger* abstention is warranted in this case, the Court dismisses Plaintiff's complaint without prejudice.").

Three days later Sanai filed a combined Rule 59(e) and 60(b) motion to vacate the judgment and enter the requested default judgment. Dkt. 37. The Judge declined to act. On August 14, 2023 Sanai filed a notice of appeal, Dkt. 39, followed on August 14, 2023, by an ex parte motion for injunction pending appeal, Dkt. 40. The appeal was not at the time of filing in effect as to dismissal. Fed. R. App. Proc. 4(a)(4)(B)(i). It was in effect, however, as to the denial of preliminary relief, Dkt. 34.

The District Court issued an order denying the motion for stay pending appeal and granting in part the motion to alter and amend the judgment, Dkt. 43, and to render the judgment without prejudice. Dkt. 45. Sanai filed new Rule 60(b) and 59(e) motions which pointed out the specific legal errors made by the District Court judge. Unable to refute them but unwilling to grant Sanai relief, the District Court denied the motions summarily. Dkt. 52. Sanai filed an amended notice of appeal. Sanai's first issue on appeal challenged whether it was proper to dismiss Sanai's complaint sua sponte.

4. Procedural History – *Sanai v. Cardona*

On March 23, 2022, Sanai filed a lawsuit against Defendants. Docket No. 1. The trigger for this lawsuit was a written threat of a disciplinary proceeding. The current version of the Complaint is the Second Amended Complaint, Northern District of California ("CAND") Docket No. 77 ("SAC"). The SAC alleges the following facial constitutional inadequacies of the California State Bar's attorney disciplinary rules and practices.

Sanai was forced by the then-imminent filing of the disciplinary proceeding to file a motion for a temporary restraining order and preliminary injunction. CAND Docket No. 52. After briefing, it was denied. CAND Docket No. 58.

One of the grounds for denying relief was Judge Tigar's view that having not seen the draft complaint, Sanai had not met his burden to show that the complaint was inadequate as a matter of due process. Sanai successfully moved for a motion to extend the time to file a notice of appeal. CAND Docket No. 63. He filed a motion for leave to file a motion for reconsideration and the Notice of Appeal on April 24, 2023. Docket Nos. 68-69. The motion was denied on grounds of the automatic stay on appeal. CAND Docket No. 75.

Sanai then obtained a stipulation to file the Second Amended Complaint and did so. CAND Docket Nos. 74, 77.

On June 5, 2023, Sanai filed a motion for injunction pending appeal and for an indicative ruling pending appeal that injunctive relief should be granted. CAND Docket No. 81. Without notice or an

opportunity to be heard, Judge Tigar ruled that *Younger* abstention applied to this case; however, he did not dismiss it as Sanai had requested an indicative ruling. Sanai filed an amended notice of appeal on June 9, 2023 so that the earlier events became part of the appellate record and so this Court had jurisdiction to address all issues.

5. Procedural History of *Sanai I*

Sanai v. Lawrence and *Sanai v. Kruger* both address *Sanai I,* the now completed attorney discipline matter against Sanai that was filed in 2014. Sanai was the subject of an out-of-control prosecution, in which eight of the nine charges were dismissed when the California State Bar Office of Chief Trial Counsel ("OCTC") rested its case in 2015, several due to misconduct by the OCTC. In two different orders of dismissal, the State Bar Court Hearing Department Judge, Donald Miles, found that for some of the charges covered by the State Bar's Notice of Disciplinary Charges ("NDC"), *Sanai v. Saltz*, the **trial court judge and opposing counsel conspired to suborn the testimony** of a Los Angeles County Superior Court clerk regarding a proof of service, who recanted her prior testimony in *Sanai v. Saltz* when subpoenaed to appear before the State Bar Hearing Department:

> a contention by Respondent's opposing counsel in 2006 that Respondent, after the Memorandum of Costs had been filed, had made a notation on the previously-filed service list regarding the identity of the designated agents of those corporate

defendants for service of process. However, it is undisputed that this notation was made by Respondent with the knowledge and consent of the court's clerk, in her presence, and at her request. This clerk was aware that Respondent, a party to the action, was not (and could not be) the person who had signed the proof of service under penalty of perjury, and there is no evidence that Respondent was claiming to modify the proof of service or that the clerk believed that Respondent's subsequent notation in any way modified the original proof of service.

The disputed issue at that time was whether the clerk had merely requested that Respondent write down the identity of the designated agents for service of process or whether she had asked Respondent to write down the names of the individuals who had actually been served. At an ex parte hearing on May 11, 2006, this clerk was called to testify regarding that issue. Prior to her being summoned to testify in 2006, comments by both the presiding judge and opposing counsel made clear that each had discussed with her the substance of her anticipated testimony. (Ex. 29, pp. 5-6; cf. p. 11, line 26. During her testimony, her answers were equivocal,

> including acknowledging on cross-examination that her memory of the event (which had happened less than three days before) was poor and that she did not remember exactly the reason she had given Respondent for asking him to write down the names of the designated agents for service of process. (Ex. 29, pp. 25-26, 44.)

