IN THE SUPREME COURT OF THE UNITED STATES

No. _____

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004,

No. 23-80046

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

No. _____

IN THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND FOR STAY

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States, as Circuit Justice for matters arising within territory of the United States Court of Appeals for the Ninth Circuit:

Applicant Cyrus Sanai respectfully request an extension of 60 days from June 4, 2025 to and including August 4, 2025 within which to file a petition for a writ of certiorari to review the Ninth Circuit's suspension order of January 10, 2025, as to which a timely motion for rehearing and rehearing en banc was denied on March 6, 2025. *See* Exhs. A, D, Exh. pp. 2-3, 9. The due date for a petition for a writ of certiorari is 90 days after the date of the order denying the petition for rehearing, which was March 6, 2025.

An application combined with a stay was filed with this Court in advance on or about May 21, 2025. Sanai was informed on May 30, 2025 that this cannot be combined so his is splitting the documents and dispatching this application immediately. However, the documents will arrive mop earlier than June 2, 2025. The application for extension of time should under any circumstances be granted as he was not timely informed of the rejection and indeed had to initiate contact to learn of it. The application for stay will follow after an extension is granted.

Jurisdiction for a petition for certiorari in this matter arises under 28 U.S.C. §1254.

There is no opposing party, so no proof of service is submitted herewith.

The decision in question is the reciprocal discipline addressed in petition for review filed Sanai in 2024, *Sanai v. Lawrence,* Dkt. No. 24-588, which was denied on or about January 17, 2025. One month later this Court issued *Williams*. *Williams* renders the entire California attorney discipline system unconstitutional because the California State Bar Act jurisdiction-strips the state courts of general jurisdiction from hearing 42 U.S.C. §1983 claims against the proper *Ex Parte Young* defendants regarding attorney discipline. Sanai learned of the decision after the February 24, 2025 deadline for requesting rehearing passed. *See* Exh. E, Exh. pp. 30. His motion for leave to file a motion for reconsideration, attached as Exh. E hereto, was denied. Exh. F, Exh. p. 73.

This application should be filed more than 10 days prior to the due date for the petition. It was origimaly being dispatched by overnight mail May 22, 2025 and arrived on May 24, 2025, which was 11 days prior to the expiration of the deadline for filing a petition for certiorari. That being said, the Clerk has previously confirmed that because the deadline falls on Sunday, the due date for an extension is May 27, 2025.

The cases involved challenges to then-ongoing attorney discipline matters in California. All were dismissed pursuant to *Younger* abstention.

This case presents an important questions of federal law and issues arising from from *Williams,* as follows:

1. Given that California's State Bar Act, Cal. Bus. & Prof. Code §6000 et seq. ("State Bar Act") immunizes the *Ex Parte Young* defendants in respect of California State Bar attorney discipline matters from lawsuits under 42 U.S.C. §1983, is the State Bar Act void under *Williams,* which holds that the Supremacy Clause bars state court statutes and rules which immunize particular defendants from state court lawsuits under 42 U.S.C. §1983 where the state's courts of general jurisdiction may generally hear such lawsuits?

2. If the State Bar Act immunizes the *Ex Parte Young* defendants in respect of California State Bar attorney discipline matters from lawsuits under 42 U.S.C. §1983 and thus violates

the Supremacy Clause under *Williams*, does this constitute "some other grave reason which should convince" the court "that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do." *Selling v. Radford*, 243 U.S. 46, 51 (1917)?

The answer is yes to both questions. However, the Ninth Circuit refuses to address these questions in Sanai's reciprocal discipline proceeding.

Sanai requests an extension of time of 60 days so that the various post-judgment motions filed by Sanai in the District Court and Court of Appeals have a chance to play out. Sanai will be separately requesting a stay on the suspension order of January 10, 2025 and the orders prohibiting Sanai from filing further motions for reconsideration so that Sanai can put the two questions to the Ninth Circuit as to the reciprocal suspension and obtain a meaningful response. If the Ninth Circuit agrees with Sanai, then the need to file a petition to this Court will disappear.

After *Williams*, it is clear that the California State Bar Act "flagrantly and patently" violates "express constitutional prohibitions", namely the Supremacy Clause, "in every clause, sentence and paragraph,", because no such "clause, sentence and paragraph" can be challenged under 42 U.S.C. §1983 in California state court. The California Legislature accomplished this

by explicitly stripping California Superior Courts and Courts of Appeal of the jurisdiction in any matters involving attorney discipline, reserving such jurisdiction to the California Supreme Court. *Barry v. State Bar,* 2 Cal.5th 218, 322-3 (2017), *citing Jacobs v. State Bar*, 20 Cal.3d 191, 196 (1977) ("In 1951, the Legislature excluded other courts from exercising such jurisdiction by striking language from section 6100 which conferred jurisdiction upon the Courts of Appeal and the superior courts"); *see also Sheller v. Sup. Ct.*, 158 Cal.App.4th 1697, 1710 (2008). The California Supreme Court has repeatedly acknowledged that under the State Bar Act "this court has exclusive original jurisdiction to discipline attorneys, and the sole means of obtaining review of State Bar Court disciplinary recommendations is by a petition for review filed in this court". *In re Rose,* 22 Cal. 4th 430, 446 (2000). Since the California Supreme Court, by statute and California Constitution proviso, cannot try a 42 U.S.C. §1983 claim, this jurisdiction stripping immunized the Defendants in *Sanai v. Lawrence* from all 42 U.S.C. §1983 lawsuits regarding attorney discipline and admissions in California state courts. Cal. Code Civ. Proc. §395; Cal. Const. Art.. VI, §10. In addition, *Williams* makes clear in a footnote that 42 U.S.C. §1983 claims against the defendants and *Ex Parte Young* defendants of the State Bar must be in the same court of general jurisdiction as all other 42 U.S.C. §1983 claims. *Williams*, slip. op. at 6-7 fn. 3 (obligation to remove state law barriers arises because of "state creating

courts of general jurisdiction that routinely sit to hear analogous §1983 actions").

The standard for federal courts to impose reciprocal discipline was set out in *Selling, supra.* In that opinion this Court included a catch-all factor justifying a federal court from withholding reciprocal discipline, the "same grave reason" factor. Sanai submits that the complete unconstitutionality of California's attorney discipline system for violation of the Supreme Clause count as "some grave reason." The Ninth Circuit refuses to address that question. Extension of time to file the petition is therefore justified while Sanai seeks to force it to address it through other avenues, including the stay motion to be separately filed.

Respectfully submitted,

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EXHIBITS

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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NOS. 23-80046

ORDER OF APRIL 16, 2025

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EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 10 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004, Respondent.	No. 23-80046 ORDER

Before: PAEZ, BYBEE, and MILLER, Circuit Judges.

On June 1, 2023, this court ordered respondent Cyrus Mark Sanai to agree to a reciprocal suspension or to show cause, in writing, why he should remain eligible to practice law in this court despite being suspended from the practice of law by the California Supreme Court. Following a hearing on May 16, 2024, the Hearing Officer issued a Report and Recommendation on August 2, 2024, recommending that Sanai be suspended from practice before this court until his suspension is lifted by the California Supreme Court. Sanai filed objections to the Report and Recommendation on September 23, 2024.

Respondent's motion to replace the Hearing Officer and to conduct a new hearing (Docket Entry No. 41) is denied. Respondent's motion for a stay (Docket Entry No. 60) is denied.

We adopt the Hearing Officer's August 2, 2024 Report and Recommendation. *See In re Kramer*, 282 F.3d 721, 724-25 (9th Cir. 2002) (setting forth the limited circumstances in which an attorney can avoid a federal court's

imposition of reciprocal discipline and setting forth attorney's burden of proof). Respondent is reciprocally suspended from the practice of law in this court. Fed. R. App. P. 46(b)(1)(A).

All other pending motions and requests are denied as moot.

Respondent's electronic filing status will be updated to pro se filer.

EXHIBIT B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 21 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004, Respondent.	No. 23-80046 ORDER

Before: PAEZ, BYBEE, and MILLER, Circuit Judges.

The motion for an extension of time to file a motion for reconsideration (Docket Entry No. 62) is granted. Any motion for reconsideration or reconsideration en banc of the court's January 10, 2024 order is due February 24, 2025.

EXHIBIT C

FILED

JAN 31 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004,	No. 23-80046
Respondent.	ORDER

Before: PAEZ, BYBEE, and MILLER, Circuit Judges.

Respondent's motion to stay the court's January 10, 2025 order (Docket Entry No. 64) is denied.

No motions for reconsideration of this order will be considered.

EXHIBIT D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004, Respondent.	No. 23-80046 ORDER

Before: PAEZ, BYBEE, and MILLER, Circuit Judges.

The motion (Docket Entry No. 67) for reconsideration and reconsideration en banc is denied. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. The motion (Docket Entry No. 68) to file a substitute motion is denied.

No further filings will be entertained other than a motion for reinstatement accompanied by proof that respondent has been reinstated to the California Bar.

EXHIBIT E

Case No. 23-80046

In the

United States Court of Appeals

For the

Ninth Circuit

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004,

Respondent

UNOPPOSED MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION BASED ON *WILLIAMS v. REED* AND TO VACATE OR STAY ORDER

RELIEF REQUESTED BY APRIL 16, 2025

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AMENDED EMERGENCY MOTION FOR LEAVE TO FILE MOTION FOR RECONSIDERATION AND TO VACATE OR STAY ORDER

I. MOTION

Respondent Cyrus Sanai hereby moves this Court for the following relief: leave to file a motion for reconsideration of this Court's suspension order based on the intervening authority of *Williams v. Reed*, No. 23-191, 604 U. S. ____ (February 21, 2025), and an order either vacating or staying its order imposing reciprocal discipline on the grounds of intervening change of law that will result in Sanai's collateral attacks on the state bar proceedings being allowed to go forward. Relief is requested by April 16, 2025.

II. PROCEDURAL BACKGROUND

Cyrus Sanai challenged his state bar disciplinary proceedings every step of the way, eventually turning to federal court to sue the *Ex Parte Young* officials. *See Sanai v. Lawrence*, CACD No. 2:21-cv-07745-JFW-KES, and *Sanai v. Cardona* 22-cv-01818-JST. *Sanai v. Lawrence* was dismissed pursuant to *Younger* abstention, while interlocutory relief was denied in *Sanai v. Cardona.*

One of Sanai's arguments as to the constitutional deficiency was that he had fewer discovery rights regarding federal issues than a regular litigant in a civil action. *See Sanai v. Kruger*, CAND Docket No. 23-cv-01057-AMO, , Docket No. 1 at 16 ¶36, 37 ¶90 ("The State Bar Court discovery procedures are less for a lawyer facing disciplinary charges than a defendant in either a civil case or criminal case in California.").

These arguments were rejected in a consolidated memorandum decision of January 30, 2024. *Roshan v. Lawrence*, cons. 21-15771 (9th Cir. January 30, 2024). The next day Circuit Judge Hurwitz was assigned to these proceedings.

Three days before Sanai's petition for rehearing was due, the United States Supreme Court published *Williams v. Reed,* No. 23-191, 604 U.S.____ (February 21, 2025). Sanai became aware of it on March 1, 2025. Sanai Decl. ¶2. Even if he had been aware of the decision, he would not have been able to analyze it and incorporate his conclusions in the form of a brief in 3 days.

