No. _____

In the Supreme Court of the United States

MIKE SINGH SETHI,

Petitioner,

v.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Anthony C. Gunst, IV, Esq.
Counsel of Record
Salma A. Attia
NISSENBAUM LAW GROUP, LLC
2400 Morris Avenue, Suite 301
Union, NJ 07083
(908) 686-8000
ag@gdnlaw.com
sattia@gdnlaw.com

September 1, 2026 *Counsel for Petitioner*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether the Fifth Amendment and Federal Rule of Appellate Procedure 46 permit a court of appeals to suspend an attorney based materially on alleged violations that were not identified in a supplemental disciplinary charge and the attorney was never afforded an opportunity to defend against them as charges.

2. Whether Federal Rule of Appellate Procedure 47(b) permits a court of appeals to suspend an attorney for violating a specific requirement—announced in the final disciplinary decision—that an attorney correcting inaccurate citations must disclose the citations' technological source, where that requirement was not previously contained in federal law, the Federal Rules of Appellate Procedure, the circuit's local rules, or an actual-notice order in the case.

PARTIES TO THE PROCEEDINGS

This is an attorney discipline matter stemming from an immigration appeal in the Ninth Circuit: *Malkeet Lnu, Sunita Rani Lnu, and Jaivin Lohan,* Petitioners *v. Todd Blanche, Acting Attorney General,* Respondent. The immigrant petitioners had sought review of a Board of Immigration Appeals decision denying asylum, withholding of removal, and protection under the Convention Against Torture. In the course of the appeal, the Ninth Circuit imposed a disciplinary sanction against their attorneys, Mike Singh Sethi and William Rounds.

Petitioner

- Mike Singh Sethi

Respondent

- U.S. Court of Appeals for the Ninth Circuit

Respondent and Co-Counsel in the Ninth Circuit

- William Rounds

Respondents* and Parties in the Appeals Court

Immigrant Petitioners (represented by Mr. Sethi) below

- Malkeet Lnu
- Sunita Rani Lnu
- Jaivin Lohan

Respondent in the Ninth Circuit

- Todd Blanche, Acting U.S. Attorney General

* Under Sup. Ct. R. 12.6, "All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court."

LIST OF PROCEEDINGS

Direct Proceedings below

United States Court of Appeals for the Ninth Circuit

No. 24-4790

Lnu v. Blanche
Memorandum disposition of immigration matter
November 4, 2025

Attorney Discipline Order: June 3, 2026
reported at 177 F.4th 1014

Collateral Reciprocal Disciplinary Proceeding

Board of Immigration Appeals

Disciplinary Case No. D2026-0242

In the Matter of Mike Singh Sethi

This proceeding was commenced after the Ninth Circuit's June 3, 2026 disciplinary order and is predicated on that order. Petitioner has opposed reciprocal suspension and requested an evidentiary hearing. The administrative matter remains collateral to, but directly related to, the disciplinary order for which review is sought here.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mike Singh Sethi respectfully petitions for a writ of certiorari to review the disciplinary order of the United States Court of Appeals for the Ninth Circuit suspending him from practice before that court for six months and imposing additional monetary, notice, certification, and licensing-authority sanctions.

OPINIONS BELOW

The published disciplinary order is *Lnu v. Blanche*, 177 F.4th 1014 (9th Cir. 2026), filed June 3, 2026. It is reproduced at App.1a-28a. The November 4, 2025 Order to Show Cause is unreported and is reproduced at App.29a-32a. The underlying merits memorandum opinion granting the immigration petition for review and remanding to the Board of Immigration Appeals is unreported, *Lnu v. Bondi*, No. 24-4790, 2025 LX 475065 (9th Cir. Nov. 4, 2025), and is reproduced at App.33a-38a. Because this case involves the attorney discipline imposed by the Ninth Circuit for briefing errors in the Ninth Circuit, we have not included the prior BIA orders for review.

JURISDICTION

The Ninth Circuit issued its decision imposing the underlying six-month suspension on June 3, 2026. App.1a. This Honorable Court has jurisdiction under 28

U.S.C. § 1254(1). Per 28 U.S.C. § 2101(c) and Supreme Court Rule 13, a petition must be filed within 90 days after entry of the order sought to be reviewed.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following provisions are reproduced in the appendix:

Constitutional Provisions

U.S. Const, amend. V. (Due Process Clause) (App.44a)

Federal Rules

Fed. R. App. P. 28(a)(8)(A) (App.44a)

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STATEMENT OF THE CASE

I. The Ninth Circuit Initiated a Specific Disciplinary Proceeding

This petition does not defend fabricated authorities, inaccurate quotations, or inadequate cite checking. Petitioner accepts that a lawyer who signs a brief is responsible for ensuring that the filing is accurate and that courts possess substantial authority to sanction deficient advocacy. The constitutional question is narrower and more fundamental: once the Ninth Circuit chose to transform briefing errors into a professional discipline proceeding capable of suspending an attorney from practice, could it materially increase that discipline by adjudicating new misconduct that arose from the defense to the charges and from later corrective filings, without issuing supplemental charges and without providing a new opportunity to defend? *In re Ruffalo* makes clear that the answer to that question is no.