Dkt. 21-7 Vol VI p.1412 (February 6, 2015 Order at 7); *see also* Dkt 1, Complaint at 12.

However, Judge Miles, notwithstanding his finding of Superior Court misconduct, elected to stay the case rather than allow Sanai to defend. *Id.*

Also at issue were exculpatory documents that the OCTC refused to produce from its investigatory records. The status of a Fourteenth Amendment right to exculpatory evidence from the State Bar was admitted by Judge Miles. *See* Dkt. 21-7 Vol. VI p. 1419. This federal right has been explicitly incorporated and expanded by the California Legislature in 1995 when it passed legislation that confirms Sanai had the right "[t]o receive **any and all exculpatory evidence** from the State Bar after the initiation of a disciplinary proceeding in State Bar Court, and thereafter when this evidence is discovered and available." Cal. Bus. & Prof. Code §6085(b) (bold emphasis added).

This right is to receive exculpatory evidence from *all* parts of the State Bar, not just the OCTC, and is not subject to any exceptions other than that mitigating evidence need not be disclosed, so California law privileges do not apply. After repeated refusals to produce exculpatory material,

Judge Miles imposed evidence and issue sanctions on the OCTC, as it is the State Bar Court's position that it lacks the authority to impose anything other than mere discovery sanctions where the State Bar violates its duty of disclosure. Dkt. 1, Complaint at 12.

By 2015 all but one charge had been dismissed with prejudice. The only charge left was the contention that Sanai had violated Cal. Bus. & Prof. Code 6068(g) by filing an abstract of judgment. This statute states that "It is the duty of an attorney . . . (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest."

Bus. & Prof. Code §6068(g) was entered into California law in the original 1872 version of the California Code of Civil Procedure. It read as follows:

> It is the duty of an attorney and counselor-
>
> ....
>
> (7) Not to encourage either the commencement or the continuance of an action or proceeding from any motive of passion or interest.

Cal. Code Civ. Proc. §282 (1872)

The 1872 Code of Civil Procedure identifies §511 of the New York Code of Civil Procedure as the source and the provision is identical. The latter Code is known as the "Field Code" and was the basis of California's Code of Civil Procedure.

When interpreting §6086(g), a court must look at its plain language with particular attention to what the words would have signified to an attorney in 1850-72. *Wisconsin Cent. Ltd. v. United States,* 585

US 274, 277 (2018). The literal words as written prohibit a lawyer from encouraging, that is to say advising or assisting, the filing or continuation of a lawsuit or other legal proceeding "from any motive or passion." The preposition phrase "from any motive of passion or interest" modifies the verb "encourage". The Ninth Circuit has addressed the meaning of the term "encourage" in statutes:

> At the outset, we agree with the government, and the Seventh Circuit, that "to encourage" means "to inspire with courage, spirit, or hope ... to spur on ... to give help or patronage to." *United States v. He,* 245 F.3d 954, 960 (7th Cir.2001) (quoting Merriam Webster's Collegiate Dictionary 381 (10th ed.1996)). Indeed, we have previously equated "encouraged" with "helped." *United States v. Yoshida,* 303 F.3d 1145, 1150 (9th Cir.2002).

U.S. v. Thum, 749 F. 3d 1143, 1147 (9th Cir. 2014); *see also* Black's Law Dictionary 1 ed (1891) at 419.

The plain language of this statute was its intended purpose: it barred attorneys from committing advisory or "common" barratry, that is to say, encouraging third parties to file lawsuits, whether or not justified.

> At early common law, **barratry was the practice of encouraging** or maintaining suits or quarrels in the courts by (1) disturbing the peace, (2) taking or detaining the possession of property in question by subtlety and

> deceit, or **(3) fostering calumny resulting in discord between neighbors. Later, the definition was expanded to include any incitement of litigation between subjects of the King.**
>
> **In order to sustain a conviction for barratry at common law, it was necessary to show that the offender had incited litigation in several instances and had not brought any of the suits in his own right,** It was not a defense to claim that malicious intent or an intent to vex and annoy was lacking. In addition, it was immaterial that the suits were in fact meritorious.
>
> At common law, there was a strong aversion to the institution of litigation. Barratry, and its sister offenses, chainperty and maintenance, were based on a "mind your own business" philosophy which was, at one time, carried to the extreme of making it criminal for one to testify at a trial without having been previously subpoenaed.