Though the question presented in the *Williams* petition was whether states could require administrative exhaustion for 42 U.S.C.

§1983 claims, the opinion was much broader and took a different tack. See *Williams* Petition (https://www.supremecourt.gov/DocketPDF/23/23-191/278266/20230828101518662_Williams%20v.%20Washington%20Cert%20Petition.pdf). *Williams* held that any procedural barrier which effectively immunizes a class of state defendants from claims under 42 U.S.C. §1983 in state court violates the Supremacy Clause. U.S. Const. Art. VI, cl.2. The *Ex Parte Young* Alabama defendant presented two arguments. First, that the administrative exhaustion requirement was jurisdictional; and second, that judicial exhaustion should apply because the plaintiffs had a mandamus remedy they never utilized.

The jurisdictional argument of Alabama was supported by an amicus brief signed by the attorneys general of 16 states. *See* Exh. D. This brief demonstrates that seventeen states recognized that reversing the Alabama Supreme Court was creating a right to require that State which recognize 42 U.S.C. §1983 claims in their courts of general jurisdiction may not legislatively or otherwise jurisdiction-strip their Courts for hearing such claims as against certain defendants in certain circumstances.

The Supreme Court majority rejected both arguments. Justice Kavanaugh wrote that any state procedural barrier to present the federal claim, even if it was jurisdictional, violated the Supremacy Clause if it immunized the state defendants. In doing so, he broadly applied the statement in a 1988 decision:

> This Court has long held that "a state law that immunizes government conduct otherwise subject to suit under §1983 is preempted, even where the federal civil rights litigation takes place in state court." *Felder v. Casey,* 487 U. S. 131, 139 (1988). As the Court has explained, States possess "no authority to override" Congress's "decision to subject state" officials "to liability for violations of federal rights." *Id.,* at 143. That principle bars any state rule immunizing state officials from a "particular species" of federal claims, even if the immunity rule is "cloaked in jurisdictional garb." *Haywood,* 556 U. S., at 739, 742.

Williams, supra, slip. op. at 1-2.

The second argument fared no better. He rejected the argument that the availability of a state judicial remedy barred the lawsuit; while it might be relevant to the merits, the state courts could not refuse to hear the lawsuit based on the refusal to exercise a judicial remedy; indeed, judicial exhaustion was just a more elaborate version of administrative exhaustion. *Williams, supra, slip. op.* at 9. Accordingly, any state which immunizes a class of defendants from 42 U.S.C. §1983 lawsuits

violates the Supremacy Clause, even if the procedural barriers were not intended to frustrate federal 42 U.S.C. §1983 claims.

The *Williams* holding directly affects this case. *Younger* abstention is premised on comity, and one of the so-called *Middlesex* factors is whether the plaintiff can assert federal constitutional claims. California has erected multiple levels of barriers to attacks on administrative proceedings in general and California State Bar administrative proceedings in particular. These barriers violate the Supremacy Clause; the jurisdiction stripping by the California Legislature and Supreme Court of claims regarding attorney discipline constitute "extraordinary circumstances that would make [*Younger*] abstention inappropriate". *Middlesex County Ethics Comm. v. Garden State Bar Assn*, 457 U.S. 423, 435 (1982).

The particular extraordinary circumstance is complete unconstitutionality of the relevant statute (in this case the California State Bar Act). This is explicitly discussed in *Younger*. *See Aiona v. Judiciary of Haw.*, 17 F.3d 1244, 1248-49 (9th Cir.1994) ("For example, if a statute `flagrantly and patently' violates `express constitutional prohibitions in every clause, sentence and paragraph,' then federal

intervention in state court proceedings is appropriate." (*Quoting Younger*, 401 U.S. at 53, 91 S.Ct. 746)).

After *Williams*, it is clear that the State Bar Act "'flagrantly and patently' violates `express constitutional prohibitions...'", namely the Supremacy Clause, "in every clause, sentence and paragraph,", because no such "clause, sentence and paragraph" can be challenged under 42 U.S.C. §1983 in California state court. The California Legislature accomplished this by explicitly stripping California Superior Courts and Courts of Appeal of jurisdiction in any matters involving attorney discipline, reserving such jurisdiction to the California Supreme Court. *Barry v. State Bar*, 2 Cal.5th 218, 322-3 (2017), *citing Jacobs v. State Bar*, 20 Cal.3d 191, 196 (1977) ("In 1951, the Legislature excluded other courts from exercising such jurisdiction by striking language from section 6100 which conferred jurisdiction upon the Courts of Appeal and the superior courts"); *see also Sheller v. Sup. Ct.*, 158 Cal.App.4th 1697, 1710 (2008). The California Supreme Court has repeatedly acknowledged that under the California State Bar Act "this court has exclusive original jurisdiction to discipline attorneys, and the sole means of obtaining review of State Bar Court disciplinary

recommendations is by a petition for review filed in this court". *In re Rose,* 22 Cal. 4th 430, 446 (2000). This is as brazen a violation of the Supremacy Clause as one can imagine.

Since the California Supreme Court, by statute and Constitutional proviso, cannot try a 42 U.S.C. §1983 claim, this jurisdiction stripping immunized the Defendants and the State Bar from all 42 U.S.C. §1983 lawsuits regarding attorney discipline and admissions in California state courts. Cal. Code Civ. Proc. §395. In addition, *Williams* makes clear in a footnote that 42 U.S.C. §1983 claims against the *Ex Parte Young* defendants in an attorney discipline case must be in the same court of general jurisdiction as all other 42 U.S.C. §1983 claims. *See Williams, supra,* slip. op. at 6-7 fn. 3 (obligation to remove state law barriers arises because of "state creating courts of general jurisdiction that routinely sit to hear analogous §1983 actions.")

Williams eliminated the contentions that this Court might be tempted to raise in addressing whether the Supremacy Clause violation vitiated *Younger's* application. First, and most important, it held that it is irrelevant whether or not the immunity is direct or operates by jurisdiction stripping. The parties to Williams fully recognized this

would be the effect if the plaintiffs and petitioners won. See Exh. A.

> As the Court has explained, States possess "no authority to override" Congress's "decision to subject state" officials "to liability for violations of federal rights." *Id.*, at 143. That principle bars any state rule immunizing state officials from a "particular species" of federal claims, even if the immunity rule is "cloaked in jurisdictional garb." *Haywood,* 556 U. S., at 739, 742.

Williams, slip. op. at 6.

Second, the Supreme Court trashed the contention that the supposedly adequate state procedures to adjudicate constitutional claims salvaged the Supremacy Clause violation:

> In any event, the Secretary's argument based on the supposed availability of mandamus is simply another way of saying that the claimant must go through the process provided by the State before suing under §1983 to challenge delays in the state process. To be sure, the availability of mandamus relief in state court might be relevant to the merits of a due process or federal statutory claim challenging delays in the state process. But just as Alabama may not force plaintiffs to complete the state administrative process before plaintiffs may sue under §1983 to challenge allegedly unlawful delays, Alabama may not force plaintiffs to seek mandamus before bringing those §1983 claims.

Williams, slip. op. at 9.

The principles in *Williams* have a long history:

> This Court has long held that "a state law that

immunizes government conduct otherwise subject to suit under §1983 is preempted, even where the federal civil rights litigation takes place in state court." *Felder v. Casey,* 487 U. S. 131, 139 (1988). As the Court has explained, States possess "no authority to override" Congress's "decision to subject state" officials "to liability for violations of federal rights." Id., at 143. That principle bars any state rule immunizing state officials from a "particular species" of federal claims, even if the immunity rule is "cloaked in jurisdictional garb." *Haywood,* 556 U. S., at 739, 742.

In *Howlett v. Rose,* for example, the Court analyzed a Florida rule extending the State's sovereign immunity from §1983 suits "not only to the State and its arms but also to municipalities, counties, and school districts that might otherwise be subject to suit under §1983." 496 U. S. 356, 365–366 (1990). This Court held that §1983 preempted Florida's rule because the rule in effect afforded immunity from certain §1983 claims. *Id.,* at 375–378.

And in *Haywood v. Drown,* the Court addressed a New York statute depriving state courts of jurisdiction over claims by prisoners seeking damages against state correctional officers. See 556 U. S., at 733–734. The Court reiterated that States "lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." *Id.,* at 736. In violation of that principle, New York in essence had created "an immunity defense" for correctional officers when those officers were sued under §1983 in state court. *Id.,* at 736–737, n. 5, 742. The *Haywood* Court held that "the unique scheme adopted by the State of New York—a law designed to shield a particular class of defendants (correction officers) from a particular type of liability (damages) brought by a particular class of plaintiffs (prisoners)"—was preempted by §1983. *Id.,* at 741–742.3

Williams, supra, slip op. at 5-6. footnotes omitted

Of these prior opinions, *Felder v. Casey*, 487 U. S. 131 (1988)

expresses the strongest condemnation against the creation of any barriers to state court consideration of 42 U.S.C. §1983 claims; it is thus the focus of the dissent's efforts to distinguish the Alabama statute from precedent. *See Williams, supra,* slip. op. at 7-8 (Thomas, J., diss.).

To date there has apparently been only one appellate decision to consider the inter-relationship of abstention and the *Felder/Williams* line of cases in any detail: *SKS & Associates, Inc. v. Dart,* 619 F.3d 674 (7th Cir. 2010). To be clear, *SKS* is no longer good law after *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69 (2013), as *SKS* expanded *Younger* principles outside the categories approved in *Sprint.* Nonetheless, *SKS* explicates how the *Felder/Williams* line of cases eneres into the Younger calculus, thus disproving any assertion that *Williams* does not fully constitute a potential exception to the application of *Younger.* In *SKS,* a landlord sued the Chief Judge of Cook County's District Court to vacate his order delaying all eviction cases. The Seventh Circuit panel held that *Younger* principles permitted the expansion of abstention to this situation which *Sprint* rejected. The panel also found the merits of granting injunctive relief were relevant to *Younger*, again a rejected position. However, the panel did acknowledge that abstention as to a 42

U.S.C. §1983 claim should not occur if there are procedural barriers to filing 42 U.S.C. §1983 claims in state court against the same defendants:

> We recognize that there is no general duty to exhaust state judicial or administrative remedies before pursuing a section 1983 action. *See Felder v. Casey,* 487 U.S. 131, 146-47, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988); *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 500-501, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982) (collecting cases). However, when the section 1983 action seeks to impose federal supervision on state court proceedings, the federal courts must defer to the state's sovereignty over the management of its courts, **at least so long as the state does not substantively limit or procedurally obstruct something that Congress intended to provide by enacting section 1983.** *See Felder v. Casey,* 487 U.S. at 147, 108 S.Ct. 2302 ("States retain the authority to prescribe the rules and procedures governing suits in their courts.... [H]owever, that authority does not extend so far as to permit States to place conditions on the vindication of a federal right.").... Unlike the State of Wisconsin in *Felder,* Cook County has done nothing to limit the remedies available to claimants like SKS, nor has the county attempted to force SKS into a specialized, burdensome adjudication system. *See Felder,* 487 U.S. at 141-150, 108 S.Ct. 2302 (striking state statute that limited remedies, provided specialized courts, and imposed a notice restriction).

