No. _____

In the Supreme Court of the United States

Mel M. Marin, *Petitioner / Applicant*

v.

Kristine Catano, Adela De La Torre, Joseph I. Castro,
In Their Official and Personal Capacities
And
The California State University, *Respondents*

An Emergency Motion
to Extend Time Four Weeks to File a Petition for Writ of Certiorari
Before the May 27 Deadline

To the Honorable Elena Kagan
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Ninth Circuit

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May 20, 2025

Parties to the Proceeding

Mel M. Marin, is the petitioner, and the plaintiff-appellant below who sought redress for the refusal of the respondents to provide a meaningful disability accommodation for course work in the university, and retaliated for his informal inquiries and formal complaints, by their alleged violations of the Americans with Disabilities Act and the Rehabilitation Act, and in violation of the free speech, due process and equal protection doctrines in the 1st and 14th Amendments for damages and for injunctive relief under the Civil Rights Act at 42 U.S.C. § 1983.

Respondents are the college officials who managed the denials and retaliated, and the college itself that refused the accommodation physicians sought.

Reason for Delay

Court rule 13.5 requires this motion to be made at least 10 days before the 90 day deadline, and allows consideration only for exceptional circumstances. Only one week is now left. The reason here is clerk failure to notify petitioner at all, although that may be unlikely to be considered exceptional. The attached circuit order did not arrive at all. The order does not even state that it was or will be mailed to the petitioner, but to the district court clerk. That clerk did not mail

it to petitioner. He only discovered it by accident when submitting a copy of his appeal brief to the circuit last Friday.

Here is the procedure causing confusion on the status of the circuit appeal:

The Magistrate denied a protective order petitioner sought, to seal his medical records and college records and close the trial for them. He appealed it.

The District Judge also denied sealing of all records and to close the trial so he could respond to summary judgment. He appealed that, on this basis:

> However, we conclude, as we did in Bittaker, that the decision is appealable now "because significant strategic decisions turn on its validity," and "review after final judgment may therefore come too late." Id. at 717-718. Once "[t]he cat is already out of the bag," it may not be possible to get it back in. . . .
>
> Even if a new trial were ordered at which the material found to be privileged was not admissible, it might be impossible to undo the effects of the disclosure with regard to the information in plaintiffs' hands and its effect on their trial strategy. Jurisdiction exists to decide the dispute now.

Agster v. Maricopa County, 422 F. 3d 836, 838-39 (9th Cir. 2005).

The district judge ignored the notice of appeal and invited summary judgment. Petitioner refused to hand over his confidential records, believing the appeal divested the court of the right to dismiss for an issue on appeal, and since doing so would moot the appeal.

The district court dismissed for failure to file evidence in opposition to summary judgment.

Petitioner appealed that too, and received notice recently that this last notice of appeal would be allowed, and he submitted the attached Brief last Friday for that appeal. But when he dropped a copy at the clerk's office for the district judge, he checked the docket again and was surprised to see that the clerk had suddenly filed in that docket the attached denial of his earlier appeals from February 27. Petitioner checked that same docket only two days earlier and it was not there. The proof that is was so late is that the entry is the most recent. If it were entered in last February, it would have been posted in the docket in late February.

So petitioner did not delay. The clerk did. Petitioner jumps like a rabbit.

Content of the Case

The issues were supposed to be disability discrimination and retaliation.

But here it included privacy because like the 40% of Americans with disabilities, this petitioner did not want his medical records exposed, and the college records that included them, while district court procedure by written local rules and unwritten rules imposes a federal common law privacy rule or privilege, which means essentially no privacy at all once a lawsuit is filed, and disregards

FERPA protections entirely, as if they do not apply in courts.

Petitioner argues the court process itself "chills" or prevents the disabled from fighting for their own rights because they will be punished for it by exposing whatever a judge wants, and once submitted to the judge for that's court's weighing of importance, even if done *in camera*, the judge will never give it back and if sealing is denied will expose it immediately.

That is not good enough for petitioner and 136 million disabled Americans.

So disability discrimination was never adjudicated.

Petitioner also challenges the *IFP* statute as void as applied.

And he does not know if that appeal that he just briefed and submitted is open or valid because the same issues were already dismissed on February 27, 2025 as "insubstantial". So even though a panel said he may appeal it, the issues are no different now than in the insubstantial appeals.

Petitioner submits here, as an exhibit, his entire brief to the circuit so this Court can see if his arguments in favor of FERPA and sealing based on the state constitution are insubstantial, or if he properly appealed interlocutory the denials of sealing to avoid waivers since no one can "unring the bell". *Knaust v. the City of Kingston*, 157 F.3d 86, 88 (2d Cir. 1998) ("Though federal courts possess great authority, they lack the power, once a bell has been rung, to unring it. ").

FERPA Split In The Circuits

Petitioner intends to show this Court that the split in the district courts in the 9th Circuit (some applying the common law balancing test for importance of the privacy as for medical records but exposing those record with that test, and a majority sealing records quickly without weighing) is also present in the circuits.

His preliminary survey shows this:

- *Doe v. Massachusetts Institute of Technology*, 46 F. 4th 61, 76-77 (1st Cir. 2022)(district courts are to do a weighing of FERPA secrecy for litigants but there is a heavy presumption for sealing and the student suing the college does not waive that presumption as MIT argues).

- *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 675 (D.C. Cir. 2017)(does weigh privacy content but resolves it usually for sealing, "confidentiality provision should weigh heavily in" the district court's balancing).

- *Klein Independent School Dist. v. Mattox*, 830 F. 2d 576, 580 (5th Cir. 1987)(Applies the balancing test of federal common law, and denies special protection of school records under FERPA as if FERPA does not exist: "under the balancing test, even if she did have an interest it is significantly outweighed by the public's interest in evaluating the competence of its school teachers").

- *United States v. Miami Univ.*, 294 F.3d 797, 820-24 (6th Cir.2002) (affirming categorical denial of access to student records under FERPA and rejecting asserted "First Amendment right of access to student records").

- *Disability Rights Wisconsin, Inc. v. Wisconsin Dept. Public Instr.*, 463 F. 3d 719, 730 (7th Cir. 2006)(weighs importance as under federal common law but declines to decide how a FERPA balancing test is applied).

- *Webster Groves School Dist. v. Pulitzer Pub. Co.*, 898 F. 2d 1371, 1375 (8th Cir. 1990)(automatic sealing and trial closure under FERPA, no balancing test, with additional restrictions for school records of disabled students: "our decision must be the same whether the case is governed by a First Amendment qualified right of access or a common law right of access . . . it therefore is appropriate to restrict access to the courtroom and the court file").

- *Hancock v. Hobbs*, 967 F.2d 462, 466 (11th Cir. 1992) ("A claim of privilege in federal court is resolved by federal common law, unless the action is a civil proceeding and the privilege is invoked with respect to an element of a claim or defense as to which State law supplies the rule of decision.")

This petitioner argues in favor of this 11th Circuit test in his Brief to the 9th Circuit, because the Full Faith And Credit Clause of Article IV appears to require following the privilege the state applies and that provision raises the state's test to a fundamental federal constitutional right that a less important judge-made federal common law *not* based on the Constitution should not ignore.

DATED: May 20, 2025

Mel Mai