Case Note, First Conviction Under New York Barratry Statute, 11 CATHOLIC LAWYER 250, 251 (Summer 1965) (bold emphases added, footnotes omitted).

At no time was Sanai ever accused of encouraging anyone to do anything. There

were no allegations that Sanai did anything forbidden by the statute.

While the stay was ongoing, Judge Miles was replaced by Judge Cynthia Valenzuela. Dkt. 1, Complaint at 12.

When the stay was lifted, new information was trickling out about the corruption of the State Bar by superstar attorney Thomas Girardi. In a series of devastating pieces over two years, the Los Angeles Times demonstrated that Girardi had placed his own operatives in the State Bar who drew a salary from the State Bar while doing Girardi's judicial selection fixing. Girardi was the powerful judicial gatekeeper, as to federal judges, because of his relationship with California Senator's Dianne Feinstein and Barbara Boxer, and, as to state judges, because of his relationship with former Attorney General and four-term governor Jerry Brown. In California the Governor selects all Court of Appeals judges and appoints trial court judges when vacancies arise between elections. Girardi held a veto on all state candidates for judicial office when Brown was Governor, and held a veto on State Court of Appeal judges when Brown was Attorney General because of the veto rights that Attorneys General have under California's judicial appointment process.

Both Judges Miles and Valenzuela had obtained their positions through Girardi and were part of his cabal. Dkt. 1, Complaint at 12-13. Indeed, when Girardi was finally prosecuted by the State Bar, Judge Valenzuela recused herself from the case while refusing to disclose the reason for her recusal when asked by Sanai, pre-emptively ruling that she had no "conflict of interest" under California law.

Dkt 1, Complaint at 13-4. Sanai took this issue up on interlocutory appeal to the California Supreme Court; the Court denied review. *See* Dkt. 21-7 at Vol. VI, pp. 1362-81; Exh. 5, Vol. VI, pp. 1484-1485. No justices recused themselves, even though at least two of them, Justice Kruger and Justice Groban, have conflicts of interest that required recusal due to their relationship with Girardi. Dkt 1, Complaint at 14.

Judge Valenzuela quashed all witness subpoenas. Dkt 1, Complaint at 13-14. Unable to put on additional evidence, Sanai did the best he could, and Judge Valenzuela imposed a suspension. Dkt 1, Complaint at 14. In doing so, she made clear that she rejected Judge Miles' findings of fact exonerating Sanai, and she increased the discipline recommended by the OCTC and stated she would have recommended Sanai be disbarred if she could have. *See* Dkt. 21-7 Vol. VI p. 1515 (rejecting Judge Miles findings that trial court and opposing counsel prepared witness in advance concerning testimony she recanted). In addition, Judge Valenzuela completely rejected the obvious conclusion that the State Bar prosecutors had committed misconduct by filing causes of action they knew they would lose, violating discovery orders, and failing to turn over exculpatory information. Dkt. 21-7, Vol. VI p. 1520. Most revealing, Judge Valenzuela castigated Sanai for seeking to prove the existence of an illegal judicial conspiracy when her State Bar judicial employer was enmeshed in a twenty-year corrupt conspiracy between Girardi and trustee and employees of the State Bar. *Id.* Judge Valenzuela

was actually biased against Sanai. Dkt. 1, Complaint at 20-21.

On appeal to the Review Department of the California State Bar Court, the Review Department dismissed Sanai's appeal on the grounds that he failed to file it after a clerk's default notice was issued, but no such notice was issued or could have been issued under the California State Bar Court Rules of Procedure. Dkt. 1, Complaint at 16.

Sanai filed a timely petition for review on November 1, 2022 with the California Supreme Court that reserved all federal constitutional issues. Dkt. 21-7, Vol. VI, p. 1530. At the time of filing the Complaint in this action on March 9, 2023, the California Supreme Court had made no decision on Sanai's Petition for Review. The next day the State Bar issued a press release and three heavily redacted internal reports admitting to decades of corruption associated with Girardi. *See* Dkts. 21-2, Vol. I, pp. 1-155. The California State Bar's outside counsel confirmed that the OCTC were unaware of (or chose to ignore) their ethical duties, which are the same as criminal prosecutors. Dkts. 21-2, Vol. I, pp.71-2.

Two weeks later the California Supreme Court issued an opinion, *In re Jenkins*, 14 Cal.5th 493 (Cal. 2023). In *Jenkins,* the Court interpreted federal and California law to conclude that prosecutors have an ethical duty after trial and even post-conviction proceedings to disclose exculpatory information. The Court noted that this disclosure duty is also an attorney ethical duty existing even in the absence of specific rules governing prosecutor duties in California. *Id.* at 512-518.

