25-798

No. 25-

IN THE
Supreme Court of the United States

Rick Siegel,

Petitioner,

v.

Jude Salazar

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeal of California,
Second Appellate District, Division Five

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner presents two queries about administrative authority, both of which resonate with the Court's recent actions to ensure agencies act within statutory bounds. It respectfully urges the Court to address these critical, unsettled questions of federal and constitutional law:

1) "Whether state procedural rules are 'adequate' under the Fourteenth Amendment when, in combination (limited-case misclassification, jurisdictional limits, and record-based affirmance), they foreclose any merits forum for preserved federal constitutional claims raised in the same litigation."

2) "Whether due process permits a State to retroactively void private contracts and compel disgorgement by relying on general severability statutes (Civ. Code §§ 1598–1599) as the operative 'penalty' where the governing licensing statute—the Talent Agencies Act—is concededly silent on remedies."

PARTIES TO THE PROCEEDINGS

Petitioner Rick Siegel, as assignee of Diane and Sarah Pardoe's claims, was Appellant in the Court of Appeal and Appellant in the Superior Court Appellate Division. Diane and Sarah Pardoe were the Plaintiffs at the Superior Court and the Respondents at the Labor Commission proceedings.

Respondent Jude Salazar was Respondent/Appellee in all proceedings below.

Neither Party is a corporation.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Rick Siegel ("Petitioner") respectfully submits this petition for a writ of certiorari to review the judgment of the Appellate Division of the Los Angeles Superior Court. The California Court of Appeal denied transfer, leaving the State Supreme Court without jurisdiction and the Court of Appeal the highest state court in which a decision could be had.

OPINIONS BELOW

The California Supreme Court order denying review is at Appendix A-1. The Court of Appeal order denying transfer from the Appellate Division of the Los Angeles Superior Court is at A-2. The Appellate Order denying transfer to the Court of Appeal is at A-3. The Appellate Division order begins on A-4. The trial court order denying review based on res judicata is at A-19. The trial court order in the related matter is at A-20. The minute order denying submission of a summary motion is at A-21. The Labor Commissioner's ruling begins at A-22.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a). The Appellate Division issued its decision on May 7, 2025. The Court of Appeal denied transfer on July 18, 2025. The California Supreme Court declined review on July 28, 2025, finding it lacked jurisdiction because the Court of Appeal's denial rendered the Appellate Division's decision final, leaving the Appellate Division the highest state court in which a decision could be had. This petition is timely under Sup. Ct. R. 13.1 (filed within 90 days of the July 18, 2025 order).

STATEMENT OF THE CASE

As stated in *New Jersey v. Fair Lawn Service Center Inc.*, 120 A.2d 233, 236 (N.J. 1956), "Where a statute fails to provide a penalty it has been uniformly held it is beyond the power of the court to prescribe a penalty."

Except California's Talent Agencies Act.

The TAA is enforced *as if* it statutorily prohibits and penalizes unlicensed persons who procure employment for an artist. But as *Marathon Entertainment v. Blasi*, 42 Cal. 4th 974, 991, 996 (2008) notes, the licensing scheme has no related remedy.

A. Enforcement

"The Labor Commissioner ["Commissioner", "CLC"] has original and exclusive jurisdiction over issues arising under the Act." *Id.* at 981.

In 1982, the Legislature eliminated the two sanctions arguably related to procurement. *Id.* at 985.

In its next TAA-related opinion, the CLC announced it would ignore that action and void contracts without statutory authority: "Since 1953, the Labor Commissioner has consistently construed the Act and its predecessors to encompass any unlicensed procurement activity, regardless of the procuring entity's overall activity." *Cummins v. The Film Consortium*, Cal. Lab. Comm'n. TAC 5-83 at 7 (1983).[1]

State courts uniformly defer to the Commissioner's interpretation and enforcement.

Marathon exemplifies this judicial abdication of review: "The Labor Commissioner's views are entitled to substantial weight if not clearly erroneous;

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[1] California Labor Commission decisions are published at: https://www.dir.ca.gov/dlse/DLSE-TACs.htm.

accordingly, we likewise conclude the Act extends to individual incidents of procurement." 42 Cal. 4th at 987-88.

Loper Bright Enterprises v. Raimondo eliminated judicial deference to agency statutory interpretations, holding that courts—not agencies—must interpret statutes. These principles apply with particular force under the Due Process Clause when state agencies void private contracts, thereby destroying vested property rights.

Had state courts exercised their independent judgment in interpreting the statute rather than deferring to the Commissioner, they would have found the CLC's interpretation clearly erroneous and, worse, that the enforcement itself is unconstitutional, extrajudicial, and ultra vires. As applied, the Act violates fundamental rights: the right to notice and the right to be paid for one's lawful labors—violations only this Court can remedy.

B. Procedural History

This case raises questions related to *res judicata*. Specifically, the same trial court that never addressed Petitioner's constitutional claims then barred litigation of those claims in a related case by invoking res judicata.

Respondent did not respond to Plaintiffs Diane and Sarah Pardoe's complaint with claims of non-performance, conversion, misappropriation, fraud, or breach. Rather, Respondent petitioned the Labor Commissioner on July 30, 2022, alleging only that Plaintiffs acted unlawfully by doing exactly what she hired Plaintiffs to do: maximize the quality and quantity of her career opportunities.

On August 3, 2022, Respondent filed a motion for stay in the superior court until the administrative agency action was fully adjudicated.

On August 23, 2022, Plaintiffs filed an opposition to the stay motion and an amended complaint adding constitutional claims, including that as the TAA neither bars nor penalizes unlicensed procurement, the enforcement violates the Due Process Clause of the Fourteenth Amendment.

