NO. ____

IN THE

Supreme Court of the United States

CYRUS MARK SANAI,

Petitioner,

v.

Justices LEONDRA KRUGER; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI EVANS; CAROL CORRIGAN; GOODWIN LIU; Honorable PATRICIA GUERRERO, Chief Justice

Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

Petitioner Cyrus Sanai's lawsuit attacking California's attorney discipline scheme was dismissed on *Younger* abstention grounds. This Court denied his petition for certiorari, Case No. 21-15771 and a month later issued *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 general jurisdiction from hearing §1983 lawsuit concerning attorney discipline, 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).

The Ninth Circuit refused to apply *Haywood* and *Williams* because under *Miller v. Gammie,* 335 F.3d 889 (9th Cir. 2003)(en banc) a regular panel cannot change prior Ninth Circuit precedent unless this Court's new decision "clearly irreconcilable" and not "merely inconsistent." *Whitfield v. Mullin,* Case No. 25-5220 (9th Cir. Oct. 16, 2026)(VanDyke, J, diss.). The courts in the Ninth Circuit "systematically hold the Supreme Court's instructions about the *right* answer to any number of legal questions in lower regard than" the Ninth Circuit's "own *wrong* precedents." *Id.,* slip op. at 14 (emphasis in original).

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 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) and cases cited therein?

3. Does the deferral of Sanai's motion for preliminary relief violate the guarantees of due process and equal protection, as well as *Nken v. Holder,* 556 U.S. 418 (2009), particularly as some appeals are given automatic relief under Ninth Circuit General Order 6.4(c) and then deferred to the merits panel, effectively operating as an automatic stay, while the deferral in the case of other litigants operates as an automatic denial of preliminary relief?

4. 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 Transport 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 are members of the California Supreme Court sued in their individual and official capacities: Leondra Kruger, Joshua P. Groban, Martin J. Jenkins, Kelli M. Evans, Carol A. Corrigan, Goodwin H. Lieu, and Patricia Guerrero, all of whom elected not to appear after valid service was made, thus causing the District Court to enter default against all of them.

RELATED CASES

Sanai v. Kruger, Northern District of California Case No. 23-cv-01057-AMO.

Sanai v. Kruger, Ninth Circuit Docket No. 23-16104, decided sub nom. *Roshan v. Lawrence,* No. 21-15771, 2024 WL 339100 (9th Cir. Jan. 30, 2024).

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

Sanai v. Kruger, Ninth Circuit Docket No. 25-293.

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IN THE
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CYRUS MARK SANAI,
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JUSTICES LEONDRA KRUGER, et. al.
Respondents,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CASE NO. 25-2937

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/supreme- 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 expanded the scope of *Miller*, holding 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* elected not to 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 previously affirmed the sua sponte 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 Transport 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".

But *Miller* is not the only tool employed by the Ninth Circuit for evading this Court's holdings. The Ninth Circuit also employs unwritten practices that have the effect of rejecting this Court's authority. One of these practices is the deferral of motions for preliminary relief to the merits panel. This practice has two dramatically different effects depending on the class of appeal. For most appellants, the deferral is an automatic denial that cannot be raised to this Court. But certain appeals, particularly appeals from removal orders in immigration cases, are given an automatic stay upon filing of the motion. Ninth Cir. Gen. Order 6.4(c)("G.O. 6.4(c)"). Because of the backlog in addressing removal order appeals, this rule combined with the unwritten practice results in automatic stays pending appeal for removal cases in violation of *Nken v. Holder,* 556 U.S. 418

(2009)("*Nken*"). Circuit Judge VanDyke has led an attack on this practice for more than a year but has been stymied by the redirection of review of this practice from consideration by merits panels of the Ninth Circuit to a secret internal rule-making process. *Rojas-Espinoza v. Bondi,* 167 F.4th 1069, 1078 (9th Cir. 2025)(VanDyke, J., diss.).

The result of the Ninth Circuit's practices is that the workload of both this Court and the Ninth Circuit is unnecessarily multiplied. As a consequence of *Miller*, to correct the "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." *Whitfield* at 17. As to deferral, "it is the Ninth Circuit's automatic-stay and deferred-review procedures themselves that perversely incentivize the extraordinarily high volume of meritless stay motions." *Rojas-Espinoza v. Bondi,* 167 F.4th at 1078 (VanDyke, J., diss.).

