

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

**CYRUS MARK SANAI,
Plaintiff-Appellant,**

v.

MELANIE J LAWRENCE, sued in her individual and official capacities; CYNTHIA VALENZUELA, sued in her individual and official capacities; GEORGE CARDONA, 2 sued in his individual and official capacities; RICHARD A. HONN, sued in his official capacity; W. KEARSE MCGILL, an individual sued in his official capacity; DOES, 1 through 10, inclusive, Defendants-Appellees.

No. 22-56215

CYRUS MARK SANAI, Plaintiff-Appellant, v. GEORGE CARDONA; LEAH WILSON, Defendants-Appellees.

No. 23-15618

CYRUS MARK SANAI, Plaintiff-Appellant, v. LEONDRA KRUGER, Judge; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI M. EVANS; CAROL A. CORRIGAN; GOODWIN H. LIU; PATRICIA GUERRERO, Defendants-Appellees.

No. 23-16104

**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

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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 July 16, 2024 to and including September within which to file a petition for a writ of certiorari to review *Sanai v. Lawrence*, *Sanai v. Cardona*, and *Sanai v. Kruger*, the judgment of the Ninth Circuit Court of Appeals dated January 30, 2024, as to which a timely motion for rehearing and rehearing en banc was denied on April 17, 2024. See App. A-B, 1-9. 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 April 16, 2024. Jurisdiction for a petition for certiorari in this matter arises under 28 U.S.C. §1254.

The decision was a combined disposition of four different appeals filed by two different parties, the applicant here and Peyman Roshan, whom Sanai represented in the appeal.

This application should be filed more than 10 days prior to the due date. It is being dispatched by Federal Express on July 3, 2024 and assuming it is delivered as promised, should arrive on July 5, 2024, which is 11 days prior to the expiration of the deadline for filing a petition for certiorari. That being said, the Clerk confirmed that because the deadline falls on the Saturday, the due date for an extension is July 8, 2024.

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

This case presents an important issue of federal law and issues arising from two decisions of this Court from last term.

The first and most important unresolved issue is when Younger abstention is determined. There are at least five views expressed in the case law, three of which are present in Ninth Circuit law:

- (1) The federal courts only look at the time the complaint is filed, a view set out in the Ninth Circuit's en banc authority and many other cases.

- (2) The federal courts look at the time the complaint is filed and perform a second check, as accepted in some Ninth Circuit case law and the panel in this appeal.
- (3) The federal courts look at the state proceedings at the time of the district court hearing and separately upon appellate review, as the majority held in *Duke v. Gastelo*, 64 F.4th 1088, 1096 (2023).
- (4) The federal courts look at matters as the case progresses, in the same way constitutional standing and mootness are evaluated, which is the position of the Appellants, the Eighth Circuit, the Tenth Circuit, and the Supreme Court in *Middlesex County Ethics Comm. v. Garden State Bar Assn*, 457 U. S. 423, 436-7 (1982);
- (5) The federal courts look at the time the complaint is filed and matters before, as advocated by Judge Bumatay in his dissent in *Duke, infra*, and the Fourth Circuit held in *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F. 3d 156 (4th Cir. 2008). Notably the Fourth Circuit's holding is explicitly premised on the Supreme Court's prior expressed view that:

In *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), the Supreme Court stated that "a necessary concomitant of *Younger* is that a party must exhaust his state appellate remedies before seeking relief in the District Court." Thus, "a party may not procure federal intervention by terminating the state judicial process

prematurely — forgoing the state appeal to attack the trial court's judgment in federal court." *New Orleans Pub. Serv.*, 491 U.S. at 369, 109 S.Ct. 2506; see also *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718, 91 L.Ed.2d 512 (1986)(applying *Younger* to state administrative proceedings).
Laurel Sand & Gravel, supra at 166.

In Sanai's case and Mr. Roshan's case the opportunity to make constitutional claims terminated after the federal litigation was filed but before the Ninth Circuit ruled, and the facts underlying the claims were unknown.

In addition, after the petitions for rehearing were filed, this Court entered decisions which directly impacted the matter. This Court's decision in *In Devillier* the Supreme Court unanimously held that comity requires allowing a federal court to adjudicate a state remedy asserting a federal claim without imposition of federal immunities:

Our constitutional system assigns to state officers "a coordinate responsibility to enforce [the Constitution] according to their regular modes of procedure." *Howlett v. Rose*, 496 U. S. 356, 367 (1990). It therefore looks to "[t]he good faith of the States [to] provid[e] an important assurance that 'this Constitution, and the Laws of the United States which shall be made in Pursuance thereof shall be the supreme Law of the Land.'" *Alden v. Maine*, 527 U. S. 706, 755 (1999) (quoting U. S. Const., Art. VI; original alterations omitted). We should not "assume the States will refuse to honor the Constitution," including the Takings Clause, because "States and their officers are [also] bound by obligations imposed by the Constitution." 527 U. S., at 755.