SKS, supra, at 682 (bold emphasis added, citation to and quotation of the holding of *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) deleted as it was explicitly overturned and abrogated by *Knick v. Township of Scott, Pa.*, 580 U.S. 180 (2019).

In the face of this persuasive authority, this Court must reconsider

its ruling. The unavailability of a 42 U.S.C. §1983 remedy in Superior Court to attack attorney discipline proceedings on constitutional grounds due the jurisdiction-stripping of the California State Bar Act render the enter statute and its products unconstitutional.

The complete unconstitutionality of the California attorney discipline system is a very relevant factor for purposes of determining reciprocal discipline. First, it is "some other grave reason which should convince" the court "that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do." *Selling v. Radford*, 243 U.S. 46, 51 (1917). To put it bluntly, the California attorney discipline system, by only allowing constitutional challenges to be adjudicated by a petition for review from a proceeding before the State Bar Court (which cannot adjudicate constitutional issues) is totally and completely illegal under the Supremacy Clause as explicated in the *Felder/Williams* line of cases. A proceeding which is not constitutional cannot be a valid basis for reciprocal discipline.

Second, Sanai is mounting a multi-prong challenge to this Court's

prior determination not to address the constitutional infirmities via Fed. R. Civ. P. 60(b)(1) and 60(b)(6) motions in the actions adjudicated in *Roshan v. Lawrence*, Dkt. No. 21-15771 (cons.) (mem. op. January 30, 2024). One of the actions, *Sanai v. Cardona*, was adjudicated as a preliminary injunction appeal, and the appeal from the final judgment is currently pending; briefing has been extended to allow for indicative 60(b) motions on this issue to be adjudicated by the trial court judge. *See Docket, Sanai v. Cardona*, Order, March 21, 2025 Dkt. No. 24-6708. Success on these attacks will result in the suspension being demonstrably unjust.

Third, and the reason for this amended motion now requesting emergency relief, this Court's suspension caused Sanai to be removed as counsel to perform oral argument in the case of *Roshan v. McCauley*, a published decision of this Court. *See* Roshan Decl. ¶2, Exh. A. Mr. Roshan's real estate brokerage license was revoke by the DRE based exclusively on State Bar discipline. The panel addressed *Williams* in a footnote after denying the opportunity for briefing. *See* Exh. B. A petition for rehearing and a petition for panel rehearing are due on April 24, 2025. *See* Exh. C.

Sanai's removal as counsel based on a plainly unconstitutional California State Bar proceeding violated Mr. Roshan's due process right to counsel of his choice. The right to be represented by counsel of one's choice springs from both the Fifth Amendment right to Due Process, the Fourteenth Amendment right to due process, and the Sixth Amendment right to "Assistance of Counsel".

> This case and its companion, *Missouri v. Frye,* 566 U.S. 133, 132 S.Ct. 1399, ___ L.Ed.2d ___, raise relatively straightforward questions about the scope of the right to effective assistance of counsel. Our case law originally derived that right from the Due Process Clause, and its guarantee of a fair trial, *see United States v. Gonzalez-Lopez,* 548 U.S. 140, 147, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006)...

Lafler v. Cooper, 566 U.S. 156, 176-7 (2012)(Scalia, J. diss.).

In *United States v. Gonzalez Lopez* 548 U.S. 140 (2006), the United States Supreme Court held that the right to defense counsel includes the right to have counsel *pro hac vice.* While *Gonzalez-Lopez* involved a criminal trial, the same right to counsel of one's choice exists in all but the most trivial non-criminal cases under the Fifth and Fourteenth Amendments. The Fifth Amendment's Due Process Clause (as imposed on the states by the Fourteenth Amendment) and the Fourteenth Amendment

itself guarantees civil litigants the right to retained counsel, which includes the right to be represented by the counsel of their choice. *McCuin v. Tex. Power & Light Co.*, 714 F.2d 1255, 1262 (5th Cir.1983) (*citing Potashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1118 (5th Cir.1980)); *Powell v. Alabama*, 287 U.S. 45 (1932)(holding the right to counsel of one's choice arises from due process clause); *In re BellSouth Corp*, 334 F.3d 941, 965 (11th Cir. 2003)(*citing Potashnik* for "recognizing that due process guarantee of right to counsel extends to civil as well as criminal proceedings"); *Id.* at 975 (Tjoflat, J., dissenting) ("The Fifth Amendment Due Process Clause guarantees civil litigants the right to retained counsel, which ordinarily includes the right to be represented by the counsel of their choice"); *UCP Int'l Co. Ltd. v. Balsam Brands Inc.*, 261 F. Supp. 3d 1056, 1061-1063 (N.D. CA 2010)(agreeing that "choice of counsel is generally a fundamental interest in civil litigation").

Of course, this right is not absolute, and if Sanai were properly suspended from the practice of law, then Roshan does not retain a right to choose to retain Sanai as his counsel. However,

Sanai was not validly suspended: the California State attorney discipline system, including without limitation the California State Bar Act, violates the Supremacy Clause and is thus void.

> Of course, a state statute is void to the extent it conflicts with a federal statute—if, for example, "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U. S. 132, 142-143 (1963), or where the law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz, supra*, at 67. *See generally Ray v. Atlantic Richfield Co.*, 435 U. S. 151, 157-158 (1978); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U. S. 624, 633 (1973).

Maryland v. Louisiana, 452 U.S. 725, 747 (1981).

The Legislature's placement of exclusive jurisdiction to address constitutional defects in attorney discipline within the California Supreme Court, instead of allowing state Superior Courts and Courts of Appeal to hear constitutional claims violates the *Felder/Williams* line of cases. Moreover, if Sanai had tried, he would have been slammed with mandatory attorney fees based on explicit California Sup (holding that attorney who asserted 42 U.S.C. §1984 and other claims against California State Bar and its Ex Parte Young defendants regarding her attorney discipline proceedings is liable for mandatory attorney fees even though complaint was dismissed due to Legislature's stripping of

jurisdiction). *Barry v. State Bar*, 2 Cal.5th 218, 322-3 (2017),

Mr. Roshan will be arguing that the illegality of the California attorney discipline system means that the dismissal of his lawsuit against the California Department of Real Estate on *Younger* abstention grounds was error because the jurisdiction-stripping that eliminates 42 U.S.C. §1983 lawsuit in state courts satisfies the completely unconstitutionality prong of the exceptional circumstances; and second, that this Court violated his constitutional rights by barring his counsel of choice from continuing to represent him including appearing at oral argument. To ensure that he does not waive the argument, Mr. Roshan requested Sanai expedite his request for a stay so Sanai can substitute in as counsel and request rehearing and additional oral argument on behalf of Roshan. Roshan Decl. ¶3.

In order to properly present the latter argument, the panel in this docket must allow reconsideration; it should also either vacate or stay the suspension order pending reconsideration. In order to ensure that there is no contention of waiver, Mr. Roshan must seek to have Mr. Sanai again represent him at the earliest opportunity, which is the filing of the petition for rehearing and rehearing en banc.

There is another systemic reason this Court should address this issue now: the State Bar is now well aware of Williams that nit invalidates the letter and spirit of the State Bar Act, but refuse to acknowledge the holding. C. Sanai Decl. ¶3. The longer it takes to strike down the State Bar Act the longer it will take to replace it with a constitutional alternative such as the one in place in Texas.

If this panel does not elect to tackle this question, it should vacate or stay the order suspending Sanai until these issues are fully litigated (in the case of a vacate) or while Sanai pursues a petition for certiorari (in the case of a stay). If the Court denies or strikes this motion, then Sanai will at least have exhausted his remedy for purposes of obtaining a stay from the United States Supreme Court based on this Court's refusal to consider the application of the *Felder/Williams* line of authority as "grave reasons" for not reciprocally disciplining Sanai under *Selling v. Radform*, *supra.*

Respectfully Submitted this April 13, 2025

By: /s/*Cyrus Sanai*
CYRUS SANAI, RESPONDENT

DECLARATION OF CYRUS SANAI

I, CYRUS SANAI, declare:

1. I am an individual residing in the County of Los Angeles, State of California and respondent in this matter. I have personal knowledge of the facts stated in this declaration, if called as a witness, could and would testify competently to those facts. '

2. I became aware of *Williams v. Reed*, No. 23-191, 604 U. S. ____ (February 21, 2025) on March 1, 2025.

3. I have communicated the holding of *Williams* and its significance to the State Bar Act to counsel for the California State Bar in required a mandatory meet and confer. The position of the State Bar is that they refuse to recognize that it renders the current State Bar attorney discipline regime unconstitutional.

4. Attached as Exhibit D hereto is an amicus brief from *Williams, supra,* that I downloaded from the United States Supreme Court website.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this April 13, 2025 in Santa Monica, California.

/s/ Cyrus M. Sanai

DECLARATION OF PEYMAN ROSHAN

I, PEYMAN ROSHAN, declare:

2. I am an individual residing in the County of Sonoma, State of California; and I am a member of the California State Bar. I have personal knowledge of the facts stated in this declaration, unless otherwise stated and as to those matters I believe them to be true, and, if called as a witness, could and would testify competently to those facts. This declaration is in support of Mr. Sanai's attached motion.

2. On February 4, 2024, a few days before the scheduled Ninth Circuit oral argument in *Roshan v. McCauley*, the Court ordered my Counsel, Cyrus Sanai, may not appear at oral argument and that he be removed as counsel of record. See Exh. A. I requested the opportunity to brief the effects of *Williams v. Reed*, No. 23-191, 604 U. S. ____

(February 21, 2025), denied by the order attached as Exhibit B. The petition for rehearing and rehearing en back is due on April 24, 2025, as set forth in the order attached hereto as Exhibit C.

3. To ensure that I does not waive the argument, I requested Mr. Sanai expedite his request for a stay so he can substitute in as counsel and request rehearing and additional oral argument on my behalf.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on this April 13, 2025 in Santa Rosa, California.

Peyman Roshan

EXHIBIT A

FILED

FEB 4 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEYMAN ROSHAN,

Plaintiff - Appellant,

v.

DOUGLAS R. MCCAULEY,

Defendant - Appellee.

No. 24-659

D.C. No.
4:23-cv-05819-JST
Northern District of California,
Oakland

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

In response to appellant's Motion to Participate in Oral Argument (Dkt. No. 46), the court orders that appellant Peyman Roshan is permitted to appear pro se at oral argument on February 11, 2025. No further filings will be accepted from Cyrus Sanai, whom this court has ordered suspended from the practice of law in this court. Sanai may not appear at oral argument. The clerk will remove Sanai as counsel of record and update the docket to reflect that Peyman Roshan is proceeding pro se. The clerk will serve this order on both Sanai and Roshan.

EXHIBIT B

FILED

MAR 11 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEYMAN ROSHAN,

Plaintiff - Appellant,

v.

DOUGLAS R. MCCAULEY,

Defendant - Appellee.

No. 24-659

D.C. No.
4:23-cv-05819-JST
Northern District of California,
Oakland

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

Appellant's motion to file a supplemental brief (Dkt. No. 55) is DENIED.

EXHIBIT C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 11 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PEYMAN ROSHAN,

Plaintiff - Appellant,

v.

DOUGLAS R. MCCAULEY,

Defendant - Appellee.

No. 24-659

D.C. No.
4:23-cv-05819-JST
Northern District of California,
Oakland

ORDER

Before: OWENS, VANDYKE, and JOHNSTONE, Circuit Judges.

