NO. ____

IN THE

Supreme Court of the United States

CYRUS MARK SANAI,
Petitioner,

v.

GEORGE S. CARDONA;
LEAH WILSON,
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NINTH CIRCUIT CASE NO. 24-6708

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QUESTIONS PRESENTED

Petitioner Cyrus Sanai's motion for a preliminary injunction staying attorney discipline proceedings was denied on *Younger* abstention grounds, Case No. 21-15771, and this Court denied a challenge. This Court then decided *Williams v. Reed*, 604 U.S. 168 (2025), which held that under *Haywood v. Drown,* 556 U.S. 729 (2009), administrative hearing schemes that due to state-law jurisdiction stripping cannot be attacked under 42 U.S.C. §1983 in state court violate the Supremacy Clause. California's State Bar Act strips its courts of jurisdiction to hear §1983 lawsuits concerning attorney discipline and Ninth Circuit precedent holds that *Younger* abstention does not bar attacks on state administrative procedures that violate the Supremacy Clause. *Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 884 fn. 9 (9th Cir. 2011). However, the lower courts refused to apply *Williams* and dismissed the case. Under *Miller v. Gammie,* 335 F.3d 889 (9th Cir. 2003)(en banc) this Court's new precedents cannot change prior Ninth Circuit precedent unless this Court's new decision is "clearly irreconcilable" and not "merely inconsistent", unless an en banc panel is ruling. *Whitfield v. Mullin,* No. 25-5220 (9th Cir. Oct. 16, 2026)(VanDyke, J, diss.). The Ninth Circuit courts "systematically hold the Supreme Court's instructions about the *right* answer to any number of legal questions in lower regard than" the Circuit's "own *wrong* precedents." *Id.,* slip op. at 14.

The questions presented are:

1. Is the Ninth Circuit's rule for amending its circuit precedents established by *Miller v. Gammie,*

335 F.3d 889 (9th Cir. 2003) as supplemented by *Kivett v. Flagstar Bank,* 154 F.4th 640 (9th Cir. 2025), petition pending sub nom. *Flagstar Bank v. Kivett,* Case No. 25-1350, which does not permit changing circuit precedent unless the Ninth Circuit decides the issue en banc or if a three-judge panel finds this Court's precedent "clearly irreconcilable", a violation of due process and equal protection under the Fifth Amendment and of the principles of stare decisis?

2. If a state prohibits its courts of general jurisdiction from hearing 42 U.S.C. §1983 claims addressing attorney discipline proceedings, do such proceedings and the state law establishing them violate the Supremacy Clause under *Haywood v. Drown,* 556 U.S. 729 (2009) and *Williams v Reed,* 604 U.S. 168 (2025) as agreed by the Washington State Court of Appeals in *Eugster v. Wash. State Bar Assoc.,*198 Wash.App. 758, 397 P.3d 131, 143-6 (2017) and therefore *Younger* abstention does not apply under *Potrero Hills Landfill, Inc. v. County of Solano,* 657 F.3d 876, 884 fn. 9 (9th Cir. 2011) ?

3. Given that the California State Bar is a California public corporation the debts of which are not the responsibility of the State of California, can it no longer be deemed an "arm of the state" under *Galette v. New Jersey Transit Corp.,* 607 U.S. 509, 146 S.Ct. 854 (2026) and thus not be protected by *Younger* abstention under *Sprint Commc'ns, Inc. v. Jacobs,* 571 U.S. 69, 79 (2013) and *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350 (1989)?

PARTIES TO THE CASE

The plaintiff, appellant and petitioner in this petition is Cyrus Sanai, an individual. The defendants, George Cardona and Leah Wilson, officers of the State Bar of California.

RELATED CASES

Sanai v. Cardona, Northern District of California Case No. 22-cv-01818-JST.

Sanai v. Cardona, Ninth Circuit Docket No. 23-15618, decided sub nom. *Roshan v. Lawrence,* No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024).

Sanai v. Cardona, Sup. Ct. Docket No. 24-588, cert. denied sub nom. *Sanai v. Lawrence,* (Jan. 27, 2025).

Sanai v. Kruger, Ninth Circuit Docket No. pending.

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PETITION FOR A WRIT OF CERTIORARI

"Judge Reinhardt famously announced the Ninth Circuit's motto: the Supreme Court can't "catch 'em all." *Whitfield v. Mullin,* Case No. 25-5220 slip op. at 16 (9th Cir. Oct. 16, 2026)(R. Nelson, J, diss.)("*Whitfield*"), citing Linda Greenhouse, Dissenting Against the Supreme Court's Rightward Shift, N.Y. Times (Apr. 12, 2018), https://www.nytimes.com/2018/04/12/opinion/su

preme- court-right-shift.html [https://perma.cc/H473-3MRD]. This petition presents to this Court two of the Ninth Circuit's armory of defenses to avoid this Court's precedent and ensure that it "can't catch 'em all."

The first is the Ninth Circuit's barrier to vertical stare decisis, *Miller v. Gammie,* 335 F.3d 889 (9th Cir. 2003)(en banc)("*Miller*"). *Miller* is a "fundamental problem within" the Ninth Circuit because of its "improper demand that… circuit's precedent be privileged over the Supreme Court's more recent instructions unless [its] precedent is "clearly irreconcilable" with what the Supreme Court has subsequently told….[t]his prevents three-judge panels….from applying more recent Supreme Court authority whenever it is merely inconsistent with" the Ninth Circuit precedent. *Whitfield* at 14. Circuit Judge VanDyke argues that the "effect of this rule is both obvious and obviously wrong—we systematically hold the Supreme Court's instructions about the right answer to any number of legal questions in lower regard than our own wrong precedents." *Id.*

In *Whitfield*, Judge VanDyke dissented from an order denying en banc reconsideration of an unpublished case where the Ninth Circuit applied its alternative test for granting preliminary injunctions. Presumably that issue may be taken up by the Solicitor General in due course. However, the Solicitor General is also currently providing its view on another case where a divided panel of the Ninth Circuit

expanded the scope of *Miller*. See *Kivett v. Flagstar Bank,* 154 F.4th 640 (9th Cir. 2025), petition pending sub nom. *Flagstar Bank v. Kivett,* S. Ct. No. 25-1350 ("*Kivett*"). In *Kivett,* the majority held that the "clearly irreconcilable" standard also applies to cases where this Court remands a case back to the Ninth Circuit for reconsideration in light of one of its recent decisions. However, the losing party in *Kivett* did not raise the correctness of *Miller* in its petition for certiorari, though the Solicitor General may elect to raise that issue.

In this case, the *Miller* standard was applied to bar the application of *Williams v. Reed*, 604 U.S. 168 (2025)("*Williams*") to this case, which is a federal 42 U.S.C. §1983 attack on the constitutionality of California attorney discipline procedures. California law allows legal persons injured by unconstitutional state actions to file suit in the Superior Court—the courts of general jurisdiction—against certain agencies of the state and all *Ex parte Young* defendants with one major exception: the Superior Courts and Courts of Appeal are stripped of jurisdiction to hear cases challenging attorney discipline proceedings. *Barry v. State Bar*, 2 Cal.5th 318, 322-3 (2017), *citing Jacobs v. State Bar*, 20 Cal.3d 191, 196 (1977) ("In 1951, the Legislature excluded other courts from exercising such jurisdiction by striking language from section 6100 which conferred jurisdiction upon the Courts of Appeal and the superior courts"); see also *Sheller v. Sup. Ct.*, 158 Cal.App.4th 1697, 1710

(2008). The California Supreme Court has repeatedly acknowledged that under the California State Bar Act, Cal. Bus. & Prof. Code §6000 *et seq.*, "this court has exclusive original jurisdiction to discipline attorneys, and the sole means of obtaining review of State Bar Court disciplinary recommendations is by a petition for review filed in this court". *In re Rose*, 22 Cal. 4th 430 (2000).

In *Williams,* this Court held that such jurisdiction-stripping to immunize particular defendants from certain kinds of liability under 42 U.S.C. §1983 suits violates the Supremacy Clause, U.S. Const. art. VI, cl.2. However, both the District Court and Court of Appeals refused to accept that this principle applied to California attorney discipline. If it did apply, then the District Court's dismissal of this case under *Younger* abstention was invalid under *Potrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 884 fn. 9 (9th Cir. 2011)("*Potrero Hills*").

The Ninth Circuit also affirmed the decision of the district court, made in violation of the party presentation principle, to dismiss this action under *Younger* abstention based on its determination that under *Hirsh v. Justs. of Sup. Ct. of State of Cal.*, 67 F.3d 708 (9th Cir. 1995)("*Hirsh*") and *Kohn v. State Bar of Cal.*, 87 F.4th 1021 (9th Cir. 2023)(en banc)("*Kohn*") the State Bar of California is a governmental arm of California. *Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024)("*Roshan v. Lawrence*"). *Hirsh* holds that

because of the State Bar's status as an arm of the state, proceedings before it are protected by Eleventh Amendment immunity and the application of *Younger* abstention, as proceedings before the State Bar Court are "judicial in nature," *Hirsh* at 712, as well as "governmental in nature," *Kohn* at 1033.

