18-1095
No. ____

IN THE
SUPREME COURT OF THE
UNITED STATES

CHARLES G. KINNEY,
Petitioner,

v.

FRANCES ROTHSCHILD; et al.,
Respondents,

On Petition For Writ Of Certiorari To The Ninth Circuit Court of Appeals #18-15805 (11/8/18 denial of right to proceed with appeal) [1 of 2]

U.S. District Court, Northern District of Calif. (San Francisco) #3:17-cv-07366-VC

PETITION AND APPENDIX FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

It is ***rare*** for a federal statute to say it "voids" a court judgment, but that is *exactly* what 11 U.S.C. Sec. 524(a)(1) does. If that decision determines a 2010 Chapter 7 "no asset" discharged-debtor still has some "personal liability" to a listed-unsecured creditor, that judgment, order or sanction is void regardless of the rationale used to justify it. Since the statute "voids" the decision, there is no need for a collateral attack; it is not a *defacto* appeal; and the *Rooker-Feldman* doctrine does not apply.

11 U.S.C. Sec. 524(a)(2) *prohibits* listed unsecured creditors from employing any means to obtain any judgment, order or sanction which determines (e.g. presumes) a discharged Chapter 7 "no asset" debtor still has "personal liability" to a creditor.

For over 8 years, listed unsecured-creditor David Marcus has filed attorney fee motions on behalf of his client, discharged Chapter 7 "no asset" debtor Clark, based on pre-petition contracts, with help from contract attorney Eric Chomsky. Their ***goal*** was to shift pre- and post-petition attorney's fees incurred by Clark onto listed-creditors Kinney and Kempton, co-buyers of Clark's house in 2005.

Dockets show that state and federal courts keep issuing decisions that ***concede*** debtor Clark is ***still liable*** to creditor Marcus for legal work (and Marcus keeps filing attorney's fee "cost" motions to shift those fees onto Kinney), contrary to law.

Bosse requires all courts to follow the law. Why is this court ignoring Kinney's constitutional rights?

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are those appearing in the caption to this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Kinney requests that a writ of certiorari issue to review the "final" Nov. 8, 2018 decision which denied Kinney the right to proceed with his appeal as to violations of bankruptcy law [e.g. 11 U.S.C. Sec. 524(a)(1) and (2)]; **AND** as to violations of the vexatious litigant ("VL") in his Ninth Circuit appeal **#18-15805 (1 of 2)** [Dk #2].

The only reason given in the dismissal by the Ninth Circuit was that the appeal was "so insubstantial" that Kinney could not proceed with it [App. A, 1].

Insubstantial vs. Substantial

The adverse economic impacts on Kinney of ongoing violations of bankruptcy law ***exceed*** $500,000 due to 13+ "***void***" attorney fee orders for *already-discharged* pre- and post-petition debts shifted onto Kinney by Chapter 7 "no asset" discharged-debtor Michele Clark **and** by her listed-unsecured-creditor attorneys David Marcus etc (including the contract attorney Eric Chomsky). That is **not** an "insubstantial" amount.

The bankruptcy law being violated [11 U.S.C. Sec. 524(a)] was created: (1) to enjoin the *exact activity* that has been pursued by listed-unsecured-creditor attorneys David Marcus etc.; and (2) to "void" any resulting state or federal court attorney's fee awards or orders, but all of the lower courts refuse to follow the law. Those are **not** "insubstantial" issues.

The VL law is being used as *justification* for allowing listed-creditors Marcus etc to continue to violate bankruptcy law against listed-creditors Kinney and his co-buyer Kempton (now deceased), **and** to compel

silence upon them by denying their First Amendment rights. Those are **not** "insubstantial" issues.

Vexatious litigant laws

The Calif. vexatious litigant ("VL") law is found at Code of Civil Procedure ("CCP") Secs. 391-391.8. It allows a Calif. court to make a person a VL when a federal court has made that person a VL, but without safeguards to keep a VL order from being *overbroad.* State Univ. of New York v. Fox, 492 U.S. 469, 482-486 (1989). In contrast to the "narrow" federal VL orders, all Calif. VL orders are "broadly" applied.

The federal VL law arises from the All Writ Act (28 U.S.C. Sec. 1651) and under federal law all VL orders must be "narrowly tailored" in scope. De Long v. Hennessey, 912 F.2d 1144, 1146-1149 (9th Cir. 1990). In Kinney's situation, the federal VL orders against him are being "broadly" applied" to all of his cases (e.g. to his Clean Water Act citizen-lawsuit cases).

Wolfe v. George, 486 F.3d 1120 (9th Cir. 2007) did consider Cal. VL law, but not via a *facial* challenge.

In 2014, the constitutional framework of VL laws was extensively clarified in Ringgold-Lockhart v. County of LA, 761 F.3d 1057, 1060-1067 (9th Cir. 2014).