On October 4, 2022, Plaintiffs filed a summary adjudication motion arguing that their constitutional claims barred the enforcement action as the TAA does not prohibit or penalize unlicensed procurement. unlicensed procurement.

Without ruling on the summary motion, the superior court granted the stay on October 20, 2022. The motion was subsequently taken off calendar.

In a February 17, 2023 ruling, the Labor Commissioner voided Plaintiffs' contractual rights for procuring without a license. (App. pp. 22 to 30.)

The matter was then bifurcated: the breach claims remained in limited court, the Labor Commission appeal assigned as an unlimited case to be heard, per state law, as a de novo review.

The cases were ruled related and assigned for adjudication by the Honorable Barbara Meiers on July 7, 2023. California requires constitutional challenges to be tried in an unlimited court. As the Appellate Division later acknowledged, the trial court should have classified both matters as unlimited, a judicial error creating a jurisdictional barrier on appeal.

From the Appellate ruling (App. pp. 11-13) [citations omitted]: "Here, the declaratory relief sought in plaintiffs' amended complaint, as to whether the TAA, on its face and as applied, violated provisions of

the federal Constitution, is not of a type that could be granted in a limited civil case.... As a result, the case should have been reclassified, as a matter of law, as an unlimited civil action. It was not reclassified, however, and continued to be "treated" as a limited civil case, however erroneously.... '[B]ecause our jurisdiction is limited to appeals in limited civil cases... we have no jurisdiction over the appeal from the judgment of dismissal as to the declaratory relief claim."

Between September and October 2023, the trial court denied two ex parte applications of Plaintiffs seeking to present their constitutional claims: on September 20, 2023, an application to file an appellate brief addressing the Commissioner's ruling; and on October 12, 2023, an application to file a summary judgment motion.

The court denied the second application, finding Plaintiffs "had many months and even over a year in which to file any such Summary Judgment/Summary Adjudication motion,' though the case was three months old." See Minute Order, A-21.

On November 1, 2023, Plaintiffs filed a pretrial brief, reasserting the constitutional issues raised in the amended complaint and opposition to stay.

On November 9, 2023, the court held a hearing on the appeal of the Commissioner's ruling. Plaintiffs had stipulated to being unlicensed and procuring employment.

Despite raising constitutional issues as the focus of their pretrial brief—after the court denied the ex parte applications seeking permission to file an appeals brief and summary judgment motion—the court only heard testimony about the procuring, leaving the constitutional issues unaddressed.

On November 15, 2023, Plaintiffs, recognizing they lacked the needed knowledge, experience, and finances to effectively litigate these constitutional questions, assigned all claims arising from the contract, including constitutional claims related to the deprivation of those rights, to Petitioner.

Petitioner has standing as assignee. "History and precedent show that, for centuries, courts have found ways to allow assignees to bring suit." *Sprint Communications Co. v. APCC Services,* 554 U.S. 269, 285 (2008).

Contracts are property rights, and both contracts and associated constitutional claims are assignable. See *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000).

On January 4, 2024, Judge Meiers issued a one-sentence affirmance: *It is hereby adjudged and decreed that the Labor Commission Ruling of February 17, 2023 which is and has been the subject of an appeal on case number 23STCP00683 heard by this Court on November 9, 2023 is affirmed."*

The order makes no mention of the constitutional claims.

On January 25, 2024, Judge Meiers dismissed the underlying breach matter based on *res judicata*. The Appellate Division affirmed the *res judicata* ruling on May 7, 2025.

The Appellate Division (May 30, 2025) and Court of Appeal (July 21, 2025) denied transfer to the higher court.

On July 28, 2025, the California Supreme Court denied review, finding it lacked jurisdiction due to the Court of Appeal's refusal to accept transfer.

REASONS FOR GRANTING PETITION

A. These Important *Res Judicata* Issues Could Affect Generations of Future Litigants

1. The Constitutional Claims Were Never Actually Adjudicated

California Constitution Article III, Section 3.5 expressly prohibits administrative agencies from addressing constitutional challenges. The CLC cannot:

> "(a) ... declare a statute unenforceable or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination such statute is unconstitutional;
>
> "(b) ... declare a statute unconstitutional;
>
> "(c) ... declare a statute unenforceable, or ... refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

The Commissioner's February 17, 2023 ruling makes no mention of Plaintiffs' constitutional claims—nor could it, given this prohibition.

Plaintiffs raised the constitutional issues in their amended complaint, opposition to stay, summary adjudication motion, and pretrial brief. Judge Meiers' January 4, 2024 single-sentence order makes no mention of these federal claims. App. at 20.

This violates California law. Under *Buchwald v. Katz,* 8 Cal. 3d 493, 502 (1972), litigants appealing a TAA determination are "entitled to a complete new hearing—a complete new trial—in superior court that

is in no way a review of the prior proceeding." Any reference to the CLC ruling constitutes error.

By affirming the agency's determination rather than conducting independent proceedings, the trial court violated *Buchwald*. A bare affirmance cannot adjudicate constitutional claims that the CLC lacked authority to address and that the order never mentions.

Res judicata requires actual adjudication. *Allen v. McCurry*, 449 U.S. 90, 101 (1980) recognizes exceptions "where state law did not provide fair procedures for the litigation of constitutional claims, or where a state court failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim." One forum lacked jurisdiction to address the constitutional claims; the other failed to acknowledge them and violated *Buchwald.*

Allen further explains that "collateral estoppel does not apply where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court." *Id.*

"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *Pennoyer v. Neff*, 95 U.S. 714, 732-733 (1878).

