APP. NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DANIEL GONZALEZ,

Petitioner,

v.

DEPARTMENT (BUREAU) OF REAL ESTATE, JEFFREY DAVI, TRUDY SUGHRUE, WAYNE BELL, KYLE JONES, TRICIA SOMMERS, WILLIAM MORAN, JOHN VAN DRIEL, ET AL.,

Respondents.

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE A PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Daniel E. Gonzalez ("Gonzalez") respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 60 days up to and including October 27, 2025. The Court of Appeals issued its opinion on May 27, 2025. (Appendix ("App.") A) and extended time for panel and en banc rehearing on June 13, 2025 (App. B). Absent an extension of time, the Petition for Writ of Certiorari would be due on August 27, 2025. Petitioners are filing this Application more than ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. 1254(1). Respondents take no position on the extension request.

Core Constitutional Conflicts

This matter implicates important issues of fundamental fairness grounded in the Due Process Clause, Equal Protection of the Law Clause, and Administrative Procedure Act, conflicting with Federal Rule of Civil Procedure 37 decided by the courts below. In

2006, this Court concluded that Arkansas violated the Due Process Clause by failing to meet requirements for sufficient minimal notice before taking real property, did not take additional steps, and the owner's failure to register a current address did not excuse the state from its obligation to meet lawful service. *Jones v. Flowers (Jones v. Flowers)*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006), The Ninth Circuit applied *Jones v. Flowers* to reverse the FAA's suspension of a pilot's license because its certified mailing was returned "undelivered" and "unclaimed." *Yi Tu v. Nat'l Transp. Safety Bd.* (*Yi Tu*), 470 F.3d 941 (9th Cir . 2006), ("Actually, anyone who had read *Jones v. Flowers*, ___ U.S. ___, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006), could decide this case without more.").

Gonzalez challenges the unlawful taking of his real estate broker license after repeated prosecutorial misconduct, misleading California and lower federal courts to ignore *Jones v. Flowers*. During the past fifteen years, the California Department of Real Estate commissioner (DRE commissioner) and the California Attorney General's Office have refused to disclose all administrative records that prove the same *Jones v. Flowers* errors.

See dissent of JJ. Ginsburg, Breyer, Sotomayor, and Kagan, *Connick v. Thompson*, 131 S. Ct. 1350, 179 L. Ed.2d 417, 563 U.S. 51 (2011), 104, and n. 20, ("[W]illiams did not believe *Brady* required disclosure of impeachment evidence[e]") Still, the specific official records from the business manager sent in November 2010 are undisclosed to establish that the DRE commissioner has always known that an accusation and revocation failed to meet the minimal sufficient notice required. The state agency did nothing upon knowing, despite having alternative information to provide Gonzalez with proper notice. The state courts ruled that Gonzalez's petitioning was untimely, and the federal courts did worse, dismissing his action while not recognizing *Jones v. Flowers* or the Administrative Procedure Act requirements. Certiorari should be granted to reinforce the jurisdictional authority established in *Jones v. Flowers*, preventing state actors from using bad faith pretexts to defend against challenges to unlawful license takings that violate the Due Process Clause. Without this Court's intervention to ensure fundamental fairness, state and federal courts, particularly in California, may improperly refuse to follow

the Administrative Procedure Act requirements to order disclosure of all official records before determining final judgments.

Background

The California Administrative Procedure Act (APA), modeled after the federal Administrative Procedure Act enacted in 1946, establishes rulemaking procedures and standards for state agencies in California designed to ensure that regulations are clear, necessary, and legally valid. The APA is found in the California Government Code, section 11340 et seq. The Department of Real Estate is one of 239 regulatory agencies operating under the APA. California requires all licensed real estate brokers that practice in the State to register a mailing address or place of business with the California Department of Real Estate.

In 2005, Gonzalez was licensed as a real estate broker by the Department of Real Estate after he met the State's requirements. Gonzalez worked in real estate with no civil litigation or disciplinary complaint from 2005 to 2008. In 2009, Gonzalez was injured in an auto accident that left him permanently disabled.

Several months later, a buyer breached a real estate sale Gonzalez had brokered, then she filed two concurrent complaints against Gonzalez for agent fraud and misconduct with the Department of Real Estate and a civil action in the California courts. In June 2010, a trial de novo civil judgment was entered against the buyer that determined Gonzalez had no liability or fault in the buyer's failed real estate transaction. The civil judgment was served on the Department of Real Estate that same day, but a department investigator told Gonzalez, "I don't care what the judge said."