Appellant's emergency motion (Dkt. 64) is GRANTED IN PART AND DENIED IN PART. The motion for an extension of time within which to file a petition for panel rehearing and/or petition for rehearing en banc is GRANTED. The petition shall be filed on or before April 24, 2025. The motion for leave to file an oversized petition is DENIED.

EXHIBIT D

No. 23-191

IN THE
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,

Petitioners,

v.

FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR

Respondent.

ON WRIT OF CERTIORARI TO THE
ALABAMA SUPREME COURT

BRIEF FOR THE STATES OF TENNESSEE, IDAHO, INDIANA, IOWA, KANSAS, LOUISIANA, MISSISSIPPI, NEBRASKA, NORTH DAKOTA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA, AND THE COMMONWEALTH OF PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*

The State of Alabama is not a "mere province[] or political corporation[]." *Alden v. Maine*, 527 U.S. 706, 715 (1999). It is "a sovereign entity," *Seminole Tribe v. Florida*, 517 U.S. 44, 54 (1996), "with the dignity and essential attributes inher[ent]" to sovereignty, *Alden*, 527 U.S. at 714. Our legal traditions recognize "judicial power" as one of those attributes, with each sovereign State having purview to distribute its own judicial power at its discretion.

In the order under review, the Alabama Supreme Court affirmed dismissal because Alabama's judges "have no power" under state law to render a binding judgment on the claims at bar. Pet. App. 12a; *Johnson v. Ala. Sec'y of Labor*, --- So. 3d ---, 2023 WL 4281620, at *4 (Ala. 2023). The Question Presented asks only whether such claims can be brought prior to administrative exhaustion. But in answering that question, this Court will also necessarily decide whether the liability-imposing terms of the Civil Rights Act somehow "tamper with or alter [the] jurisdiction of [Alabama's] courts." *Tenn. Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 846 (Tenn. Ct. App. 1999).

The States of Tennessee, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Nebraska, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, and West Virginia, and the Commonwealth of Pennsylvania all have a self-evident and significant interest in protecting their sovereign prerogative to dictate their own courts' jurisdiction, notwithstanding any act of Congress.

SUMMARY OF THE ARGUMENT

I. The Alabama Supreme Court decision under review interprets an Alabama law through which the Alabama legislature has distributed "the judicial power of [Alabama]" among Alabama's state courts. Ala. Const. art. VI, § 139(a). This Court must take the Alabama Supreme Court's jurisdictional analysis as a "binding" determination of state law. *Wainwright v. Goode*, 464 U.S. 78, 84 (1983); *see Johnson v. Fankell*, 520 U.S. 911, 916 (1997); *Grubb v. Pub. Utils. Comm'n*, 281 U.S. 470, 477 (1930). The question before this Court thus cannot simply be whether the Civil Rights Act "require[s]" the "exhaustion of state administrative remedies." Pet. Br. i. The question must be whether the Civil Rights Act confers judicial power, or compels Alabama's state courts to exercise (unpossessed) judicial power, over the claims at issue.

II. The answer to that question must be no, because the U.S. Constitution neither confers state judicial power nor empowers Congress to do the same. *See* U.S. Const. art. I, § 8, cl. 9; *id.* art. III, § 1; *Houston v. Moore*, 18 U.S. (5 Wheat.) 1, 67 (1820) (Story, J., dissenting). This Court has said so repeatedly for over two centuries, *see, e.g.*, *Houston*, 18 U.S. (5 Wheat.) at 27–28 (majority opinion); *Claflin v. Houseman*, 93 U.S. 130, 136 (1876), and nothing in the text of, or jurisprudence on, the Supremacy Clause could justify a contradictory holding here, *see infra* at 11–16; *cf. Haywood v. Drown*, 556 U.S. 729, 742–77 (2009) (Thomas, J., dissenting) (tracing the text and precedent).

III. Even if Congress could control state courts' jurisdiction, it has not done so in the Civil Rights Act. This Court's precedents construe only the most "unmistakably clear [statutory] language" to impose on the traditional spheres of state sovereignty. *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989)). The Civil Rights Act's substantive right-of-action provision, 42 U.S.C. § 1983, contains no language regarding jurisdiction, much less clear language dictating the distribution of state judicial power.

ARGUMENT

I. This case concerns the extent of an Alabama court's judicial power under Alabama law.

This Court has granted review to decide "[w]hether exhaustion of state administrative remedies is required to bring claims under [the Civil Rights Act] in state court." Pet. Br. i. But the Court should not lose sight of the reason that question arose: The Alabama courts have definitively determined they lack jurisdiction to render judgment in this case.

This case was brought by a group of Alabamians who "appli[ed] for unemployment benefits" but "experienced delays in the handling of their applications." Pet. App. 2a. Before the State could fully process all their applications, the Applicants went to court seeking an order "compel[ling] the Alabama Secretary of Labor . . . to improve the speed and manner" of the benefits-claim process. *Id.* And to justify such relief, the Applicants asserted claims under the federal Civil

Rights Act, 42 U.S.C. § 1983. *See* JA42; *Ex parte Young*, 209 U.S. 123, 159–60 (1908).

Yet despite asserting federal rights of action within the federal courts' subject-matter jurisdiction, *see Will*, 491 U.S. at 66, the Applicants chose to sue in the Circuit Court of Montgomery County, Alabama, *see* JA14. They need not disclose (or have) a reason for that decision. But they must accept its consequences—including those that flow from the limits Alabama has placed on its courts' judicial power.

Those limits, and those limits alone, proved dispositive below. The Alabama Supreme Court held that "the [Alabama] Legislature ha[d] prohibited [Alabama's] courts from exercising jurisdiction over [the] claims" the Applicants were pursuing. Pet. App. 6a.

The court explained that conclusion clearly and in detail. To begin, the Applicants had no "traditional private right" to unemployment compensation. *Id.* at 7a. Instead, the benefits they sought through an expedited executive process were "'creature[s] of statute' alone," which the Alabama Legislature created and "'completely governed.'" *Id.* (quoting *Quick v. Utotem of Ala., Inc.*, 365 So. 2d 1245, 1247 (Ala. Civ. App. 1979)). Under Alabama law, "when a statutory scheme gives rise to entitlements or other franchises unknown at common law, the ordinary presumption in favor of judicial review for claims related to those benefits does not apply." *Id.* at 8a (citing *Birmingham Elec. Co. v. Ala. Pub. Serv. Comm'n*, 47 So. 2d 449, 452 (Ala. 1950)). Instead, Alabama law effectively flips

that presumption, causing Alabama courts to "construe [their] jurisdictional grants narrowly and jurisdictional limitations broadly." *Id.* (citing *Birmingham Elec.*, 47 So. 2d at 452).

Applying that standard to the Alabama unemployment-benefits statute, the court concluded that the Applicants' claims fell outside of the Alabama courts' jurisdiction, at least until the benefits applications had percolated through the State's Department of Labor. *See id.* at 8a–9a, 12a. This jurisdictional limitation did not apply specifically to federal Civil Rights Act claims; it applied to "*all* 'disputed claims and other due process cases' involving the . . . administration of unemployment benefits." *Id.* at 8a (emphasis added) (quoting Ala. Code § 25-4-92(a)–(b)). And it did not bar such claims outright; it merely channeled them through the Department's claim "examiner[s]" and "appeals tribunals" as a prerequisite to any state court adjudication. *Id.* (quoting Ala. Code §§ 25-4-91, 25-4-92(b)) (citing Ala. Code § 25-4-95). That Alabama courts can hear and decide most federal Civil Rights Act claims therefore did not matter. *See Terrell v. City of Bessemer*, 406 So. 2d 337, 340 (Ala. 1981). Because the claims asserted in this case fell into a universally applicable exhaustion exception to jurisdiction, they could not yet proceed in the Alabama courts under Alabama law.

This Court has no basis to review the Alabama Supreme Court's reading of Alabama law, *see Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (citing *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236–37 (1940)), regardless of what this Court may wish to say about the

Civil Rights Act. Instead, this Court must take the Alabama Supreme Court's jurisdictional analysis as a "binding" determination. *Wainwright*, 464 U.S. at 84; *see Johnson*, 520 U.S. at 916; *Grubb*, 281 U.S. at 477.

That means the question before this Court cannot merely be whether the Civil Rights Act "require[s]" the "exhaustion of state administrative remedies." Pet. Br. i. Rather, the question must be whether the Civil Rights Act allows—or more precisely, compels—Alabama's state courts to ignore the state-law limits imposed on their judicial power.

II. Congress cannot dictate a state court's jurisdiction to adjudicate a federal claim.

The answer to this question must be no, because the U.S. Constitution neither confers, nor empowers Congress to confer, jurisdiction on any state court.

A "court" is one or more government officers (judges) imbued with at least some portion of a sovereign's "judicial power." *See, e.g.*, U.S. Const. art. III, § 1; *Todd v. United States*, 158 U.S. 278, 284 (1895). And "judicial power" is a very specific thing: It is the power to merge "claims" into "judgments." *See Jones v. Hendrix*, 599 U.S. 465, 487 (2023); *Stern v. Marshall*, 564 U.S. 462, 494 (2011); *Swisher v. Brady*, 438 U.S. 204, 209 (1978). A "claim" is the assertion of a right to some individualized form of government coercion. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007); *see also Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) (citing *Powers v. Ohio*, 499 U.S. 400, 410 (1991)). And a "judgment" is the manifestation of sov-

ereign power that legitimizes and authorizes the coercive relief sought in the claim. *See Hanson v. Denckla*, 357 U.S. 235, 246 & n.12 (1958).

It follows that when courts talk about "jurisdiction," they are referring to the existence and scope of judicial power, outside of which a given court's "decision[s] amount[] to nothing." *Williamson v. Berry*, 49 U.S. 495, 543 (1850). That is, jurisdiction identifies the set of claims that a court can merge into binding judgment. *See Ex parte Reed*, 100 U.S. 13, 23 (1879), *abrogation on other grounds recognized in Brown v. Davenport*, 596 U.S. 118, 129 n.1 (2022). But whereas claims and the rights beneath them can spring from any source of law, *see Missouri ex rel. St. Louis, B. & M. Ry. v. Taylor*, 266 U.S. 200, 208–09 (1924); *Ex parte McNiel*, 80 U.S. 236, 243 (1871), a court's jurisdiction must derive from the sovereign whose judicial power that court exercises, *see Claflin*, 93 U.S. at 136; *Houston*, 18 U.S. (5 Wheat.) at 27–28; *Ex parte Knowles*, 5 Cal. 300, 302 (1855).

Each of the States is its own "sovereign[] . . . participant[] in the governance of the Nation," *Alden*, 527 U.S. at 748, with its own courts wielding its own state judicial power, *see, e.g.*, Tenn. Const. art. VI, § 1; Ariz. Const. art. VI, § 1; Colo. Const. art. VI, § 1; Mich. Const. art. VI, § 1; Or. Const. art. VII, § 1; S.C. Const. art. V, § 1. And just like the national government, *see* 28 U.S.C. chs. 83, 85, each State can and does distribute that power among its courts by "parcel[ing] out the[ir] jurisdiction . . . at its discretion," *Missouri v. Lewis*, 101 U.S. 22, 30 (1879); *see, e.g.*, *Herb v. Pitcairn*, 324 U.S. 117, 120–21 (1945); *In re Fordiani*, 120

A. 338, 339 (Conn. 1923); *see also, e.g.*, Tenn. Code Ann. §§ 16-10-101 to 113 (Circuit and Criminal Courts); *id.* §§ 16-11-101 to 115 (Chancery Courts); *id.* §§ 16-15-501 to 505 (General Sessions Courts); *id.* §§ 16-16-102, 107, 108 (County Courts).