Earlier this year this Court issued *Galette v. New Jersey Transit Corp.,* 607 U.S. 509, 146 S.Ct. 854 (2026)("*Galette*"). This decision effectively overrules the Ninth Circuit's opinion in *Kohn*. Under *Galette*, the California State Bar is no longer an "arm of the state" entitled to the protection of the Eleventh Amendment because it is an independent corporation the debts of which are not the liability of the State of California. Because it is no longer an arm of the state, the State Bar attorney disciplinary proceedings were not "initiated by the State in its sovereign capacity" nor were they "judicial in nature," both requirements for the application of *Younger* abstention. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 79 (2013)("*Sprint*"). Thus California State Bar Court attorney discipline proceedings no longer fall into the only available category of the three described in *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350 (1989)("*NOPSI*") for the application of *Younger* abstention: "state civil enforcement proceedings akin to criminal proceedings".

ORDERS BELOW

The order of the Ninth Circuit Court of Appeals affirming the District Court is attached as Appendix ("App.") A. The orders of the district court dismissing the case and denying reconsideration are set forth in App. B and App. C. The order denying the petition for rehearing is set out in App. D.

BASIS FOR JURISDICTION

The Ninth Circuit Court of Appeals issued its memorandum affirming the orders of dismissal of the District Court on May 5, 2026. App. A. Timely petition for rehearing and rehearing en banc was denied on June 22, 2026. App. B. This Court granted an extension to file a petition for certiorari through November 19, 2026. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1) and the federal courts jurisdiction under 28 U.S.C. §1331.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES

The relevant statutory and constitutional provisions and judicial rules are set forth in App. E, and include the Supremacy Clause, U.S. Const. art. VI, cl. 2, the Fifth, Eleventh and Fourteenth Amendments to the United States Constitution U.S. Const., amends. V, § 1, XI & XIV, and 42 U.S.C. §1983.

STATEMENT OF THE CASE

This case is a lawsuit against the officials of the State Bar of California for purposes of

challenging California's attorney discipline system. Sanai filed a motion for preliminary injunction, which was denied sua sponte by the District Court raising *Younger* abstention. The Court of Appeals affirmed, and this Court denied Sanai's petition for certiorari challenging that ruling. *Roshan v. Lawrence,* No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024) ("*Roshan v. Lawrence*"), cert. denied sub nom. *Sanai v. Lawrence,* Sup. Ct. Docket No. 24-588 (Jan. 27, 2025).

Less than a month after this Court denied Sanai's petition for certiorari it issued *Williams*. The District Court then granted the motions to dismiss and found *Younger* abstention applied based on the determination that under *Hirsh v. Justs. of Sup. Ct. of State of Cal.,* 67 F.3d 708 (9th Cir. 1995)("*Hirsh*") and *Kohn v. State Bar of Cal.,* 87 F.4th 1021 (9th Cir. 2023)(en banc)("*Kohn*") the State Bar of California is a governmental arm of California. *Hirsh* holds that because of the State Bar of California's status as an arm of the state, proceedings before it are protected by Eleventh Amendment immunity and the application of *Younger* abstention, as proceedings before the State Bar of California are "judicial in nature," *Hirsh* at 712, as well as "governmental in nature," *Kohn* at 1033. App. C. The Court denied a timely motion to set aside judgment. App. D.

Sanai filed a notice of appeal. The Ninth Circuit's controlling precedent states that law of the case requires the appellate panel to re-examine the issues de novo and to jettison the

decision entirely if there is intervening law. *S. Or. Barter Fair v. Jackson County,* 372 F.3d 1128, 1136 (9th Cir. 2004)("*SOBF*").

The panel refused to comply with binding authority concerning law of the case based on the false contention that Sanai agreed to a different rule. However, even if law of the case had applied, *Hirsh* and *Kohn* are no longer good law, because under *Galette* the State Bar of California , including its *Ex Parte Young* defendants are not "arms of the state" and therefore the State Bar Court proceeding and subsequent judicial review are not subject to *Younger* abstention under *NOPSI* and *Sprint Commc'ns, Inc. v. Jacobs,* 571 U.S. 69 (2013)("*Sprint*"). Indeed, due to the change in *Galette*, on remand Sanai may now amend his complaint to demand damages from the Defendants, other State Bar of California employees, and the State Bar itself. Such damages claims may not be dismissed under *Younger*. *Gilbertson v. Albright*, 381 F.3d 965, 984 (9th Cir. 2004) (en banc).

The *Hirsh* panel assumed without analysis that "the Eleventh Amendment's grant of sovereign immunity bars monetary relief from state agencies such as California's Bar Association and Bar Court. *See Lupert v. California State Bar*, 761 F.2d 1325, 1327 (9th Cir.1985)." *Hirsh* at 715. *Hirsh* and *Lupert* made the assumption without any analysis. *Kohn* at 1024-1025.

The Ninth Circuit took *Kohn* en banc and fashioned a new test that this Court rejected in

Galette. Absent intervening U.S. or state Supreme Court authority, that is the only method for overturning Ninth Circuit precedent approved in *Miller v. Gammie,* 335 F.3d 889 (9th Cir. 2003)(en banc) ("*Miller*").

Galette effectively overrules the Ninth Circuit's opinion in *Kohn.* Under *Galette*, the California State Bar cannot be an "arm of the state" entitled to the protection of the Eleventh Amendment because it is an independent corporation the debts of which are not the liability of the State of California. Because it is not an arm of the state, the State Bar attorney disciplinary proceedings were not "initiated by the State in its sovereign capacity" nor were they "judicial in nature," both requirements for the application of *Younger* abstention. *Sprint* at 79. Thus California State Bar Court attorney discipline proceedings no longer fall into the only available category of the three described in *NOPSI* for the application of *Younger* abstention: "state civil enforcement proceedings akin to criminal proceedings".

On May 5, 2026 the Court of Appeals entered its memorandum disposition. It refused to accept that either *Williams* or *Galette* constituted new law because it was not "clearly irreconcilable", as required by *Miller,* since the rulings did not mention abstention.

> And, contrary to Sanai's argument on appeal, *Williams v. Reed*, 604 U.S. 168 (2025), and *Galette v. New Jersey Transit Corp.,* 146 S. Ct. 854 (2026), do not constitute intervening changes in

> law that warrant us revisiting our previous holding. *Williams* involved exhaustion, not abstention. *See Williams,* 604 U.S. at 173–79. And *Galette* involved sovereign immunity, not abstention. *See generally Galette*, 146 S. Ct. 854.

App. A3

Sanai filed a timely petition for rehearing and rehearing en banc which was denied. See App. D1.

WHY THE PETITION SHOULD BE GRANTED

A. *Younger* Abstention

In this Court's most recent discussion of *Younger* abstention, it explained that:

> In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter. *New Orleans Public Service, Inc. v. Council of City of New Orleans,* 491 U.S. 350, 373, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1989) (*NOPSI*) ("[T]here is no doctrine that ... pendency of state judicial proceedings excludes the federal courts."). This Court has recognized, however, certain instances in which the prospect of undue interference

with state proceedings counsels against federal relief. See *id.*, at 368, 109 S.Ct. 2506.

Younger exemplifies one class of cases in which federal-court abstention is required: When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution. This Court has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions, see *Huffman v. Pursue, Ltd.,* 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), or that implicate a State's interest in enforcing the orders and judgments of its courts, see *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987). We have cautioned, however, that federal courts ordinarily should entertain and resolve on the merits an action within the scope of a jurisdictional grant, and should not "refus[e] to decide a case in deference to the States." *NOPSI*, 491 U.S., at 368, 109 S.Ct. 2506.

Circumstances fitting within the *Younger* doctrine, we have stressed, are "exceptional"; they include, as catalogued in *NOPSI*, "state criminal prosecutions," "civil enforcement proceedings," and "civil

> proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S., at 367-368, 109 S.Ct. 2506.

Sprint at 72-78.

This Court's decisions in *Williams* and *Galette,* if properly applied by the Ninth Circuit, would result in *Younger* abstention being unavailable to dismiss this lawsuit. This is because under *Williams*, the State Bar Act violates the Supremacy Clause by stripping jurisdiction from California's courts of general jurisdiction to hear a specific class of cases, namely those attacking attorney discipline. Under *Potrero Hills*, state proceedings that violate the Supremacy Clause are not eligible for protection under *Younger*. Under *Sprint* and *NOPSI,* administrative proceedings which are not initiated by the sovereign do not qualify for protection under *Younger*. However, because the Ninth Circuit requires "clear irreconcilability" rather than inconsistency, Sanai cannot argue these issues to the Ninth Circuit outside of an en banc proceeding.

B. The Criticisms of *Miller* by Judge VanDyke Are Correct.

In *Kivett,* the two judge majority opinion characterized *Miller* as follows:

> *Miller v. Gammie* is our en banc decision providing the standards under which a three-judge panel may overrule a prior circuit decision. In that decision, we

emphasized that as an intermediate appellate court "[a] goal of our circuit's decisions, including panel and en banc decisions, must be to preserve the consistency of circuit law." *Miller,* 335 F.3d at 900. Our starting point is the general principle that a three-judge panel may not overrule a prior court decision. Nevertheless, we have acknowledged the reality that consistency in our court decisions "must not be pursued at the expense of creating an inconsistency between our circuit decisions and the reasoning of state or federal authority embodied in a decision of a court of last resort." *Id.* Just as we are bound by our own decisions, we are also bound by the decisions of the Supreme Court (or a state supreme court on an issue of state law) and our need for consistency in our own decisions must sometimes yield to the reality that a decision has become untenable because of the "holding[ ] ... [or] `mode of analysis'" of the higher court. *Id.* (quoting Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1177 (1989)). In Miller, we decided that "issues decided by the higher court need not be identical in order to be controlling.