The underlying immigration case, Ninth Circuit No. 24-4790, sought review of a Board of Immigration Appeals decision denying asylum, withholding of removal, and protection under the Convention Against Torture. App.34a. On November 4, 2025, the Ninth Circuit granted the petition for review and remanded, concluding that the agency's stated bases for the adverse credibility determination were infirm. App.34a-38a. Thus, the Petitioner's underlying papers at issue here ultimately succeeded on the merits even though the court separately identified problems in the briefing. *Id.*

That same day, on November 4, 2025, the panel issued an Order to Show Cause directed separately to Petitioner and attorney William Rounds. App.29a-32a. The order stated that Petitioner had filed an opening brief containing two (2) nonexistent cases and misattributed quotations. App.29a-30a. It also stated that Petitioner had filed a motion to correct the record that characterized two nonexistent cases as typographical errors and sought to substitute real authorities. App.30a. The panel found the explanation inadequate because the reporter information and other features did not resemble the replacement cases. *Id.*

The November 4 order also described an October 20 oral argument. *Id.* Petitioner did not attend that October 20 oral argument. The Ninth Circuit's notices scheduling the oral argument did not state that the purpose of the hearing was to address the briefing issues rather than the merits of the underlying petition for review.[1] *Id.* Accordingly, only Rounds appeared

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[1] After briefing was completed, on June 3, 2025, a docket notice stated:

> 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

for the October 20 oral argument on behalf of the petitioners. App.30a. When questioned, Rounds initially stated that artificial intelligence had not been used but later acknowledged that it might have been used by the not-yet-licensed individual who drafted the briefs. *Id.* The panel further identified problems in the reply brief and listed fabricated authorities in two other pending appeals, *Anguiano Alvarado v. Bondi*, No. 25-2485, and *Contreras Pelayo v. Bondi*, No. 24-5168. App.30a-31a.

The operative charging paragraph of the order to show cause then ordered Sethi and Rounds, separately, to show cause why they should not be sanctioned,

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> (http://www.ca9.uscourts.gov/forms/form32 instructions.pdf) carefully. . . .

App.40a-41a.

A subsequent notice was entered on the docket on August 10, 2025 stating, in pertinent part:

> NOTICE OF ORAL ARGUMENT on Monday, October 20, 2025 - 09:00 A.M. - Courtroom 3 - Scheduled Location: San Francisco CA . . . NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you are expected to appear in person at the Courthouse. . . .
>
> Be sure to review the GUIDELINES for important information about your hearing. . . .

App.42a-43a.

Respondent then filed a motion to submit the case on brief without oral arguments and a motion to stay the proceedings in this court. On October 8, 2025, the Court denied both motion without any further information or instruction. App.39a.

suspended, or disbarred for conduct unbecoming under Fed. R. App. P. 46(b)(1)(B) and for violating applicable professional rules under Ninth Circuit Rule 46-2(a). App.31a. The order expressly cited Cal. R. Prof. Conduct 3.1(a)(2) and Cal. R. Prof. Conduct 3.3(a)(1), as well as *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). *Id.* It afforded twenty-eight days to respond and warned that failure to request a hearing in the response would waive the hearing right. App.32a.

The order did not, and could not, charge Petitioner with making a knowingly false statement in a response that had not yet been filed. *Compare* App.29a-32a *with* App.23a. Nor did it charge Petitioner with professional misconduct in a future Notice of Errata in *Contreras Pelayo* that the final opinion later described as having been filed "despite" the Order to Show Cause. *Compare* App.29a-32a *with* App.24a. Nor were the other rules of professional conduct that the court found Petitioner to have violated—including Cal. R. Prof. Conduct 1.1 and Cal. R. Prof. Conduct 1.3—listed in the Order to Show Cause, and therefore Petitioner did not receive proper notice of those charges prior to the decision. *Compare* App.29a-32a *with* App.11a.

II. Petitioner Responded to the Noticed Charges and Explained His Own State of Mind

Petitioner timely responded and submitted an individual declaration. App.49a-57a. He acknowledged the firm's deficient review process. *Id.* The firm used law school graduates as brief writers; writers were instructed to check citations through Lexis before returning drafts; and the firm's final attorney review did not ordinarily include substantive verification of every citation. App.54a-55a. Petitioner did not attempt to justify that process after the court identified the problem; instead, he acknowledged the need for stronger lawyer review and described corrective measures. App.56a-57a

Petitioner also addressed the central state of mind issue. He explained that before filing the motion to correct, Rounds told him that the names and citations looked wrong and that the likely explanation was cut-and-paste assembly from prior briefs or manual transcription from Lexis or earlier work product. App.55a. Petitioner stated that neither he nor Rounds suspected generative AI at that time because the firm prohibited its use. App.55a-56a. Most importantly, Petitioner declared that when he prepared the motion to correct and substitute cases, he had "no idea" that the erroneous cases were the product of AI. App.56a. However, he stated that, while he was not completely certain, AI misuse appeared more likely than not and ultimately highly likely. *Id.*

Therefore, Petitioner's response made an important point. He did not deny responsibility for signing filings containing inaccurate authorities. App.53a-57a. Instead, he denied that his earlier description of his understanding of what caused the inaccuracies was a knowing lie. App.55a-56a. His explanation was that the firm's safeguards and his information from Rounds led him to an incorrect diagnosis of the source. *Id.* That distinction matters because Cal. R. Prof. Conduct 3.3(a)(1) turns on knowledge, and the California rules define knowledge as actual knowledge, even though circumstantial evidence may support an inference.