This case differs from scenarios where parties failed to raise claims they could have presented. Here, Plaintiffs raised constitutional claims—in their amended complaint, opposition to stay, summary motion, pretrial brief, and ex parte applications. The trial court systematically refused to address them through procedural rulings, ignored them in its January 4, 2024 order, creating a new due process violation, then invoked *res judicata* to bar them permanently in the January 25, 2024 dismissal—a

due process violation neither *Pennoyer nor Allen* contemplated.

The court deprived Plaintiffs of fundamental property rights—the contractual rights to compensation for lawful services—through proceedings that denied any opportunity to litigate the federal constitutional claims.

Property rights receive the same procedural due process protection as liberty interests. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Just as habeas corpus constitutes a "major exception to the doctrine of *res judicata*," *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502, 512 (1982), property deprivations through void proceedings cannot be immunized from review. As *Fay v. Noia*, 372 U.S. 391, 424 (1963), explains, "the familiar principle that *res judicata* is inapplicable in habeas proceedings... is really but an instance of the larger principle that void judgments may be collaterally impeached."

2. *Res Judicata* Should Not Bar Constitutional Challenges Arising From A Court's Own Rulings

Petitioner advances a principle not found in published cases: constitutional claims arising from the litigation process itself—from proceedings or rulings in that litigation—should be exempt from res judicata.

This case presents three compelling examples:

First, only from the ruling that the 'penalty' for Labor Code § 1700 *et seq.* is in the Civil Code—without statutory cross-reference—did the question of unconstitutional vagueness arise.

Second, only from *Marathon*'s declaration that the TAA has no remedy did due process implications of punishment without statutory authority arise.

Third, the one-sentence affirmance ignoring the constitutional claims and violating *Buchwald* created new due process challenges.

To hold otherwise allows courts to immunize their own constitutional violations from review—permitting a court to create the violation and then bar future review, which is exactly what happened here.

3. The Procedural History Itself Violates Due Process

Federal constitutional challenges to the TAA's enforcement were properly raised, ignored, then permanently barred through res judicata by a single trial-level judge.

These procedural violations were compounded by jurisdictional error. The Appellate Division acknowledged the "erroneous" failure to reclassify the case as unlimited (App. at A-11), an error leaving the appellate tribunal without "jurisdiction over the appeal from the judgment of dismissal as to the declaratory relief [constitutional] claim." (App. at A-13, fn. 8).

This classification error prevented any appellate review, eliminating a full and fair opportunity to litigate the federal claims.

The challenges raised but ignored at trial, barred by *res judicata* in subsequent proceedings, and unreviewable on appeal due to a jurisdictional error, transformed *res judicata* from a doctrine of judicial economy into a tool of injustice—the antithesis of American jurisprudence.

This combination of *res judicata* and jurisdictional barriers preventing any state appellate court review provides compelling justification for certiorari. When state procedural rules operate to completely foreclose

federal constitutional review, this Court's intervention becomes necessary.

The principle at stake transcends this case. Barring as-applied challenges that arise during litigation—challenges that could not have been raised earlier because they emerged from the court's own rulings—violates fundamental fairness. When a judicial officer blocks constitutional arguments through procedural rulings, then invokes *res judicata* to bar those same arguments without ever addressing their merits, this cannot be deemed a litigant's procedural default. It is instead a systemic failure that only this Court can remedy.

B. State Courts Have Repeatedly Avoided Adjudicating These Matters

Tens of thousands of representatives are potentially subject to TAA enforcement—including domestic and foreign talent agents who represent clients who live, work, or may someday work in California's entertainment industry—deserve more than "because we say so." Or as here, be ignored.

1. Without Notice Of Sanction, Adjudicators Have No Authority To Assign One

"Notice is required before property interests are disturbed, before assessments are made, before penalties are assessed." *Lambert v. California*, 355 U.S. 225, 228 (1957).

"Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574 (1996).

Without a remedy, unlicensed procurement cannot be a violation of law. Violations of law are "made up of two parts, forbidden conduct and a prescribed penalty. The former without the latter is no crime." 1 Wayne R. LaFave, *Substantive Criminal Law*, § 1.2(d) (1st ed. 1986). If there is no possible violation of law, the Commissioner has no authority to impair an unlicensed procurer's contractual rights.

LaFave addresses criminal law. *BMW of North America* confirms the same "basic protection against judgments without notice afforded by the Due Process Clause is implicated by civil penalties," making it clear that whether civil or criminal, penalties cannot be imposed without statutory authorization.

This Court has established notice is imperative irrespective of intent. In *United States v. Evans*, 333 U.S. 483 (1948), the Court examined the Immigration Act of 1917. The chapter contained statutes barring citizens from either smuggling or harboring undocumented persons, but Congress only codified a remedy for smuggling: five years in prison.

Though Congress clearly intended to ban both smuggling and harboring and had statutory prohibitions for both, the Immigration Act had a statutory sanction only for smuggling.

That lack of sanction led this Court to send the harborer home rather than to prison, holding that prescribing a sanction for an illegal act is "a task outside the bounds of judicial interpretation. It is better for [the legislative branch], and more in accord with its function, to revise the statute than for us to guess at the revision it would make. That task it can do with precision. We could do no more than make speculation law." *Id.* at 495.

Evans involved conduct Congress expressly prohibited—harboring—but failed to assign a penalty to that action. The TAA presents an even stronger case for unconstitutionality: unlike the statute in *Evans,* it lacks both an express prohibition on unlicensed procurement and any authorized penalty, satisfying neither condition *Evans* requires.