Rather, the relevant court of last resort must have undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Id.*

S

ince *Miller*, we have added to our understanding of what constitutes "clear irreconcilability." The requirement is a "high standard." *Rodriguez v. AT & T Mobility Servs. LLC,* 728 F.3d 975, 979 (9th Cir. 2013). The presumption is against overruling our prior decision: "if we can apply our precedent consistently with that of the higher authority, we must do so." *FTC v. Consumer Def., LLC,* 926 F.3d 1208, 1213 (9th Cir. 2019). "It is not enough for there to be `some tension' between the intervening higher authority and prior circuit precedent or for the intervening higher authority to `cast doubt' on the prior circuit precedent." *Lair v. Bullock,* 697 F.3d 1200, 1207 (9th Cir. 2012) (first quoting *United States v. Orm Hieng,* 679 F.3d 1131, 1140-41 (9th Cir. 2012); then quoting *United States v. Delgado-Ramos,* 635 F.3d 1237, 1239 (9th Cir. 2011)). Even if a Supreme Court decision "contain[s] language that might persuade us to

> decide [the prior case] differently if presented to us today[,] ... the fact that we might decide a case differently than a prior panel is not sufficient grounds for deeming the case overruled. Nothing short of `clear irreconcilability' will do." *Close v. Sotheby's, Inc.,* 894 F.3d 1061, 1073-74 (9th Cir. 2018) (citations omitted).

Kivett at 645.

As the above makes clear the goal of *Miller* is not to ensure the fidelity of Ninth Circuit case law to this Court's interpretation of the law, but rather to ensure the consistency of Ninth Circuit's precedents. That's plainly the wrong purpose.

The panel decision applied the strict understanding of *Miller* articulated in *Kivett*. Both decisions vitiate the application of *Younger* abstention: *Galette* eliminates one of the prerequisites for California State Bar proceedings to be classified as "civil enforcement proceedings akin to criminal prosecutions", while *Williams* renders California attorney discipline proceedings void under the Supremacy Clause and thus not subject to *Younger* abstention.

Judge VanDyke's attacks on *Miller* span several cases, the most recent of which is in *Whitfield*:

> I write separately to underscore that this case illustrates (yet again) a more fundamental problem within

> our circuit: *Miller v. Gammie's* improper demand that our own circuit's precedent be privileged over the Supreme Court's more recent instructions unless our precedent is "clearly irreconcilable" with what the Supreme Court has subsequently told us. 335 F.3d 889, 893 (9th Cir. 2003). This prevents three-judge panels of our court from applying more recent Supreme Court authority whenever it is merely inconsistent with our own. *See In re Manion,* No. 25-2507, 2026 WL 2641687, at *3 (9th Cir. Sept. 8, 2026) (VanDyke, J., concurring in part); *see also Arizona All. for Retired Ams. v. Mayes,* 186 F.4th 622, 652-56 (9th Cir. 2026) (VanDyke, J., concurring in part). The effect of this rule is both obvious and obviously wrong—we systematically hold the Supreme Court's instructions about the *right* answer to any number of legal questions in lower regard than our own *wrong* precedents.
>
> ….
>
> As I've explained elsewhere, *Miller* ossifies erroneous Ninth Circuit precedent across doctrinal areas, forcing litigants to seek en banc or Supreme Court review to obtain the benefit of intervening

Supreme Court decisions. *See id.* at 653-56.

The reality is that our en banc court is often unable or unwilling to fix things at odds with Supreme Court precedent. Sometimes, the obstacle is simply institutional inertia; the costs of en banc review make correction burdensome enough that erroneous precedent persists by default. *See In re Manion,* 2026 WL 2641687, at *4. We are a very busy court, and we can't be expected to take every case en banc that presents a legal issue where subsequent Supreme Court authority is inconsistent with, but not "clearly irreconcilable" with, our own.

But that is not the only problem with *Miller's* rule. The effect of that inverted rule is especially insidious (and no doubt intentional) when our precedent involves one of the many contested legal questions where our circuit's ideological commitments are at odds with what the Supreme Court has recently told us. In those instances, it is very unlikely a majority of our court would ever vote to take a case en banc to abandon the majority's own preferred doctrinal approach, even after the Supreme Court has

undermined its foundation. *See, e.g., Knife Rts., Inc. v. Bonta,* 182 F.4th 797, 802-10 (9th Cir. 2026) (VanDyke, J., dissenting) (explaining how the Ninth Circuit ignores the Supreme Court's Second Amendment precedent). Judge Reinhardt famously announced the Ninth Circuit's motto: the Supreme Court can't "catch `em all." See*, e.g.,* Linda Greenhouse, Dissenting Against the Supreme Court's Rightward Shift, N.Y. Times (Apr. 12, 2018), https://www.nytimes.com/2018/04/12/opinion/supreme-court-right-shift.html [https://perma.cc/H473-3MRD]. *Miller's* strictures ensure that the Supreme Court's guidance will, for the most part, be limited in this circuit to only those instances where the Court actually "catches" a specific case—that is, where it actually grants review and issues a binding opinion in that case. And even in that rare instance, *Miller* ensures that whatever guidance the Supreme Court provides will have little spillover effect beyond the very narrow issue actually decided by the Court in that case. *See, e.g., Wolford v. Lopez,* 116 F.4th 959, 970 (9th Cir. 2024), *rev'd and remanded,* 609 U.S. 185 (2026); *Wolford v. Lopez,*

> 184 F.4th 1167, 1170-71 (9th Cir. 2026) (accepting, reluctantly, the Supreme Court's direct holding that a Hawaii law "prohibit[ing] the carry of firearms onto private property unless the owner allows it" violates the Second Amendment, but refusing to re-evaluate any other aspect of the panel's previous analysis upholding other Hawaii arms restrictions in light of *Wolford*). Everything else is not "clearly irreconcilable" (judges and lawyers alike are, after all, pretty good at distinguishing), so three-judge panels of this court that would very much like to follow the Supreme Court's recent guidance can't. And those who would very much like to avoid the Supreme Court's guidance can do so simply by not voting to take a case en banc.

Whitfield at 14-17 (italicized emphasis in original).

The rejection of *Williams* in this case shows the problem. When presented with *Williams,* the Court of Appeals stated that even if *Williams* is a change in law, it does not address abstention, so it cannot be relevant. App. A3. No attention was paid to the fact that under a long line of cases in the Ninth Circuit and other circuits discussed in the next section, the creation of immunities by jurisdiction-stripping

results in the administrative scheme violating the Supremacy Clause, and thus becoming void.

The panel's mode of analysis, which resulted in a finding that no relevant change in law occurred, is a typical result of a *Miller*-style analysis involving a holding of this Court that affects a multi-step merits or jurisdictional analysis in an area of law not discussed in this Court's opinion. This is particularly true if a new decision of this Court makes an exception to a complex doctrine like *Younger* abstention or the *Rooker-Feldman* doctrine available in a particular case; the newly created availability of the exception will not cause this Court's new decision to be "clearly irreconcilable" with the Court of Appeals precedent under *Miller*.

> The consequence is perverse. To correct our circuit's many erroneous precedents and ensure litigants can benefit from intervening Supreme Court decisions, the Supreme Court will have to take case after case after case and reverse them all, slowly, over the course of decades, one by one by one, as it has done so many times before….
>
> The Supreme Court should not have to keep trimming the same poison ivy one tiny branch at a time. There are many judges on our circuit who would be glad to do the right thing and apply the Supreme Court's guidance in three-judge panel decisions whenever that

> guidance is inconsistent with our circuit's own earlier precedents. By overturning *Miller* in this or some future case, the Supreme Court would remove a perverse rule that entrenches erroneous precedent in this circuit, enabling three-judge panels to help hack away at the overgrowth. Help us help you….why not also correct *Miller's* "clearly irreconcilable" standard? Addressing the former will eliminate one of many legal doctrines in our court that are inconsistent with subsequent Supreme Court authority. But also addressing the latter would do much more to conform the Ninth Circuit's law to the Supreme Court's—without the Supreme Court's needing to exhaustively address every single error seriatim.

Whitfield at 17-18.

In her prior career as an academic, Justice Barrett analyzed how the overbroad application of stare decisis results in due process violations. Amy C. Barrett, Stare Decisis and Due Process, 74 U. Colo. L. Rev. 1011 (2003). The *Miller* rule is precisely the kind of overbroad application of stare decisis that deprives litigants of due process, specifically the components of right to be heard and equal protection. The violation of the right to be heard is obvious. The Ninth

Circuit panel explicitly refused to consider the application of *Williams* and *Haywood* to support the Supremacy Clause exception to *Younger* abstention, and *Galette's* negation of one of the elements that must exist for the California State Bar to claim the benefits of *Younger* abstention. This refusal to consider these issues also constitutes a violation of equal protection of this Court's decisional law in *Williams* and *Galette* on grounds that are completely irrational, because *Miller* privileges the consistency of Ninth Circuit law over the *ratio decidendi* of the decisions of the highest court of the land.

Circuit Judge VanDyke elaborated on the equal protection deficiencies of the Ninth Circuit's processes:

> *Miller* places the burden of correcting our "merely inconsistent" precedent on the en banc process even when a three-judge panel recognizes that our court's prior decision is contrary to intervening Supreme Court direction. But en banc review is an extraordinary and institutionally costly mechanism. It requires a party willing and able to litigate the issue through another layer of briefing and argument and the investment of a majority of judges on our large and busy court who think our precedent is not just wrong but instead so wrong—and consequential—that fixing it is

worthy of the extra workload.