Since substantial changes have occurred to VL laws (e.g. in 2011) after the *Wolfe* decision, and since the *Ringgold-Lockhart* decision explains some issues of the VL law that the *Wolfe* decision never considered, the 2007 *Wolfe* decision is no longer controlling law.

The defendants

Calif. Court of Appeal, Second Appellate District, Division One ("COA2") Justices Frances Rothschild,

Victoria Cheney and Jeffrey Johnson were named as defendants. They have willfully and consistently ignored the application of 11 U.S.C. Sec. 524(a)(1) and (2) in all matters involving listed creditor Kinney with respect to 2010 Chapter 7 "no asset" discharged debtor Michele Clark and her listed unsecured creditor attorneys David Marcus etc.

Those Justices decided an appeal against Kinney and in favor of Clark which clearly shows in the text of the published opinion that they and others are ignoring and/or violating 11 U.S.C. Sec. 524(a); see *Kinney v. Clark*, 12 Cal.App.5th 724 (Cal. 2017).

Kinney's complaint

On Dec. 29, 2017, Kinney filed a civil rights complaint in US District Court, Northern District of California, which was assigned case #3:17-cv-07366-VC [Dk #1]. 42 U.S.C. Sec. 1983.

Kinney's complaint included ongoing violations of 11 U.S.C. Sec. 524(a) as well both facial and as-applied challenges to the VL law [Dk #1]. All the courts and defendants continue to willfully ignore these violations [e.g. of 11 U.S.C. Sec. 524(a)(1) and (2)].

As for the ***ongoing*** violations of 11 U.S.C. Sec. 524, it is rare for a federal statute to say it "voids" a court judgment, but that is ***exactly*** what 11 U.S.C. Sec. 524(a)(1) does. If that decision determines a 2010 Chapter 7 "no asset" discharged-debtor still has some "personal liability" to a listed-unsecured creditor (e.g. Marcus), that judgment, order or sanction is "void" regardless of the rationale used to justify it.

Sec. 524(a)(1) "voids" any decision by any court that decides a discharged-debtor is still "personally liable"

to a creditor. As to a "void" order, a collateral attack or an appeal (*de facto* or not) is unnecessary; and the *Rooker-Feldman* doctrine does not apply. Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994).

On the other side of the coin, 11 U.S.C. Sec. 524(a)(2) prohibits listed unsecured-creditors from employing any means to obtain any judgment, order or sanction that determines (e.g. implies) a discharged Chapter 7 "no asset" debtor still has "personal liability" to any creditor. In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015). Sec. 524(a)(2) is the *discharge injunction* and it has different consequences than Sec. 524(a)(1).

For 8+ years, listed unsecured-creditor attorneys Marcus etc have filed attorney fee motions on behalf of a client, discharged Chapter 7 "no asset" debtor Clark, based on pre-petition contracts, with help from contract attorney Chomsky. Their ***goal*** was to ***shift*** both pre- and post-petition attorney's fees incurred by debtor Clark ***onto*** listed unsecured-creditors Kinney and Kempton, co-buyers of Clark's house in 2005, but Sec. 524(a)(2) *absolutely prohibits* those motions. In re Marino, 577 B.R. 772, 782-784 (9th Cir. 2017).

The dockets from cases in state and federal courts show that courts keep issuing decisions that ***concede*** (***admit***) discharged-debtor Clark is ***still liable*** to listed-creditor Marcus for legal work. When attorney Marcus files an attorney's fee "cost" motion to shift Clark's legal bills onto Kinney, creditor Marcus ***concedes (admits)*** discharged-debtor Clark still has "personal liability" to him. Cal. Civil Code Sec. 1717; Cal. Code of Civil Procedure Sec. 1033.5(a)(10).

As to the 13+ fee award orders, the state courts were engaging in willful judicial misconduct. Dodds v.

Commission on Judicial Performance, 12 Cal.4th 163, 166-172 (Cal. 1994); Broadman v. Comm. on Judicial Performance, 18 Cal.4th 1079, 1091-1113 (Cal. 1998).

As for his ***facial*** challenge to Calif. VL law, Kinney contends that every application of that VL law is unconstitutional because it is hopelessly vague (e.g. as to terms such as "litigation", "finally determined against", "merit", "reasonable expenses" for security; "presiding justice"); **and** because an "ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated". Citizens United v. Federal Election Commission, 558 U.S. 310, 331 (2010).

As for his ***as-applied*** (factual) challenge to the VL law, Kinney contends the law was and is misapplied to him, contrary to specific language and criteria of the statute (e.g. because in 2008 Kinney was not a party and, as an *in pro se* plaintiff, did not have 5 out of 7 losses in the last 7 years; **and** because Kinney was not a party in Dec. 2011 when *In re Kinney* was issued by a "presiding justice" who did not have subject matter jurisdiction to do so at that time).

