

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

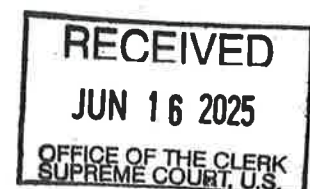
In re: CYRUS MARK SANAI, Admitted to the Bar of the Ninth Circuit;
January 13, 2004,

No. 23-80046

**IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT**

APPLICATION FOR STAY

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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 requested 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. 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. The application was rejected for combining two requests

for relief. Sanai immediately filed a solo request for extension of time which was granted.

Sanai now requests stays of the Ninth Circuit's reciprocal suspension orders of January 10, 2025 and the order order of April 16, 2025 which refused to re-open briefing to account for new authority, *Williams v. Reed*, No. 23-191, 604 U. S. ____, 145 S.Ct 465 (February 21, 2025) ("*Williams*"). See Exh. F. 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 January 27, 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 at 19. His motion for leave to file a motion for reconsideration, attached as Exh. E hereto, was denied. Exh. F.

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

This case presents 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. This motion therefore requests 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 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 standard for evaluating an injunction pending appeal are essentially the same as granting an injunction in the first instance.

In deciding whether to grant an injunction pending appeal, the court "balances the plaintiff's likelihood of success against the relative hardship to the parties." *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1092 (9th Cir.2005) (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir.2003)). This court has recognized two different sets of criteria for preliminary injunctive relief. Under the "traditional test," the moving party must show: "(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to the plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases)." *Id.* (quoting *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir.2005)). The "alternative test" requires that the moving party demonstrate "either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor." *Id.* (quoting 408 F.3d at 1120). As this court has explained many times, "[t]hese two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. They are not separate tests but rather outer reaches of a single continuum." *Id.* at 1092-93 (quoting 408 F.3d at 1120).

Southeast Alaska Conservation Council v. U.S. Army Corps of Eng'rs, 472 F.3d 1097, 1100 (9th Cir. 2006).

Sanai meets the first requirement for an injunction pending appeal. He has demonstrated probable and indeed strong success on the merits with ongoing irreparable injury, along with a balance of hardships favoring him and consistency with the public interest, and demonstrates them again below.

Sanai is suffering irreparable injury each day as he was not granted relief effective by June 30, 2023 which was the finality date for his suspension order. In addition, Mr. Roshan wishes to employ Sanai to argue on his

behalf in the scheduled oral argument for an appeal raising his *Williams* claim. His constitutional right to counsel of his choice is irreparably injured if the proceedings which stripped his counsel of the right to appear before the Ninth Circuit were reciprocal recognition of proceedings that are void for violation of the Supremacy Clause.

Constitutional injuries constitute irreparable harm. *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (noting that "an alleged constitutional infringement will often alone constitute irreparable harm"); *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008), *rev'd on other grounds*, *Nat'l Aero. & Space Admin. v. Nelson*, 562 U.S. 134, 131 S.Ct. 746, 178 L.Ed.2d 667 (2011) (stating that, "[u]nlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute irreparable harm").

As to balance of equities, the Defendants suffers no hardship from attorney discipline not being imposed on Sanai. In the attorney regulation arena, the California Supreme Court is deemed to have the interests and immunity of a prosecutor because it has the independent power to discipline attorneys—indeed, under the California system, it has the ONLY power to do so, as the State Bar is merely an administrative advisory body. *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U. S. 719. 736 (1980).

On public interest, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), *citing Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir.2002), quoting that "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

This Court should grant the relief requested. No one will be prejudiced by the stay. The stay will also allow Sanai to elicit the view of the Ninth Circuit on the merits, which means that if he disagrees with its resolution there will be something of substance to bring before this Court, as opposed to a petition for certiorari which requests a grant and remand based on *Williams*.

Sanai proposes two alternates for the order.

Alternative number one, the direct approach:

The motion for a stay is granted. The January 10, 2025 and April 16, 2025 orders entered by the United States Court of Appeals for the Ninth Circuit, case No. 23-80046, are stayed pending disposition of any supplemental motion for reconsideration that may be submitted to the Court of Appeals in light of the stay, and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically.

The Court of Appeals is directed to forthwith address the following three issues, in the following sequence, within 30 days of this order unless it elects to vacate the stayed orders, in which case it shall address the questions in due course:

1. Does the 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?
2. If the answer to the first question is yes, does the State Act violate *Williams v. Reed*, No. 23-191, 604 U. S. ____, 145 S.Ct 465 (February 21, 2025)?
3. 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 second alternative is less direct:

The motion for a stay is granted. The January 10, 2025 and April 16, 2025 orders entered by the United States Court of Appeals for the Ninth Circuit, case No. 23-80046, are stayed pending disposition of any supplemental motion for reconsideration that may be submitted to the Court in light of the stay, and disposition of a petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be denied, this stay shall terminate automatically.

In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court.