Petitioner's response also described remediation. The firm retained a California-licensed lawyer to review briefs before they reached Petitioner or Rounds, instructed that lawyer to flag suspect citations, disciplined the responsible writer, reviewed other pending matters, and undertook to correct affected filings. App.56a-57a. Petitioner apologized to the court and its staff. *Id.* These remedial actions were not offered as a defense to the underlying verification failures. They were relevant to sanction and to whether the court could fairly infer a deliberate effort to deceive.

Petitioner did not request an evidentiary hearing in his response, thereby waiving his right to such a hearing on the noticed charges. App.53a-57a; Fed. R. App. P. 46(c); and Ninth Circuit Rule 46-2(d). However, that waiver can only extend to charges properly noticed—it cannot logically extend to new charges that did not yet exist or were never identified as disciplinary bases.

III. The Final Order Converted the Defense and Later Corrective Conduct into Additional Misconduct

On June 3, 2026, the panel issued a disciplinary order. App.1a-28a. The opinion stated that the court was not imposing discipline merely because AI may have been used. App.11a. Instead, it found violations arising from signing and filing inaccurate briefs and from what the panel viewed as a continuing lack of candor. App.22a-27a. It held that Petitioner violated duties of competence, diligence, meritorious advocacy, and candor, as well as federal appellate rules governing citation-supported contentions and signed filings. App.15a-18a.

The decisive portion of the opinion, however, went materially beyond the conduct identified as disciplinary charges in November. *Compare* App.11a-27a *with* App.29a-32a. The court announced that the misconduct did not end with the original filings and stated that at “every subsequent step”—specifically including the response to the Order to Show Cause and more recent filings in other cases—Sethi and Rounds had knowingly or recklessly made false statements. App.22a. It then expressly inferred that the attorneys knew as early as the Motion to Correct that the errors were not innocent typographical or copy-paste mistakes, and it held that their statements in the disciplinary response denying such prior knowledge were themselves knowingly false. App.23a.

The response thus became a substantive additional charge and violation found against Petitioner. App.25a-26a. That is the very procedural transformation that makes the case materially different from an ordinary sanctions matter in which an attorney loses on the facts stated in the original show cause order.

The panel also relied on Petitioner’s later filing in *Contreras Pelayo*. App.24a. The final order described a Notice of Errata filed <u>after</u> the Order to Show Cause, in which Petitioner identified two bad citations and sought to replace them. *Id.* The panel faulted the notice for describing the citations as errors without expressly labeling them hallucinations or disclosing that AI had been the source. *Id.* The opinion characterized this conduct as “subterfuge,” held that it was not sufficient disclosure under Cal. R. Prof. Conduct 3.3, and separately stated that failing to disclose the nature and source of the errors was conduct unbecoming a member of the court’s bar App.24a-25a.

The order to show cause did not identify the disciplinary response itself as a separate charge, nor did it identify the later *Contreras* filing as a new violation of Cal. R. Prof. Conduct 3.3 or as separate conduct unbecoming. App.29a-32a. The final order nevertheless relied on those acts as grounds for discipline. App.23a-27a. Thus, Petitioner was never placed on notice that he was required to defend against those acts as separate instances of misconduct—including whether he knew the technological source of the error at the relevant time or whether Rule 3.3 required disclosure not merely of the error and its correction, but of the specific technological mechanism by which the error arose. *Compare* App.29a-32a *with* App.23a-27a.

The opinion simultaneously formulated a new, technology-specific disclosure rule. App.24a-26a. It declared that when an attorney learns of an error such as an AI hallucination, the attorney should immediately notify the court and opposing counsel, describe the nature of the error, and disclose its source. App.26a. The panel then used failure to make that source disclosure as a ground for its candor and conduct-unbecoming conclusions. App.24a-27a. The question presented under Fed. R. App. P. 47(b) is whether that precise requirement may be enforced through suspension when it was not contained in federal law, a federal rule, a local circuit rule, or a case-specific notice served before the challenged noncompliance.