This Court's *Bosse* decision requires all courts to follow the law, but no court has done that over the last 8+ years with respect to Kinney. The defendants were timely served, but they never made any appearance in the USDC case.

USDC dismissal order

On Feb. 26, 2018, USDC Judge Vince Chhabria entered a *sua sponte* dismissal order for Kinney's complaint [Dk #6; App. B, 3] and a judgment [Dk #7].

In his dismissal order [App. B, 3], Judge Chhabria justified his order by saying: (1) Kinney's complaint is a "de facto appeal" of state court decisions; (2) any additional issues are "inextricably intertwined" with state court decisions; (3) the district court is "without subject matter jurisdiction"; **and** (4) no amendment "could cure" the defects.

Kinney is challenging "void" orders that were issued contrary to 11 U.S.C. Sec. 524(a) [and that have resulted in a "taking" of Kinney's property], so the civil rights complaint filed by Kinney cannot be a *defacto* appeal because no appeal is necessary from a "void" order **and** because full faith and credit *cannot* be given to a "void" order. 28 U.S.C. Sec. 1739.

This is a "***federal claim alleging a prior injury that a state court failed to remedy***" [e.g. based on 11 U.S.C. Sec. 524(a); **and** the "taking" of Kinney's property without due process]. Fowler v. Guerin, 899 F.3d 1112, 1118-1119 (9th Cir. 2018); Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005); Long v. Shorebank Development Corp., 182 F.3d 548, 554-561 (7th Cir. 1999); In re Schwartz, 954 F.2d 569, 572 (9th Cir. 1992).

Kinney's complaint is **not** an appeal of a legal wrong committed by a state court because the state court never considered the 11 U.S.C. Sec. 524(a) restraints; and because bankruptcy law completely overrides and preempts state law. In re Gruntz, 202 F.3d 1074, 1078-1084 (9th Cir. 2000). A state court can issue a "final" fee award order, but that order is still "void".

Likewise, any "void" orders cannot be "inextricably intertwined" with any valid state decisions because a void order is not accorded any dignity in the judicial

system, and can be attacked without violating the *Rooker-Feldman* doctrine. Sinochem Intern. Co. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 430-431 (2007); Kalb v. Feuerstein, 308 U.S. 433, 428, 60 S.Ct. 343, 345-46, 84 L.Ed. 370 (1940); Kougasian v. TMSL, Inc., 359 F.3d 1136, 1141 (9th Cir. 2004); 30A Amer. Jurisprud., Judgments, Secs. 43, 44, 45 (1958).

As an aside, the *Rooker-Feldman* doctrine and other preclusionary rules do **not** apply to a *facial* challenge of the Calif. VL law which was part of Kinney's civil rights complaint. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-488 (1983).

As for subject matter jurisdiction, this district court is the proper and only place to challenge state court orders which are "void" per 11 U.S.C. Sec. 524(a)(1). 28 U.S.C. Secs. 1331, 1343, 1441, 1443, and/or 1452.

USDC denial order

On March 30, 2018, USDC Judge Chhabria denied Kinney's motion to vacate [Dk #13; App. C, 5].

In his denial order [App. C], Judge Chhabria justified his order by saying that "the issues raised remain inextricably intertwined with state court decisions" [App. C, 5].

Since all state court fee awards in favor of Clark were "***void***" after July 2010 (e.g. because those decisions had to presume that discharged-debtor Clark was still "personally liable" to her listed unsecured-creditor attorneys Marcus), there is ***nothing*** that could be "inextricably intertwined" with a valid order.

On April 25, 2018, Kinney filed an appeal to the Ninth Circuit [USDC Dk #17].

Ninth Circuit dismissal

On May 3, 2018, the Ninth Circuit filed an order based on its *overbroad* pre-filing VL order in Ninth Circuit #17-80256 to consider whether it would allow Kinney's appeal to proceed [Ninth Cir. Dk #1]. This is an example of overbroad VL pre-filing order being used to prejudice Kinney's First Amendment rights.

On Nov. 8, 2018, the Ninth Circuit denied Kinney the right to proceed with his appeal [Ninth Cir. Dk #2] by arguing that the appeal was "so insubstantial" that Kinney was not going to be allowed to proceed. As noted herein, there was *nothing* "insubstantial" about Kinney's appeal as to willful judicial misconduct.

This ruling was done to "silence" Kinney without due process and in violation of Kinney's First Amendment rights, so Kinney could not complain about ongoing violations of bankruptcy law and about the ongoing misapplication of VL laws against him. [App. A, 1]

Based on these and similar decisions occurring from 2012 onward (for which this Court has yet to take action), Kinney is filing this petition because federal courts continue to ignore the ongoing violations of bankruptcy law by listed-creditor attorneys Marcus etc that are enjoined under 11 U.S.C. Sec. 524(a)(2); **and** continue to ignore the automatic voiding of any state or federal court attorney's fee award orders in favor of Clark under 11 U.S.C. Sec. 524 (a)(1).