The premise that Texas left *DeVillier* with no cause of action to obtain the just compensation guaranteed by the Takings Clause does not hold. Texas state law provides a cause of action by which property owners may seek just compensation against the State. As Texas explained at oral

argument, its state-law inverse-condemnation cause of action provides a vehicle for takings claims based on both the Texas Constitution and the Takings Clause. Tr. of Oral Arg. 38; *id.*, at 40 (citing *Baytown v. Schrock*, 645 S. W. 3d 174 (Tex. 2022)); Tr. of Oral Arg. 59–60. And, although Texas asserted that proceeding under the state-law cause of action would require an amendment to the complaint, it also assured the Court that it would not oppose any attempt by DeVillier and the other petitioners to seek one. *Id.*, at 41, 61, 64. This case therefore does not present the circumstance in which a property owner has no cause of action to seek just compensation. On remand, DeVillier and the other property owners should be permitted to pursue their claims under the Takings Clause through the cause of action available under Texas law.

Devillier, slip. op. at 6-7.

The underlying issue of comity was recognized explicitly by this Court a few months ago in *Redd v. Guerrero*, 84 F. 4th 874 (9th Cir. 2023). In that case there were two different branches of the California government to whom acknowledging “comity” led to different results. *Id.* at 886. If “comity” was owed to Defendant California Supreme Court Chief Justice Guerrero, then the Ninth Circuit should have accepted “the State Officers' federalism and comity concerns [that] are surely significant” and abstained from adjudicating the case as contended by her. *Id.* at 886. However, the comity owed to the California Legislature pointed to enforcing its mandate against the California Supreme Court.

In *DeVillier v. Texas*, case No. 22–91, this Supreme Court decided that “comity” required adjudicating the federal issues under the state remedy in federal court, even though the original version of the Fifth Circuit’s one-paragraph opinion provided for remand to state court. *See DeVillier v. State*,

63 F.4th 416, 432 (5th Cir. 2023)(Oldham, C.J., diss.). This is a break from prior precedent. As Circuit Judge Oldham explained:

But as Justice Holmes put it more than a century ago, "[a] suit arises under the law that creates the cause of action." *Am. Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260, 36 S.Ct. 585, 60 L.Ed. 987 (1916). That means, as a general matter, suits are removable under § 1441 only when federal law creates the cause of action:

[A] federal court does not have original jurisdiction over a case in which the complaint presents a state-law cause of action.... For better or worse, under the present statutory scheme as it has existed since 1887, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case "arises under" federal law. A right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action.

Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. Cal., 463 U.S. 1, 10-11, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983) (quotations and footnote omitted).

Consider, for example, *Merrell Dow Pharmaceuticals v. Thompson*, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). In that case, the plaintiff brought a state tort action predicated on the allegation that a drug company violated a federal misbranding standard. The drug company tried to remove on the theory that the federal misbranding standard was an essential element to plaintiff's cause of action and obviously appeared on the face of the complaint. See *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152-53, 29 S.Ct. 42, 53 L.Ed. 126 (1908). The Supreme Court held the action was not removable because to hold otherwise would "flout" Congress's decision not to create a federal cause of action for such misbranding claims. *Merrell Dow*, 478 U.S. at 812, 106 S.Ct. 3229. Because the State—and only the State—created the plaintiff's cause of action, the Court held the suit had to stay in state court. The fact that the entirety of the case was predicated on a federal misbranding standard was irrelevant.

Devillier v. State, 63 F.4th 416, 431 (5th Cir. 2023)(Oldham, C.J., diss., footnotes omitted).

Devillier thus holds that comity considerations for states dictates allowing adjudication of STATE REMEDIES for FEDERAL CONSTITUTIONAL VIOLATIONS in FEDERAL COURT. The question then arises whether Younger abstention applies if comity requires that state causes of action can be adjudicated in federal court.. California has a version of 42 U.S.C. §1983, the Bane Act, that allows lawsuits against any persons for violation of State or federal law.

Accordingly, Sanai and Mr. Roshan will be able to raise issues that are currently the subject of engrained Circuit splits plus issues that arose from decision last term that were not considered by the Ninth Circuit and so would merit a GVR.

Sanai needs more time for the following reasons. First, Sanai's petition will be coordinated with Mr. Roshan's, which takes more time. Second, Mr. Roshan became unavailable due to family issues and is heading to Europe on July 4, 2024. Sanai Decl. Third, Sanai is discussing the involvement of potential amicus and needs more time to lock in their interest if possible. Fourth, no one will be prejudiced by the delay.

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 3rd day of July, 2024 in Santa Monica, CA.

Respectfully submitted,

A handwritten signature in blue ink that reads "Cyrus Sanai". The signature is written in a cursive style and is positioned above a horizontal line.

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