IV. The Challenged Findings Materially Increased the Sanction and Triggered Collateral Discipline

The notice defects were not harmless. The Ninth Circuit expressly stated that if counsel had disclosed AI use and apologized for failing to check the brief at the correction stage, lesser sanctions might have been warranted. App.26a-27a. It then stated that the gravity of the discipline, including suspension, was owed to the repeated failure of candor. *Id.* Thus, the uncharged findings were not peripheral aggravating observations. On the panel's own explanation, they supplied the reason the sanction escalated to professional suspension. *Id.*

The final order imposed multiple forms of discipline. Petitioner and Rounds were each personally sanctioned $2,500.00 and suspended from practice before the Ninth Circuit for six months. App.27a. They were ordered to provide the decision to clients, opposing counsel, presiding judges in pending state and federal cases, and every attorney in the firm. *Id.* For two years, every attorney at the firm was required to include a statement in future filings addressing whether generative AI was used, identifying the tool, and certifying personal review and the existence of cited authorities. App.27a-28a. The clerk was directed to serve the order on California and other licensing authorities. App.28a.

This petition accordingly presents no request for immunity from accountability and no invitation to bless inaccurate briefs. The petition asks for the minimum this Court required in *Ruffalo*: notice of the charges before the proceeding becomes the source of the charge, and a meaningful opportunity to defend before professional suspension is imposed on that basis.

REASONS FOR GRANTING THE PETITION

I. The Decision Conflicts with *In Re Ruffalo* Because the Defense Itself Became a New Basis for Discipline Without Supplemental Notice

Certiorari is warranted because the final order follows the procedural pattern condemned in *In re Ruffalo*, 390 U.S. 544, 550-51 (1968) where a disciplinary proceeding began on specified charges, the attorney answered them, and the adjudicator then converted the defense itself into additional professional misconduct without first charging that new misconduct. The conflict is direct, the resulting prejudice is explicit, and Supreme Court Rule 10(a) and (c) identify conflict with this Court's precedent, and extraordinary departures from the accepted and usual course of judicial proceedings, as reasons that may warrant review.

Ruffalo explained that professional discipline is penal in character and that due process requires fair notice of the precise charge before the attorney is called to defend. *See id.* at 550. Because a disciplinary proceeding is adversarial and quasi-criminal, the charge cannot be made to evolve from the accused lawyer's own defense in a way that turns the hearing into a trap. *See id.* at 550-52. Specifically, the Court found that:

> These are adversary proceedings of a quasi-criminal nature. The charge must be known before the proceedings commence. They become a trap when, after they are underway,

> the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.
>
> How the charge would have been met had it been originally included in those leveled against petitioner . . . no one knows.

Id. at 551 (internal citations omitted).

Fed. R. App. P. 46(c) independently requires reasonable notice and an opportunity to show cause before discipline. Ninth Circuit Rule 46-2(b) likewise requires the order to show cause to identify the basis for discipline, while Ninth Circuit Rule 46-2(e) describes any hearing as a hearing on the disciplinary charges. *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980), likewise recognizes that serious attorney sanctions require fair notice and an opportunity to respond.

The Ninth Circuit's inquiry into this matter began without adequate notice or opportunity to be heard. When the Ninth Circuit required oral arguments on the underlying petition for review, it did not indicate that the argument would focus on counsel's use of AI or erroneous citations and quotations in the briefing. App.39a-43a. Lacking notice of that intended focus, Petitioner did not attend the argument. App.6a. Instead, his associate, Rounds, attended the argument. *Id.* During the argument, it became clear that the panel intended to address the erroneous citations and quotations. App.6a-7a.

That is imperative because the testimony Rounds gave during that argument was frequently cited in the final order as a basis for Petitioner's 6-month suspension. App.22a-23a, 26a. In other words, like in *Ruffalo*, the oral argument served as a "trap", the testimony from which was used as a material reason to suspend the Petitioner before any charge was even raised. *Id.*

Subsequently, the November 4 Order to Show Cause described the erroneous citations, misattributed quotations, Petitioner's motion to correct, Rounds' oral-argument statements, and specified errors in other briefs. App.29a-31a. It cited Cal. R. Prof. Conduct 3.1(a)(2), Cal. R. Prof. Conduct 3.3(a)(1), Fed. R. App. P. 46(b), Ninth Circuit Rule 46-2, and *Chambers*. App.31a. Accordingly, Petitioner filed a response to those charges.

However, the final order went further than those charges. At the outset, the Ninth Circuit found that the attorneys violated Cal. R. Prof. Conduct 1.1 and 1.3, which the Order to Show Cause did not charge. App.11a. It further declared the response itself was knowingly false because Petitioner continued to maintain that he lacked actual knowledge of AI use when he filed the motion to correct. App.23a-24a. The court did not simply reject the explanation. It converted the explanation into new inculpatory conduct: a separate knowingly false statement that extended the alleged candor violation. *Id.* That distinction is dispositive under *Ruffalo*. There, the constitutional defect was not that the disciplinary body disbelieved the lawyer's testimony; it was that the testimony supplied a new charge after the defense had already begun. *Id.*, 390 U.S. at 551.