On March 15, 2023 Sanai's Petition for Review to the California Supreme Court was denied. Dkt. 21-7. He filed a timely petition for rehearing. On April 3, 2023, after the filing of a petition for rehearing, the finality of the denial of the petition and imposition of a 60 day suspension was stayed pending resolution of the petition. Docket 21-7, Vol. VI, pp. 1530-2. On May 31, 2023 the petition was denied, and discipline was ordered to be effective on June 30, 2023. App. VIII, Exh. 8, Docket 21-7, Vol. VI, p. 1532.

Sanai then filed with the California Supreme Court a Petition for Rehearing of the order denying the petition for hearing based on the new facts regarding the State Bar's patently false public announcement that Sanai was suspended. Dkt. 27-2. The Supreme Court responded with a letter rejecting the petition because:

> The court is unable to file your submission as there is no provision in the Rules of Court to file a rehearing of the denial of a rehearing. This case is now closed and cannot be reconsidered or reinstated.

App. F,

B. Procedural Background

Sanai filed appeals in each case that were consolidated with the appeal he filed as counsel for Mr. Roshan. The Ninth Circuit affirmed the dismissals based on *Younger* abstention. App. A. Four petitions for rehearing which cross-referenced

the others were filed on April 17, 2024, and were denied. App. B.

WHY THE PETITION SHOULD BE GRANTED

A. *Younger* Abstention

In this Court's most recent discussion of *Younger* abstention, it explained that:

> In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter. *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350, 373, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989) (*NOPSI*). ("[T]here is no doctrine that ... pendency of state judicial proceedings excludes the federal courts."). This Court has recognized, however, certain instances in which the prospect of undue interference with state proceedings counsels against federal relief. *See id.*, at 368, 109 S.Ct. 2506.
>
> *Younger* exemplifies one class of cases in which federal-court abstention is required: When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution. This Court has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions, *see Huffman v.*

> *Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), or that implicate a State's interest in enforcing the orders and judgments of its courts, see *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987). We have cautioned, however, that federal courts ordinarily should entertain and resolve on the merits an action within the scope of a jurisdictional grant, and should not "refus[e] to decide a case in deference to the States." *NOPSI*, 491 U.S., at 368, 109 S.Ct. 2506.
>
> Circumstances fitting within the *Younger* doctrine, we have stressed, are "exceptional"; they include, as catalogued in *NOPSI*, "state criminal prosecutions," "civil enforcement proceedings," and "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S., at 367-368, 109 S.Ct. 2506.

Sprint Communications Inc. v. Jacobs, 571 US 69, 72-78 (2014).

B. The Courts of Appeal are Completely Inconsistent on the Propriety of Raising *Younger* abstention or other Abstention Doctrines Sua Sponte and Raising it Sua Sponte Violates the Party Presentation Principle.

In *Sanai v. Kruger* and *Sanai v. Lawrence* the district courts raised *Younger* abstention sua sponte. Ninth Circuit authority permits this. *San Remo Hotel*

v. San Francisco, 145 F.3d 1095, 1103 fn 5 (9th Cir. 1998)(Tashima, J.), *citing Barichello v. McDonald,* 98 F.3d 948, 955 (7th Cir. 1996); *see also Columbia Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001). Other opinions taking this view include: *Lawrence v. McCarthy*, 344 F.3d 467, 470 (5th Cir. 2003); *Morrow v. Winslow*, 94 F.3d 1386, 1391-92 (10th Cir. 1996); *O'Neill v. City of Philadelphia*, 32 F.3d 785, 786 n.l (3d Cir. 1994); *Federal Exp. Corp. v. Tenn. Pub. Serv. Comm'n*, 925 F.2d 962, 966 (6th Cir. 1991).

However, sua sponte invocation of *Younger* is also often rejected: *Winston v. Children & Youth Servs.*, 948 F.2d 1380, 1385 (3d Cir. 1991) ("[W]e decline to decide the abstention issue on our own motion"); *Shannon v. Telco Communications, Inc.*, 824 F.2d 150, 151-52 (1st Cir. 1987) (because state did not press the abstention issue before the court of appeals, court addressed merits of appeal); *Universal Amusement Co. v. Vance*, 587 F.2d 159, 163 n. 6 (5th Cir. 1978) (en banc) ("Appellant did not raise the question of *Younger* abstention, and that issue, being nonjurisdictional, is thus not before this court.").