When the civil judgment became final in September 2010, Gonzalez cancelled the business center mailbox address listed with the Department of Real Estate. Due to physical limitations, he worked remotely from his home address while receiving specialized medical care at the VA medical hospital.

In October 2010, the Department of Real Estate sent by certified mail an accusation to Gonzalez's cancelled address regarding the identical buyer, claims, and transaction as the civil judgment fully adjudicated. On November 22, 2010, the business

center manager returned the certified mail of the accusation to the Department of Real Estate, "undelivered" and "unclaimed" per a declaration provided to the California courts in April 2011.

On December 6, 2010, the DRE commissioner revoked Gonzalez's license, and despite knowing the listed business center address was incorrect, mailed the revocation by certified mail to the same business center address on December 18, 2010. According to online U.S. Postal Service records Gonzalez produced to the California courts, on February 28, 2011, the certified mail of the revocation was also returned to the DRE commissioner "undelivered" and "unclaimed." Gonzalez never received any of the certified mailings or regular mailings.

The Attorney General's Office and the Department of Real Estate strongly opposed Gonzalez getting any relief from default or a meaningful hearing, arguing that his petition was untimely. The Attorney General's Office selectively produced a limited official record, specifically withholding from the California courts any official document of returned certified mail. (Sacramento Superior Court, Gonzalez v. Davi, 2011-80000794, May 30, 2011). In

February 2014, a California panel ruled that Gonzalez's mandamus petition was untimely and he was not entitled to res judicata based on his no liability civil judgment. California Third District Court of Appeals, Gonzalez v. Bell, C0770099, February 14, 2014). Thus, the complete administrative record was never produced in the California court proceedings, as no California court ever ordered the Department of Real Estate to disclose its complete administrative record.

In a parallel California court proceeding, in April 2015, the Department of Real Estate responded to a subpoena for the administrative record involving the license revocation of Gonzalez. Again, the Department of Real Estate withheld from disclosure the specific documents proving that the certified mail violated the *Jones v. Flowers* minimal sufficient notice requirements.

Gonzalez then filed a district court action, challenging the unlawful taking (Second Claim) of his real estate license under 42 U.S.C. § 1983, based on new California court discovery that the Department of Real Estate had falsified records and used perjury to revoke his license. (Eastern District of California, Gonzalez v. Davi,

Bell, et al., 2:15-cv-02448-GEB-GGH, April 1, 2016). At paragraph 92 of his first amended complaint, Gonzalez contends the Department of Real Estate acted unconstitutionally by conflicting with the holdings in *Jones v. Flowers*, 547 U.S. 220 (2006), knowing where to serve him at his home address in its possession, violating due process rights. (Id., at para. 92). On February 2, 2017, the deputy attorney general told the district court that all the named defendants are involved in the investigation, initiation, and adjudication of Gonzalez's license revocation. (Transcript, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-GEB-GGH, February 2, 2017, *18). The original magistrate judge ordered that the Attorney General's Office *must* file declarations from each defendant addressing immunity with the whole official record. "Then I have the entire record before me, and your motions to dismiss." (Id., at *21). On February 6, 2017, the district court denied the motion to dismiss, ordering:

> "[d]efendants must rely on the allegations of the FAC to make their immunity arguments. However, plaintiff is under no obligations to ensure that the FAC contains sufficient, specific averments such that defendants can have a potential defense totally adjudicated on a motion to dismiss."

(Dt. Ct., Dkt. 43, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-GEB-GGH, February 6, 2017, *9).

Between February 2017 and January 2019, the Attorney General's Office never filed a single defendant declaration or the "entire record" as ordered by the district court. Instead, after a new magistrate judge and district judge were reassigned to the case, the Attorney General's Office demanded extra-record discovery from Gonzalez. However, Gonzalez clearly presented to the district court that his challenges are grounded on the Administrative Procedure Act and the due process requirement of minimal sufficient notice in accord with *Jones v. Flowers*. (Dt. Ct., Dkt. 134 and 138, Status Report and Discovery Dispute Letter, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-TLN-KJN, February 14, 2019, at *4, and March 22, 2019, at *2, respectively).