For some state courts, that jurisdiction includes a presumptive power to adjudicate claims derived from the national Constitution and the laws of Congress. *See Poling v. Goins*, 713 S.W.2d 305, 307 (Tenn. 1986). But that does not mean all state courts have the power to adjudicate any federal claim, under the Civil Rights Act or otherwise. *See, e.g.*, *Danford v. State*, 197 A.D.3d 913, 914 (N.Y. App. Div. 2021). And to the extent any state court lacks such adjudicatory power, there is nothing Congress can do about it. *See Haywood*, 556 U.S. at 742, 747 (Thomas, J., dissenting). Indeed, "[i]f Congress could displace a State's allocation of [judicial] power . . . , the judicial branch of the State, whose legitimacy derives from fidelity to the law, would be compelled to assume a role not only foreign to its experience but beyond its competence as defined by the very [state] Constitution from which its existence derives." *Alden*, 527 U.S. at 752.

That is not our system of government.

Instead, when Congress confers jurisdiction, it distributes "[t]he judicial Power of the United States." U.S. Const. art. III, § 1. And state judges cannot exercise that power for a host of fundamental reasons. Their "Courts" are not "ordain[ed]" or "establish[ed]" by Congress. *Id.* They are not "nominate[d]" by the

President "with the Advice and Consent of the Senate." *Id.* art. II, § 2, cl. 2. They may, and often do, lack life tenure or salary protection. *Compare id.* art. III, § 1, *with* Tenn. Const. art VI, § 3. And most fundamentally, *this* Court has deemed it "perfectly clear"—for over two centuries—that Congress has no power to "confer jurisdiction upon" state courts because they do not "exist under the constitution and laws of the United States." *Houston*, 18 U.S. (5 Wheat) at 27. "The Constitution having thus fixed where the judicial power shall be vested, it cannot be vested elsewhere" by congressional act (or judicial say-so). *Knowles*, 5 Cal. at 301.

Put differently, "the right to create courts for the [S]tates does not exist in Congress," *Holmgren v. United States*, 217 U.S. 509, 517 (1910), and the "authority" to "compel a [state court] to convene and sit in judgment on" a federal claim "is no where confided to [Congress] by the constitution" either, *Houston*, 18 U.S. (5 Wheat) at 67 (Story, J., dissenting). Instead, "[t]he [federal government] may organize its *own* tribunals" to adjudicate federal claims. *Id.* (emphasis added). And "[i]f" Congress "do[es] not choose to organize such tribunals, [that] is its own fault." *Id.*

This Court has never wavered from that position, and the courts of each State have taken it to heart. Courts throughout our federal system have recognized that, although Congress can supersede state-court jurisdiction over some federal subject matter, *see Robb v. Connolly*, 111 U.S. 624, 636 (1884), and delineate "substantive" federal rights as "enforceable only in a

federal court," *Taylor*, 266 U.S. at 208, or only as limited by certain procedural rules, *see Felder v. Casey*, 487 U.S. 131, 138 (1988); *Atl. Coast Line R.R. v. Burnette*, 239 U.S. 199, 201 (1915), Congress "can not" do the obverse and "compel [state courts] to entertain jurisdiction" over federal claims, *Morgan v. Dudley*, 57 Ky. (18 B. Mon.) 693, 715 (1857); *see United States v. Jones*, 109 U.S. 513, 520 (1883); *Houston*, 18 U.S. (5 Wheat.) at 27; *McConnell v. Thomson*, 8 N.E.2d 986, 991 (Ind. 1937). Instead, a "federal right is enforceable in a state court" only when the state court's "jurisdiction [a]s prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws." *Taylor*, 266 U.S. at 208; *see Tafflin v. Levitt*, 493 U.S. 455, 459 (1990); *Douglas v. N.Y., N.H. & H.R. Co.*, 279 U.S. 377, 387–88 (1929).

In other words, the power to merge a federal claim into judgment must be "conferred upon [a] court[] by the authority, state or nation, creating [that court]." *Minneapolis & St. Louis R.R. v. Bombolis*, 241 U.S. 211, 221 (1916); *see Haywood*, 556 U.S. at 749 (Thomas, J., dissenting). And when a state court "exercise[s]" such power, it does so "not upon the ground of a judicial authority conferred . . . by a law of the United States, but" through its "ordinary jurisdiction" under state law, which may include the power to adjudicate "legal rights . . . created . . . by the legislation of congress." *Ward v. Jenkins*, 51 Mass. (10 Metcalf) 583, 589 (1846) (citing Justice Story's treatise and Chancellor Kent's commentaries).

The few cases cabining this principle do nothing to undercut its fundamental premises. Beginning with

Mondou v. New York, New Haven, & Hartford Railroad Co., 223 U.S. 1 (1912), this Court has held that state courts possessing jurisdiction to render judgment on federal claims *must* do so, regardless of how state and federal "policy" may seem to be in conflict, *id.* at 57; *see also Haywood*, 556 U.S. at 740; *McNett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 233–34 (1934) (applying *Mondou*). And under *Testa v. Katt*, 330 U.S. 386 (1947), this Court has held that when a State grants a court jurisdiction over a class of state-law claims, the court is "not free to refuse" to adjudicate federal claims of "th[e] same type," *id.* at 394, even if a purportedly jurisdictional state law directs that result, *see Haywood*, 556 U.S. at 741–42; *see also Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 375 (1990) (applying the principle); *FERC v. Mississippi*, 456 U.S. 742, 760 (1982) (same). Yet both strains of jurisprudence should be read narrowly for several reasons.

First, neither *Mondou* nor *Testa* has much basis in constitutional text. *See Haywood*, 556 U.S. at 750–55 (Thomas, J., dissenting). Both decisions ostensibly flow from the Supremacy Clause, *see Howlett*, 496 U.S. at 373, which says "the Judges in every State shall be bound []by" federal law, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," U.S. Const. art. VI, cl.2.

But to say state "Judges" must adjudicate federal claims under that language just begs the question. A "Judge" is a person exercising the judicial power of some specific sovereign. *See supra* at 6–7. A state "Judge" exercises judicial power conferred and delimited by state law. *See supra* at 7–8. This Court does

not exposit state law, *see Montana*, 563 U.S. at 377 n.5 (citing *West*, 311 U.S. at 236–37); *Wainwright*, 464 U.S. at 84; *Johnson*, 520 U.S. at 916; *Grubb*, 281 U.S. at 477, so this Court cannot deem a person to be a state "Judge . . . bound" to adjudicate federal claims, U.S. Const. art. VI, cl. 2, if under state law that person's "decision" on those claims would "amount[] to nothing," *Williamson*, 49 U.S. at 543.

Second, neither the language of the Supremacy Clause nor the analysis in *Mondou* or *Testa* establishes a federal power to confer jurisdiction on state courts. *See Johnson*, 520 U.S. at 922 & n.13. Unlike other portions of the Constitution, the Supremacy Clause does not speak of "Power[s]," U.S. Const. art. I, § 8, cl. 1, or "right[s]," *id.* amend VII. It pronounces "a rule of decision[for] Courts," telling them to disregard "state laws that conflict with federal laws." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). Yet no case in the *Mondou-Testa* line ever explains how a Congress lacking the power to "confer jurisdiction upon [state] Courts" could pass a law that conflicts with any state law restricting the jurisdiction of state courts. *Houston*, 18 U.S. (5 Wheat.) at 27.

At the same time, these cases purport to carry forward and apply the basic precepts laid down in earlier precedent. In particular, the *Mondou-Testa* line of jurisprudence presupposes that the decision under review came from a state court possessing "jurisdiction adequate and appropriate under established local law to adjudicate" the federal claims at issue. *Testa*, 330 U.S. at 394; *see Haywood*, 556 U.S. at 739–40 & n.6; *Howlett*, 496 U.S. at 378–79; *FERC*, 456 U.S. at 760;

Mondou, 223 U.S. at 55–56. And while the Supremacy Clause may permit (and even require) this Court to snuff out substantive and procedural rules "hiding behind a jurisdictional label," *Haywood*, 556 U.S. at 771 (Thomas, J., dissenting); *see also id.* (discussing *Howlett*, 496 U.S. at 359, 381), the precedent never justifies a review of state law going any deeper than that. If a state supreme court construes a state statute as jurisdictional—not just in name, but in function—that "choice" must be respected as "one [this Court] ha[s no] authority to" contradict. *Johnson*, 520 U.S. at 918.

It is thus anyone's guess how this Court could deem a state-law jurisdictional grant "adequate and appropriate" for adjudicating a federal claim without contradicting a state court on matters of "local law." *Testa*, 330 U.S. at 394. But of course, "[n]either this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State." *Johnson*, 520 U.S. at 916. In fact, to do so would exceed "the limitations of [this Court's] own jurisdiction," *Herb*, 324 U.S. at 125; *see* U.S. Const. art. III, § 2, cl. 1; *Missouri ex rel. S. Ry. v. Mayfield*, 340 U.S. 1, 4 (1950); *Douglas*, 279 U.S. at 387, rendering this Court's opinion on the issue highly suspect.

These cases also fail to explain, or even attempt to explain, their proffered solution to the preemption defect. That is, they never explain why this Court must prohibit the application of a state-law jurisdictional limit to federal claims, rather than negate the jurisdictional grant over "th[e] same type" of state-law

claims. *Testa*, 330 U.S. at 394. Answering that question would seem to require a "severability" analysis, *Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2349 (2020), which would itself have to be grounded in state law, *see City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 772 (1988) (citing *Mayflower Farms, Inc. v. Ten Eyck*, 297 U.S. 266, 274 (1936)). And "if [a dismissal would still] be rendered by the state court after" conducting that state-law severability analysis, this Court's "review" of the Supremacy Clause question "could amount to nothing more than an advisory opinion." *Herb*, 324 U.S. at 126.

Yet even putting aside those lurking issues, one component of the *Mondou-Testa* cases remains clear: They merely require the exercise of jurisdiction (supposedly) already "conferred upon [a] court[] by the . . . [S]tate . . . [that] creat[ed it]." *Bombolis*, 241 U.S. at 221. They do not say the Supremacy Clause can grant state courts jurisdiction those courts would otherwise lack—nor could these cases have any textual basis for saying that.

Moreover, whatever *Mondou*, *Testa*, and their progeny say or mean, they do not apply here. The Alabama courts did not "decline cognizance" of this case because the Civil Rights Act "is not in harmony with [Alabama public] policy," *Mondou*, 223 U.S. at 55–57, or because Alabama deems these claims "frivolous and vexatious," *Haywood*, 556 U.S. at 742. Nor has anyone "conceded that this same type of claim arising under [Alabama] law would be enforced by [Alabama] courts" without exhaustion. *Testa*, 330 U.S. at 394. Put

simply, Alabama's administrative exhaustion requirement "does not target civil rights claims against the State." *Johnson*, 520 U.S. at 918 n.9; *see also id.* (deeming a similar rule "neutral").