The current Untied States Attorney for the Central District of California analyzed the conflicting authority in 2005. Estrada, E. Martin (2005) "Pushing Doctrinal Limits: The Trend toward Applying *Younger* Abstention to Claims for Monetary Damages and Raising *Younger* Abstention Sua Sponte on Appeal," North Dakota Law Review: Vol. 81: No. 3, Article 18. After surveying the case law Mr. Estrada wrote that:

> The court of appeals decisions stating that sua sponte implementation of *Younger* on appeal is permissible generally do so with

> little discussion. In almost all instances, their support for this proposition can be traced to one primary source, a footnote in *Bellotti v. Baird*, a Supreme Court decision addressing *Pullman* abstention.
>
> The most oft-cited language in *Bellotti* is a portion of a footnote that reads, "[I]t would appear that abstention may be raised by the court sua sponte."'

Id. at 490 (footnotes omitted).

The *Belotti* footnote is pure dicta concerning the theoretical possibility that *Pullman* abstention could have been raised earlier in the action. This dictum was consistent with the then unrestrained practice of raising new issues in the Courts of Appeals sua sponte. *See* Miller, Barry A. (2002) "Sua Sponte Appellate Rulings: When Courts Deprive Litigants of an Opportunity to be Heard," San Diego Law Review: Vol. 39, 1255,

This Court also focused on sua sponte judicial action at the same time. In 2000 Justice Ginsberg penned the first of several opinions that addressed what she called the "party presentation principle" in rejecting a call for states for the court to sua sponte raise the issue preclusion. *See Arizona v. California* 530 U.S. 392 (2000). Over the next two decades the principle was invoked with greater frequency, until this Court took a case solely for the purpose of reversing sua sponte action of the Ninth Circuit: *United States v. Sineneng-Smith,* 140 S. Ct. 1575 (2020).

Sinenneng-Smith stated, for the first time, the parameters for sua sponte consideration of issues by federal appellate courts. It held that outside a few circumscribed areas such as helping pro se parties

and fundamental jurisdictional issues, federal courts should not be raising issues in litigation.

This petition presents three new and important aspects of the application of the principle not present in *Sineneng-Smith*. First, this case involves sua sponte actions of a district court. While there is no articulable reason that this should make a difference, the fact that it is a different level of court that acted is the kind of distinction without a difference that nonetheless can be seized upon by lower courts to allow unfettered sua sponte issue-raising by district courts or bankruptcy judges.

Second, the Courts that have put some thought into the question of sua sponte raising *Younger* abstention have dicta from this Court's decision in *Belotti* to cite as support. Only this Court can tell the lower courts to put aside its non-precedential discussions. Accordingly this Court should grant certiorari to address whether or not its *Belotti* footnote remains good law or has been superseded by this Court's holding in *Sineneng-Smith*.

Third, in both instances where the district court invoked *Younger* abstention, in *Sanai v. Kruger* and *Sanai v. Lawrence,* the finding that *Younger* applied was made without notice or an opportunity to be heard. Each time the judges relied upon the holding in *Hirsh v. Justices of Supreme Ct. of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995), a case which held that in 1995 California attorney discipline matters met the *Middlesex* factors. *Hirsh, supra, citing Middlesex, supra at* 432. The Court below made no effort to determine whether the attorney disciplinary process is the same today as it was found to be in 1995.

Like *Sineneng-Smith, Sanai v. Kruger* is the ideal case for addressing sua sponte judicial action,

because the California Supreme Court justice defendants chose, quite wisely, to default. If sua sponte consideration was appropriate in *Sanai v. Kruger,* it will be proper in any circumstances. *San Remo, supra* and *Sineneng-Smith* were both written decisions of Circuit Judge Tashima, who was on the panel in the appeals addressed by this petition.

C. California State Bar Proceedings are Not "Civil Enforcement Actions."

The panel decision in this case included no finding that California attorney discipline matters fall into the *NOPSI* categories. In the *Sanai v. Lawrence* Petition for Rehearing, Appellants argued as follows:

> For half a century the federal courts expanded the scope of a long-existing rule of Anglo-American equity jurisprudence, that civil equity courts cannot enjoin criminal proceedings, into a ballooning bar against federal court enjoining proceedings in any state tribunal, whether in the executive, legislative, or judicial branch. *See Sprint Commc'n, LLC v. Jacobs,* 571 U.S. 69, 81 (2014); *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund,* 754 F.3d 754, 758 (9th Cir. 2014); *Cook v. Harding,* 879 F.3d 1035, 1039 (9th Cir. 2018).
>
> In *Sprint,* the United States Supreme Court ("SCOTUS") imposed "strict limitations on *Younger* abstention", to only three kinds of state *judicial* proceedings identified in *New Orleans*

Public Service, Inc. v. Council of New Orleans, 491 U.S. 350, 367-68 (1989)*("NOPSI")*. "[T]hese three categories are known as the *NOPSI* categories." *Herrera v. City of Palmdale,* 918 F.3d 1037, 1044 (9th Cir 2019). As to *Younger* abstention SCOTUS "has never extended it to proceedings that are not "judicial in nature" and/or that where the initial proceedings are "legislative or executive action". *NOPSI* at 368-70. *Sprint* further limited the qualifying categories of judicial proceedings to criminal proceedings, civil enforcement proceedings, and civil court proceedings at the core of the state court's mechanism for enforcement of its operations. *Sprint* at 69-70.