The same defect is even more clear concerning the later *Contreras Pelayo* Notice of Errata. The Ninth Circuit's final opinion placed that filing temporally after the Order to Show Cause and faulted Petitioner for not disclosing that the prior citations were hallucinations and for not identifying AI as their source. App.24a-25a. It labeled the filing subterfuge, held that the omission violated the duty to correct under Cal. R. Prof. Conduct 3.3, and characterized the failure to disclose the nature and source of the error as conduct unbecoming. *Id.* Whatever the merits of that conclusion, those were additional disciplinary determinations based on later conduct. The November 4 order never told Petitioner that a future corrective filing would itself become a separate disciplinary offense. App.29a-32a.

This sequencing is constitutionally consequential because Petitioner's response was tailored to the original charges. App.49a-57a. Had the court issued a supplemental order saying that the December response was itself a knowing falsehood, Petitioner could have requested the Fed. R. App. P. 46(c) hearing on that new charge, presented testimony concerning what he knew when he filed the Motion to Correct and the response, sought testimony from Rounds and the brief writer, and developed evidence concerning the firm's AI policy and communications. Had the court issued a supplemental charge concerning the later *Contreras* notice, Petitioner likewise could have addressed when the filing occurred, what was then known about the source, what Rule 3.3 required, whether the notice sufficiently corrected the false legal proposition, and whether a technological-source disclosure obligation had been communicated to him.

The Ninth Circuit's hearing-waiver statement does not cure that defect. A waiver must attach to a known right in a known controversy. Ninth Circuit Rule 46-2(e) itself calls the hearing a hearing "on the disciplinary charges." An attorney cannot knowingly waive a hearing on a disciplinary charge that has not yet arisen or that the court has not identified as a charge. Treating the initial waiver as perpetual authorization to adjudicate later misconduct would erase the notice requirement from Fed. R. App. P. 46(c) whenever a court discovers additional issues after the response.

Zauderer v. Office of Disciplinary Counsel of Supreme Court, 471 U.S. 626 (1985), does not save the procedure. The Court in *Zauderer* rejected a notice objection where the relevant theory changed but the attorney had a meaningful opportunity to address the issue before the ultimate disciplinary decision and could not show prejudicial surprise. *Id.* at 654-55. In distinguishing *Ruffalo*, this Court emphasized that due process is especially offended when the defense itself becomes inculpatory and when the change causes prejudice—where the "original charges functioned as a trap" by "lull[ing] the petitioner into presenting evidence that irrevocably assured his disbarment under charges not yet made." *Id.* at 655 n. 18 (internal citations and quotations omitted).

Again, that is precisely what happened in this case. The Ninth Circuit noticed an October 20 oral argument concerning the underlying petition, but it did not notify Petitioner, nor Rounds, that the hearing would focus on questioning the attorney, on the record, about the AI hallucinations in the petition rather than the merits of the petition. App.39a-43a. Petitioner did not attend that oral argument. App.30a. Rounds' testimony from that hearing, however, became a material part of the decision to suspend Petitioner. App.22a-27a. Accordingly, this is identical to *Ruffalo*: the oral argument served as a "trap" to "lull" Rounds into providing testimony on the record—before any charges against Petitioner were even presented—that later became material evidence used against Petitioner for his suspension. *Id.*, 390 U.S. at 551 n. 4. Had Petitioner known the true nature of that hearing, he could have attended it, prepared for it, considered consulting counsel, formulated his defenses, and presented them before the court relied on that testimony to impose discipline.

In re Snyder, 472 U.S. 634 (1985), reinforces the need for review. *Snyder* also involved a six-month suspension by a federal court of appeals under Rule 46. *Id.* at 636, 643-44. This Court granted certiorari and reversed. *Id.* at 636. Although *Snyder* ultimately resolved the case on the meaning of conduct unbecoming, its procedural history illustrates why federal appellate discipline must remain tethered to the conduct for which the attorney was called to account: the court's inquiry shifted from the initially stated concern to a different perceived offense. *Id.* at 638 (noting that the show-cause order was based on the attorney's refusal to accept Criminal Justice Act assignments and made no reference to any disrespect in his letter). This Court has repeatedly treated federal attorney discipline as an area requiring disciplined use of inherent power, not ad hoc expansion of charges as the proceeding unfolds. *Chambers*, 501 U.S. at 44 finding that "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion) (citing to *Roadway Express*, 447 U.S. at 764).

Ruffalo did not immunize underlying misconduct; it held that even substantial disciplinary authority must be exercised through fair charges. The more serious the underlying errors, the easier it is to lose sight of that procedural boundary. But constitutional notice is most valuable in hard cases, where strong institutional concern creates the greatest risk that the defense will be recast as further defiance.

The question is not fact-bound. The relevant facts are contained on the face of two written orders. The November 4 order states what was charged. App.29a-32a. The June 3 order states what additional misconduct was adjudicated and states that the additional candor findings materially drove suspension. App.3a-28a. This Court need not decide whether Petitioner was truthful, whether the briefs were adequately checked, or whether some sanction was warranted. It need decide only whether a federal appellate court may impose discipline based on testimony it received prior to charges being issued and whether it may increase discipline based on a new charges without prior notice of those charges.