On the contrary, the Alabama Supreme Court held that the Montgomery County Circuit Court lacked original subject-matter jurisdiction over "*all* 'disputed claims and other due process cases' involving the . . . administration of unemployment benefits," at least until administrative review was exhausted. Pet. App. 8a (emphasis added) (quoting Ala. Code § 25-4-92(a)–(b)) (citing Ala. Code §§ 25-4-91, 25-4-95). The Circuit Court's judicial power, "as prescribed by local laws," was thus *not* "appropriate to the occasion." *Mondou*, 233 U.S. at 57. And that being the law of Alabama, this Court has no "judicial Power" to override the Alabama Supreme Court on this issue. U.S. Const. art. III, § 2, cl. 1; *see Montana*, 563 U.S. at 377 n.5 (citing *West*, 311 U.S. at 236–37).

Of course, none of this in any way threatens the Applicants' ability to have their federal rights protected through binding judgment, even before their unemployment claims are fully processed. At most, it simply requires Congress "[t]o constitute [federal] Tribunals" for adjudicating the federal claims at issue. U.S. Const. art I, § 8, cl. 9; *see Houston*, 18 U.S. (5 Wheat) at 67 (Story, J., dissenting). And to no one's surprise, Congress has done exactly that, *see* 28 U.S.C. §§ 132(a), 1331, both in Alabama and in every other State, *see id.* §§ 81–131. This Court should thus re-

frain from any ruling that would reach beyond its legitimate purview and attempt to undermine the States' power to control their own courts.

III. Congress has not provided state courts jurisdiction to adjudicate the claims in this case.

Even setting aside the building blocks of "split[] . . . sovereignty" discussed above, *Alden*, 527 U.S. at 751 (quoting *Saenz v. Roe*, 526 U.S. 489, 504 n.17 (1999)), this Court still should not read the Civil Rights Act to compel the Alabama courts to adjudicate the Applicants' claims.

This Court has long presumed that Congress does not legislate with intent to upset "the constitutional balance [of power] between" the States and the federal government. *Bond v. United States* (*Bond II*), 572 U.S. 844, 862 (2014) (quoting *Bond v. United States* (*Bond I*), 564 U.S. 211, 222 (2011)). Precedent thus construes only the most "unmistakably clear [statutory] language" to impose on the traditional spheres of state sovereignty. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65); *see U.S. Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604, 621–22 (2020).

That precept applies across the full range of legislative subject matter. It applies to statutes that implicate property rights and natural resources. *See Cowpasture*, 590 U.S. at 621–22; *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001); *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 544 (1994). It applies to statutes governing transportation and labor relations. *See United Auto., Aircraft & Agric. Implement Workers of Am. v. Wisc. Emp. Rels.*

Bd., 351 U.S. 266, 274–75 (1956); *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 513 (1940); *Palmer v. Massachusetts*, 308 U.S. 79, 84 (1939). It applies to statutes imposing criminal punishment. *Bond II*, 572 U.S. at 857–60; *Jones v. United States*, 529 U.S. 848, 858 (2000); *United States v. Bass*, 404 U.S. 336, 349–50 (1971). It applies to statutes empowering federal agencies. *See Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021) (per curiam); *United States v. Five Gambling Devices, Labeled in Part "Mills," & Bearing Serial Nos. 593-221*, 346 U.S. 441, 450 (1953); *FTC v. Bunte Bros.*, 312 U.S. 349, 351 (1941). And most pertinent for present purposes, it applies to the Civil Rights Act. *See Will*, 491 U.S. at 65.

Of course, few attributes of state sovereignty have a more robust pedigree than the prerogative to distribute state judicial power. *See supra* at 6–9. And were Congress to intend a displacement of that prerogative, the Civil Rights Act's substantive imposition of "liab[ility]," 42 U.S.C. § 1983, would be an odd and unnatural mechanism for "[s]uch [a] drastic inroad[] upon [state] authority," *Miles v. Ill. Cent. R.R.*, 315 U.S. 698, 713 (1942) (Frankfurter, J., dissenting).

That provision does not speak of jurisdiction *or* administrative exhaustion—much less in "unmistakably clear" terms. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65). "The words are, 'shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.'" *Giles v. Harris*, 189 U.S. 475, 486 (1903) (quoting Rev. Stat. § 1979).

"They allow suit . . . only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding." *Id.*

To read this language as conferring judicial power, and not just granting a private right of action, would "blur[] accepted usages . . . in the English language in a way which would be quite inconsistent with the words Congress chose in [the Civil Rights Act]." *Rizzo v. Goode*, 423 U.S. 362, 376 (1976). And "[w]hen the frame of reference moves from a unitary court system . . . to a system of federal courts . . . subsisting side by side with [fifty] state judicial . . . branches, appropriate consideration must be given to principles of federalism in determining the availability and scope of" legal process. *Id.* It follows that "[b]y the enactment of" this substantive liability provision, "Congress did not intend nor attempt to tamper with or alter jurisdiction of state courts," whether "federalism would have prevented" that or not. *Tenn. Downs*, 15 S.W.3d at 846; *cf. Mayfield*, 340 U.S. at 5 (reaching a similar holding regarding the Federal Employers' Liability Act).

Nor does this language "clear[ly]" preempt state jurisdictional rules requiring administrative exhaustion. *Gregory*, 501 U.S. at 460 (quoting *Will*, 491 U.S. at 65). Even in "stat[ing] categorically that exhaustion is not a prerequisite to an action under" the Civil Rights Act, this Court has never based its interpretation in any clear text. *Patsy v. Bd. of Regents*, 457 U.S. 496, 500–01 (1982). Instead, it has considered the issue of exhaustion under the rubric of "defer[ring] the exercise of jurisdiction" actually possessed. *Id.* at 502.

And it has rejected such "prudential" abstention as inconsistent with the statute's legislative history. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014); *see Patsy*, 457 U.S. at 502. Yet whatever "the tenor of [congressional] debates" may have been, *Patsy*, 457 U.S. at 502, or what "recurring themes" they may have touched on, *id.* at 503, they yielded a statutory text that says nothing about exhaustion, not a word about jurisdiction, and certainly no clear statement attempting to preempt state jurisdictional laws.

* * *

For the Court to reverse, it must ignore several core tenants of federalism. It must invent legislative powers neither possessed nor wielded by Congress, and it must contradict some our Constitution's most celebrated expositors. *See Ward*, 51 Mass. (10 Metcalf) at 589 (citing Justice Story's treatise and Chancellor Kent's commentaries).

And for what? If the Applicants here have colorable claims under the Civil Rights Act, they can take those claims to their local federal courthouse. They do not need a ruling from this Court telling their State how to distribute its own sovereign judicial power.

CONCLUSION

The judgment of the Alabama Supreme Court should be affirmed.

Respectfully submitted,

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EXHIBIT F

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004,	No. 23-80046
Respondent.	ORDER

Before: PAEZ, BYBEE, and MILLER, Circuit Judges.

On March 6, 2025, this court denied respondent's motion for reconsideration and reconsideration en banc, and stated that no further filings would be entertained other than a motion for reinstatement accompanied by proof that respondent has been reinstated to the California Bar.

The court will take no action on Docket Entry Nos. 70 and 71. No further orders will be issued unless respondent files a motion for reinstatement accompanied by proof of respondent's reinstatement to the California Bar.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit: January 13, 2004, Respondent.	No. 23-80046 REPORT AND RECOMMENDATION

Before: ANDREW D. HURWITZ, Circuit Judge

Cyrus Mark Sanai was admitted to the practice of law in California in 1990. *In the Matter of Cyrus M. Sanai*, State Bar Court of California, Case No. 10-O-09221-CV, at 9 (Jan. 4, 2022) (hereafter cited as "*In the Matter of Cyrus M. Sanai.*"). Sanai was admitted to the bar of this Court in 2004. On March 15, 2023, the California Supreme Court suspended Sanai from the practice of law. After this Court was notified of that suspension, an Order to Show Cause was issued on June 1, 2023, requiring Sanai to address whether he should be reciprocally disciplined.

In December 2023, I was appointed as a Hearing Officer in this matter. On May 16, 2024, I conducted a hearing on the record. I submit this Report and Recommendation pursuant to Ninth Circuit Rule 46-2 and recommend that Sanai be suspended from practice before this Court until his suspension is lifted by the California Supreme Court.

I. Background

a. Rent Dispute

In 1998, Sanai rented an apartment for $2,165 a month.[1] He later received a letter from apartment management offering a new rent of $1,410. Sanai sent apartment management a letter accepting the offer and a check for $1,410.

One day after receiving Sanai's letter, apartment management informed him that their previous letter had a typographical error, rescinded the offer, and provided a different rent. Sanai insisted he had accepted the offer and that the contract was binding. In December, apartment management responded by posting a notice to quit[2] on Sanai's door.

Sanai moved out in January 1999. Apartment management then informed consumer credit reporting agencies of a claim against Sanai for unpaid rent. In 2000, after Sanai's application for a credit card was denied, he obtained his credit report and sued the credit reporting agency in California state court, seeking $5 million in damages.[3] The apartment management company was eventually joined

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[1] Unless otherwise indicated, the facts are taken from the California State Bar Court's January 4, 2022, decision, and carry a presumption of correctness. *See In re Rosenthal*, 854 F.2d 1187, 1188 (9th Cir. 1988).

[2] A "notice to quit' requires the tenant to either pay back rent or move out. https://selfhelp.courts.ca.gov/eviction-tenant/notice-types.

[3] The operative complaint asserted causes of action for slander, libel, intentional and negligent interference with prospective economic advantage,

as a defendant.

The litigation dragged on for five years. "After all of the causes of action in Mr. Sanai's [operative] complaint had been dismissed and a trial date set for [the apartment management's] cross-complaint to collect unpaid rent, Mr. Sanai made a statutory tender of the full amount sought by [the landlord]." *Sanai v. Saltz*, 170 Cal. App. 4th 746, 756 (2009).

The superior court then awarded $7,248.60 in costs to defendants and $136,034 in attorney fees to the credit agency. *Id.* The court also denied Sanai's motion "to set aside void orders and judgment" based on a jurisdictional argument relating back to defendants' appeal from a January 16, 2001, denial of a special motion to strike Sanai's complaint. *Id.*

The California Court of Appeal "reversed the trial court's order denying Mr. Sanai's motion to set aside void judgment and orders, vacated the judgment entered against Mr. Sanai and reversed all post-judgment orders awarding and denying costs and attorney fees." *Id.* at 757; *see also Sanai v. Saltz*, No. B170618, 2005 WL 1515401 (Cal. Ct. App. June 28, 2005). The Court of Appeal remanded (1) "with directions to vacate all orders entered after January 16, 2001, the date on which [defendants] filed notices of appeal from the denial of [their] special motion

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intentional and negligent infliction of emotional distress, and violations of state and federal credit reporting laws.

to strike Mr. Sanai's complaint"; (2) "to conduct further proceedings based on the state of the pleadings on January 16, 2001"; and (3) "to consider Mr. Sanai's request for restitution [] and to order reimbursements to the extent appropriate." *Id.* at 757. The Court of Appeal also awarded Sanai his costs on appeal. *Id.*

b. Post-Remand Proceedings in the Trial Court

The post-remand proceedings in the superior court gave rise to Sanai's suspension. The following timeline recounts the relevant conduct.