Ignoring that Gonzalez has had PTSD since the 2010 license revocation, and acting against the standing order dated February 6, 2017, from March 2019, the reassigned magistrate judge compelled Gonzalez to submit to extra-record discovery. Despite responding willingly to over 100 written discovery requests and producing over

3000 pages of discovery to the Attorney General's Office, they demanded that Gonzalez provide oral testimony. Gonzalez was denied a protective order limiting the deposition as the Attorney General's Office still has never complied with filing any defendant declarations or the entire record in compliance with the order from February 6, 2017.

Due to COVID-19, loss of Gonzalez's home, recurring PTSD, and need for eye surgeries, the depositions continued into 2020. Gonzalez had relocated some 100 miles away from the district court. Just before an eye surgery in 2020, Gonzalez lodged with the district court his copy of the administrative records obtained from the California courts, though they are incomplete and unofficial. (Dt. Ct., Dkt. 195, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-TLN-KJN, August 3, 2020).) In response, the Attorney General's Office filed a motion for terminating sanctions, which the district court continued for hearing on January 28, 2021. On November 9, 2020, prior to a second eye surgery, Gonzalez appeared and gave testimony on the defective notice, damages, and the unconstitutional taking of his license. (Dt.

Ct., Dkt. 209, Transcript, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-TLN-KJN, November 9, 2020).

The Attorney General's Office made an effort to arrange a further deposition mutually. Instead, they unilaterally set a deposition on the same day Gonzalez's opposition was due on the terminating sanction motion. Without any written agreement or consent with Gonzalez, the Attorney General's Office emailed a notice just three days before the deposition. The day before the deposition, Gonzalez submitted a motion for a protective order due to surprise, seeking an attorney, incomplete vision recovery, and the unreasonable deposition notice. Gonzalez complied with the order to appear at the deposition, testified that he presented the administrative evidence to show the government defendants had violated his due process rights fraudulently, and asserted his Fifth Amendment privilege against self-incrimination as the Attorney General's Office had not complied with the order requiring declarations and the entire record. (Dt. Ct., Dkt. 221, Eastern District of California, Gonzalez v. Davi, Bell, et al., 2:15-cv-02448-TLN-KJN, March 10, 2021).

The reassigned magistrate judge vacated the hearing on the terminating sanctions, ordered the deposition transcript by the Attorney General's Office, found that Gonzalez acted "recalcitrant," dismissed the request for a protective order hearing, and recommended the harshest sanction of dismissal—not stay—of the case. Gonzalez filed objections to the dismissal, citing his testimony and the fact that the Attorney General's Office never complied with filing the defendants' declarations with the entire official record. The district court adopted and dismissed the case, never having ordered or reviewed the official record challenging the unlawful taking of Gonzalez's license by the Department of Real Estate commissioner.

Gonzalez appealed and raised issues on the Due Process Clause, Equal Protection, Administrative Procedure Act, and defective deposition notice. He further disputed that his conduct did not warrant dismissal, but stayed until the official record and declarations were filed and reviewed by the district court. His incomplete state court copy of the administrative and mandamus

record contained all the evidence Gonzalez had to prove that the defendants violated *Jones v. Flowers.*

The panel summarily affirmed the terminating sanction in two pages. The panel stated that the constitutional and Administrative Procedure Act issues are "irrelevant." The panel did not address that the Attorney General's Office violated the order requiring them to file defendant's declarations and the entire record before seeking dismissal. The panel permitted the Attorney General's Office to submit a Supplemental Excerpt of Record that directly violated Fed. Appellate Rules 10 and 30. This violation occurred because the Attorney General's Office selectively omitted the actual pleading of Gonzalez's citations in his brief, including hearing transcripts, eleven documents, and over 2000 pages of the state court record lodged in the district court. Gonzalez motioned to correct the record and provide the missing records, but the panel held that the corrections were denied as moot. The panel further found that the three-day deposition notice, without any agreement, was "reasonable" when no district court in California has ever held that to be reasonable or acceptable.

Reasons for Granting an Extension of Time

The time to file a Petition for a Writ of Certiorari should be extended for 60 days for the following reasons:

1. This case presents issues of importance to licensees nationwide who must have minimal sufficient notice to meet the Due Process Clause and Administrative Procedure Act requirements established by *Jones v. Flowers* and its progeny.
2. The case presents a conflict with *Societe Internationale v. Rogers*, 357 U.S. 197 (1958), -- where a plaintiffs claim had been dismissed for failure to comply with a trial court's order -- the Court read the "property" component of the Fifth Amendment's Due Process Clause to impose "constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause." *Id.* at 357 U.S. 209.
3. This case presents issues of importance to appellate review nationwide. Without consequence, the panel summarily

permitted the California Attorney General's Office to use Rule 37 while violating a district court order to file an official record, service of process rules, and appellate rules.