The Court should grant certiorari on the first Question Presented, reaffirm *Ruffalo*, and hold that an attorney's response to noticed charges—and later conduct not itself charged—cannot become a material basis for suspension without supplemental notice and an opportunity to defend. The judgment should be reversed.

II. The Decision Presents an Important Question under Federal Rule of Appellate Procedure 47(b) Concerning Retroactive Enforcement of an Unannounced Source-Disclosure Requirement

Certiorari is independently warranted because the Ninth Circuit's order announced a specific disclosure obligation—identify not only the error but also how the error arose, including the use of generative AI—and then treated noncompliance with that obligation as professional misconduct supporting suspension. App.24a-27a. Fed. R. App. P. 47(b) exists to prevent precisely that form of sanctions-by-unannounced-requirement.

Fed. R. App. P. 47(b) states a simple federal appellate principle: a court may regulate practice, but it may not impose a sanction or other disadvantage for noncompliance with a requirement not found in federal law, the Federal Rules of Appellate Procedure, or the circuit's local rules unless the affected person received actual notice of the requirement in the particular case. Fed. R. App. P. 46's broad authority to discipline "conduct unbecoming'" does not nullify Fed. R. App. P. 47(b); the Rules must be read together so that broad disciplinary power does not become authority to punish retroactively for a previously unstated practice command.

Here, again, the Ninth Circuit's opinion commanded that an attorney correcting an erroneous citation must also disclose the technological source or mechanism by which the error was produced. App.24a-27a. We are unaware of any such controlling law at the time Petitioner was suspended. Therefore, the sanction of suspension was imposed for noncompliance with a non-existent rule in contravention of Fed. R. App. P. 47(b).

The court's own reasoning highlights the issue. It explained that the source of an inaccurate citation—human error or AI—ordinarily does not matter to the basic filing violation. App.14a-15a. That is sensible: a false citation is false regardless of its origin. But when the court turned to candor, source became decisive.

App.24a-27a. The opinion declared that an attorney who submits a hallucination must immediately identify the <u>nature</u> of the error and disclose <u>how</u> it came about. *Id.* It then faulted Petitioner's *Contreras* notice not because he left the false citation uncorrected, but because the notice called the citations "errors" without explicitly stating the source of the errors were due to the use of AI. *Id.*

Neither Cal. R. Prof. Conduct 3.3(a)(1) nor the November 4 Order to Show Cause states that exact source-disclosure requirement. Cal. R. Prof. Conduct 3.3 forbids a knowing false statement and requires correction of a false material statement previously made by the lawyer. It does not, by its text, say that every correction must identify the technology or research pathway that generated the error. The November 4 order likewise identified suspected AI use and Rounds' oral statements, but it did not direct that future errata in other cases must explicitly label the original citations as hallucinations, identify AI as the cause, or face separate discipline for failing to do so. App.29a-32a.

The chronology reinforces the notice problem. The June 3 order repeatedly relied on the Ninth Circuit's Rule 32-1 Advisory Committee Note in its decision. App.12a, 16a, 21a, and 25a. That Advisory Note is dated December 1, 2025. However, the opening and reply briefs, the subsequent October 20 oral argument, the November 4 Order to Show Cause, and the response to the order to show cause all preceded that date. *See* App.57a. Petitioner does not contend that lawyers lacked preexisting duties to verify authorities; however, a later advisory opinion cannot substitute for advance notice of a newly specified attestation or source-disclosure obligation when the court uses that specification to characterize corrective conduct as knowing professional misconduct.

A likely counter-response may be that the source-disclosure rule was not a new "requirement" at all, but merely an application of the preexisting duty of candor and the concept of conduct unbecoming. That argument makes Supreme Court review more, not less, important. If every newly specified practice command can be characterized after the fact as implicit in a general candor rule, Fed. R. App. P. 47(b)'s actual-notice protection becomes largely illusory in disciplinary cases. The question is where interpretation of a general ethical duty ends and an enforceable sanction-triggering practice requirement begins.

This case presents that question in a clean posture. The final order did not merely suggest best practices. It said the *Contreras* notice was insufficient, identified the missing source disclosure, tied the omission to Cal. R. Pro. Conduct 3.3 and conduct unbecoming, and then treated alleged candor failures as the reason suspension was warranted. App.24a-28a. The sanction thus supplies the "disadvantage" Fed. R. App. P. 47(b) addresses. The requirement was also specific enough to be administered prospectively, as the panel demonstrated by crafting a detailed two-year certification condition. App.27a-28a.

The source-disclosure issue also interacts with the due-process issue in an unusually concrete way. Had the November 4 order told Petitioner that the disciplinary proceeding would adjudicate whether Cal. R. Prof. Conduct 3.3 required technological-source disclosure in future corrective filings, Petitioner could have addressed the legal question before acting and before sanction. Had a supplemental order later identified that theory, Petitioner could have contested it before the court imposed suspension. Instead, the first definitive articulation and the punishment arrived together in the published final order.