- September 23, 2005 - Sanai filed a memorandum of costs on appeal seeking $4,922.95 in costs from the defendants.[4]
- March 28, 2006 - The superior court signed an order submitted by Sanai instructing the clerk to prepare a judgment for costs in the amount of $4,922.95 plus interest. The order recited that "Mr. Sanai may enforce such judgment from and after March 8, 2006."

[4] The defendants were Harvey Saltz (former president of credit reporting agency The U.D. Registry, Inc. ("UDR")), First Advantage Corporation (UDR's successor-in-interest), and owners of the apartment Sanai had leased (referred to in proceedings below as "the Irvine Entities").

- April 5, 2006 - Sanai obtained an abstract of judgment[5] which he then recorded in Los Angeles and Orange Counties showing a judgment in the amount of $4,922.95.
- April 12, 2006 - Sanai served (on the corporate defendants but not their counsel) a memorandum of costs after judgment purportedly pursuant to Cal. Code of Civil Procedure § 685.070,[6] seeking: (1) the $4,922.95 in costs incurred on appeal; (2) $52 in costs incurred preparing and recording the abstract of judgment; (3) other cost items totaling just under $700; and (4) $137,800 in attorney fees allegedly incurred between March 28, 2016 and April 10, 2016.
- April 17, 2006 – The memorandum of costs after judgment was filed in the superior court.
- May 1, 2006 – Before learning of the memorandum of costs after judgment, defendants sent Sanai two checks, one for $4,922.95, and the other for interest on that sum. Counsel for defendants then learned about the

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[5] To obtain an abstract of judgment, the judgment creditor fills out an "EJ-001 Abstract of Judgment Form" and has it certified by the court clerk. After certification, the judgment creditor can record it at the County Recorder's Office. *See* Instructions: Abstract of Judgment – Restitution, https://www.courts.ca.gov/documents/cr113.pdf.

[6] Section 685.070 sets forth various fees and costs a "judgment creditor may claim" in "enforcing a judgment."

memorandum and contacted court clerk Sally Perez about it. Perez informed counsel that the corporate defendants, but not the individual ones, had been served. She also indicated that the memorandum of costs after judgment would be rejected because there as yet was no underlying judgment.

- May 8, 2006 – Counsel for defendants gave Sanai telephonic notice of his intention to apply to the court ex parte for an order shortening the time to move to strike the memorandum of costs after judgment. Sanai then went to the court clerk's office and spoke with Perez, who said that because there was no record of an underlying judgment, she would reject the memorandum of costs. Sanai then went to the superior court judge's courtroom clerk and obtained a judgment in the amount of $4,922.95 (plus interest), returned to Perez, and handed it to her.
- The judgment form, filed May 9, 2006, stated in its body that it was for $4,922.95 (plus interest) but also has on it a stamp apparently dated May 8, 2006, indicating that "COSTS AFTER JUDGMENT IN THE AMOUNT OF $138,547.00" are "CLAIMED BY Plaintiff." Both "$138,547.00" and "Plaintiff" are handwritten.
- May 11, 2006 - Defendants and Sanai appeared before the court. Defendants moved to strike the memorandum of costs after judgment. The court made clear that the only order it issued for costs provided $4,922.95 plus interest.

Sanai objected to the hearing because he had only been given notice of a request to shorten time and was not notified that a substantive motion would be presented to the court. The trial court initially granted the motion to strike, but vacated that order after confirming that the notice stated only that defendants were seeking an order to shorten time.

- May 12, 2006 – The superior court issued a minute entry stating: "The [May] 11, 2006 order striking the memorandum of costs and the 5/8/06 judgement is stricken. Counsel for defendant shall bring a properly noticed motion to strike the memorandum of costs."
- June 26, 2006 – Defendants moved to strike Sanai's memorandum of costs after judgment.
- July 31, 2006 – The superior court granted defendants' motion to strike the memorandum of costs after judgment. The court concluded that service of the memorandum of costs on the various corporate defendants was defective. The court also expressly found Sanai thereafter "intentionally altered court documents to show that certain individuals were served on behalf of corporate defendants." The court stated that the memorandum should have been filed as a noticed motion because the attorney fees sought by Sanai were not incurred in enforcing a judgment that awarded attorney

fees. The court deferred ruling on the merits of any request for attorney fees by Sanai until the question was presented in a properly noticed motion.

- October 18, 2006 – Notwithstanding the trial court's July 31, 2006, order, Sanai procured another abstract of judgment for $143,469.96.
- October 20, 2006 – Sanai recorded that abstract of judgment.
- March 9, 2007 – After a two-day hearing, the superior court quashed the second abstract of judgment, finding Sanai "fraudulently" obtained it and "wrongfully" recorded it. *Sanai*, 170 Cal. App. 4th at 759 n.7.
- January 26, 2009 – The Court of Appeal affirmed the trial court's order striking the memorandum of costs after judgment. *Id.* at 783.

c. State Bar Court Proceedings

In January 2014, the Office of Chief Trial Counsel ("OCTC") of the State Bar of California commenced disciplinary proceedings against Sanai, alleging nine counts of professional misconduct.

State Bar Court Judge Miles eventually dismissed eight of the counts. *See In the Matter of Cyrus M. Sanai*, State Bar Court of California, Case No. 10-O-09221-CV, at 1 (Mar. 20, 2015). He dismissed two counts for lack of proof and six counts as barred by the limitations period for state bar actions. However, he denied a motion to dismiss count eight, which alleged that Sanai violated California

Business and Professions Code § 6068(g)[7] by improperly using the abstract of judgment to pursue attorney's fees. *See In the Matter of Cyrus M. Sanai*, State Bar Court of California, Case No. 10-O-09221-CV (Feb. 6, 2015) ("The evidence received by this court is sufficient to sustain a finding that Respondent's actions in filing the Abstract of Judgment constituted a willful violation of section 6068, subdivision (g)."). But the State Bar Judge abated proceedings on count eight because of pending litigation.[8]

Judge Miles retired during the abatement and the State Bar Court reassigned Sanai's case to Judge Valenzuela in 2018. After the abatement ended, Judge Valenzuela initially ordered trial to resume on count eight, but then announced her intention to declare a mistrial because she thought that count eight should be decided by a judge who heard all the evidence. *In the Matter of Cyrus M. Sanai* at

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[7] "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."

[8] It is not clear from the record what exactly this related litigation entailed. *See In the Matter of Cyrus M. Sanai* at 2 (Sanai's case "endured a lengthy abatement awaiting the conclusion of related civil proceedings"); *In the Matter of Cyrus Mark Sanai*, State Bar Court of California, Case Nos. 10-O-09221, 12-O-10457-DFM, at 1 (Mar. 20, 2015) ("It has become clear to this court that during the trial and subsequent discussions with counsel that the Los Angeles litigation is still ongoing and that there remains the possibility that Respondent's conduct can and might ultimately be determined in the matter to have been legally correct.") (order abating count eight).

4. In a September 2019 status conference, however, both sides "agreed to waive their right to have the case heard by a single judge." *Id.* At that status conference, Judge Valenzuela also allowed Sanai "to present a lengthy preview of his defense." *Id.* at 5.

The adjudication of count eight continued for two more years, and was recounted in relevant part by Judge Valenzuela as follows:

> [O]n October 18, 2019, OCTC filed a brief summarizing the aspects of the trial, findings, and evidence relating to count eight.
>
> In the coming months, Respondent filed numerous motions and sought review of many issues before the Review Department and Supreme Court. On February 14, 2020, the court granted Respondent's motion to stay Hearing Department proceedings pending disposition of the numerous interlocutory petitions he intended to pursue, which ultimately were resolved by October 14, 2020, when the Supreme Court denied Respondent's petition for review. At Respondent's request, however, the court continued the abatement of these proceedings due to certain medical issues. Following resolution of Respondent's medical concerns, the court lifted the abatement, effective July 19, 2021.
>
> On October 5 and 6, 2021, the court held the final two days of trial on the sole remaining count in this case. On October 6, 2021, Respondent filed a motion to dismiss count eight, which the court tentatively denied at trial, announcing that it would issue its ultimate ruling on the motion in this decision. The parties filed their respective closing briefs October 20, 2021.

Id. at 5-6.

Judge Valenzuela issued her decision in January 2022. She noted that "Section 6068, subdivision (g) is aimed at preventing attorneys from using the

justice system as a tool to harass or vex another." *Id.* at 22 (cleaned up). She rejected Sanai's argument that he properly filed the abstract of judgment "because he wanted to prove a point to the superior court—that the order striking the memorandum of cost had no legal effect on the judgment." *Id.*

> His stated reasoning for filing the abstract of judgment was improper—attempting to discredit, embarrass, or school the superior court judge to demonstrate Respondent's self-proclaimed superior intellect and/or knowledge of the rules, did nothing to further the litigation.
>
> In addition, Respondent has maintained that he filed the abstract of judgment to create a record to reveal his conspiracy theory that the superior court, court personnel and the Saltz parties colluded against him—an allegation wholly without merit. Respondent has shown that he filed the abstract of judgment to pursue his own personal agenda—wrongfully and unnecessarily extending the litigation in the civil lawsuit—and not for its proper purpose of securing a debt.

Id.

Judge Valenzuela found Sanai's misconduct "substantially aggravated by the significant harm [he] caused to the public and the administration of justice and his lack of insight and indifference to the consequences of his acts." *Id.* at 24. She recommended that Sanai "be suspended from the practice of law for one year, stayed, and placed on probation for one year, subject to a 60-day actual suspension." *Id.* at 32. She also recommended that Sanai be required, as conditions of probation, to: (1) read, review, and comply with the rules of professional conduct; (2) maintain a valid address and contact information; (3) meet and

cooperate with an assigned probation case specialist; (4) file quarterly reports detailing compliance with the rules of professional conduct; (5) attend and complete the State Bar Ethics School and pass the test given at the end of the session; and (6) take and pass the Multistate Professional Responsibility Examination (MPRE). *Id.* at 32-34.

The State Bar Court's recommendation was transmitted to the California Supreme Court in August 2022. *In the Matter of Cyrus M. Sanai*, Case No. 10-O-09221-CV, Transmittal of State Bar Court Recommendation (Aug. 24, 2022). After receiving extensive briefing from Sanai and the State Bar, the Supreme Court issued a final order on March 15, 2023, providing that Sanai was "suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and [he] is placed on probation for one year subject to the following conditions:

1. Cyrus Mark Sanai is suspended from the practice of law for the first 60 days of probation.
2. Cyrus Mark Sanai must comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Decision filed on January 4, 2022; and
3. At the expiration of the period of probation, if Cyrus Mark Sanai has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Cyrus Mark Sanai must provide to the State Bar's Office of Probation proof of taking and passing the Multistate Professional Responsibility Examinations as recommended by the Hearing Department in its Decision filed on January 4, 2022. Failure to do so may result in suspension.

In the Matter of Cyrus M. Sanai, Case No. 10-O-09221-CV Order Imposing Discipline (Mar. 15, 2023).

d. Ninth Circuit Discipline Proceedings

After being notified of the California Supreme Court's order, this Court issued an order to show cause ("OSC") on June 1, 2023, requiring Sanai to "either agree to a reciprocal suspension or show cause why such a suspension should not be imposed." He was given until June 29, 2023, to file a response to the OSC.