Because Miller makes en banc review the only mechanism for correcting "merely inconsistent" conflicts between our circuit's precedent and intervening Supreme Court authority, most disparities will go unfixed. All the stars may align for en banc review when the case concerns a politically salient issue, a high-profile constitutional right, or a question that affects an exceptionally large number of cases. But most legal errors manifest in less auspicious circumstances, and most cases don't present the headliner legal issues. The parties to each case almost always have a great deal at stake personally, but the questions they present have less significance in the broader legal landscape. There is consequently little reason for our entire court to expend the resources required to correct errors in the run-mill of cases through en banc review. Most litigants who can show only that our precedent is "merely inconsistent" with subsequent Supreme Court decisions, then, are simply out of luck. That should trouble everybody: a litigant who deserves to win under more recent Supreme Court precedent will instead lose under

our inferior court's older precedent. How is that right?

What's more, *Miller* creates an unfortunate asymmetry. Two litigants can be equally entitled to the benefit of intervening Supreme Court precedent, yet only the one presenting what we deem to be a sufficiently important issue justifying the high transaction costs of en banc review has a chance to obtain it. The ordinary litigant with an ideologically innocuous or narrow grievance has little realistic ability to garner the attention necessary to secure en banc review. The result is that, while our court effectively nullifies Supreme Court precedent through *Miller's* improperly onerous standard, everyday litigants like Manion are left suffering from wrong law simply because they have the misfortune of being in the Ninth Circuit.[1]

The availability of having the correct law applied to a dispute should not depend on whether the litigant happens to have an important enough case to garner the attention of our entire court. As I said in *Arizona Alliance*, our court should "modify our *Miller v. Gammie* rule to clarify that

Supreme Court precedent controls whenever it is inconsistent with our own." 2026 WL 2277101 at *23 (VanDyke, J., concurring in part and concurring in the judgment). Doing so would allow litigants like Manion to benefit from recent Supreme Court direction without making rare en banc review the price of admission.

While not relevant to this case, it also can't be ignored that this court has an obvious institutional incentive to maintain its rule that "requires[] our court to apply precedent that is irreconcilable with Supreme Court decisions as long as it is not 'clearly' so." *Ariz. All,* 2026 WL 2277101, at *25 (VanDyke, J., concurring in part and concurring in the judgment). We are, after all, a famously liberal circuit ultimately answering to a more conservative Supreme Court. This court frequently works hard "to avoid following the Supreme Court's instructions." *Knife Rts., Inc. v. Bonta,* 182 F.4th 797, 810 (9th Cir. 2026) (VanDyke, J., dissenting from the denial of rehearing en banc). *Miller's* strictures provide us with a helpful mechanism for ensuring that recent Supreme Court decisions

> providing directly applicable legal reasoning sometimes remain no more significant in this circuit than a newspaper op-ed. Put differently, our *Miller* standard forces the Supreme Court to fix our incorrect precedents more directly and piecemeal instead of allowing the Court's reasoning in one case to correct our errant precedent whenever it directly applies.

In re Manion, No. 25-2507, slip. op. at 2-4 (9th Cir. Sept. 8, 2026) (VanDyke, J., concurring in part).

Judge VanDyke is entirely correct that the *Miller* standard creates equal protections violation, since "the ordinary litigant with an ideologically innocuous or narrow grievance has little realistic ability to garner the attention necessary to secure en banc review" as compared to say a governmental entity seeking to impose restrictions on Second Amendment rights.

C. *Williams* Is New Law Confirming that the Washington State Court of Appeals Correctly Found California's Attorney Discipline System Unconstitutional.

First, California imposes a rule of judicial exhaustion; the administrative outcome has preclusive effect unless the Plaintiff

successfully overturns the decision by way of state court action, usually a petition for writ of administrative mandamus but in attorney discipline a petition to the California Supreme Court. *Jamgotchian v. Ferraro*, 93 F.4th 1150 (9th Cir. 2024)(holding that California's judicial exhaustion requirement cannot be recognized in federal court 42 U.SC. §1983 lawsuits.)

awards in favor of the government. See *Barry v. State Bar,* 2 Cal.5th 218 (2017). But California attorney discipline matters have two extra layers of protection, over and above judicial exhaustion and anti-SLAPP. The California Legislature explicitly stripped Superior Courts and Courts of Appeal of the jurisdiction in any matters involving attorney discipline, reserving such jurisdiction exclusively to the Supreme Court. *Barry, supra,* at 322-23, citing *Jacobs, supra* at 196, and *Sheller v. Sup. Ct.,* 158 Cal.App.4th 1697, 1710 (2008). However, the Supreme Court is not a court of general jurisdiction, and trials are only authorized in the Superior Courts under Cal. Code Civ. Proc. §395. Accordingly, an attorney aggrieved by California state attorney discipline proceedings has no ability to file a 42 U.S.C. §1983 claim in the Superior Court, as those courts were stripped of jurisdiction; and there is no way to file such an action in the Supreme Court.

> *Haywood v. Drown,* 556 U.S. 729, 129 S.Ct. 2108, 173 L.Ed.2d 920 (2009) also controls our review of

subject matter jurisdiction…. The United States Supreme Court held the New York legislation unconstitutional because the exceptional treatment of a limited category of § 1983 claims was inconsistent with the supremacy clause of the United States Constitution. Although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action deemed inconsistent with their local policies. The state of New York impermissibly thwarted Congress' judgment that all persons who violate federal rights under color of state law be held liable for damages. A state may not employ a jurisdictional rule to undermine federal law. ….

The WSBA cites three out-of-state cases to support its contention that the superior court lacks subject matter jurisdiction: *Smith v. Mullarkey,* 121 P.3d 890 (Colo. 2005), *Barnard v. Sutliff,* 846 P.2d 1229 (Utah 1992), *Jacobs v. State Bar of California,* 20 Cal.3d 191, 570 P.2d 1230, 141 Cal. Rptr. 812 (1977). All cases support the WSBA's position that superior courts lack jurisdiction to

> review state bar disciplinary proceedings. Nevertheless, as state court decisions, the trio of opinions lack value in the face of United States Supreme Court decisions addressing federal law. …..The *Sutliff, Jacobs,* and *Smith* courts, however, did not address the federal law's requirement that state courts of general jurisdiction remain open for civil rights suit.
>
> The WSBA notes that an attorney may raise and adjudicate constitutional challenges within the scope of the lawyer discipline system with ultimate and independent review by the state Supreme Court. *In re Disciplinary Proceeding Against Smith,* 170 Wash.2d 721, 729, 246 P.3d 1224 (2011); *see In re Disciplinary Proceeding Against Blanchard,* 158 Wash.2d at 330-31, 144 P.3d 286 (2006). We recognize this feature of the disciplinary process, but the feature does not wrest jurisdiction from the superior court over federal civil rights claims. Marc Feldman and Edward Hickey also argued constitutional claims before the District of Columbia Court of Appeals.

Eugster, 397 P.3d at 143-144.

Eugster and the case law it analyzed were presented to the Delaware Supreme Court, which rejected *Eugster* and affirmed the Court of Chancery's holding that its trial courts could not hear 42 U.S.C. §1983 lawsuits concerning attorney discipline. *Abbott v. Vavala*, No. 60, 2022 (Del. Sup. Ct. Aug. 22, 2022)(per curiam) ("*Abbott*") slip op. at 9-10 fn. 31. In so doing it explicitly considered *Eugster,* but held that "[t]o the extent that case law from other states reaches a different conclusion regarding the supervision of lawyers in those states, we decline to follow it because that case law is inconsistent with Delaware law" as such law stripped jurisdiction from the relevant trial court (the Delaware Court of Chancery) to hear challenges to attorney discipline. *Abbott* at 10, fn. 31. Thus prior to *Williams,* state courts were divided as to whether it was constitutional to strip jurisdiction from trial courts to hear 42 U.S.C. §1983 claims seeking injunctive relief as to attorney discipline under *Haywood.*

Last year, this Court held in *Williams* that any procedural barrier which effectively immunizes a class of state defendants under 42 U.S.C. §1983 in state court violates the Supremacy Clause even if it is clearly jurisdictional in nature. Under *Williams* and *Haywood,* California's procedural barriers to filing state court §1983 claims arising from disciplinary matters render the entire scheme unconstitutional. The same is true of the attorney discipline systems in Utah, Colorado,

Delaware and any other states which have engaged in such jurisdiction-stripping.

This clarification constitutes "new law" as the Ninth Circuit explained:

> In *Freedman v. Maryland*, 380 U.S. 51, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965), the Supreme Court held that a content-based film licensing process must contain three procedural safeguards (including the two the Fair contends are required here), or else be classified as an unconstitutional prior restraint…..
>
> In *Thomas v. Chicago Park Dist*., however, the Supreme Court clarified that none of the Freedman safeguards are required of content-neutral time, place, and manner permit schemes.