Kinney's complaint is **not** a *de facto* appeal of a state judgment or order because no "valid" judgment or order exists as to any post-petition attorney's fee award for legal work done by attorney Marcus for debtor Clark due to 11 U.S.C. Sec. 524(a)(1).

Kinney's complaint is a "federal claim [via 11 U.S.C. Sec. 524(a)] alleging a prior injury that a state court failed to remedy". Long v. Shorebank Development Corp., 182 F.3d 548, 554-555 (7th Cir. 1999).

Each time listed-creditor attorneys Marcus etc file a motion for attorney's fees on behalf of discharged debtor Clark, they *admit (e.g. concede)* that 11 U.S.C. Sec. 524(a)(2) is being violated ***because they have to affirm or declare, as part of their motion,*** that Clark still has "personal liability" to them under a 2007 hourly-fee retainer and has obligations under a 2005 real estate purchase contract with Kinney. Cal. Civil Code Sec. 1717; CCP Sec. 1033.5(a)(10).

Of course, Michele Clark has no such obligations to any creditor as a discharged Chapter 7 "no asset" debtor, so 11 U.S.C. Sec. 524(a)(2) applies.

Each time a state or federal court awards attorneys fees to Clark and her listed creditor attorneys Marcus etc, they **admit** (e.g. concede) that 11 U.S.C. Sec. 524(a)(2) is being violated by listed creditor attorneys Marcus etc, so those courts knew or should have known that all of their attorney fee award orders were "void" under 11 U.S.C. Sec. 524(a)(1).

The judges and justices who have issued, affirmed or ignored the orders, judgments or sanctions against Kinney or co-buyer Kempton ***that were known to be "void"***, or to be based on prior "void" orders, under Sec. 524(a)(1) or (2) include but are not limited to:

(a) Los Angeles County Superior Court Judge Barbara Scheper in #BC354136 (Clark's lack of title vs. her unrecorded easement to neighbor Cooper) and Judge Steven Kleifield in #BC374938 (Clark's fraud);

(b) Cal. Court of Appeal, Second Appellate District, Justices Roger Boren, Frances Rothschild, Victoria Cheney, and Jeffrey Johnson;

(c) Alameda County Superior Court Judge Delbert Gee in Kimberly Kempton's estate #RP13686482;

(d) US Bankruptcy Court, Central Dist. of Cal., Judges Richard Neiter and Barry Russell;

(e) US District Court Judges Philip S. Gutierrez, Edward Chen, and Vince Chhabria (and others);

(f) Ninth Circuit Judges Bea, Bybee, Gould, Levy, Owens, Paez, Silverman, Thomas, and Wallace (and others); and

(g) the Justices of this Court (e.g. due to inaction).

COA Justice Jeffrey Johnson is the same Justice who was named in a 1/4/19 Calif. Commission on Judicial Performance's Notice of Formal Proceedings, but his harassment has occurred for 1+ decades and is well documented for 1+ decades, but only now is it being made public. The Justice's Answer was filed 1/22/19.

That shows a "code of silence" exists in the Cal. COA. Due to 9+ years of inaction by the Calif. Comm. on Jud. Performance, there were numerous clerks, staff and others who were harassed by Justice Johnson when that should have been stopped long ago.

Likewise, Ninth Circuit Judge Alex Kozinski had been harassing staff and others for 3+ decades, and it was well documented for 3+ decades (and ignored by the Third and Ninth Circuits), but only recently was it made public. Judge Kozinski retired in Dec. 2018.

That shows a "code of silence" exists in the Ninth Circuit. This is probably why the investigation by Supreme Court Justice John Roberts turned up no "official" complaints (even though 480 former judicial

clerks and 83 current clerks had complained in a letter about how misbehavior complaints against judges were being processed and handled).

As noted in Kinney's other petitions to this Court, Calif. Court of Appeal, Second Appellate District, Division One ("COA2") Justices Frances Rothschild, Victoria Cheney and Jeffrey Johnson have willfully and consistently ignored the application of 11 U.S.C. Sec. 524(a)(1) and (2) in all matters involving listed creditor Charles Kinney with respect to 2010 Chapter 7 "no asset" discharged debtor Michele Clark and her listed unsecured creditor attorneys David Marcus etc.

For example, these COA2 Justices decided an appeal in 2017 against Kinney and in favor of Clark which clearly shows in the text of the published opinion that they and others were and still are ignoring the ongoing violations of 11 U.S.C. Sec. 524(a); see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017).