The current test thus sets outs five requirements, starting out with falling into one of the *NOPSI* categories. "Each of these requirements must be 'strictly met.'" *Rynearson v. Ferguson,* 903 F.3d 920 (9th Cir. 2018) (citation omitted).

The District Court took none of this case law into account. He did not cite or discuss in any of the appealed orders, collected in Volume 1 of the SER the relevant authority of *Sprint, NOPSI, Readylink, Cook* or *Herrera, all supra.* Instead, he relied on *Hirsh v. Justices of Supreme Court of California,* 67 F.3d 708 (9th Cir.1995). *Hirsh* is wildly out of date and does not have any analysis as to

whether the State Bar of California ("SBOC") Court proceedings are judicial in nature or a civil enforcement proceeding: instead, the *Hirsh* panel wrote that "Appellants point to no relevant distinction between this procedure and that held to be judicial in nature in *Middlesex...*". *Id.* at 712.

....

The California Supreme Court ("SCOCA") in contrast declares that SBOC exercises no judicial power whatsoever because SCOCA cannot delegate it. *In Re Rose*, 22 Cal.4th 430, 436 (2000) ("*Rose*"). They are repeatedly characterized as "quasi-judicial"[1] in nature at pages 439-444 of *Rose; see also* AB 21 ("State Bar Disciplinary Proceeding Are Quasi-judicial Proceedings").

State Bar proceedings are also not "civil enforcement proceedings" because while they are enforcement proceedings, they are not **civil:**

> Just as the State Bar Court is unique, so are the disciplinary proceedings heard by the State Bar Court. "Proceedings before the State Bar are sui generis, **neither civil nor criminal in**

[1] "This term [quasi] is used in legal phraseology to indicate that one subject resembles another, with which it is compared, in certain characteristics, but that there are intrinsic and material differences between them." Black's Law Dict. (4th ed. 1968) at 1410.

> **character**, and the ordinary criminal procedural safeguards do not apply.

Rose at 440 (bold emphasis added).

Hirsh's determination, made five years before *Rose* and nine years before *Sprint,* that proceedings before the SBOC Court are subject to *Younger* is wrong, and because *Rose* incorporates *Hirsh's* analysis on the sufficiency of SCOCA's procedures, *Rose* is necessarily unsound and out of date as to its substantive holdings of constitutional sufficiency.

The panel refused to acknowledge the updated law, and in particular the restriction that *Younger* only applies to civil litigation if the cases fall into the *NOPSI* categories.

....

The panel's analysis likewise solely quotes the *Middlesex* factors and does not recognize the strict limitations now placed upon *Younger*. The panel explicitly stated that the conditions which must be met are that the

> "state proceedings (1) are ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims...."Middlesex factors . . . guide consideration of whether Younger extends to noncriminal proceedings"). In addition, "[t]he

> requested relief must seek to enjoin or have the practical effect of enjoining-ongoing state proceedings."…. If each of these conditions is met, *Younger* abstention is appropriate unless "there is a 'showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate.'"

Mem Disp. at 4.

This definition extends *Younger* to "virtually all parallel state and federal proceedings", in direct rejection of *Sprint.*

SBOC proceedings are also not "civil enforcement proceedings" because they are not civil, but instead *sui generis*, neither civil no criminal in character. *Rose* at 440. Appellants believe that *NOPSI* requires a civil enforcement proceeding to meet minimal civil standards for *Younger* to apply, Circuit Judge Siler held it must meet minimal standards of criminal due process. *Doe v. Univ. of Kentucky,* 860 F.3d 365, 370 (6th Cir. 2017)("while the proceeding may lack all the formalities found in a trial, it contains enough protections and similarities to qualify as "akin to criminal prosecutions" for purposes of *Younger* abstention.")

Sanai v Lawrence Pet. for Rehearing at 7-15 (bold emphasis added).

After the mandate was issued, Sanai was able to collect more admissions by the State Bar Court that California attorney discipline matters are not civil, because, among other things, they do no not recognize application of the party presentation principle. *See* Motion to Recall Mandate, Filed Sept. 3, 2024.

The California Supreme Court in *Rose, supra*, was facing a petition for review arguing for written decision because all civil and criminal proceedings decided on the merits are required by California law to be by written decision after oral argument. However, because the California Supreme Court wanted out of the burden of writing decisions in attorney discipline matters, it classified California State Bar proceedings as something outside the parameters of both criminal proceedings and civil proceedings.