S. Or. Barter Fair v. Jackson County, 372 F.3d 1128, 1137 (9th Cir. 2004).

unconstitutional jurisdiction stripping or was a structural feature that must be respected. See *Monroe v. Pape*, 365 U.S. 167 (1961). In *Williams*, this Court confronted this question squarely and five justices held that it was pre-empted even in light of the dissent's argument:

> [T]he dissent argues that *Haywood's* reasoning about immunity rules applies only where a "focus on statutory purpose" reveals that a state rule reflects " `policy

> disagreement' " with federal law. *Post,* at 189 (opinion of Thomas, J.) (quoting *Haywood,* 556 U. S., at 737–738). We respectfully disagree with the dissent's reading of *Haywood.* That decision did not endorse a freewheeling inquiry into whether a state rule's "purpose" or "policy" (however assessed) is at odds with federal law. Rather, a state rule runs afoul of *Haywood* if it operates as an "immunity statute cloaked in jurisdictional garb" by wholly barring a "particular species" of § 1983 suits in state court. *Id.,* at 739, 742.

Williams at 178.

Supremacy Clause, the attorney discipline systems of California, Colorado, Utah and any other state that jurisdiction-strips its trial courts of jurisdiction to hear 42 U.S.C. §1983 claims concerning attorney discipline.

Hills Landfill, *supra* at 884 fn. 9; *Bud Antle, Inc. v. Barbosa,* 35 F.3d 1355, 1365-66 (9th Cir. 1994), as amended by, 45 F.3d 1261 (9th Cir. 1994); *Gartrell Construction, Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991), citing *Champion International Corp. v. Brown*, 731 F.2d 1406 (9th Cir. 1984); see also *National R.R. Passenger Corp. v. Florida*, 929 F.2d 1532, 1537 n. 12 (11th Cir. 1991), citing *Baggett v. Department of Professional Registration*, 717

F.2d 521, 524 (11th Cir. 1983); *Southwestern Bell Tel. v. Ark. Public Service Commission*, 824 F.2d 672, 673 (8th Cir. 1987); *Kentucky W. Va. Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 791 F.2d 1111, 1115 (3rd Cir. 1986).

D. *Younger* Abstention Does Not Apply Because the State Bar is not an Arm of the State.

Galette overruled *Kohn's* holding that California's State Bar is "an arm of the state" entitled to Eleventh Amendment immunity. U.S. Const., amend. XI.

This has two distinct consequences.

In *Galette,* this Court once again explained that "[o]ne problem with the States' position is that it focuses on the label a State places on an entity, rather than assessing whether the State structured the entity as legally separate." *Galette,* 146 S.Ct. at 875.

> Although the Court's arm-of-the-State cases have accounted for various considerations over time, those precedents have consistently, and predominantly, examined whether the State structured the entity as a legally separate entity liable for its own judgments.

Galette, 146 S.Ct. at 868.

Where those two characteristics are NOT present, as in the case of the California State Bar, then the entity is not an arm of the state and thus is not protected by Eleventh Amendment immunity. In addition, because

they are not "judicial in nature", California State Bar proceedings would not fall into the category of "state civil enforcement proceedings akin to criminal prosecutions" or any other *NOPSI* category if state law were dispositive.

Because the California State Bar is no longer considered an arm of the state under *Galette's* test, State Bar Court proceedings no longer fall into the *NOPSI* category of "state civil enforcement proceedings akin to criminal proceedings." *Sprint* at 78, *citing NOPSI*. First, the proceedings are not conducted by the "state" or an "arm of the state". Second, to qualify as a "state civil enforcement proceedings akin to criminal prosecutions" the proceeding must be "initiated by "the State in its sovereign capacity"". *Sprint* at 79. The State Bar Court proceedings are initiated by an entity which is not an arm of the state and cannot, by virtue, do anything in a "sovereign capacity."

This Court held in *NOPSI* that to determine whether *Younger* abstention applies to ongoing proceedings that have gone to a second level of review, one analyzes the initial proceeding:

> Respondents' case for abstention still requires, however, that the Council proceeding be the sort of proceeding entitled to *Younger* treatment. We think it is not. While we have expanded *Younger* beyond criminal proceedings, and even beyond proceedings in courts, we have never extended it to

> proceedings that are not "judicial in nature."

NOPSI at 370-371 (footnotes omitted).

The rule that the initial proceeding must meet the requirements for *Younger* abstention is necessary to ensure that it does not become a "broad abstention requirement [that] would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *NOPSI* at 369. The focus on the initial proceeding's nature in *NOPSI* is consistent with *Sprint's* requirement that a proceeding must be "initiated by "the State in its sovereign capacity"" to qualify for protection under *Younger*. *Sprint* at 79. *Younger* is a doctrine of comity based on respect for the exercise of the sovereign power of the STATE; where the STATE does not initiate the process that a defendant asserts to be "state civil enforcement proceeding akin to criminal prosecutions", the fact that judicial review down the road is available has no bearing since that is true of nearly any act injuring vested legal rights. *Marbury v. Madison*, 5 U.S. 137, 163 (1803)("it is a settled and invariable principle … that every right, when withheld, must have a remedy, and every injury its proper redress.").

Separate and apart from eliminating the basis for deeming State Bar of California administrative proceedings as the "state civil enforcement proceedings akin to criminal proceedings", the elimination of the State Bar

of California's sovereign immunity establishes grounds for Sanai amending his complaint to assert damages claims against the defendants and the State Bar of California itself. Such damages claims may not be dismissed under *Younger*. *Gilbertson v. Albright,* 381 F.3d 965, 984 (9th Cir. 2004) (en banc). Sanai has the right to amend his complaint to assert any viable claim. *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015), *quoting Akhtar v. Mesa,* 698 F.3d 1202, 1212 (9th Cir. 2012), *quoting Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988)(per curiam). Here, a claim for damages that was not viable due to *Hirsh* and *Kohn* is now viable under *Galette*.

E. This Petition Offers Immediate Resolution of an Issue that Multiplies Unnecessary Litigation.

Circuit Judge VanDyke has now written three opinions attacking the *Miller* standard this year. In the first case, *Arizona All. for Retired Ams. v. Mayes*, 186 F.4th 622, 652–56 (9th Cir. 2026)(en banc)(VanDyke, J., concurring in part), Judge VanDyke took the opportunity of sitting on any en banc panel to suggest that the Court "slightly modify" the *Miller* standard. One month later, apparently recognizing the urgency of fixing this problem, Judge VanDyke used an unpublished disposition to explain how *Miller* disadvantages ordinary litigants who do not have the pull or a sufficiently appealing cause for en banc treatment. *In re Manion, supra.*

One month after the unpublished concurrence-in-part, Judge VanDyke aimed a full broadside at *Miller* in *Whitfield*. No Ninth Circuit judge has rebutted Judge VanDyke's arguments.

Though *Miller* was discussed by the Court of Appeals in *Kivett,* the petition in the pending *Kivett* certiorari petition did not raise the question. The issue could be presented by the Solicitor General in *Whitfield*, but that case is not a good vehicle because could easily end up mooted if, on remand, the district court decides that even under the alternate preliminary injunction test it will deny the motion for preliminary injunction. Accordingly, this case appears to be the only viable vehicle for addressing *Miller* this term.

The ultimate subject matter of this case is California's attorney discipline system. It therefore connects to the pending petition before this Court, *Eastman v. State Bar of California*, No. 26-336. Petitioner Sanai and Peyman Roshan filed an amici brief in support of Mr. Eastman, pointing out that while his first question presented raised an important issue that was fully preserved, he misrepresented, likely accidentally, that the State Bar Court Review Department opinion was adopted by the California Supreme Court when it summarily denied the application. See Sanai & Roshan Amici Brief in Support of Dr. John Eastman, *Eastman v. State Bar of Cal.*, S. Ct. No. 26-336, filed October 9, 2026. That assertion is not what the California Supreme Court and this Court have interpreted a

summary denial to mean, but there is a California Court of Appeal decision which erroneously suggests this is the case. The problem for Dr. Eastman and any other person who wishes to attack California attorney discipline judgments in this court is that there is no reasoned judicial opinion of any kind. The "opinion" of the Review Department is a mere recommendation and the decision of the California Supreme Court is that the attorney did not raise any issue meriting review under the standards set forth in Cal. R. Ct. 9.16(a).

The availability of a state court remedy under 42 U.S.C. §1983 in state court would eliminate this problem. An attorney like Sanai or Dr. Eastman would, in this hypothetical attorney discipline system, have the option of raising constitutional claims in a California Superior Court action against the State Bar.

The *Eastman* amici brief recommends that this Court grant certiorari in one or more of the *Sanai* and *Roshan* petitions which are being submitted to this Court, and remand Dr. Eastman's case to the California Supreme Court to give its actual views.

However, after a closer review of Dr. Eastman's petition, it is clear that it fails to comply with S. Ct. Rule 14.1.(g)(i) as to the second and third questions presented, and that the alternative argument that Dr. Eastman may raise "jurisdictional" issues at any time is erroneously referring to a case of absence of federal court jurisdiction, not Supremacy Clause violations that would merit direct

vacatur by this Court. Dr. Eastman would however be able to obtain relief by post-judgment collateral attack if this Court grants this petition and Sanai prevails.

CONCLUSION

The Court should grant the petition for consideration this term or, with the contemporaneously filed case of *Sanai v. Kruger,* remand to the full en banc court for reconsideration of the questions presented. A remand would require the full court to directly address Judge VanDyke's contentions; so far, no Circuit Judge has rebutted anything he has written. The remand must be to an en banc panel, because under Kivett a remand from this Court to a three-judge panel does not eliminate the *Miller* barrier.