2. All Unlicensed Procurement Cases Rely On A Legally Unsupportable Holding

California's High Court has repeatedly held, like *Evans*, there must be a penalty provision to penalize.

In *Wood v. Krepps*, 168 Cal. 382 (1914), a contract was enforced despite the pawnbroker's violation of a business licensing statute that, exactly like the TAA, did not expressly prohibit the enforcement of contracts violating the statute.

As *Wood* explained, "There 'is no law in this state making the business of loaning money on personal property illegal. ... The ordinance does not declare that a contract made by any one in the conduct of the various businesses ... shall, if a license is not obtained, be invalid; nor is there any provision therein indicating in the slightest that this failure was intended to affect in any degree the right of contract." (*Id.* at 387),

"The imposition by statute of a penalty implies a prohibition of the act to which the penalty is attached, and a contract founded upon such act is void." *Smith v. Bach*, 183 Cal. 259, 262 (1920).

As the TAA contains no such penalty imposition, per *Smith,* unlicensed representative/artist contracts must be upheld.

"If the statute does not provide expressly that its violation will deprive the parties of their right to sue

on the contract, and the denial of the relief is wholly out of proportion to the requirements of public policy or appropriate individual punishment, the right to recover will not be denied." *Severance v. Knight-Counihan,* 29 Cal.2d 561, 572 (1947).

Business & Professions Code § 7031 (a) of the State Contractors Act clearly states: "[N]o person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter."

As the TAA has no such statutory restriction, an unlicensed person's right to contract should be upheld. By denying this right, unlicensed representatives lose compensation for services they lawfully performed, while artists are unjustly enriched by retaining the benefit of those services without payment.

These voidings systematically violate the limits California law places on administrative agencies: administrative regulations "must conform to the legislative will if we are to preserve an orderly system of government." *Agricultural Labor Relations Board v. Superior Court*, 16 Cal.3d 392, 419 (1976). "It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are." *Id.*

"An administrative agency cannot by its own regulations create a remedy which the Legislature has withheld." *Dyna-Med Inc. v. Fair Empl. & Housing Comm.,* 43 Cal. 3d 1379, 1389 (1987). *Dyna-Med* provides a directive: "Administrative regulations that alter or amend the statute or enlarge or impair its

scope are void and courts not only may, but it is their obligation to strike down such regulations." *Id.*

Even if there were undeniable proof the Legislature intended to punish unlicensed procurers, the enforcement would be unconstitutional. There must be statutory language which the TAA lacks.

Buchwald v. Superior Court, 254 Cal.App.2d 347 (1967) is the only case that directly holds that those found to have procured without a license lose their contractual rights. All subsequent cases rely on *Buchwald* versus making an independent examination.

As *Marathon* noted, one of the two TAA-procurement cases that have reached California's High Court, "In *Styne v. Stevens,* 26 Cal. 4th 42, 51 (2001), we correctly noted in dicta that 'an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void."

Styne relied on *Waisbren v. Peppercorn Prods.*, 41 Cal. App. 4th 246, 261 (1995) and *Buchwald,* 254 Cal. App. 2d at 351: "In furtherance of the Act's protective aims, an unlicensed person's contract with an artist to provide the services of a talent agency is illegal and void."

Waisbren's authority comes from *Buchwald*: "Since the clear object of the Act is to prevent improper persons from becoming [talent agents] and to regulate such activity for the protection of the public, a contract between an unlicensed [agent] and an artist is void.' *Buchwald* [254 Cal.App. 2d] at 351."

Where does *Buchwald* get its authority to void? Not from a statute—which would be proper but here impossible, since the Act has no voidance provision—but from four State Supreme Court cases. Pointedly, all four of those cases hold exactly the opposite of what *Buchwald* says they hold.

One of those precedents, *Loving & Evans v. Blick,* 33 Cal. 2d 603 (1949), voided an unlicensed contractor's contractual rights by citing California Business and Professions Code § 7031: "No person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action in any court of this State for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract."

Loving denied recovery based on Business and Professions section § 7031 expressly stating unlicensed parties are barred from seeking compensation. The TAA has no such provision.

The other high court holdings *Buchwald* relies upon—*Wood, Smith,* and *Severance*—as shown above, each hold that when, like with the TAA, a licensing scheme has no penalty provision, adjudicators have no right to impair contracts.

The distinction is crystalline: the Contractors' License Law expressly bars unlicensed parties from court actions, making voidance constitutionally valid. What has been inflicted on personal managers, attorneys, sports agents, and others, without an express prohibition and penalty, is not.

Because of *Buchwald,* adjudicators repeatedly find that unlicensed procurers violate the law and lose their rights to contract. While *Buchwald* has been followed for 58 years, and adjudicators mistakenly think they are following *Marathon,* longevity does not make it good law.

Just as two wrongs do not make a right, sixty years of reliance on an unconstitutional enforcement

does not transform it into constitutional action. See *Brown v. Board of Education*, 347 U.S. 483 (1954) (overturning 58 years of precedent); *Loper Bright*, 144 S.Ct. at 2273 (overturning 40 years of precedent).

This perpetuation of constitutional violations is precisely why This perpetuation of constitutional violations is precisely why the petition was filed and this Court's intervention is needed.

3. Review Would Clarify The Contradictions In The State's Enforcement

The enforcement of the Talent Agencies Act departs from a universal principle of federal due process law. In finding the Commissioner has the power to void contracts while simultaneously holding that the TAA has no remedy for illegal procurement, *Marathon,* created an internal contradiction that cannot coexist, violating the notice requirements of *Lambert v. California,* 355 U.S. 225 (1957); *BMW of North America v. Gore,* 517 U.S. 559 (1996); and *United States v. Evans,* 333 U.S. 483 (1948).