The Court should grant the second Question Presented to enforce Fed. R. App. P. 47(b)'s actual-notice safeguard and to clarify that rapidly evolving professional expectations may be imposed prospectively or after case-specific notice, but may not be converted into a retroactive basis for suspension when they were not contained in governing law or communicated beforehand.

III. Review Is Warranted Because the Suspension Turned on an Uncharged, Non-Individualized Finding of Actual Knowledge in a Published Decision with Nationwide Significance for Attorney Discipline

The importance of the issue extends well beyond this proceeding. Supreme Court Rule 10 recognizes review when a court of appeals decides an important federal question in conflict with this Court's precedent or so departs from accepted judicial procedure as to call for this Court's supervisory power. The Court has exercised that authority in federal attorney discipline cases before. *In re Snyder*, 472 U.S. 634 (1985) is particularly instructive: this Court granted review of a six-month court-of-appeals suspension under Fed. R. App. P. 46 and reversed when the conduct did not satisfy the governing standard. *See id. generally*. *Frazier v. Heebe*, 482 U.S. 641, 645-46 (1987), likewise confirms this Court's supervisory authority over rules governing admission to and practice before the federal courts. In *Chambers*, this Court cautioned that inherent powers are potent and "must be exercised with restraint and discretion." *Id.*, 501 U.S. at 44.

The Ninth Circuit itself gave this controversy institutional significance. It did not issue a routine unpublished sanction. It issued a thirty-page published opinion and expressly explained that it was writing at length as a warning to members of the court's bar about generative AI, verification, and transparent correction. App.1a-28a. That choice gives the order precedential and institutional significance. Lawyers throughout the "nation's largest circuit" now must understand not only that inaccurate citations are sanctionable but also the procedural and disclosure consequences the opinion assigns to correcting them. United States Court of Appeal for the Ninth Circuit, https://www.ca9.uscourts.gov/ (Last Updated August 26, 2026).

The legal profession will continue confronting fabricated authorities, inaccurate summaries, and uncertain AI provenance. Courts are responding. But precisely because technology is evolving, the distinction between substantive ethical norms and newly specified procedural requirements matters. As recently as August 13, 2026, the New York City Bar Committee called for nationwide framework governing the use of AI, succinctly finding that:

> [AI] is rapidly transforming how legal services are delivered in the United States and globally, from drafting and document review to legal research and workflow management. With AI's increasing presence, the demand for clear, <u>unified</u> ethical, regulatory, and operational guidance is urgent.

> . . .
>
> Despite its ubiquity, there is currently no uniform, industry-wide regulatory framework governing the use of AI in the legal profession. Instead, regulation is emerging through a decentralized array of sources . . . This fragmented approach has resulted in varying levels of clarity, flexibility, and enforceability across jurisdictions.

New York City Bar, Policy Paper on the Use of AI Tools by Legal Professionals in Emerging Company and Venture Capital (August 2026), https://www.nycbar.org/wp-content/uploads/2026/08/20221615-AIToolsInTheLegalProfession.pdf (emphases added).

A rule that counsel must not knowingly lie is timeless. A requirement that a correction identify the name or category of the technological source is more specific. Fed. R. App. P. 47(b) supplies a federal mechanism for determining when such a specific requirement may support punishment. *Ruffalo* supplies the constitutional mechanism for determining when later-discovered conduct may become a new disciplinary charge.

The case is also an unusually clean vehicle for review because the requested ruling would not require the Court to excuse the briefing errors. The only requested holding is procedural: suspension may not be materially based on new offenses generated by the defense itself or on an unannounced practice requirement enforced retrospectively.

Collateral consequences confirm practical importance. The Ninth Circuit directed distribution of the order to licensing authorities. Reciprocal discipline often accords presumptive weight to the originating order while asking whether the original proceeding denied due process or rested on infirm proof. A clear rule at the originating federal level therefore protects not only the attorney but the integrity and portability of federal disciplinary judgments.

Review now would also provide guidance to courts seeking to regulate AI responsibly. Nothing in Petitioner's position prevents courts from requiring AI disclosures, personal-verification certifications, or other safeguards. It asks courts to announce those requirements before punishing their violation and to charge later misconduct before using it to increase professional discipline. Those principles encourage, rather than obstruct, responsible regulation: they channel new rules through notice, local rulemaking, or case-specific orders that lawyers can follow.

The appropriateness for review is also heightened by the lack of uniformity among federal courts concerning the evidentiary safeguards governing serious attorney discipline and by the Ninth Circuit's decision to publish its order expressly as guidance to the bar in an era of rapidly developing legal technology. Together, those circumstances make the notice error consequential and demonstrate the need for a clear federal procedural floor.