If the Court decides to remand, Sanai suggests that this Court follow the order format it utilized in its June 22, 2026 orders in *Newberry v. Texas,* S. Ct. No. 25-862 (June 22, 2026), and *Busby v. Mississippi,* S. Ct. No. 25-6885 (June 22, 2026). The situation in this case is close to the situation in *Newberry*, where a Texas Court refused to grant relief in a habeas proceeding after the state agreed that the relief should be granted, providing no explanation. Here, the cursory analysis of the Court of Appeals is akin to the judicial *ipse dixit* in *Newberry*. See App. A. In addition, not a single Ninth Circuit judge has refuted Judge VanDyke's repeated explanations that the Ninth Circuit is violating fundamental

principles of stare decisis. Remand en banc will ensure that if Sanai does not succeed, this Court will have the full benefit of considering all views in the Ninth Circuit on a reasserted question presented in a petition for certiorari.

Accordingly, Sanai respectfully suggests that if the Court decides to remand this case to the Court of Appeals, the order read substantially in the following form:

> The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit, sitting as a full en banc court at the earliest opportunity, for further consideration, together with *Sanai v. Kruger,* in light of the positions asserted by Mr. Sanai in his petitions for certiorari in this case and *Sanai v. Kruger*.

Dated this November 19, 2026.

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED MAY 5 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CYRUS MARK SANAI, Solicitor,	No. 24-6708
Plaintiff - Appellant,	D.C. No. 4:22-cv-01818-JST
v.	
GEORGE S. CARDONA; LEAH WILSON,	MEMORANDUM*
Defendants - Appellees.	

Appeal from the United States District Court for the Northern District of California
Jon S. Tigar, District Judge, Presiding

Submitted April 30, 2026**

Before: N.R. SMITH, BUMATAY, and H.A. THOMAS, 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 this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cyrus Mark Sanai appeals the district court's: (1) dismissal of his second amended complaint without leave to amend on the basis that *Younger v. Harris*, 401 U.S. 37 (1971), abstention applies under the law of the case doctrine; (2) denial of his motion for a preliminary injunction; (3) denial of his motions under Federal Rules of Civil Procedure ("Rules") 59(e) and 60(b); (4) denial of his motions for an indicative ruling under Rule 62.1; and (5) order relating this matter with *Roshan v. Lawrence*, Case No. 4:21-cv-01235-JST. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's application of the law of the case doctrine for abuse of discretion. *See*

7*Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012). We review Sanai's remaining claims for abuse of discretion. *See Curry v. Yelp Inc.*, 875 F.3d 1219, 1224 (9th Cir. 2017) (leave to amend a complaint standard of review); *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 730 (9th Cir. 1999) (preliminary injunction standard of review); *Kaufmann v. Kijakazi*, 32 F.4th 843, 847 (9th Cir. 2022) (Rule 59 motion standard of review); *Flores v. Rosen*, 984 F.3d 720, 731 (9th Cir. 2020) (Rule 60(b) standard of review); *Mireskandari v. Mayne*, 800 F. App'x 519, 519 (9th Cir. 2020) (indicative ruling standard of review); *Jacobson v. Hughes Aircraft Co.*, 105 F.3d 1288, 1302 (9th Cir. 1997), *rev'd on other grounds*, 525 U.S. 432 (1999) (relating cases standard of review). We affirm.

1. In Sanai's first appeal, we determined that *Younger* abstention applied in this matter. *See Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100, at *1–2 (9th Cir. Jan. 30, 2024), *cert. denied*, 145 S. Ct. 1139 (2025), *and cert. denied sub nom.*, *Sanai v. Lawrence*, 145 S. Ct. 1140 (2025). Sanai does not challenge the district court's application of the law of the case doctrine to determine that *Younger* also bars his second amended complaint. Instead, he raises the same arguments he raised in his first appeal.[1] But we may not reexamine the arguments that we have already heard and decided. *See Hall*, 697 F.3d at 1067 (explaining that the law of the case doctrine "generally pre[c]ludes [us] from reconsidering an issue decided previously by the same court or by a higher court in the identical case"). And, contrary to Sanai's argument on appeal, *Williams v. Reed*, 604 U.S. 168 (2025), and *Galette v. New Jersey Transit Corp.*, 146 S. Ct. 854 (2026), do not constitute intervening changes in law that warrant us revisiting our previous holding. *Williams* involved exhaustion, not

abstention. *See Williams*, 604 U.S. at 173–79. And *Galette* involved sovereign immunity, not abstention. *See generally Galette*, 146 S. Ct. 854.

[1] At the district court, Sanai generally agreed that the law of the case doctrine applied to the Defendants' motion to dismiss. Relying on *Jamgotchian v. Ferraro*, 93 F.4th 1150 (9th Cir. 2024), however, he argued that *Younger* abstention violates the First and Fifth Amendments. The district rejected this argument. Sanai abandoned this argument on appeal.

2. Because *Williams* does not apply to this matter, the district court did not abuse its discretion in denying Sanai's motion for an indicative ruling on the grounds that *Williams* presented an intervening change in law.[2]

[2] Sanai has abandoned on appeal the arguments raised in his first motion for an indicative ruling.

3. Sanai's challenge to the district court's denial of leave to amend, preliminary injunctive relief, and Rule 59(e) and 60(b) motions fail. Here again, Sanai renews his argument that the district court relied on the "faulty legal conclusion that *Younger* abstention applied," in denying his motions, an argument that we reject as the district court properly applied the law of the case.

4. Sanai argues that the district court committed legal error in relating this matter to *Roshan v. Lawrence*, Case No. 4:21-cv-01235-JST. We determined that this argument lacked merit in Sanai's first appeal. *See Roshan*, 2024 WL 339100, at *2. We therefore do not reconsider it. *See Hall*, 697 F.3d at 1067.

AFFIRMED.[3]

[3] Sanai's motion for leave to file a petition for an initial hearing en banc (Dkt. No. 48), petition for initial en banc hearing (Dkt. No. 49), motion for injunctive relief (Dkt. No. 50), and motion to file corrected reply brief (Dkt. No. 53) are denied.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI, *Plaintiff,* v. GEORGE CARDONA, et al., *Defendants.*	Case No. 22-cv-01818-JST ORDER DENYING MOTION TO SET ASIDE JUDGMENT Re: ECF No. 137

On March 23, 2022, Plaintiff Cyrus Sanai, a California lawyer, initiated this action for declaratory and injunctive relief against Defendants George Cardona, the State Bar Chief Trial Counsel, and Leah Wilson, the State Bar Executive Director, after receiving a letter notifying him that the State Bar would initiate disciplinary proceedings against him. ECF No. 1; ECF No. 28 ¶ 30; ECF No. 77 ¶ 30. He filed his second amended complaint on May 22, 2023. ECF No. 77. Defendants subsequently filed a motion to dismiss, which the Court granted on July 16, 2024. ECF No. 134. In so ruling, the Court held that *Younger* abstention required dismissal of his claims.

Now before the Court is Sanai's motion for reconsideration. ECF No. 137. For the reasons stated below, the Court will deny the motion.

"Where, as here, the Court's ruling has resulted in a final judgment or order, a motion for reconsideration may be based either on Rule 59(e) or Rule 60(b) of the Federal Rules of Civil Procedure." *Banh v. McEwan*, No. C 10-5915 JSW (PR), 2012 WL 369920, at *1 (N.D. Cal. Feb. 3, 2012). Under Federal Rule of Civil Procedure 60(b), a movant may seek relief from a final judgment for six reasons: (1) mistake, inadvertence, surprise or excusable neglect; (3) newly discovered evidence that by due diligence could not have been discovered before the court's

decision; (3) fraud by the adverse party; (4) voiding of the judgment; (5) satisfaction of the judgment; or (6) any other reason justifying relief. *See* Fed. R. Civ. P. 60(b); *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

Under Rule 59(e), a party may move a court to alter or amend a judgment within 28 days after entry of the judgment. Fed. R. Civ. P. 59(e). "Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (internal quotation marks and citation omitted). A Rule 59(e) motion "is an extraordinary remedy, to be used sparingly in the interest of finality and conservation of judicial resources." *Kaufmann v. Kijakazi*, 32 F.4th 843, 850 (9th Cir. 2022) (internal quotation marks and citation omitted). Generally, there are four grounds upon which a Rule 59(e) motion may be granted: "(1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law." *Allstate*, 634 F.3d at 1111.

Sanai asks for relief from the judgment on the grounds that the Court mistakenly granted Defendants' motion to dismiss and because of new facts. ECF No. 137 at 2. "With respect to mistake, a [motion for reconsideration] may seek relief from an excusable mistake on the part of a party or counsel, or if the district court has made a substantive error of law or fact in its judgment or order." *Bamforth v. Facebook, Inc.*, No. 20-cv-09483-DMR, 2022 WL

1987858, at *3 (N.D. Cal. June 6, 2022) (internal quotation marks and citation omitted). Sanai disagrees with the outcome of the Court's dismissal order but does not identify any substantive mistake. *See* ECF No. 137. "[M]ere dissatisfaction with the court's order or the belief that the Court is wrong in its decision are not adequate grounds for relief." *Washington v. Caropreso*, No C 11-3666 LHK (PR), 2013 WL 4426449, at *1 (N.D. Cal. Aug. 15, 2013). Nor does Sanai's evidence of the denial of his motion for other discovery in his disciplinary proceedings change the Court's analysis. *See Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 211 (9th Cir. 1987) ("newly discovered evidence must be of such magnitude that production of it earlier would have been likely to change the disposition of the case").