ORDERS BELOW

The orders of the Ninth Circuit Court of Appeals affirming the District Court, referring the injunctive relief and initial en banc hearing request to the merits panel, and denying the petitions for rehearing and rehearing en banc are set forth in Appendices ("App.") A, B, and C. The relevant District Court order 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 8, 2026. App. A. It issued its order granting extension of time to file opening brief and referring to the panel the decision on motion for injunctive relief on August 7, 2025. App. B. Timely petition for rehearing and rehearing en banc was denied on June 17, 2026. App. C. This Court granted an extension to file a petition for certiorari through November 16, 2026. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

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, XI & XIV, and 42 U.S.C. §1983.

STATEMENT OF THE CASE

This case is a lawsuit against the Justices of the California Supreme Court challenging California's attorney discipline system. Because the justices have jurisdiction to impose attorney discipline sua sponte, they are proper defendants under *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U. S. 719 (1980).

This lawsuit was dismissed under *Younger* abstention, and this Court denied Sanai's petition for certiorari challenging that ruling. Sup. Ct. Docket

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

Less than a month after this Court denied Sanai's petition for certiorari it issued *Williams*. The following month Sanai filed a motion to vacate the judgment under Fed. R. Civ. P. 60(b). Docket Nos. 66, 67.

The district court denied the motion on April 2, 2025. Sanai filed a notice of appeal, *Sanai v. Kruger*, Case No. 25-2937, on May 7, 2025. On May 16, 2025 he filed a petition (docketed as a motion) for initial hearing en banc. On May 28, 2025 he filed a motion for declaratory or injunctive relief pending appeal, followed by the required emergency statement on May 29, 2025. On June 5, 2025 Sanai filed a notice of delay regarding the Court's failure to address the emergency motion for relief.

On August 7, 2025, the Clerk granted an extension of time to file the opening brief, stated that briefing would be complete upon its filing, and also ruled that "The motion for injunctive relief and the petition for initial hearing en banc are referred to the panel that will be assigned to decide the merits of this appeal." See App. B1

Sanai filed an opening brief and then a substitute brief in August 2025. On September 23, 2025 he filed a motion to expedite. Sanai filed periodic notices of delay regarding the unaddressed motions.

Earlier this year this Court issued *Galette,* which 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 March 15, 2026 Sanai filed a motion to file an oversized replacement brief and a revised opening brief addressing *Galette*, and on March 24, 2026 he filed a revised motion for initial hearing en banc. In that proposed amended version of the previously timely filed petition for initial rehearing en banc, Sanai added a new question presented: "Does the deferral of Sanai's motion for preliminary relief violate the guarantees of due process and equal protection and Supreme Court precedent, particularly as some appeals are given automatic relief under GO 6.4(c)) and then deferred to the merits panel?"

On March 25, 2026 Sanai filed a motion for leave to file amicus brief and amicus brief in *Rojas-Espinoza v. Bondi,* Ninth Circuit Case No. 24-7536 on the issue identified above. Sanai argued, among other things, that proper handling of motions for stays would be to retain G.O. 6.4(c) to immediately assign the motion and the merits to a panel for expedited consideration and then for resolution on the merits. The Court of Appeals refused to grant

leave to file the brief and thus declined to consider this solution.

On May 8, 2026 the Court of Appeals entered its memorandum disposition, refusing to address any of the subsequent proposed opening briefs and therefore not addressing *Galette* or the treatment of the motion for deferral of the motion for preliminary relief. Sanai filed a timely petition for rehearing and rehearing en banc which raised the unaddressed issues that was denied. See App. C1.

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 is 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.*

Since *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.

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 District Court stated that even if *Williams* is a change in law, "the *Younger* abstention analysis underlying the Court's dismissal order remains untouched by the Supreme Court's recent analysis regarding state law immunities." App. D1. That was the sum total of the analysis affirmed by the Ninth Circuit. 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.

While the District Court judge did not mention what law she was applying in her order, it is clearly a *Miller*-style analysis because the asserted change in law requires a multi-step analysis from the Supreme Court's disposition to the case at issue, the Ninth Circuit authority in general and the prior judgment will not be "touched".