After receiving an extension, Sanai filed a "preliminary response" to the OSC on July 14, 2023. On August 22, 2023, Sanai moved to continue, stay, or abate "this proceeding pending the resolution of [] pending appellate proceedings" in four related cases challenging the state bar proceedings.[9] A motions panel denied the motion and set November 1, 2023, as a new deadline for Sanai "to supplement his response to the court's [OSC]."

On January 31, 2024, I notified Sanai of my assignment as Hearing Officer. ("The court has referred this matter to me to hold a hearing and make recommendations as to whether respondent should be subject to reciprocal

[9] That pending litigation was resolved in *Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024) (memorandum disposition), in which this Court issued an omnibus memorandum disposition affirming the district court's orders dismissing the complaints under *Younger v. Harris*, 401 U.S. 37 (1971).

discipline based on his suspension from the practice of law by the California Supreme Court."). Sanai then filed an emergency motion seeking to expand the page limit for his response to the OSC to 120 pages and extend the deadline for filing the response. On February 16, 2024, I granted a time extension and expanded the page limit to 30 pages.

Before the eventual May 16, 2024, hearing on the OSC, Sanai filed numerous motions, including:

1. An emergency motion arguing that my February 16 order created "serious due process problems." Based on a dismissed charge in the State Bar complaint involving Sanai and former Chief Judge Alex Kozinski and alleged misconduct by Judge Stephen Reinhardt, both unrelated to the subject matter of count eight of the State Bar complaint, he also moved for me to make certain disclosures. ("Finally Judge Hurwitz has potential conflicts arising from his past relationship with Judge[s] Kozinski and Reinhardt"). I denied that motion.
2. Sanai then moved to disqualify me. I denied that motion on April 23, 2024. ("The mere fact that I served as Judge of the United States Court of Appeals for the Ninth Circuit at the same time as Judges Kozinski and Reinhardt should give no reason to question my impartiality to evaluate the sole

question at issue: whether Respondent was afforded due process by the State Bar of California"); (denying renewed motion).

3. Sanai moved for a pre-hearing status conference and to bifurcate the hearing. That motion was denied.

4. Sanai moved to supplement the record with four pieces of evidence.[10] That motion was denied to the extent that it sought the Court to obtain the requested evidence and held moot with respect to "the hearing transcripts from 2021, as these [were] already docketed." Sanai then made several filings of supplemental evidence.

5. Sanai moved to vacate my April 23 order and have me "order that it is undisputed that the State Bar Court proceedings violated Sanai's due process rights." He also argued that the [Court] should "Retract it's Determination that Dismissed Disciplinary Charges are Not Relevant." Those motions were denied.

6. The day before the hearing, Sanai filed an emergency motion contesting the limited nature of the proceeding as "manifestly inconsistent" with reciprocal discipline case law. That motion was denied.

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[10] "The hearing transcripts from 2021"; "The audio recording of all hearings (which Sanai does NOT have)"; "The file-stamped motion documents and orders prior 2019 (which Sanai does NOT have)"; and "The California Supreme Court pleadings."

7. A one-hour hearing was held on Zoom on May 16, 2024, and recorded.

II. Discussion

"When this Court learns that a member of the bar of this Court has been disbarred or suspended from the practice of law by any court . . . the Clerk shall issue an order to show cause why the attorney should not be suspended or disbarred from practice in this Court." Ninth Circuit Rule 46-2(c); *see also* Fed. R. App. P. 46(b).

Reciprocal discipline should be imposed unless the respondent provides clear and convincing evidence that the state proceedings involved "(1) a deprivation of due process; (2) insufficient proof of misconduct; or (3) grave injustice which would result from the imposition of such discipline." *In re Kramer*, 282 F.3d 721, 724 (9th Cir. 2002) (citing *Selling v. Radford*, 243 U.S. 46, 50–51 (1917)). Sanai has provided no such evidence.

a. Due Process.

There is no question that Sanai "received notice of the charges against him and the opportunity to challenge them in state bar court." *In re Haddix*, 702 F. App'x 648, 648 (9th Cir. 2017). As State Bar Judge Valenzuela aptly noted, this case "has been exhaustively litigated at each juncture." *In the Matter of Cyrus M. Sanai*, at 2 n.4. And, the record shows that Sanai received a fair and thorough hearing. Judge Valenzuela's decision listed the numerous motions Sanai filed—

and that the State Bar Judge carefully addressed—during the two-year adjudication of count eight, including:

> (1) motions seeking subpoenas to obtain testimony and documents relating to what he described as a judicial misconduct "conspiracy theory" of retaliation against him by various state and federal courts, some of which had no involvement in the proceedings relevant to count eight;
>
> (2) an untimely motion for partial reconsideration of Judge Miles's March 20, 2015 order quashing subpoenas previously determined to be irrelevant to count eight;
>
> (3) a motion—filed years after the discovery period had passed and after OCTC [Office of Chief Trial Counsel] concluded its case-in-chief—seeking 13 additional discovery subpoenas for production of hundreds, if not thousands, of documents;
>
> (4) motions to conduct discovery and "voir dire" of the undersigned;
>
> (5) a renewed motion to dismiss count eight;
>
> (6) motions to reconsider the court's orders denying the above-listed motions and others;
>
> (7) petitions for interlocutory review, by the Review Department, of six orders denying certain of the above-referenced motions;
>
> (8) a petition for Supreme Court review of 19 issues, including many raised in the above listed motions, plus other constitutional claims regarding the disciplinary process.

Id. at 5 n.10. "In addition, Respondent was given fair opportunity to present evidence to contradict, temper, or explain all admitted records from the various civil proceedings." *Id.* at 10; *see also id.* at 22 n.22 ("In reaching the following conclusions of law, the court has considered all of Respondent's arguments, whether or not expressly discussed herein. Those not specifically discussed have nevertheless been carefully considered and rejected."); *id.* at 4 n.2 ("[T]he court

describes the key filings submitted at the outset of this discipline case to illustrate the extent to which the case has been exhaustively litigated at each juncture"). There thus was no denial of due process during the state bar's adjudication of count eight.

Sanai argues that California Business and Professions Code sections 6085(a) and (b)[11] give attorneys in disciplinary hearings "the same state and federal criminal right as required under Brady disclosures." He then argues that the initial State Bar Judge denied him due process by not considering whether evidence relating to the dismissed counts was relevant to the remaining count.

The argument fails on several levels. For one thing, *Brady v. Maryland*, 373 U.S. 83 (1963), applies only in criminal prosecutions. More importantly, the dismissed counts originated from conduct completely unrelated to the § 6068(g) violation—Sanai does not argue he engaged in this conduct because of any fact

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[11] "Any person complained against shall be given fair, adequate, and reasonable notice and have a fair, adequate, and reasonable opportunity and right:

(a) To defend against the charge by the introduction of evidence.

(b) To 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. This subdivision shall not require the disclosure of mitigating evidence."

related to the dismissed charges.[12] Even assuming evidence stemming from unrelated conduct was somehow marginally relevant, "the exclusion of marginally relevant evidence is no denial of due process." *Queen Mary Rests. Corp. v. N.L.R.B.*, 560 F.2d 403, 412 (9th Cir. 1977).

Sanai next argues he was denied a "statutory right to intermediate appellate review when the State Bar Court dismissed" his motion for reconsideration of Judge Valenzuela's decision. To the extent that this is a due process argument, as opposed to one of state procedure, it fails. As the State Bar Court recounted:

> Respondent received several extensions to file his opening brief. On June 9, 2022, we ordered an extension until July 1, and stated, "No further extensions are contemplated." On June 24, respondent filed a motion for further extension, which we denied on June 27, and stated that his brief remained due on July 1. Respondent did not file an opening brief and we dismissed his request for review on July 8 pursuant to rule 5.152(D) of the Rules of Procedure of the State Bar.

In the Matter of Cyrus Mark Sanai, State Bar Court of California, Case No. 10-O-09221 (Aug. 11, 2022) (order denying motion to reconsider). Sanai also claims his right to appeal was "arbitrarily denied." But the State Bar Judge provided two

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[12] *See In the Matter of Cyrus Mark Sanai*, State Bar Court of California, Case Nos. 10-O-09221, 12-O-10457-DFM, at 1 (Mar. 20, 2015) ("Counts 1-5 arise out of Respondent's involvement as a party in litigation filed in the State of Washington; Count 6, which has now been dismissed by this court, related to complaints filed by Respondent with the Judicial Council of the Ninth Circuit against various judges of the Ninth Circuit; and Counts 7-9 arise out of Respondent's involvement as a party in litigation still pending in the Los Angeles County Superior Court.")

reasons: not only was the motion untimely, but he also "failed to present new facts, circumstances, or law that supports his request for reconsideration." *Id.*

Sanai next contends that discipline was improperly imposed because he was "seeking to contest collusion between opposing counsel and the judge." The State Bar Court addressed this argument and rejected it as "wholly without merit." *In the Matter of Cyrus M. Sanai*, at 23. Sanai raised the same argument to the California Supreme Court,[13] which implicitly rejected it in imposing a suspension. There was ample evidence to support Judge Valenzuela's conclusion that Sanai "filed the abstract of judgment to pursue his own personal agenda—wrongfully and unnecessarily extending the litigation in the civil lawsuit." *Id.*

b. Insufficient Proof of Misconduct.

Sanai argues that he is "factually innocent." But, the State Bar Judge reasonably concluded that "the record clearly and convincingly" supports the conclusion that he willfully violated § 6068(g). *In the Matter of Cyrus M. Sanai*, at 1; *see also In re Rosenthal*, 854 F.2d at 1188 (imposing reciprocal discipline where attorney "offer[ed] only his own unsupported, conclusory version of the facts"). And the Supreme Court implicitly rejected the same argument. *See*

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[13] *See, e.g.*, Motion for Writ of Review, (Nov. 2, 2022), Attorney Discipline – State Bar of California – Search: "Sanai, Cyrus Mark," "Case Number 10-O-09221," https://discipline.calbar.ca.gov/portal/Home/Dashboard/29 (last visited July 24, 2024).

Motion for Writ of Review, (Nov. 2, 2022), Attorney Discipline – State Bar of California – Search: "Sanai, Cyrus Mark," "Case Number 10-O-09221," https://discipline.calbar.ca.gov/portal/Home/Dashboard/29 (last visited July 24, 2024).

c. Grave Injustice.

Although Sanai's brief has a heading addressing "grave injustice," he makes no argument why reciprocal discipline would result in such injustice. I can perceive none. The discipline imposed by the State Bar was not "so ill-fitted to [his] adjudicated misconduct that reciprocal [discipline] would result in grave injustice." *In re Kramer*, 282 F.3d at 727; *see also In re Scannell*, 447 F. App'x 857, 858 (9th Cir. 2011). Indeed, the discipline—a 60-day suspension and requirement to pass the MPRE, among other conditions—"was well within the range of appropriate sanctions." *In re Kramer*, 282 F.3d at 728.

III. Conclusion

I respectfully recommend that the Court order reciprocal discipline, prohibiting Sanai from further practice before the Ninth Circuit until his privilege to practice law is restored by the California Supreme Court. No other filings will be entertained by the Hearing Officer. Sanai has 21 days from this date to file any objections, not to exceed 7,500 words in length, to this Report and Recommendation.