Accordingly, Sanai's motion for reconsideration is denied.

IT IS SO ORDERED.

Dated: September 30, 2024

JON S. TIGAR
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI, *Plaintiff,* v. GEORGE CARDONA, et al., *Defendants.*	Case No. 22-cv-01818-JST ORDER GRANTING MOTION TO DISMISS; ORDER DENYING PRELIMINARY INJUNCTION; ORDER DENYING MOTION TO STAY DISCOVERY AS MOOT Re: ECF Nos. 84, 86, 128

Before the Court is a motion to dismiss by Defendants George Cardona and Leah Wilson. ECF No. 86. Also before the Court is a motion for preliminary injunction by Plaintiff Cyrus Sanai. The Court will grant Defendants' motion to dismiss and deny Sanai's motion for preliminary injunction.[1] The Court will also deny Defendants' motion to stay discovery as moot.

[1] The Court finds these motions suitable for disposition without oral argument and hereby vacates the August 8 and September 12, 2024 motion hearings. *See* Fed. R. Civ. P. 78(b); Civil L.R. 7-1(b).

I. BACKGROUND

Because the facts are well-known to the parties and the Court has summarized Plaintiff Cyrus Sanai's allegations in detail in its prior orders, ECF Nos. 58, 82, the Court will not elaborate them in detail here.

Briefly, Sanai, a California lawyer, initiated this action for declaratory and injunctive relief against Defendants George Cardona, the State Bar

Chief Trial Counsel, and Leah Wilson, the State Bar Executive Director, in March 2022, shortly after receiving a letter notifying him that the State Bar would initiate disciplinary proceedings against him. ECF No. 1; ECF No. 28 ¶ 30; ECF No. 77 ¶ 30.

In January 2023, the State Bar Office of Trial Counsel ("OCTC") informed Sanai that it was about to file a Notice of Disciplinary Charges ("NDC") and that he could request an Early Neutral Evaluation ("ENE") conference. ECF No. 52 at 8; ECF No. 52-1 at 3–4; *see* Rules of Procedure of the State Bar of California, Rule 5.30(C). On February 17, 2023, Sanai filed a motion for (1) a temporary restraining order barring the OCTC from filing the NDC and (2) an order to show cause why a preliminary injunction should not issue. ECF No. 52. The Court denied Sanai's motion on February 22, 2023. ECF No. 58. Sanai subsequently appealed the Court's order to the Ninth Circuit. ECF No. 69.

The State Bar filed an NDC against Sanai on February 23, 2023. *See* ECF No. 81-7 at 4; Rules of Procedure of the State Bar of California, Rule 5.351(A) ("A proceeding begins when a notice of disciplinary charges is filed and served on the attorney."). On June 5, 2023, Sanai filed a motion seeking the entry of a temporary restraining order and issuance of an order to show cause why an injunction pending appeal should not issue. ECF No. 81. In denying the motion, the Court concluded that Sanai was unlikely to succeed on appeal because *Younger* abstention applies to this action. ECF No. 82 at 2 (citing *Younger v. Harris*, 401 U.S. 37 (1971)).[2]

[2] Sanai subsequently amended his Ninth Circuit appeal to include the Court's order addressing *Younger*. *See* ECF No. 83 (Amended Notice of Appeal).

Defendants filed the present motion to dismiss on July 25, 2023, arguing that the Court should dismiss Sanai's second amended complaint ("SAC") under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). ECF No. 86. Before Sanai filed an opposition brief, the Court stayed the entire case pending Sanai's Ninth Circuit appeal on November 3, 2023. ECF Nos. 99, 100. The Ninth Circuit issued its decision on January 30, 2024, affirming that *Younger* abstention applied. *See Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024). It issued a mandate on April 13, 2024, ECF No. 113, and the Court subsequently set a briefing schedule for Defendants' pending motion to dismiss, ECF No. 117.

On July 2, 2024, Sanai filed a motion for a temporary restraining order. ECF No. 119. He sought to enjoin the State Bar from commencing disciplinary proceedings against him on a date when he is simultaneously required to defend an unlawful detainer proceeding in Los Angeles Superior Court. *Id.* at 24–25. The Court denied that motion on July 3, 2024. ECF No. 121. Subsequently, on July 10, 2024, Sanai filed a motion for a preliminary injunction on the ground that "Defendants should be enjoined "from taking any action to advance the [ongoing] disciplinary matter[s] . . . or any other disciplinary action based on the same or similar facts pending a final judgment in this action." ECF No. 128 at 2.

II. JURISDICTION

Sanai alleges this Court has jurisdiction under 28 U.S.C. § 1331.

III. LEGAL STANDARD

A. Rule 12(b)(1)

"Article III of the Constitution limits the jurisdiction of federal courts to 'Cases' and

'Controversies.'" *Lance v. Coffman*, 549 U.S. 437, 439 (2007). "One component of the case-or-controversy requirement is standing, which requires a plaintiff to demonstrate the now-familiar elements of injury in fact, causation, and redressability." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). A defendant may attack a plaintiff's assertion of jurisdiction by moving to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004); *see also* 5B Charles Alan Wright & Arthur Miller, Federal Practice and Procedure § 1350 (3d ed. 2004) ("A motion to dismiss an action under Federal Rule 12(b)(1) . . . raises the fundamental question whether the federal district court has subject matter jurisdiction over the action before it.")

"A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone*, 373 F.3d at 1039. Where, as here, a defendant makes a facial attack, the court assumes that the allegations are true and draws all reasonable inferences in the plaintiff's favor. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004) (citations omitted); *Hyatt v. Yee*, 871 F.3d 1067, 1071 n.15 (9th Cir. 2017). A court addressing a facial attack must confine its inquiry to the allegations in the complaint. *See Savage v. Glendale Union High Sch., Dist. No. 205, Maricopa Cty.*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003) (citations omitted).

B. Motion for Preliminary Injunction

Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). To obtain preliminary injunctive relief, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id*. at 20. A court may "balance the elements" of this test, "so long as a certain threshold showing is made on each factor." *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). Thus, for example, "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (quotation marks omitted).

C. Leave to Amend

Leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). The decision of whether to grant leave to amend is "within the discretion of the district court, which may deny leave due to 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.'" *Leadsinger, Inc. v. BMG Music Pub*., 512 F.3d 522, 532 (9th Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

IV. DISCUSSION

Having reviewed the briefs, the Court concludes that Defendants' motion to dismiss must be granted because *Younger* abstention applies pursuant to the law of the case doctrine. Further leave to amend the complaint is not warranted. Finally, because Sanai has not demonstrated that he is likely to suffer irreparable harm in the absence of preliminary relief injury, the Court denies his motion for preliminary injunction.

A. Motion to Dismiss Second Amended Complaint

1. *Younger* Abstention and Law of the Case

Defendants argue that "*Younger*, which applies here under law of the case, requires dismissal of the SAC." ECF No. 124-1 at 8. "The law of the case doctrine holds that 'a court will generally refuse to reconsider an issue that has already been decided by the same court or a higher court in the same case.'" *Chinatown Neighborhood Ass'n v. Harris*, 33 F. Supp. 3d 1085, 1093 (N.D. Cal. 2014), *aff'd*, 794 F.3d 1136 (9th Cir. 2015) (quoting *Gonzalez v. Ariz.*, 677 F.3d 383, 389 n. 4 (9th Cir. 2012)).

The abstention doctrine first articulated in *Younger v. Harris*, 401 U.S. 37 (1971), reflects the "strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). "[T]he issue of *Younger* abstention can be addressed by a federal court at any time no matter how far along the litigation is." *Adibi v. California State Bd. of Pharmacy*, 461 F. Supp. 2d 1103, 1109 (N.D. Cal. 2006). "Absent 'extraordinary circumstances,' abstention in favor of state judicial proceedings is required if the state proceedings (1) are

ongoing, (2) implicate important state interests, and (3) provide the plaintiff an adequate opportunity to litigate federal claims." *Hirsh v. Justs. of Sup. Ct. of State of Cal.*, 67 F.3d 708, 712 (9th Cir. 1995).

In *Roshan v. Lawrence*, 2024 WL 339100, at *1, the Ninth Circuit affirmed this Court's prior conclusion that *Younger* abstention was warranted.[3] The Ninth Circuit made clear that it "reject[ed] [Sanai's] contention that [its] prior decision in *Hirsh* should not apply to these cases . . . . Applying *Hirsh*, we conclude that the district courts properly abstained under *Younger* in each of the four cases. Under *Hirsh*, for purposes of *Younger* abstention, California State Bar proceedings are judicial in nature and implicate important state interests." *Id.* at *1 (citing *Hirsh*, 67 F.3d at 712–713). The Ninth Circuit further reasoned that "attorneys subject to California State Bar disciplinary matters have an adequate opportunity to raise their federal constitutional claims in the State Bar proceedings." *Id.* at *2 (citing *Hirsh*, 67 F.3d at 713). It explicitly rejected Sanai's arguments "about the alleged insufficiency of the State Bar process," and that "the State Bar proceedings provide an inadequate opportunity to litigate[.]" And lastly, it concluded that Sanai failed to "demonstrate[] that the 'extraordinary circumstances' exception for *Younger* abstention should apply." *Id.* (citations omitted).

[3] *Roshan v. Lawrence* was a consolidated appeal of four cases, including this one, that brought "nearly identical questions about the applicability of *Younger* abstention to California State Bar proceedings." 2024 WL 339100, at *1 n.1. The actions were all filed by Sanai either on his own behalf or on behalf of a client.