The Ninth Circuit opinion acknowledged that change in law relief was available under *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434 (9th Cir. 2019), which requires analysis under six factors. The District Court judge did not address the six test factors. Nonetheless, the panel stated that "Although the district court did not explicitly name any of the six *Henson* factors in its decision, it engaged in the relevant equitable analysis." App. A3. That statement is not borne out by the District Court's brief order. There is no evidence whatsoever that the six factors were considered by the District Court, or indeed that any factors were considered.

The Court of Appeals found that "the first and fifth *Henson* factors decidedly supported the district court's conclusion that "nothing in Sanai's motion . . . merits relief from judgment," the remaining factors were not salient to the Rule 60(b)(6) equitable balancing under the circumstances. See *Henson,* 943 F.3d at 446–53 (outlining the factors)." App. A3. The first *Henson* factor is whether there is an intervening change in law, and if so, what kind it is. *Henson, supra* at 446-8. The fifth *Henson* factor is whether there is a change in law between cases with a close connection. *Id.* at 452. Given that the sole analysis of the District Court was that *Williams* did not discuss or address *Younger* abstention, the Ninth Circuit's holding thus was that there was no change in law under *Miller* "clearly irreconcilable" with the *Younger* analysis employed by the District Court. The panel refused to address whether *Galette* was grounds for relief.

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 change one step in a doctrine which has a multi-step merits or jurisdictional. 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 is "clearly irreconcilable" with the Court of Appeals precedent.

> 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 (italicized emphasis in original).

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

The District Court's holding was that there was nothing in *Williams* which "touched", i.e. was clearly irreconcilable with, a *Younger* abstention analysis supporting dismissal. App. D1.

In *Haywood* the Supreme Court held that a state violates the Supremacy Clause if its courts of general jurisdiction are barred from hearing 42 U.S.C. §1983 claims against particular state defendants. The state courts of Washington and Delaware split on the question of whether this rule applies to attorney discipline proceedings.

> *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).

A clarification of a key issue is sufficient to constitute "new law." Here the clarification was whether a jurisdictional requirement that pre-dates the use of 42 U.S.C. §1983's expansion constituted 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.

The above opinion is the *ratio decidendi*, *i.e.*, the holding, of this Court that the Ninth Circuit must respect and apply, and as the Washington State Court held in *Eugster*, it invalidates, under the 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.

California's attorney discipline system is thus invalid for violating the Supremacy Clause and under precedent of the Ninth Circuit and others, *Younger* abstention does not apply in this case. *Potrero 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 is NOT protected by Eleventh Amendment immunity.

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 is dispositive.

Because the California State Bar is no longer an arm of the state, 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 *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. The Ninth Circuit Has Created an Informal, Unreviewable, Unwritten Preliminary Relief Practice That Violates *Nken v. Holder*.

The Ninth Circuit has a practice of declining to timely review motions for stays or injunctions pending appeal and instead deferring the motion to a merits panel which is appointed many months later. This has very different effects, depending on whether the case is covered by G.O. 6.4(c), which states that "[u]pon the filing of an initial motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the Court."

For appeals of removal orders covered by G.O. 6.4(c), the Ninth Circuit's practice of deferral operates as an automatic stay pending appeal, violating *Nken*; see also *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987). For appellants not covered by G.O. 6.4(c), the practice has the opposite effect, operating as an automatic denial of relief pending appeal, since the merits panel is provided with the

motion mere weeks before oral argument. *Rojas-Espinoza v. Bondi,* 160 F.4th 991, 1000 fn.2 (9th Cir. 2025) (Nelson, Collins, and VanDyke, JJ.), *reh'g en banc granted, opinion vacated,* 167 F.4th 1069 (2026) ("[B]y the time the matter is assigned to a merits panel, the disposition of the entire matter is only 12-14 weeks away.").

Judge VanDyke predicted and Chief Judge Murguia contended that a majority of the en banc panel in the en banc *Rojas-Espinoza* proceeding would decline to address G.O. 6.4(c) and the practice of deferring consideration of preliminary relief motions to a panel appointed months after filing of the motion. See *Rojas-Espinoza, supra,* 167 F.4th at 1071 (VanDyke, J., dissenting from the grant of rehearing en banc) ("En banc vacatur of the panel order will ensure that the Ninth Circuit's automatic-grant and deferred-review process will continue to produce the same indefensible outcomes in thousands of other immigration cases each year."); see also *Rojas-Espinoza v. Bondi,* 169 F.4th 967, 968 (9th Cir. 2026) (Murguia, C.J., concurring in the order denying petitioners' motion to stay removal)("Murguia Concurrence")("The panel's order unilaterally disrupted the court's internal governance and policymaking structure by purporting to announce a change in long-standing internal procedure that was adopted and refined over time by the full court. The full court corrected this error by vacating the panel's order.").