The Commissioner's interpretation that Civil Code §§ 1598 and 1599 authorize contract voidance is legally unsupportable and, even if accepted, violates due process. Burying the penalty provision of a Labor Code licensing scheme in the middle of the California Civil Code without cross-reference is unconstitutional on its face and as applied.

The interpretation is legally unsupportable.

First, the statutes codify the doctrine of severability, which presupposes an already-unlawful contract and addresses whether to void only the illegal portions or extinguish the contract ab initio.

> **Section 1598**: "Where a contract has but a single object, and such object is unlawful,

> whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void." *(Enacted 1872.)*
>
> **Section 1599**: "Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." *(Enacted 1872.)*

These general contract law principles, enacted in 1872, describe the legal effect of contracts that are unlawful for some other reason. They do not create illegality, prescribe penalties, or mention licensing. Yet the Commissioner treats these 1872 contract law basics as the penalty provision for a 20th-century licensing statute that California's Supreme Court has held "provides no remedy."

Second, hiding the penalty provisions for California Labor Code § 1700 *et seq.* in a different code section without cross-reference would be the epitome of unconstitutional vagueness. No reasonable person would search for, much less discover, the penalty provisions of a Labor Code licensing scheme in the middle of the Civil Code.

Third, if the severability statutes were penalties, every specific penalty provision in California's licensing schemes would be surplusage. The Legislature would have had no need to write Business and Professions Code § 7031's detailed prohibition if Civil Code §§ 1598 and 1599 already voided all illegal contracts. When the Legislature wants to void contracts, it expresses that intent explicitly in the statute. As the Legislature chose not to enact such a sanction, per *Dyna-Med*, 43 Cal. 3d at 1389, that withholding must be respected.

Fourth, no lower court can assert that the TAA has a penalty when *Marathon*, 42 Cal. 4th at 991, 996, holds the Act is "completely silent" regarding a remedy for unlicensed procurement. That silence should end any thought of §§ 1598 and 1599 being the TAA's penalty provision, they are not: a statute that provides no remedy for conduct does not prohibit that conduct. There is nothing illegal when anyone, regardless of licensing status, procures.

Marathon's severability discussion is general; it never states those principles apply specifically to unlicensed procurement. Having already found the Act provides no remedy for unlicensed procurement, *Marathon* could not logically conclude that these general severability statutes authorize contract voidance for what it found to be lawful conduct.

4. The TAA Has No Language Indicating Anyone But Talent Agents Are Subject To Its Regulations Or That Procurement Is Being Regulated

For a law to be constitutional, there must be clear notice of (1) who is being regulated; (2) what activities are being regulated or prohibited; and (3) the consequence should one wrongly engage in the regulated activity. *See* "Due Process Limitations on Occupational Licensing," Virginia Law Review (Sept. 1973 Notes), Vol. 59, No. 6, at 1097, 1108.

A statute violates due process when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited." *United States v. Williams,* 553 U.S. 285, 304 (2008).

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. ... We insist that laws give the

person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

"The due process clause [of] the Fourteenth Amendment requires a statute be declared void when it is so vague that 'men of common intelligence must guess at its meaning and differ as to its application.'" *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926).

"Living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids.'" *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

Per *Marathon* (at p. 982), all talent representatives—publicists, licensed sports agents, attorneys, personal managers, etc., irrespective of their occupation—who procure or negotiate employment for an artist are subject to "the strictures of the Talent Agencies Act." [2]

Either *Marathon*'s holding is judicial error requiring correction, or, as the Act gives no such statutory notice, this lack of express intention creates a constitutional void.

Marathon cited Labor Code § 1700's inclusion of "manager" in its definition of "person" as evidence

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[2] A California-licensed sports agency abandoned a one-million-dollar commission after the Commissioner preliminarily ruled that procuring a shoe endorsement deal for an NBA player required a California talent agency license, even for licensed sports agents: https://www.prweb.com/releases/greenberg-traurig-s-matt-rosengart-secures-litigation-victory-for-nba-player-jimmy-butler-using-innovative-legal-strategy-815097680.html

personal managers are subject to TAA regulation. Yet readers of ordinary intelligence would not see it that way; "manager" is part of a list clearly referring to organizational types, not occupations: "individual," "firm," "company," "partnership," "association," "society," "corporation," "limited liability company," "agents," and "employees."

If 'manager' in section 1700 means personal manager, why is it in a list with corporate forms? If personal managers are subject to TAA regulation, why is the occupation not defined in § 1700.4(a) along with talent agent? And why does the Act not clarify it is a 'personal manager' being regulated and not a retail, property, baseball, or business manager.

Without the Act expressly stating which, or whether all who procure for artists must be licensed, the vagueness renders *Marathon*'s interpretation constitutionally suspect.

Likewise, 'procurement' merely being one of the three defining activities of a regulated occupation is not constitutionally sufficient to reserve that one activity for licensees. How would a reasonable person know only licensees can procure but anyone can engage in directing and counseling, the other two activities of § 1700.4(a)?

Section 1700.4(a) defines talent agents as engaging in procurement *or* directing *or* counseling. Yet only procurement triggers enforcement against non-licensees. Nothing in the statute indicates that two of the three defining activities are permissible for non-licensees while the third requires a license. The statute provides no basis for distinguishing between these activities; the Commissioner's selective enforcement reflects policy choices the Legislature never made and violates due process.