Obviously this holding meant that, when faced with Sanai's claims against the members of the California Supreme Court, the members would need to convince the California attorney general, who would defend them, to repudiate the Supreme Court's clear determination that attorney discipline proceedings are not civil enforcement proceedings. Rather than face this difficult task, they instead astutely allowed Sanai take their default knowing they could rely upon the Ninth Circuit's commitment to its now erroneous *Younger* abstention precedent as applied to California State Bar proceedings.

Accordingly, if this Court agrees that first question presented in this petition should be addressed, it must necessarily address whether the

Ninth Circuit erred in applying *Younger* abstention without addressing into what *NOPSI* category California attorney discipline proceedings fall when concurrently being required to accept the allegations and evidence presented by Sanai as true.

D. The Panel Invented a New *Middlesex* Factor.

California case law does not permit a party to enter a trial court's rulings or in-court statements as evidence to prove bias under either state or federal law. *See Roitz v. Coldwell Banker Residential Brokerage Co.,* 62 Cal.App.4th 716, 724 (1998); *Jack Farenbaugh & Son v. Belmont Construction, Inc.* 194 Cal. App.3d 1023, 1031 (1987); *People v. Guerra,* 37 Cal.4th 1067, 1112 (2006). In *Guerra,* the California Supreme Court rejected judicial bias claims made under state and federal law, stating that "Defendant has a due process right to an impartial trial judge under the state and federal Constitutions....a trial court's numerous rulings against a party—even when erroneous—do not establish a charge of judicial bias". *Id; see also* Cal. Code Civ. Proc. §170.2(b) (excluding as grounds for disqualification if the judge has "in any capacity expressed a view on a legal or factual issue presented in the proceeding.").

This makes it impossible to raise certain kinds of judicial disqualification claims, such as compensatory bias under *Bracy v. Gramley,* 520 U.S. 899 (1997) and *Gacho v. Wills,* 986 F.3d 1067 (7th Cir. 2021).

To establish a claim of absence of impartiality under *Bracy* and *Gacho,* a litigant must, to prove

actual bias, do **exactly** what *Guerra* prohibits, pointing to the adverse rulings as evidence, along with corruption by third parties. *See Bracy v. Schomig,* 286 F.3d 406, 416-419 (7th Cir. 2002) (exclusively using in-court statements and rulings to find actual compensatory bias of corrupt judge). Federal law is the opposite of California, and a judge's rulings and statements in courts are admissible in federal court to show bias, even without other evidence. *Liteky v. United States* 510 U.S. 540, 551 (1994). In *Liteky* the Supreme Court recognized that the statements and orders of a judge could, on their own, provide a proper basis for recusal:

> It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that "extrajudicial source" is the only basis for establishing disqualifying bias or prejudice. It is the only common basis, but not the exclusive one, since it is not the exclusive reason a predisposition can be wrongful or inappropriate.

Id.

But there is another facial barrier to raising *Bracy* or indeed any constitutional claims regarding a State Bar Court judge's lack of impartiality in the State Bar Court. The State Bar Court Rules of Procedure do not allow it. Rules Proc. of State Bar, rule 5.46(C). The State Bar Court Rules of Procedure only allow disqualification of State Bar Court judges

to be made under specific portions of the California statutory grounds for disqualification:

> Only the provisions of Code of Civil Procedure §§ 170.1, 170.2, 170.3(b), 170.4, and 170.5(b)–(g) apply to judicial disqualification in State Bar Court proceedings.

Rules Proc. of State Bar, rule 56(C).

Accordingly, when it comes to disqualification of State Bar Court judges under authority emerging solely from federal law, the California State Bar Court Rules of Procedure explicitly prohibit raising federal claims. It also prohibits consideration of the judge's statements and rulings. Cal. Code Civ. Proc. §170.2(b). This means that State Bar recusal requests can never be perfected for consideration by the California Supreme Court.

A more serious problem exists at the California Supreme Court level. There is no procedure to disqualify or seek the recusal of a Court of Appeal justice or California Supreme Court justice on any basis. *Kaufman v. Court of Appeal,* 31 Cal.3d 933 (1982). This holding is recognized by the Ninth Circuit. *Hirsh, supra* at 714 (acknowledging the "absence of a mandatory statutory recusal mechanism applicable to justices of the California Supreme Court").