As mentioned in Kinney's prior petitions filed with this Court (e.g. SCOTUS #18-906 and 18-908):

(A) Kinney was **listed** as an unsecured creditor in Clark's 2010 Chapter 7 bankruptcy along with creditors David Marcus [Clark's attorney] and Kim Kempton [Kinney's business partner and co-buyer of Clark's Los Angeles property in 2005 in which Clark willfully concealed adverse development restrictions on a house and garage during contract negotiations];

(B) by filing attorney's fee motions in state court after 2010, listed-unsecured-creditor David Marcus etc has **admitted** that discharged-debtor Clark still has "personal liability" to them, so the injunction in 11 U.S.C. Sec. 524(a)(2) clearly applies; and

(C) attorneys David Marcus etc have **never proven** the validity of the 2007 hourly-fee retainer with client Michele Clark in state courts which contained an attorney's or charging lien and thus an automatic conflict-of-interest between attorney Marcus and client Clark. Mojtahedi v. Vargas, 228 Cal.App.4th 974 (Cal. 2014).

Kinney's complaint included facial and as-applied challenges to the VL laws; **and** challenges to motions for attorneys fees and awards that violate 11 U.S.C. Sec. 524(a). *Rooker-Feldman* does **not** apply to a "**facial**" challenge by a "non-party", or to a judge or justice taking an executive or evaluative action rather than adjudicating in a judicial capacity. Wolfe v. Strankman, 392 F.3d 358, 362-366 (9th Cir. 2004); Verizon Maryland Inc. v. Public Service Commission, 535 U.S. 635, 644 n. 3 (2002); Johnson v. DeGrandy, 512 U.S. 997, 1006 (1994); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-488 (1983); Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1061-1067 (9th Cir. 2014).

Cal. VL laws were changed as of Jan. 1, 2012 to allow a "presiding justice" like COA Admin. Pres. Justice Roger Boren to perform an "evaluative function" to determine the "merits" of an appeal without taking evidence, and to set only what is a "reasonable" amount as "security" for fees to defend that specific appeal. Moran v. Murtaugh Miller Meyer & Nelson, LLP, 40 Cal.4th 780, 785-786 (Cal. 2007); Jameson v. Desta, 5 Cal.5th 594, 599 (Cal. 2018); John v. Superior Court, 61 Cal.4th 91, 93-95 (Cal. 2016).

No federal case has addressed the unconstitutional vagueness of the current Calif. VL law. Johnson v. United States, 135 S.Ct. 2551, 2557-2563 (2015).

Kinney's complaint included **ongoing** violations of bankruptcy law by listed-creditor attorneys Marcus etc since all post-petition legal work for debtor Clark is **deemed to be *fully-discharged pre-petition debt*** in Clark's Chapter 7 "no asset" case. Here, 11 U.S.C. Sec. 524(a) clearly applies to motions for more attorney's fees and the resulting fee awards in favor of debtor Clark. In re Castellino Villas, A.K.F. LLC, 836 F.3d 1028, 1033-1037 (9th Cir. 2016).

Kinney's complaint included **ongoing** violations of state law by attorneys Marcus who had a 2007 hourly-fee retainer with client Clark containing an attorney's or charging lien clause since Marcus had **never** filed the required declaratory relief action against Clark *to prove* the validity and enforceability of the 2007 hourly-fee retainer and the charging lien which created an the automatic conflict-of-interest between a client and her counsel. Goncalves v. Rady Children's Hospital San Diego, 865 F.3d 1237, 1255 fn. 5 (9th Cir. 2017) [citing "*Mojtahedi v. Vargas,* 228 Cal.App.4th 974, 176 Cal.Rptr.3d 313, 316 (2014)"].

In the Calif. courts [i.e. Los Angeles Superior Court ("LASC") and Court of Appeal ("COA")], the judges and justices operate on a collaborative basis with respect to punishing Kinney, so Kinney has been unable to determine which judges and justices should be disqualified. Williams v. Pennsylvania, __ U.S. __, 136 S.Ct. 1899 (2016); Fourteenth Amendment. As a result, Kinney is unable to obtain an impartial judge.

Here, the federal courts are punishing Kinney and allowing penalties to be imposed on him in the state courts ***simply*** because he is exercising his federal rights under the Fifth Amendment. That violates the Supremacy Clause. U.S. Const. Art. VI, Sec. 2.

Here, the state courts continue to punish Kinney for conducting litigation in federal court (including the bankruptcy court) that a federal court itself does **not** penalize. Donovan v. City of Dallas, 377 U.S. 408, 412-414 (1964). That violates the Supremacy Clause.

With a cursory examination of the facts and dockets, it can be shown that Kinney is **not** a VL because he did **not** meet any of the VL criteria under the Cal. or federal VL laws in 2008, 2011, 2016, 2017 or 2018.