4. A significant prospect exists that this Court will grant certiorari and reverse the Ninth Circuit. The panel's ruling directly conflicts with *Camp v. Pitts*, 411 U.S. 138, 142 (1973), but decisions in precedent cases in the Ninth Circuit preclude extra-record discovery in other Courts of Appeals. See *In re United States*, 875 F.3d 1200, 1205 (9th Cir. 2017), vacated, 138 S. Ct. 443, 444–45 (2017) (mem.) (vacating an opinion that upheld a district court's grant of extra-record discovery in an APA case); see also, *Chiayu Chang v. U.S. Citizenship & Immigr. Servs*, 254 F. Supp. 3d 160, 161–62 (D.D.C. 2017) (recognizing other courts' findings that "where a plaintiff's constitutional claims fundamentally overlap with their other APA claims, discovery is neither needed nor appropriate")

5. An extension will not cause prejudice to Respondents, who have concealed incriminating administrative records

proving a clear violation of the Due Process Clause since November 25, 2010.

Conclusion

For the foregoing reasons, Petitioner respectfully requests that the time to file the Petition for a Writ of Certiorari in this matter be extended 60 days, up to and including October 27, 2025.

I declare under the penalty of perjury governed by the laws of the State of California that the foregoing is true and correct. Executed on August 16, 2025.

Respectfully submitted.

By: _____

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Telephone (916) 247-6886
Petitioner, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2025, I sent a true and correct copy of the foregoing to the Office of the Attorney General, 1300 "I" Street, Sacramento, CA 95814, by carrier.

By: _____
DANIEL E. GONZALEZ

APPENDIX "A"

NOT FOR PUBLICATION

FILED

MAY 27 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL GONZALEZ,

Plaintiff-Appellant,

v.

DEPARTMENT (BUREAU) OF REAL ESTATE, A California State Agency; et al.,

Defendants-Appellees,

and

JPMORGAN CHASE BANK, N.A., as successor by merger to Chase Home Finance, LLC; et al.,

Defendants.

Nos. 21-15696
22-15523

D.C. No. 2:15-cv-02448-TLN-KJN

MEMORANDUM*

Appeals from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted May 21, 2025**

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes these cases are suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Daniel Gonzalez appeals pro se from the district court's judgment dismissing as a discovery sanction his action alleging federal and state law claims arising from the 2010 revocation of his real estate license. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion in dismissing Gonzalez's action because Gonzalez failed to comply with the district's orders to appear for and participate in his deposition, and the district court found that his behavior was willful and in bad faith. *See* Fed. R. Civ. P. 37(b)(2); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1233 (9th Cir. 2006) ("Rule 37 sanctions, including dismissal, may be imposed where the violation is due to willfulness, bad faith, or fault of the party." (citation, emphasis, and internal quotation marks omitted)); *Rio Props., Inc.*, 284 F.3d at 1022 (discussing five factors courts must weigh in determining whether to dismiss a case for failure to comply with a court order).

The district court did not abuse its discretion in denying Gonzalez's post-judgment motion because Gonzalez failed to demonstrate any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration under Federal Rules of Civil Procedure 59(e) and 60(b)).

We do not consider Gonzalez's remaining contentions, including his arguments regarding the merits of his claims, because they are outside the scope of these appeals.

Gonzalez's motions for an extension of time to file the reply brief are denied.

All other pending motions are denied as moot.

AFFIRMED.

APPENDIX "B"

FILED

JUN 13 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL GONZALEZ,

Plaintiff-Appellant,

v.

DEPARTMENT (BUREAU) OF REAL ESTATE, A California State Agency; et al.,

Defendants-Appellees,

and

JPMORGAN CHASE BANK, N.A., as successor by merger to Chase Home Finance, LLC; et al.,

Defendants.

Nos. 21-15696
22-15523

D.C. No. 2:15-cv-02448-TLN-KJN
Eastern District of California,
Sacramento

ORDER

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

The motion (Docket Entry No. 119) for an extension of time to file a petition for rehearing is granted. The petition for rehearing is due June 24, 2025.