The standard for prevailing is to demonstrate actual, prejudicial bias, which is not the federal standard. *Compare Kaufman, supra* at 940 ("in this court the sole question would be: "Because of his

bias, did the appellate proceeding wherein a justice participated become illegally and prejudicially unfair?"") *with Williams v. Pennsylvania,* 136 S. Ct. 1899, 1905-1909 (2016)(in applying federal standard, "Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, "the average judge in his position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias'" and "a due process violation arising from the participation of an interested judge is a defect "not amenable" to harmless-error review"). Thus under the federal standard there is no requirement to show the prejudice required under *Kaufman, supra. See also Gacho, supra,* at 1075, *citing Edwards v. Balisok,* 520 U.S. 641, 647 (1997). It is therefore impossible to move to disqualify a California Court of Appeal or California Supreme Court judge or justice under the federal standard—there is no procedure to do it, and the standard applied is not the federal standard. Nor is there any mechanism to obtain disclosures of potential conflict of interests, or to conduct discovery against them to determine whether a conflict of interest exists.

The absence of a recusal mechanism for the California Supreme Court is particularly problematic when demanding disclosure of Girardi's corrupt relationship with the California judiciary. Prior to being seated at the California Supreme Court, Defendant Justice Groban was the intermediary between Girardi and former Governor Brown. Complaint, Dkt. No. 1 at ¶13. Girardi had a veto over all judges appointed by Governor Brown. Groban's job for eight years was ensuring that

Girardi's hold over the judiciary was rock-solid. He therefore had a disqualifying financial interest in litigation which sought to raise *Bracy* and *Gacho* compensating bias with the California Supreme Court as to California State Bar Court judges in Sanai's case, including Judge Valenzuela, regarding Girardi, where the same issue exists to him; but he did not recuse from such a case, and there was no mechanism to make him recuse. Justice Groban also has a disqualifying personal interest to not have publicly revealed the extent to which his activities gave Girardi carte blanche in California Courts for over a decade. *Aetna Life Ins. Co. v. Lavoie,* 475 U.S. 813 (1986) (Supreme Court justice must recuse himself from case involving legal issues that will have an effect on his personal financial interests).

Defendant Justice Jenkins was the intermediary between Girardi and Governor Newsom. Justice Jenkins, like Justice Groban, was tasked to ensure that Girardi's hold over the judiciary was rock-solid. He therefore had a disqualifying financial interest in litigation which sought to raise *Bracy* and *Gacho* compensating bias as to State Bar Court judges in Sanai's case, including Judge Valenzuela, regarding Girardi, where the same issue exists to her, but did not recuse and there was no mechanism to make him recuse. He also has a disqualifying personal interest to not have publicly revealed the extent to which his activities gave Girardi *carte blanche* in California Courts over a decade to his role in appointing them. *Aetna Life Ins. Co., supra. See generally* Complaint, Docket No. 1 at ¶13.

The District Court is required to accept the truth of these specific factual allegations because the Court was conducting a dismissal on a pleading basis, and because the Defendants defaulted. Upon entry of default, the well-pleaded factual allegations of a complaint are deemed true; however, allegations pertaining to the amount of damages must be proven. *TeleVideo Systems, Inc., supra*, at 917; *see also Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977) ("[U]pon default[,] the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true.").

The panel refused to accept the truth of Sanai's allegations. Moreover, the panel rejected the allegations in the Complaint that there was no procedural mechanism to raise constitutional disqualification arguments as to California State Bar Court judges or appellate justices.

> Appellants relatedly argue that the State Bar proceedings provide an inadequate opportunity to litigate because appellants are precluded from raising claims of judicial bias or obtaining discovery related to suspected bias, as allegedly allowed under *Bracy v. Gramley*, 520 U.S. 899 (1994) and *Gacho v. Wills*, 986 F.3d 1067 (7th Cir. 2021). But in alleging bias by State Bar officials and state judges in favor of Thomas Girardi, appellants have not plausibly explained the relationship between Girardi and their State Bar proceedings. Appellants' wholly

> conjectural bias claims fail to "overcome [the] presumption of honesty and integrity in those serving as adjudicators." *Hirsh*, 67 F.3d at 713 (quoting *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992)).

App. A at A-8.

This analysis is completely in conflict with the requirement that the allegations of the plaintiff be deemed true. All this Court, and every other published Ninth Circuit decision, has ever required for *Younger* to be defeated is that there will be no fair opportunity to raise and prove the contention. *See Middlesex, supra*, at 434 ("The remaining inquiries are...whether the federal plaintiff has an adequate opportunity to present the federal challenge.") Evaluating the merits of the federal challenge is not part of the inquiry, and indeed would require that the federal court rule on the merits!

CONCLUSION

The judges in the Ninth Circuit still do not take the party presentation principle seriously, and district court judges appear to be believe that it does not even apply to them.

For the reasons set forth above and in Roshan's accompanying petition, this Court should grant both petitions as to all issues, or grant it only as to Question 3, summarily reverse, and remand to the Ninth Circuit to address all other issues raised by Sanai and Roshan.

Dated this September 16, 2024

Respectfully submitted,

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