Without notice that a publicist booking a client on a talk show must either obtain a license or involve a licensee, such rulings are unconstitutional as applied. Without notice that a lawyer renegotiating a contract—one of the defining activities of a lawyer—must involve an agent or get a second license, the statute is unconstitutionally vague as applied.

In *Solis v. Blancarte*, Cal. Lab. Comm'n. TAC-27089 (2013), an attorney violated the Act when he negotiated the extension of a contract. The Commissioner ruled (at p. 8, ln. 20 – p. 9, ln. 2) "that the functional scope of the TAA admits to no exceptions and encompasses the activities of respondent, even though he is an attorney." In saying (at p. 8, lns. 3-4), "The provisions of the TAA do not contain or recognize any such exemption," the Commissioner made it clear the Act must be interpreted as written.

If the Commissioner did not create provisions not contained in the licensing scheme, there would be no unlicensed procurement controversies.

5. The Commissioner Knows The Enforcement Is Unconstitutional

In 1982, the Legislature repealed the sanctions for violations related to unlicensed procuring and enlisted a group of artists, personal managers, and talent agents to create the California Entertainment Commission ("CEC").

Its mission: "to evaluate the Act and 'recommend to the Legislature a model bill." *Marathon* at 985.

The Commissioner both chaired the CEC and authored its 1985 official report. In writing as to whether the State should have any sanctions for unlicensed procuring, the Commissioner noted, "It is

the majority view of the Commission that the industry would be best served without the imposition of civil or criminal sanctions for violations of the Act."[3]

In explaining why, the Commissioner wrote of the "inherent inequity—and some question of constitutional due process—in subjecting one to criminal sanctions in violation of a law which is so unclear and ambiguous as to leave reasonable persons in doubt about the meaning of the language or whether a violation has occurred.

"'Procure employment' is just such a phrase ... [and it] has left the personal manager uncertain and highly apprehensive about the permissible parameters of their daily activity."[4]

"The Legislature adopted [the Commission's] recommendations," and the Act remained without any remedy for unlicensed procuring. *Marathon* at 985.

The Commissioner's invocation of *Grayned* shows he understood the Act, if applied, should be voided for vagueness. And his being on the CEC makes clear that in 1982, he knew the TAA was remedy-free with regard to unlicensed procurement.

Yet the CLC continued to void unlicensed procurer's contractual rights. The Commissioner was clear as to why the removal of consequences would be ignored: "Since 1953, the Labor Commissioner has consistently construed the Act and its predecessors to encompass any unlicensed procurement activity, regardless of the procuring entity's overall activity." *Cummins v. The Film Consortium,* CA Lab. Comm'n. TAC 5-83, at 7.

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[3] Report of the California Entertainment Commission, at 15. https://www.dir.ca.gov/dlse/TAC/California%20Entertainment%20Commission%20Report%20-%201985.pdf

[4] *Id.*, pp. 15-16.

Cham v. Spencer / Cowlings, CA Lab. Comm'n. TAC 2005-19 (July 27, 2007), notes how the Court of Appeal in *Marathon Entertainment v. Blasi*, 140 Cal.App.4th 1001 (2006), "held that the doctrine of severability could apply to sever the illegal from the legal elements of an agreement between an artist and a manager but was depublished after high court review was granted." *Cham* at 17.

The Commissioner refused to consider severability in *Cham,* explaining that "our long standing position, which is supported by case law and legislative history, is that a contract under which an unlicensed party procures ... is void *ab initio* and the party procuring the employment is barred from recovering payments for any activities under the contract, including activities for which an agency license is not required, still stands." (*Id.*, lns. 9-14).

As this brief elucidates, there is no legislative history aligning with the Commissioner's position.

Worse, *Marathon v. Blasi,* 140 Cal.App.4th 1001, 1010 (2006) cites how the aforementioned *Wood v. Krepps* court "enforced a promissory note despite the plaintiff pawnbroker's violation of a municipal business licensing statute that, like the Act, did not expressly prohibit the enforcement of contracts made in violation of the statute."

While able to ignore the holding in *Marathon*, that decision was a reminder that following *Wood* was an obligation—a reminder the Commissioner ignored.

As the CLC is copied on every brief of every appeal from the office, the Commissioner knows the Act is devoid of either a prohibition or penalty statute for unlicensed procurement, that *Buchwald* was wrongly decided, and is aware of *United States v. Evans, Dyna-*

Med, supra, and all the other holdings pointing out the unconscionable enforcement.

California Labor Code § 1700.29 empowers the CLC to adopt "such rules and regulations as are reasonably necessary for the purpose of enforcing and administering [the Act] and as are not inconsistent with this chapter." While the Commissioner refuses to use that power to right the wrong, Petitioner hopes this Court will use its.

6. If All Procurers For Artists Need A Talent Agency License, All Other Representation Vocations Are Illegitimate

Personal managers procure by definition. It is impossible for personal managers to fulfill their responsibilities without procuring. *Marathon* acknowledges this reality in its introductory remarks (at 979), noting how the perceived division of labor where only agents procure "exists in theory only."

The Legislature recognized this distinction when it enacted the Artists' Managers Act ("AMA") in 1943. At the time, the General Employment Agencies Act already subjected 'theatrical employment agents'[5] and 'motion picture agents'[6] to its regulation.