Kinney was subjected to systematic *retaliation* for being in the wrong place at the wrong time (e.g. when LASC Judge Elizabeth Grimes wanted to be elevated to a Justice in COA, Second App. Dist., but she had made 2 directly-inconsistent rulings in Kinney's case BC354136, as affirmed in B200893 and B208943). That *retaliation* continues to this day.

Kinney had to file numerous petitions after it became obvious that Clark's unsecured-creditors Marcus etc would continue to violate 11 U.S.C. Sec. 524(a)(2). Those *violations* of Sec. 524(a)(2) continue to this day.

Kinney recently filed petitions with this Court based on ***more*** violations of the same laws [#18-509, 18-504, 18-510, 18-515, 18-508, 18-516 and 18-517]; all were denied. Kinney then filed petitions with this Court based on ***even more*** violations of the same laws [#18-906 and 18-908]; those are pending.

Recently, this Court clarified that "professional speech" is just as broadly protected as "free speech" **and** when a group *compels speech* or *silence* it violates one's First Amendment rights. However, this Court has ***never allowed*** Kinney to benefit from, or be protected by, that recent clarification of the law.

Here, the decisions ***compel silence*** so that property owner Kinney cannot pursue his claims to redress violations of his federal constitution and civil rights by Judges and others who act as *prosecutors* under color of authority, rather than acting as *neutral arbitrators* of disputes. Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. __ (2018); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003).

The difference between ***compelled speech*** and ***compelled silence*** has *no constitutional significance* when applying the First Amendment's guarantee of "freedom of speech" to all citizens which includes the decision(s) by Kinney of both what to say and what not to say. Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

The penalties imposed on Kinney include ***compelled silence***; refusal to allow Kinney to file cases and appeals in state and federal courts; and punishment of attorneys hired by Kinney by imposing sanctions on those attorneys even though **there is no dispute** 11 U.S.C. Sec. 524 applies after Clark filed her "no asset" Chapter 7 bankruptcy in July 2010.

Janus applies to the "unified" Calif. State Bar which requires all attorneys to pay for ***compelled speech*** [e.g. as to what cases or appeals the Bar thinks have "merit"; and what issues the Bar wants to promote or not promote] and for ***compelled silence*** [e.g. because

of a Cal. Legislature's prohibition that the Bar cannot "conduct or participate" in any "review" of a Justice who rules against Kinney ***even if*** that Justice causes public harm by his/her ruling, which means Cal. Bus. & Prof. Code Sec. 6031(b) becomes 100% directly-inconsistent with Cal. Bus. & Prof. Code Sec. 6001.1].

Kinney was ***forced to sue*** the Judges who act as *prosecutors* under color of authority, rather than act as *neutral arbitrators* of disputes [or who ignore 11 U.S.C. Sec. 524(a)] to protect his civil rights and his property. Thus, Kinney is being punished (e.g. via disbarment by the Bar; via sanctions by Judges).

Many federal cases allow federal civil rights claims against a state Judge or Justice under 42 U.S.C. Secs. 1983 etc (e.g. *Bauer, Consumers Union*); or as a *Bivens* claim against a federal Judge.

Federal civil rights and "facial" challenge cases are **not** precluded by the *Rooker-Feldman*, res judiciata, collateral estoppel, and/or *defacto* appeal doctrines **even though** these claims may involve a state court Judge or Justice who allegedly has sovereign and judicial immunity [but not for "*prospective* injunctive relief"]. No contrary authority has ever been cited.

In 2013, USDC Judge Maxine Chesney (SF) ruled that retaliation claims arise after the original proceedings, so retaliation claims cannot have been decided in a prior matter. Thus, *Rooker-Feldman* and other preclusion doctrines would **not** apply. In USDC No. 3:13-cv-01396 [Dk #43, 12/23/13], Judge Chesney cited *Sloman* to support Kinney's retaliation claims under 42 U.S.C. Sec. 1983. Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310,

1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 911-922 (9th Cir. 2012). Even so, Kinney was still not allowed to proceed in that case.

NIFLA clarified regulations of "professional speech", and gave it the *same broad protection* as given to "free speech" under the 1st and 14th Amendments.

Professional speech can occur by an attorney or *pro se* litigant when there is willful judicial conduct by state court Judges or Justices, by Article I bankruptcy judges, or (like here) by Article III federal judges.

Professional torts may be regulated [i.e. government may define boundaries of legal malpractice claims], but regulation of non-advertising, non-solicitation "speech" is subject to a "strict scrutiny standard" of review via *Janus* and *NIFLA*, but that was ignored.

All content-based laws (which would include the unconstitutionally-vague Calif. "vexatious litigant" laws) are presumptively unconstitutional and can only be upheld if the government proves the laws are narrowly tailored to serve a compelling state interest (which was never shown by relevant facts, or proven by law, as to Kinney) under *Janus* and *NIFLA*.