As Defendants correctly note, "the issue before the Court is whether the *Younger* doctrine applies to the claims in the SAC—the exact same issue that was decided on appeal." ECF No. 124-1 at 9. The Court

agrees that the law of the case doctrine squarely applies here, meaning that *Younger* abstention requires dismissal of the claims in the SAC.

2. *Younger* Abstention Does Not Violate the First and Fifth Amendments

Although Sanai generally agrees that the law of the case doctrine applies to Defendants' motion, *see* ECF No. 118 at 2, he appears to contend that an exception is warranted in light of the Ninth Circuit's decision in *Jamgotchian v. Ferraro*, 93 F.4th 1150 (9th Cir. 2024). Specifically, he argues that "that *Younger,* as applied to California attorney discipline proceedings, violates the Fifth Amendment equal protection component of the due process clause and the First Amendment petitioning clause because federal court challenges to all California professional discipline matters can as of right be made in federal court, while *Younger* abstention prevents such challenges for attorneys." ECF No. 118 at 2. The Court is unpersuaded.

The appeal in *Jamgotchian* arose from a 2022 California Horse Racing Board ("CHRB") decision that Plaintiff Jerry Jamgotchian could not enter his horse, Malpractice Meuser, into races without registering with the private Jockey Club of New York. 93 F.4th at 1152–53. The CHRB is "the state agency responsible for administering 'all laws, rules, and regulations affecting horse racing.'" *Id.* at 1153 (quoting Cal. Bus. & Prof. Code § 19440(a)(3)). Litigants challenging CHRB decisions may bring their claims, including federal constitutional challenges, to state court via mandamus review. *Id.* In *Jamgotchian*, the CHRB advised plaintiffs that "a California superior court would have authority to address his constitutional claims." *Id.* Rather than seek review of the CHRB's decision in state court,

Jamgotchian brought his lawsuit in federal court under 42 U.S.C. § 1983 against individual Stewards and CHRB members. *Id.* The Ninth Circuit concluded that "Jamgotchian's decision not to seek review of the CHRB's ruling in state court did not imbue the CHRB decision—or, in reality, its lack of decision—with preclusive effect." *Id.* at 1155–56. Thus, there could be no requirement that plaintiffs go to state court before filing suit under Section 1983, because that would amount to an improper exhaustion prerequisite. *Id.* at 1156.

Jamgotchian never mentions *Younger* and has no bearing on the case at hand.[4] Nor is there anything novel about the Court's application of *Younger* to State Bar disciplinary proceedings. As Defendants correctly note, "*Younger* . . . has [previously] been applied to State Bar disciplinary proceedings precisely because of the unique purposes and features of those proceedings, which includes a unique judicial review procedure. *Younger* applies to state attorney disciplinary proceedings generally because they are akin to criminal proceedings and they implicate core interests of state judiciaries to regulate the attorneys that practice in the state." ECF No. 124-1 at 10 (citing *Middlesex*, 457 U.S. at 432; *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69, 79, 81 (2013); *Hirsh*, 67 F.3d at 712). In other words, in applying *Younger* to the present case, both the Ninth Circuit and this Court were trodding familiar ground.

[4] To put a fine point on it, *Jamgotchian* does not make a single reference to *Younger* abstention.

It is also well-established that "'the California Supreme Court's rules relating to Bar Court decisions provide for an adequate opportunity for a plaintiff to present federal constitutional claims.'" *Sanai v.*

Kruger, No. 23-CV-01057-AMO, 2023 WL 5496477, at *2 (N.D. Cal. Aug. 24, 2023), *aff'd sub nom. Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024) (quoting *Robertson v. Honn*, No. 17-CV-01724-JD, 2018 WL 2010988, at *2 (N.D. Cal. Apr. 30, 2018), *aff'd*, 781 F. App'x 640 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 948 (2020)). After the State Bar Court's decision becomes "final," a "recommendation . . . and the accompanying record, is transmitted to [the Supreme Court of California]." *In re Rose*, 22 Cal. 4th 430, 439 (2000). "The State Bar may make only recommendations to [the Supreme Court of California], which undertakes an independent determination whether the attorney should be disciplined as recommended." *Id.* at 439–440. The U.S. Supreme Court has squarely "rejected" the presumption "that the California Supreme Court will not adequately safeguard federal constitutional rights." *Hirsh*, 67 F.3d at 713 (citing *Middlesex*, 457 U.S. at 431). Finally, a federal forum is also available to litigations, as they may challenge California Supreme Court decisions via a petition for a writ of certiorari to the United States Supreme Court. *See Hirsh*, 67 F.3d at 713; *Beltran v. State of Cal.*, 871 F.2d 777, 780–81 (9th Cir. 1988).

In sum, Sanai's argument that *Younger* abstention does not apply because it "violates equal protection and the First Amendment" is without merit. ECF No. 118 at 7. "[*Younger*] and its progeny espouse a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances. The policies underlying *Younger* abstention have been frequently reiterated by [the U.S. Supreme Court]." *Middlesex*, 457 U.S. at 431. The *Younger* doctrine ensures that federal courts do not unduly interfere with core state functions—nothing in either *Jamgotchian* or Sanai's

opposition compels this Court to reach a different result.[5]

[5] Because the Court concludes that *Younger* applies via law of the case, it need not reach Defendants' arguments under Rule 12(b)(6).

B. Leave to Amend

Sanai seeks leave to amend to file a third amended complaint so he can (1) add a Bane Act claim, ECF No. 118 at 8; (2) seek a declaration that certain state court judgments at issue in his disciplinary case are void, *id.* at 9; and (3) argue that he cannot defend himself in the ongoing disciplinary proceeding without breaching attorney-client confidences, *id.* at 2–3. The decision of whether to grant leave to amend is "within the discretion of the district court." *Leadsinger, Inc.*, 512 F.3d at 532 (quoting *Foman*, 371 U.S. at 182). A district court may deny leave for many reasons, including "futility of amendment." *Id.* A district court's discretion to deny leave to amend is "particularly broad" when it has previously granted leave to amend. *Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002). In this case, the Court concludes that amendment would be futile, and accordingly denies Sanai's request.[6]

[6] The Court will also dismiss as moot Defendants' motion for a stay of discovery pending a ruling on their motion to dismiss. ECF No. 84.

C. Motion for Preliminary Injunction

The Court now turns to address Sanai's motion for preliminary injunction. On July 10, 2024, Sanai filed a motion for preliminary injunction, arguing that he "cannot defend himself" in the ongoing State Court proceedings "without disclosing confidential information" and that he "is being sent to trial before expiration of the time to complete discovery under the

Second NDC." ECF No. 128 at 21. Because Sanai has not demonstrated that he is likely to suffer irreparable harm in the absence of preliminary relief, the Court will deny the motion.

"*Winter* tells us that [a] plaintiff[] may not obtain a preliminary injunction unless [he] can show that irreparable harm is likely to result in the absence of the injunction." *All. for the Wild Rockies*, 632 F.3d at 1135. First, Sanai argues that he cannot defend himself in his ongoing State Bar proceeding without revealing attorney-client information. Sanai contends that "[p]ost-hearing review is an inadequate remedy because the defendant's very choice to reveal or not reveal are [sic] a violation that cannot be remedied." ECF No. 128 at 12. This, however, is not sufficient to demonstrate irreparable harm: Sanai can choose not to reveal attorney-client information at trial and subsequently appeal any adverse decision. Interlocutory review may also be an option. *See* Cal. Rules of Court, Rule 9.13(c). Thus, Sanai has not demonstrated that he is likely to face irreparable harm in the absence of a preliminary injunction.

Sanai's second argument concerning discovery fares no better. Sanai argues that "[t]he time for requesting and litigating discovery has not expired on the second NDC; both sides agree that the expiration date is July 3, 2024." ECF No. 128 at 20. Putting aside the fact that Sanai filed his motion for preliminary injunction on July 10—one week after the alleged date of expiration— Sanai has not put forth any argument as to why he cannot raise his "due process" arguments on appeal. Indeed, Sanai appears to concede that this argument lacks the necessary element of "irreparable injury." ECF No. 128 at 20.

Because Sanai has not established a likelihood of irreparable harm, his motion for a preliminary injunction is denied.[7]

[7] In light of this conclusion, the Court need not reach Sanai's remaining arguments on this issue.

CONCLUSION

In sum, Defendants' motion to dismiss, ECF No. 86, is granted. Sanai's request for leave to amend is denied. The Court denies Defendants' motion for a stay of discovery, ECF No. 84, as moot. And finally, the Court denies Sanai's motion for preliminary injunction, ECF No. 128.

The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: July 16, 2024

JON S. TIGAR

United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED JUN 22 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CYRUS MARK SANAI, Solicitor,	No. 24-6708
Plaintiff - Appellant,	D.C. No. 4:22-cv-01818-JST
v.	Northern District of California, Oakland
GEORGE S. CARDONA; LEAH WILSON,	ORDER
Defendants - Appellees.	

Before: N.R. SMITH, BUMATAY, and H.A. THOMAS, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing. Judge Bumatay and Judge H.A. Thomas have voted to deny the petition for rehearing en banc, and Judge N.R. Smith so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 40. The petition for panel rehearing and the petition for rehearing en banc, Dkt. No. 62, are DENIED.

APPENDIX E

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. §1983.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art VI, cl. 2

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. V

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States

U.S. Const. amend. XI

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.