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[5] Theatrical employment agencies were defined as those "procuring or offering, promising or attempting to provide engagements for circus, vaudeville, theatrical or other entertainments..." See Report of the California Entertainment Commission at 6. https://www.dir.ca.gov/dlse/TAC/California%20Entertainment%20Commission%20Report%20-%201985.pdf

[6] In 1937, the Legislature "established another category of employment agency, namely, the motion picture employment agency" (*id.*), which was defined as those "procuring or offering, promising or attempting to provide engagements for or employment in motion pictures." *Id.*

While the conventional wisdom is that the AMA was simply the antecedent licensing scheme for the regulation of talent agents (*see Marathon* at pp. 978-979), it is not so. The AMA explicitly defined an artists' manager (synonymous with personal manager) as one "who engages in the occupation of advising, counseling, or directing artists in the development or advancement of their professional careers; and who, as an element of such occupation, endeavors to find opportunities of employment for the artists to whom the services above described are rendered." California Labor Code § 1650.

The AMA did not bar unlicensed persons from procuring for artists, nor did it have any sanctions should an unlicensed person procure.[7]

Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972), struck down an ordinance because it made activities "which by modern standards [] are normally innocent," unlawful. Under *Papachristou*, an ordinance is void for vagueness if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute[], and because it encourages arbitrary and erratic arrests and convictions."

The TAA's current enforcement imposes the ultimate legal Catch-22, rendering personal management a structurally illegitimate profession. The Legislature recognized procurement is an essential element of management. The Commissioner's interpretation makes it impossible to lawfully practice the profession, which incorporates procuring employment for artists.

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[7] The AMA was replaced with the TAA in 1978 without the Legislature creating a prohibition on unlicensed procurement.

Artists function as Chairman of the Board and the product being marketed. Publicists serve as vice-presidents of public relations, attorneys the vp's of business affairs, agents the vp's of sales. A successful artist may employ multiple agents: for acting, writing, directing, voiceovers, endorsements etc.—with the personal manager the chief executive officer supervising the other professionals.

Personal managers supervise all professional aspects of their clients' careers, providing guidance, creating marketing strategies, and recruiting appropriate team members. Whether working alone or overseeing a team, personal managers cannot fulfill their responsibilities while remaining isolated from their clients' revenue-generating activities.

The arbitrary nature of the Commissioner's enforcement is exemplified by contradictory rulings issued just months apart: in *Marathon v. Blasi,* Cal. Lab. Comm. TAC 15-03 (2004), a manager violated the Act when his client's publicist secured talk show bookings, while in *Gittleman v. Karolat*, Cal. Lab. Comm. TAC 24-02, p. 10, ln. 19 – p. 11, ln. 3 (2004), the CLC ruled promotional appearances were 'not employment of an artistic nature,' thus permissible.

Under current enforcement, managers can only execute their job responsibilities after obtaining a talent agency license, thus ceasing to be a personal manager and becoming a talent agent.[8]

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[8] Becoming an agent would be more than a title change; it would impact the ability to be paid. Each Artists Guild limits the total compensation of a talent agent to 10%. Most successful artists have agents, managers, lawyers, and publicists. If the agent gets their standard 10%, none of the other representatives can be compensated at all without putting their client at risk of violating their Guild bylaws.

This constitutional defect spawns a paradox: TAA violations typically arise not from representative failure or fraud, but because artists obtained work and subsequently use litigation to avoid compensating their representatives for helping attain that objective.

The American system promises judicial relief for those who are wronged. With the TAA, when an attorney, personal manager, licensed sports agent or other non-talent agency representative seeks redress for a client's breach, they become the alleged villains.

Courts must recognize, as the Legislature did in 1943 when it created the AMA, that management and agenting are complementary but distinct occupations. And if laws actually barred managerial procurement, the profession would be effectively forbidden.

7. The TAA Is Enforced *As If* It Bars Unlicensed Procurement; As It Does Not, The Commissioner's Interpretation Is Legally Unsupportable

The TAA as applied relies on assumption; the equivalent of the transitive property: if a = b and b = c, then a = c. Law relies on explicitly expressed statutory authorization, clear notice, defined element, and proven facts, not inference or suppositions.

While (a) procuring is a defining activity of a talent agent, and (b) one must obtain a license to lawfully engage in the occupation of a talent agent (§ 1700.5), those two elements alone do not axiomatically mean one needs a license to procure. Law relies on explicit, expressed statutory language, clear notice, defined elements, and proven facts, not assumptions or suppositions.

Comparing the TAA to California's other licensing schemes cements this precept: there must be statutory

notice, which the TAA lacks, for any activity to become reserved only for licensees.

An activity is not regulated simply by its presence in the definition of a regulated profession. It becomes regulated only when the Legislature expressly reserves that activity for licensees or expressly bars unlicensed persons from engaging in it.

Sometimes the Legislature requires additional accreditation, beyond the basic license (see, e.g., Business and Professions Code §§ 7028–7029 of the State Contractors Act).

The rules of statutory construction require interpreting the TAA consistently with other state licensing schemes. California's licensing schemes follow three models:

Model 1: All defined activities of a regulated profession are expressly reserved by statute to licensees. *See, e.g.*, the State Contractors Act, Business and Professions Code § 7000 *et seq.*

Model 2: A few, like the State Accountancy Act, reserve a percentage of the regulated profession's defining activities for licensees; *See* Business and Professions Code § 5051 (a)-(i).

Model 3: The state only statutorily reserves the professional title to licensees—anyone can engage in the defining activities. The title is reserved to identify those who have met specialized training requirements. *See*, i.e., the Landscape Architects Act (Business and Professions Code § 5615, maintaining and beautifying outdoor areas), the Geologists Act (Business and Professions Code §§ 7802.1/7803, examining Earth materials).

The TAA contains no express reservation language and thus falls into this third model.