Professional speech by an attorney or *pro se* litigant is being improperly ***penalized*** by unconstitutionally-vague vexatious litigant laws and is being improperly applied to Kinney by Judges and Justices.

Given how Calif. counts losses under the VL law and given that Calif. requires an appeal within 60 days of whenever a defendant is dismissed, a plaintiff can become labeled as a vexatious litigant in one case with 6 defendants, but still "win" the case. Fink v.

Shemtov, 180 Cal.App.4th 1160, 1170 (Cal. 2010). Calif. VL law also changes defendants into plaintiffs. Ogunsalu v. Sup. Ct., 12 Cal.App.5th 107 (Cal. 2017).

A **Judge's** penalty (e.g. a VL order) *is in addition to* the ***State Bar's*** penalty of suspension or disbarment.

This Court's opinions apply to the VL laws which are being utilized by state and federal courts: (A) to silence "professional speech"; **and** (B) to enforce their will by the threat that attorneys or *pro se* litigants will be prohibited [e.g. since 1 Judge can deny permission] **or** limited [e.g. since 1 Justice can require $175,000 in security to proceed with an appeal; and 1 Judge can require $185,000 in security to proceed with a case] from appearing in the courts.

It only takes 1 federal or state Judge to decide to improperly label a *pro se* litigant or attorney as a "vexatious litigant", and then other courts seem to intentionally (or blindly) follow that first ruling.

Prior to 2008, Kinney had been improperly identified as a "difficult" attorney or *pro se* litigant; *see* Kinney v. Overton, 153 Cal.App.4th 482 (Cal. 2007) wherein Kinney was a "defendant" in the original case.

On Nov. 19, 2008, Kinney was labeled as "vexatious" by LASC Judge Luis Lavin even though Kinney was no longer a party in that fraud case as of Nov. 7, 2008 onward (as shown in the docket) and about which Kinney was never allowed to appeal due to unilateral dismissals by Cal. Court of Appeal Adm. Pres. Justice Roger Boren from Jan. 2009 onward.

As part of the Nov. 2008 VL decision by Judge Lavin, he counted cases against Kinney in which Kinney

was only the attorney and usually only the attorney for a defendant. In May 2008, Judge Lavin refused to rule that Kinney was a VL, but a "**win**" by Kinney and his co-buyer Kempton in Aug. 2008 apparently "changed" Judge Lavin's mind by Nov. 2008; see Kempton and Kinney v. City of Los Angeles, 165 Cal.App.4th 1344 (Cal. 2008) [*public nuisances per se*].

On Dec. 8, 2011, Kinney was labeled as "vexatious" by COA Justice Roger Boren even though Kinney was never a named party or appellant; see In re Kinney, 201 Cal.App.4th 951 (Cal. 2011). Without supporting evidence, Justice Boren labeled appellant Kempton as Kinney's puppet. Justice Boren never considered violations of bankruptcy law by debtor Clark and/or creditor Marcus, so that is **not** authority as to those violations. In re GVF Cannery, Inc. v. Wells Fargo Bank, N.A., 202 B.R. 140, 144 fn. 2 (N.D. CA. 1996).

In 2016, Kinney was labeled as "vexatious" by USDC Judge Philip S. Gutierrez with respect to Kinney's challenges to **ongoing** bankruptcy law violations by discharged-debtor Clark and her "listed" unsecured-creditor attorneys Marcus etc (including Chomsky).

In 2017, Kinney was labeled as "vexatious" by COA2 Justices Rothschild, Cheney and Johnson even though he was specifically "listed" as a bankruptcy "creditor" by debtor Michele Clark in her July 28, 2010 Chapter 7 bankruptcy petition, which they ignored; see Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017). Those Justices totally ignored all of the **ongoing** bankruptcy law violations by debtor Clark and her creditors Marcus; see *In re GVF Cannery*.

In 2018, Kinney was labeled as "vexatious" by the Ninth Circuit in #17-80256 as to any **new** appeals.

From 2008 onward, all "vexatious litigant" rulings against Kinney have been decided: (1) **without** using a "strict scrutiny standard" of review; (2) **without** fact finding by Judges or Justices via oral testimony in open court under oath and with cross-examination; (3) **without** balancing public benefits of Kinney's litigation versus public harm of Kinney's litigation, if any; and (4) **without** allowing Kinney the right to appeal or have a review of these adverse rulings. Boddie v. Connecticut, 401 U.S. 371, 382-383 (1971).

The *Janus* and *NIFLA* decisions clearly apply to the Cal. State Bar, but also apply to the state and federal courts that have *compelled* ***speech*** and/or ***silence*** against litigant or attorney Kinney by the ongoing misapplication of unconstitutionally vague "VL" laws.

The Ninth Circuit is attempting to ***compel silence*** as to Kinney's First Amendment and federal civil rights **and** as to ongoing bankruptcy law violations.