However, after en banc oral argument, the majority reversed itself and granted a stay based on apparently new arguments. *Rojas-Espinoza v.*

Blanche, No. 24-7536, Order (9th Cir. June 9, 2026). Judge Tung again dissented:

> The about-face shows that the en banc panel did not actually engage with the merits when it voted quickly to deny the stay, even though the en banc panel had the full merits briefing before it when it issued the denial; and it is (again) confirmation that the en banc panel only denied the stay to sweep the issue of our problematic stay practice under the rug. *See Rojas-Espinoza,* 169 F.4th at 970 (statement of Tung, J.). By its own implicit admission then, this court violated *Nken* twice over in a single case— first, when it automatically granted a prolonged stay without examining the merits, and again, when it hastily denied the stay to mask our unlawful stay practice (a denial that it now vacates).

Id., slip op. at 8 (Tung, J., diss.).

Circuit Judge Wardlaw admitted that Court's practice of evaluating preliminary relief requests, even by en banc panels, is inherently inadequate as they are made before a merits panel "has had the opportunity to conduct an in-depth review of the record":

> This case lays bare the dangers of denying motions to stay removal before the panel has had the opportunity to conduct an in-depth review of the record. As our decision to vacate our prior order denying Ms. Rojas's motion makes clear,

> assessing a petitioner's likelihood of succeeding on the merits is a time-consuming, fact-dependent, and highly variable exercise. It became clear only after a full review of the record and briefs, and following oral argument, that Ms. Rojas has raised substantial questions about the merits of the BIA's decision and has met her burden under *Nken v. Holder,* 556 U.S. 418 (2009).

Id., slip op. at 5 (Wardlaw, J. concur.).

It is clear from *Rojas-Espinoza* that the Ninth Circuit's current procedures for evaluating preliminary appellate relief requests are inadequate, whether one agrees with Circuit Judge Wardlaw or Circuit Judge Tung. The deferral policy of the Ninth Circuit will consistently evade review by an en banc panel of that Court or review by this Court in removal cases, because, as Circuit Judge VanDyke recognized, the majority of the Ninth Circuit can repeatedly grant en banc review of those panels that seek to put a stop to the practice then vacate the stay as to a particular removal appellant followed by regranting the stay if the panel finds reason to grant relief.

However, that does not work in Sanai's case. A Fifth Amendment due process violation has already occurred a year ago, giving him Article III standing. Mootness is not a barrier to review for three reasons. First, as both Judge VanDyke and Chief Judge Murguia have stated in published opinions, this is an issue that is "capable of repetition yet evading review" but for the intervention of Court through en banc orders. Second, Sanai has a pending appeal

against the same defendant in which he will be requesting preliminary relief. See *Sanai v. Kruger,* Ninth Cir. Docket No. 26-1959. Thus there is an actual appeal pending in which the same deferral would likely be employed by the Ninth Circuit, so Sanai meets the standard of avoiding mootness as the same issue is capable of repetition yet evading review **as to him**. *Honig v. Doe,* 484 U.S. 305, 321-23 (1988). Third, the non-public internal review process that Chief Judge Murguia discusses in the Murguia Concurrence is limited to immigration appeals, and thus its outcome will have no effect on cases like the instant action or Sanai's other pending appeal.

F. This Petition Offers Immediate Resolution of Issues that Multiply Unnecessary Litigation.

The questions presented in this petition connect to pending or soon to be filed petitions before this Court. But one question presented once addressed will result in a substantial reduction in federal court litigation that will not be addressed any other way.