Sanai submits that in the unusual procedural posture of this case, the first, more direct order, is the better approach. Unlike a regular civil or criminal appeal, the Ninth Circuit continues to have jurisdiction over the reciprocal discipline; there is no mandate involved and no opposing party. Since the Ninth Circuit has jurisdiction, it is appropriate for this Court to order the Ninth Circuit to exercise jurisdiction and address the application of this Court’s new opinion on Sanai’s case where no one will be prejudiced by it

so doing, it may eliminate the need for a petition for certiorari, and a third party's constitutional injury may be averted.

The undersigned, Cyrus Sanai declares under penalty of perjury under the laws of the United States that the statements of fact in the foregoing are true and correct statements. Executed on this 11th day of June, 2025 in Santa Monica, CA.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Cyrus Sanai', written over a horizontal line.

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2025

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CASE NOS. 23-80046

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MOTION FILED APRIL 14,
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,

No. 23-80046

ORDER

Respondent.

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

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 31 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.

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

FILED

MAR 6 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,

No. 23-80046

Respondent.

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-](https://www.supremecourt.gov/DocketPDF/23/23-191/278266/20230828101518662_Williams%20v.%20Washington%20Cert%20Petition.pdf)

[191/278266/20230828101518662_Williams%20v.%20Washington%20Cert%20Petition.pdf](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 eners 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 entire 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

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 4 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.

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

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 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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Counsel for Amicus Curiae State of Tennessee

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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 [b]y” 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 of 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.

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Theodore E. Rokita
Attorney General
State of Indiana

Brenna Bird
Attorney General
State of Iowa

Kris W. Kobach
Attorney General
State of Kansas

Liz Murrill
Attorney General
State of Louisiana

Lynn Fitch
Attorney General
State of Mississippi

Michael T. Hilgers
Attorney General
State of Nebraska

Drew H. Wrigley
Attorney General
State of North Dakota

Dave Yost
Attorney General
State of Ohio

Michelle A. Henry
Attorney General
Commonwealth of
Pennsylvania

Alan Wilson
Attorney General
State of South Carolina

Marty J. Jackley
Attorney General
State of South Dakota

Ken Paxton
Attorney General
State of Texas

Sean D. Reyes
Attorney General
State of Utah

Patrick Morrisey
Attorney General
State of West Virginia

EXHIBIT F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 16 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,

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.

EXHIBIT G

DECLARATION OF PEYMAN ROSHAN

I, Peyman Roshan, declare as follows:

1. I am a member of the State Bar of State of California and I have personal knowledge of each fact stated in this declaration.
2. On June 3, 2025, in my Ninth Circuit appeal *Roshan v. Lawrence, et al.*, Case No. 24-7429, I received from the Court a notice that my case is being considered for oral argument. (Exh. A.)
3. One of the issues in this appeal will be the applicability of the recent U.S. Supreme Court opinion, *Williams v. Reed*, 145 S.Ct. 465 (2025), to the California State Bar disciplinary procedures; and the propriety of making such pure facial attacks on a state system in a federal forum under *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983).
4. I would like Mr. Cyrus Sanai to appear as my counsel for that oral argument.

I declare under the laws of the United States and the State of California that the foregoing is true and correct. Executed on June 4, 2025 in Santa Rosa, California.

By: 
Peyman Roshan

EXHIBIT A



Peyman Roshan <peyroshan@gmail.com>

Roshan v. Lawrence, et al. 24-7429 - 025 - Notice of Case Being Considered for Oral Argument

2 messages

ACMS@ca9.fedcourts.us <ACMS@ca9.fedcourts.us>

Tue, Jun 3, 2025 at 2:06 PM

To: peyroshan@gmail.com

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Ninth Circuit**Notice of Docket Activity**

The following transaction was entered on 06/03/2025 2:05:28 PM PDT and filed on 06/03/2025

Case Name: Roshan v. Lawrence, et al.

Case Number: 24-7429

Docket Text:

NOTICE: This case is being considered for an upcoming oral argument calendar in San Francisco. Please review the San Francisco sitting dates for October 2025 and the subsequent sitting month in that location at http://www.ca9.uscourts.gov/court_sessions. Absent an irreconcilable conflict, the court expects you to appear and argue your case during one of these two months. If you have an irreconcilable conflict on any of the dates, please consult with opposing counsel to propose an alternate date and/or location and file Form 32 (<http://www.ca9.uscourts.gov/forms/form32.pdf>) within 3 business days of this notice using the ACMS filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions (<http://www.ca9.uscourts.gov/forms/form32instructions.pdf>) carefully.

If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a motion within 3 business days of this notice, using the filing type: **Motion to Refer to Mediation**.

You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date. [24-7429]

Notice will be electronically mailed to:

Peyman Roshan ; peyroshan@gmail.com

Kirsten Galler ; ryan.sullivan@calbar.ca.gov, kirsten.galler@calbar.ca.gov

Ms. Carissa Noelle Andresen ; ryan.sullivan@calbar.ca.gov, carissa.andresen@calbar.ca.gov,

jenny.batdorj@calbar.ca.gov

Case participants listed below will not receive this electronic notice:

Peyman Roshan <peyroshan@gmail.com>
To: Cyrus Sanai <cyrus@sanaislaw.com>

Tue, Jun 3, 2025 at 2:12 PM

[Quoted text hidden]