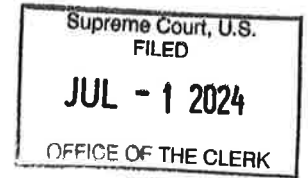


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June 29, 2024

The Honorable John G. Roberts, Jr.  
Chief Justice  
Supreme Court of the United States  
1 First Street NE  
Washington, DC 20543

Re: Application 23A700, *Sanai v. Villanueva*

Dear Chief Justice Roberts:

Petitioner Cyrus Sanai hereby requests the Chief Justice to assign his application for a certificate of appealability to the Hon. Sonia Sotomayor. The initial application was submitted to Circuit Justice Kagan on as of January 23, 2024, who denied it on January 31, 2024.

This application is UNOPPOSED by the Respondent *Ex Parte Young* officer of the State, the Los Angeles County Sheriff.

The delay in submitting this request was due to an Act of God, namely flooding that damaged the electronic media and sole paper copy on which the application was stored. Destruction of copy of document filed with a court normally not be a huge problem, as a copy would be obtained from the relevant court. However, the initial scan put on the Court's website was defective, in that many of the pages were missing. In addition, the version printed and filed was the penultimate version, which had some typographical errors. Sanai filed a motion to substitute the filed version with the corrected version on February 29, 2024. Instead of filing and addressing the motion, the Clerk returned it.

Clerk of the Court

June 29, 2024

Page 2

Petitioner Sanai then called the clerk whose name was on the return correspondence and was directed to a different clerk covering for the signatory. That clerk agreed to have a rescan posted; he also informed me that it would be acceptable to file this request with sufficient copies for Justice Sotomayor only. If that advice is wrong I will submit as many extra copies as needed.

The rescanned version, as can be seen from the website, is complete, but it is in dual page format. Sanai therefore could not just print this version out, but instead had to proceed page by page to correct the document, which took a lot of time.

Sanai was informed by the covering clerk that he need only supply materials for Justice Sotomayor. If the Court would like more copies, a clerk can call Sanai or contact Sanai by email at [cyrus@sanaislaw.com](mailto:cyrus@sanaislaw.com)

Since the application for certificate of appealability is not not opposed by the State and there is no time limit for filing for a second look with this Court, no one is prejudiced by the delay. Indeed, no one is prejudiced by granting the application.

In addition, Sanai is submitting the version of the application what should have been filed along with the original. Justice Sotomayor may review it or toss it away.

Two important events occurred while the original application for a certificate of appealability was pending before the Ninth Circuit Court of Appeal. First, as already mentioned, the State dropped its opposition to granting the habeas petition. Accordingly, this application is UNOPPOSED.

The second important event, which Justice Sotomayor may or may not be familiar with, is the issuance of an in opinion in *Redd v. Guerrero*, 84 F.4th 874 (9th Cir. 2023). As described in *Redd*,

In 2013, Redd filed a *pro se* federal petition for a writ of habeas corpus challenging his conviction. The district court dismissed that petition for failure to exhaust state law

remedies. This Court declined to issue a certificate of appealability, and Redd filed a petition for a writ of certiorari in the U.S. Supreme Court. The Supreme Court denied Redd's petition. *Redd v. Chappell*, 574 U.S. 1041, 135 S.Ct. 712, 190 L.Ed.2d 463 (2014). In a statement respecting the denial of certiorari, Justice Sotomayor, joined by Justice Breyer, suggested that Redd "might seek to bring a 42 U.S.C. § 1983 suit contending the State's failure to provide him with the counsel to which he is entitled violates the Due Process Clause." *Id.* (Sotomayor, J., respecting the denial of certiorari).

Following Justice Sotomayor's suggestion, Redd filed a *pro se* section 1983 complaint in district court.

*Redd, supra* at 882.

Sanai's petition, among other things, builds on *Redd*. In *Redd*, the California Legislature granted death-penalty convicts the right to paid habeas counsel but then the judicial system failed to find him an attorney, alleging inadequate funding. The Ninth Circuit correctly rejected the argument that the California Courts were powerless to rectify the matters.

In Sanai's case, the Court of Appeals and State Supreme Court refused to comply with a century of precedent which allowed Sanai to refuse to comply with a judicial order and then challenge it on the basis of either total absence of jurisdiction or that the order was in excess of jurisdiction. In *Redd*, much of the attention was focused on whether there is a liberty interest or property interest in the right to paid habeas counsel. In Sanai's case, he has a direct liberty interest in the right of appellate review; the Ninth Circuit, citing to precedent of the Supreme Court, acknowledged that where state law grants a right to habeas petition or other review, the deprivation of that right in violation of the state law is a violation of a liberty interest. *Redd, supra*, at 899.

Clerk of the Court

June 29, 2024

Page 4

Accordingly, issuing the certificate of appealability will help expand and solidify the expansion of due process rights that Justice Sotomayor and former Justice Breyer initiated with their 2014 statement in *Redd v. Chappell*.

Granting the application for a certificate of appealability will also correct an injustice that the State's officer has ceased to defend. If there is some fatal issue that does not relate to the merits, Sanai points out that there are no guides to filing a request for a certificate of appealability with this Court other than a single law review article and there is no rule addressing it. Accordingly any procedural problem should be addressed with an order to guide future applications.

Very truly yours,

By:   
Cyrus Sanai  
Petitioner