The district courts and the Courts of Appeal in the Ninth Circuit are inundated by specific kinds of motions and proceedings. At the district court, it is habeas petitions or bail motions seeking interim release for detained immigrants. At least 100,000 such lawsuits have been filed in the past two years, and some U.S. attorneys are no longer able to oppose them. Katelyn Polantz, Justice Department prosecutors in Washington can't keep up with all the prisoners suing for their release, CNN.com (Nov. 10, 2026) at

https://www.cnn.com/2026/11/10/politics/justice-department-prosecutors-cant-keep-up-immigrants-habeas. Approximately half of these cases are in the Ninth Circuit, and as Judge VanDyke pointed out, every individual who can obtain release has overwhelming incentive to move for release pending appeal. Judge VanDyke and his colleagues first held the deferral practice illegal 13 months ago. See *Rojas-Espinoza*, *supra*, 160 F.4th 991. The issue has been mooted by the en banc court's actions, there is no current case at the Court of Appeals that can serve as a vehicle for addressing this problem, and there is no deadline for the Ninth Circuit to complete its secret internal rule-making process.

Accordingly, this case is the only case this term presenting this Court a vehicle to address the Ninth Circuit's deferral practice.

As for the *Miller* issue, as it 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 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 suggests this is the case. The 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.

Lastly, this is a default case. That means if this Court grants the petition for certiorari, there will be no opposing counsel unless appointed by this Court or the Court grants certiorari in *Sanai v. Cardona,* which will be filed soon after this case, and it consolidates the two cases. However, the absence of

opposing counsel is no barrier for this Court to remand the case back to the Ninth Circuit with instructions to reconsider its decision, including the questions presented in this petition, by the full en banc court (since if it is remanded to the three-judge panel the *Miller* barrier remains under *Kivett*). By remanding this case to the full en banc court, Judge VanDyke, Judge Tung, Judge R. Nelson and all other judges with a strong opinion on stare decisis and that Court's practice of deferral of preliminary relief will have their say in a public forum that will resolve this matter in a reasoned opinion.

CONCLUSION

The Court should grant the petition for consideration this term or remand to the full en banc court for reconsideration of the questions presented.

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,* Case 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, a default by *the Ex parte Young* judicial defendants, 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, particularly its mysterious conclusion that the District Court had considered the *Henson* factors where it neither mentioned the factors or even the case law, is akin to the judicial *ipse dixit* in *Newberry*. Compare App. A3 with App. D1.

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 in light of *Galette v. New Jersey Transit Corp.,* 607 U.S. 509 (2026) and in light of the positions asserted by Mr. Sanai in his petition for certiorari.

Dated this November 16, 2026.

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED MAY 8 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CYRUS MARK SANAI, Solicitor,

Plaintiff - Appellant,

v.

Judge LEONDRA KRUGER; JOSHUA P. GROBAN; MARTIN J. JENKINS; KELLI EVANS; CAROL CORRIGAN; GOODWIN LIU; Honorable PATRICIA GUERRERO, Chief Justice,

Defendants - Appellees.

No. 25-2937

D.C. No. 3:23-cv-01057-AMO

MEMORANDUM*

Appeal from the United States District Court for the Northern District of California
Araceli Martinez-Olguin, 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, a California attorney subject to California State Bar disciplinary proceedings, filed a pro se action under 42 U.S.C. § 1983 against the Justices of the California Supreme Court, alleging that the Bar disciplinary process is constitutionally defective. We previously affirmed the district court's dismissal of Sanai's claims on the basis of abstention under *Younger v. Harris*, 401 U.S. 37 (1971), and its denial of Sanai's post-judgment motions under Rules 59 and 60(b) of the Federal Rules of Civil Procedure. *See Roshan v. Lawrence*, No. 21-15771, 2024 WL 339100 (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 now appeals the district court's denial of his motion for relief from judgment pursuant to Rule 60(b)(6).[1] In his motion, Sanai argued that the Supreme Court's recent opinion in *Williams v. Reed*, 604 U.S. 168 (2025), presented an intervening change in the law that warrants vacatur of the judgment. We have jurisdiction under 28 U.S.C. § 1291. We review a district court's denial of a motion for relief from judgment under Rule 60(b) for abuse of discretion. *Flores v. Rosen*, 984 F.3d 720, 731 (9th Cir. 2020). We affirm.

[1] We consider only Sanai's initial opening brief (Dkt. No. 13). *See* 9th Cir. R. 32-1(a). In doing so, we decline to revisit Sanai's arguments in support of default judgment, equitable relief, and reassignment, which we previously rejected in connection with Sanai's first appeal. *See Roshan*, 2024 WL 339100, at *2 (finding Sanai's other assignments of error were without merit); *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012) (explaining that the law of the case doctrine "generally pre[c]ludes a court from reconsidering an issue decided previously by the same court or by a higher court in the identical case"). Sanai's motions to file oversized replacement briefs (Dkt. Nos. 14, 21, 24) are denied. *See* 9th Cir. R. 32-2.