The canon of expressio unius est exclusio alterius applies: when a statute specifies certain things, it excludes others. When the Legislature wants to reserve activities to licensees, it says so explicitly, as demonstrated by California's other licensing schemes.

Business and Professions Code § 2903(a) of the Psychologists Act defines the practice of psychology as, "rendering or offering to render... any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships..."

Yet coaches, teachers, politicians, advertisers, clergy, and others all employ psychological principles without fear of licensing violations. The TAA's language mirrors the Psychologists Act's language and should be similarly interpreted.

As the Nursing Act states in Business and Professions § 2861, non-licensees may perform all activities of a licensee, provided "that such person shall not in any way assume to practice as a licensed vocational nurse."

The TAA defines the activities that characterize talent agents (procure, direct, counsel) but nowhere states 'only licensed talent agents may procure.' Without express language reserving procurement to licensees—as exists in other schemes—the CLC lacks authority to enforce such exclusivity. The enforcement usurps the legislative function, violating separation of powers principles established in *United States v. Evans*, 333 U.S. 483, and *Dyna-Med v. Fair Employment & Housing Commission*, 43 Cal. 3d 1379.

C. This Matter Exemplifies Why *Loper Bright* Rejected Agency Deference

Marathon notes (at 975) how the supposed division between agents procuring and managers who "coordinate everything else," ... "largely exists only in theory. The reality is not nearly so neat."

This petition explains why: personal managers cannot fulfill their responsibilities without getting involved in the procurement process. It is only the interpretation of the Labor Commissioner that penalizes something impossible to avoid, leaving to artists the choice of whether they wish to pay for the benefits of another's labor, not their responsibility.

Marathon exemplifies this problem: "The Labor Commissioner's views are entitled to substantial weight if not clearly erroneous; accordingly, we likewise conclude the Act extends to individual incidents of procurement." 42 Cal. 4th at 987-88.

While addressing federal administrative law, *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), "reflects principles of separation of powers that apply with constitutional force when, as here, agencies exceed statutory boundaries. This Court rejected the 'judicial impulse to abdicate the responsibility' of statutory interpretation. *Id.* at 2273. The problem this Court identified—agencies filling statutory gaps to expand their own authority—has a constitutional dimension when it results in deprivation of property without statutory authorization.

Here, California courts have deferred to the Commissioner's interpretation despite *Marathon*'s explicit holding that the TAA "provides no remedy" for unlicensed procurement. This deference has allowed

an agency to deprive parties of property rights without the statutory authority *United States v. Evans* and basic due process principles require. While *Loper Bright* does not govern state administrative law, its reasoning highlights why unchecked agency action that exceeds legislative authority violates fundamental principles: it usurps the legislative function and denies fair notice of prohibited conduct and penalties."

The problem is not statutory ambiguity, there is no statutory interpretation issue. The problem is the actions of an administrative agency ignoring the Legislature's edicts and ignoring the lack of statutory authority—enforcing penalties the Legislature never enacted.

This is why TAA enforcement is a judicial, not legislative, problem. The Legislature declined, multiple times over multiple decades, to enact related prohibitions or penalties.

Petitioner is asking this Court to require enforcement of the statute as written and as the Legislature intended rather than deferring to the Commissioner's unconstitutional gap-filling.

This defect reduces to three principles:

> (1) As held in *United States v. Evans,* even explicit statutory prohibitions cannot be enforced without legislatively prescribed remedies.
>
> (2) *Marathon Entertainment v. Blasi* held the TAA provides no remedy—meaning it has neither an express prohibition nor a prescribed penalty.
>
> (3) Yet the Commissioner continues voiding contracts, depriving parties of

> their rights to the due process and economic liberty that due process requires.

California courts' deference to the CLC's ultra vires interpretation—the "judicial impulse to abdicate" that *Loper Bright* identified, (144 S. Ct. at 2273)—has allowed systematic deprivation of property rights without statutory authorization. Only this Court can remedy these constitutional violations.

D. If Not Now, When?

This enforcement affects every entertainment lawyer, personal manager, publicist, and producer living in California, and every talent representative everywhere else in the world with clients who work or may someday work in California.

The complexity and cost of challenging TAA enforcement create a systematic barrier to review. Cases involving substantial amounts settle rather than litigate these issues—representatives accept buyouts to avoid further expense. Cases involving smaller amounts cannot support the multidisciplinary legal team required to reach this Court.

Challenging TAA enforcement requires specialized legal analysis across multiple domains: an integration of administrative law, constitutional law, statutory construction, legislative history, and employment law—a multidisciplinary effort that exceeds the resources available in most TAA cases, most ironically, because of the loss of income which these matters are based on.

The procedural barriers documented here demonstrate how difficult it is for these issues to reach appellate review, much less this Court.

Denial means constitutional defects may persist indefinitely—not because they lack merit, but because

of the economic and procedural barriers preventing cases from reaching this Court.

In a July 14, 2025, U.S. Department of Education ruling (*McMahon v. New York*, Docket No. 24A1203), Justice Sotomayor (joined by Justices Kagan and Jackson) made this point: when an agency "publicly announces its intent to break the law, and executes on that promise, it is the Judiciary's duty to check that lawlessness, not expedite it."

As detailed above, the Commissioner has repeatedly, openly, broken the law by engaging in ultra vires activities and—alternately through deference, avoidance, and precedent—state courts have expedited rather than checked this lawlessness.

The result: industry estimates suggest hundreds of millions of dollars in otherwise deserved compensation have been lost due to the CLC's ultra vires enforcement. If not now, when?

CONCLUSION

With these understandings, the petition for a writ of certiorari should be granted.

Most Respectfully,

Rick Siegel