Cal. R. Prof. Conduct 3.3(a)(1) turns on a knowing false statement, and Cal. R. Prof. Conduct 1.0.1(f) defines knowledge as actual knowledge, though it may be inferred from circumstances. Federal discipline is governed at minimum by *Ruffalo*'s due-process floor and Fed. R. App. P. 46's notice-and-response protections. The federal courts do not speak with one voice about the evidentiary formulation used in serious attorney discipline. For instance, the Second Circuit's Local Rule 46.2 expressly requires clear and convincing evidence of misconduct. *See* 2d Cir. Local R. 46.2(b)(3)(G). The Fifth Circuit likewise has required clear and convincing evidence in suspension and disbarment proceedings, emphasizing their quasi-criminal character and placing the burden on the proponent of discipline. *See In re Thalheim*, 853 F.2d 383, 389 (5th Cir. 1988); *Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 229-230 (5th Cir. 1998); *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992). By contrast, the Ninth Circuit has upheld use of a "clear preponderance" standard in a federal disciplinary proceeding incorporating Washington law. *United States Dist. Court v. Sandlin*, 12 F.3d 861, 865-67 (9th Cir. 1993). And the Seventh Circuit has rejected the proposition that due process invariably requires a heightened burden, applying the ordinary civil preponderance framework in attorney discipline. *See In re Palmisano*, 70 F.3d 483, 486-87 (7th Cir. 1995); *see also In re Barach*, 540 F.3d 82, 86-87 (1st Cir. 2008) (holding that a preponderance standard was a "constitutionally permissible choice" in attorney discipline proceedings).

Those authorities arise in differing procedural settings and do not form a perfectly aligned constitutional split. But they demonstrate meaningful nonuniformity in the safeguards surrounding severe federal attorney discipline. The Ninth Circuit's published order here did not identify an evidentiary burden governing its disputed actual-knowledge finding, which ultimately supported its determination to suspend Petitioner. App.1a-28a.

The manner in which the court reached that finding illustrates why individualized notice and adjudication matter. Petitioner and Rounds engaged in materially different conduct. Petitioner did not appear at oral argument. App.30a. Rounds did. *Id.* Rounds made the categorical oral statements that AI "was not used" and then, under questioning, acknowledged that AI use was possible. *Id.* The final order expressly relied on that progression to infer knowledge. App.25a-26a. Yet the opinion repeatedly spoke collectively of "Sethi and Rounds" when drawing conclusions about what the attorneys knew and when they knew it. App.2a, 8a-9a, 11a, 15a, 22a-24a, and 26a.

Petitioner's own conduct was different. He signed the briefs and filed the Motion to Correct. App.53a-56a. But as to the decisive candor issue, his declaration stated that Rounds had supplied the cut-and-paste/transcription explanation, that the firm prohibited AI, that Petitioner had no idea at the time of the correction motion that AI had generated the errors, and that his view changed only after the court-directed broader review. App.55a-56a. Those statements may be believed or disbelieved. The due-process point is that actual knowledge cannot be imputed merely from another attorney's oral pivot without a charge directed to Petitioner's own state of mind.

The Ninth Circuit made the actual-knowledge finding outcome-determinative when it said the repeated candor violations were why suspension, rather than lesser measures, was necessary. App.26a-27a.

This Court need not resolve, in this case, a comprehensive constitutional burden-of-proof rule for every species of federal attorney discipline. The narrower point is that divergent federal practice makes *Ruffalo*'s notice rule indispensable. Where circuits vary in institutional structure and evidentiary formulation, meaningful advance notice of the precise charge is the common safeguard that permits the lawyer to invoke whatever hearing and proof protections the forum provides.

Review of the first Question Presented permits this Court to reaffirm the procedural minimum common to all such systems without prematurely constitutionalizing one burden of proof for every disciplinary setting.

The absence of an evidentiary hearing on the original charges does not make this a poor vehicle. It sharpens the question. Petitioner waived a hearing in response to the November charges because he chose to defend those charges in writing. The court then created additional actual-knowledge charges from that written defense and later conduct. App.22a-26a. If the original waiver automatically applies to such new charges, then the very act of submitting a written defense can deprive an attorney of the hearing that would have been requested had the new charge been known. *Ruffalo* forbids turning the response process into that kind of procedural trap. *Id.*, 390 U.S. at 551.

Thus, the published nature of the order, the differing federal approaches to serious attorney discipline, the recurrence of AI-related filing issues, the substantial collateral consequences, and the clean separation between acknowledged verification failures and disputed uncharged candor offenses make this case an appropriate vehicle for resolving both Questions Presented. The Court can provide nationally useful guidance on the procedural safeguards governing federal attorney discipline without becoming a fact-finder, excusing inaccurate filings, or prescribing a comprehensive constitutional burden of proof for every disciplinary proceeding.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. The Court should reverse or vacate the judgment insofar as it suspended Petitioner without proper notice of charges and based on an unannounced source-disclosure requirement. Such a conclusion would be consistent with the Fifth Amendment, Federal Rules of Appellate Procedure 46 and 47, and this Court's decision in *In re Ruffalo*.

Respectfully submitted,

/s/ Anthony C. Gunst, IV

Anthony C. Gunst, IV, Esq.
Counsel of Record
Salma A. Attia
NISSENBAUM LAW GROUP, LLC
2400 Morris Avenue, Suite 301
Union, NJ 07083
(908) 686-8000
ag@gdnlaw.com
sattia@gdnlaw.com

Counsel for Petitioner

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