Contrary to Sanai's argument on appeal, the district court did not abuse its discretion by failing to analyze Sanai's motion under the six factors outlined in *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434 (9th Cir. 2019). Although the district court did not explicitly name any of the six *Henson* factors in its decision, it engaged in the relevant equitable analysis. *See Henson*, 943 F.3d at 444 (providing that the factors are "well-reasoned principles that should guide courts in exercising their discretion," not "a rigid or exhaustive checklist" (citation omitted)); *Lemoge v. United States*, 587 F.3d 1188, 1193 (9th Cir. 2009) (explaining that in the Rule 60(b)(1) context, the mere failure to cite the equitable test ordinarily does not require reversal as long as the court actually engaged in the analysis required).

Given that the first and fifth *Henson* factors decidedly supported the district court's conclusion that "nothing in Sanai's motion . . . merits relief from judgment," the remaining factors were not salient to the Rule 60(b)(6) equitable balancing under the circumstances. *See Henson*, 943 F.3d at 446–53 (outlining the factors). Thus, it was not an abuse of discretion for the district court to omit discussion of those factors or other equitable considerations. *See Lemoge*, 587 F.3d at 1196 (recognizing that "[b]ecause the standard under Rule 60(b) is an equitable standard, it may follow that in some circumstances a district court may satisfy the standard even though omitting to discuss some specified factor" (citation omitted)).

AFFIRMED.[2]

[2] Sanai's emergency motions for an injunction or stay pending appeal (Dkt. Nos. 6, 7, 28, 29), motion to expedite the appeal (Dkt. No. 18), and motions for an initial hearing en banc (Dkt. Nos. 5, 26, 27) are denied.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED AUG 7 2025
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CYRUS MARK SANAI, Solicitor,	No. 25-2937
Plaintiff - Appellant,	D.C. No. 3:23-cv-01057-AMO
v.	
Judge LEONDRA KRUGER; et al.,	Northern District of California, San Francisco
Defendants - Appellees.	

ORDER

The motion (Docket Entry No. 11) for an extension of time to file the opening brief is granted. The opening brief is due August 18, 2025. There is no appearance by appellees, so briefing will be complete when the opening brief is filed.

The motion for injunctive relief and the petition for initial hearing en banc are referred to the panel that will be assigned to decide the merits of this appeal. *See* 9th Cir. Gen. Ord 5.2.

FOR THE COURT:
MOLLY C. DWYER
CLERK OF COURT

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CYRUS SANAI,

Plaintiff,

v.

LEONDRA KRUGER, et al.,

Defendants.

Case No. 23-cv-01057-AMO

ORDER DENYING RELIEF UNDER RULE 60(b)

Re: Dkt. No. 66

Before the Court is Plaintiff Cyrus Sanai's self-styled "ex parte emergency motion for relief from order and judgment pursuant to Fed. R. Civ. P. 60(b)." Rule 60(b) provides for relief from judgment in extraordinary circumstances including, potentially, an intervening change in law. *See* Fed. R. Civ. P. 60(b); *Phelps v. Alameida*, 569 F.3d 1120, 1136 (9th Cir. 2009).

Here, Sanai contends that the Supreme Court's opinion in *Williams v. Reed*, No. 23-191, 604 U.S. ____ (February 21, 2025), presents an intervening change in law regarding state law immunities. Even if that were so, the *Younger* abstention analysis underlying the Court's dismissal order remains untouched by the Supreme Court's recent analysis regarding state law immunities. *See* ECF 44 at 3-5. Therefore, the Court finds nothing in Sanai's motion that merits relief from judgment, and the Court DENIES his motion for reconsideration under Rule 60.

IT IS SO ORDERED.

Dated: April 2, 2025

ARACELI MARTÍNEZ-OLGUÍN
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED JUN 17 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CYRUS MARK SANAI, Solicitor,	No. 25-2937
Plaintiff - Appellant,	D.C. No. 3:23-cv-01057-AMO
v.	
Judge LEONDRA KRUGER; et al.,	Northern District of California, San Francisco
Defendants - Appellees.	

ORDER

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. 34, are DENIED. No further filings will be entertained.

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.

U.S. Const. amend. XIV, §1