Kinney has *attempted* to pursue claims against discharged-debtor Michele Clark and her listed-creditor attorneys David Marcus etc (and contract attorney Eric Chomsky), all of whom intentionally continue to violate Kinney's federal constitutional and civil rights over the last 8+ years. Kinney also has *attempted* to pursue claims against those in positions of authority who acted as prosecutors under color of law rather than as neutral arbitrators of disputes, and those involved in rulings about Clark's 2010 Chapter 7 bankruptcy who continue to violate the bankruptcy laws as to "listed" creditor Kinney.

From July 28, 2010 onward, Kinney's attempts to pursue claims against those who have intentionally and continually violated Kinney's rights as a listed

bankruptcy creditor in Clark's Chapter 7 bankruptcy have been *blocked* even though some violators have engaged in bankruptcy fraud. 18 U.S.C. Sec. 152 defines crimes with no private right of action, but the acts can be *predicate* acts for a private action (e.g. a RICO "enterprise" run by Marcus and Chomsky).

The lower courts continue to mislabel Kinney's attempts under the First Amendment and 42 U.S.C. Sec. 1983 to seek redress of grievances (e.g. as *defacto* appeals; as precluded by *Rooker-Feldman* or other similar doctrines like collateral estoppel or *res judicata* **and/or** as meritless or frivolous claims).

Most courts have summarily or *sua sponte* dismissed Kinney's claims or appeals. Many courts have tried to silence Kinney by denying him the right to file cases or appeals, or to remove improper state court proceedings that violate 11 U.S.C. Sec. 524(a)(2).

Some refuse to rule on his counter-claims by ignoring them (e.g. Judge Gutierrez). Levin Metals v. Parr-Richm. Term., 799 F.2d 1312, 1315-16 (9th Cir. 1986).

The **courts** have been denying Kinney's attempts to have reviews of rulings based on: (1) his vexatious litigant status; (2) ignoring the injunction as to new fee motions and the voiding of orders under 11 U.S.C. Sec. 524(a); **or** (3) ignoring violations of bankruptcy law (e.g. by listed-creditor Marcus). The rulings are violations of Kinney's First Amendment rights to "professional speech" and his federal civil rights by ***compelling silence*** on him contrary to the *Janus*, *NIFLA*, *Riley,* and *Consumer Union* decisions.

The courts ignore bankruptcy law violations, and continue to punish *creditor* Kinney by declaring him

a VL, sanctioning him, and awarding fees for post-petition legal work for discharged-debtor Clark by listed-creditor attorneys Marcus etc based on pre-petition contracts for work that is ***deemed to be fully-discharged pre-petition debt***. That violates 11 U.S.C. Sec. 524(a)(2) because debtor Clark would still have to be "personally liable" to creditor Marcus.

Every time listed-creditor attorneys Marcus etc file a motion for more attorney's fees after July 2010, they violate 11 U.S.C. Sec. 524(a)(2) because attorney Marcus must concede debtor Clark still has "personal liability" for his post-petition legal work for her.

Every attorney's fee award issued in favor of debtor Clark after July 2010 is "void" because of 11 U.S.C. Sec. 524(a)(1) since that award has to be based on debtor Clark's "personal liability" to her own listed-creditor attorneys Marcus etc. Cal. Civil Code Sec. 1717; Cal. Code of Civil Procedure Sec. 1033.5(a)(10).

The dismissals of Kinney's cases and appeals were abuses of discretion because only the district courts and Ninth Circuit can adjudicate: (i) federal civil rights complaints under 42 U.S.C. Sec. 1983; and (ii) violations of bankruptcy law [e.g. 11 U.S.C. Sec. 524].

Since 2008, Kinney has been repeatedly and unjustly denied his right to appeal because he was mislabeled as a VL. From 2008-2009, there were 100% directly-inconsistent decisions from COA2 by their blatant misapplication of Evans v. Fraught, 231 Cal.App.2d 698, 705 (Cal. 1965) which they still refuse to correct (see B200893; B208943; and B265267). In 2014, COA Justice Boren ruled non-party Kinney was still a party in LASC #BC374938 and imposed Clark's ***discharged*** pre-petition debt on him (see B248713).

Each time Kinney went to the federal courts, *Rooker-Feldman* was used to dismiss his cases **even though** he was not allowed to finish any state court appeals.

This Ninth Circuit panel knows that, if Kinney hires an attorney to pursue his cases or appeals, they will label that attorney as Kinney's "puppet" (without any proof) and impose sanctions (as was done before). This means Kinney cannot obtain the services of an attorney because no attorney wants to take that risk.

In March 2018, an attorney filed a complaint in the USDC, Central District of Calif. (Los Angeles), Case No. 2:18-cv-02136-RGK in which the history of willful judicial misconduct by LASC Judges was described.

According to that complaint, a scheme was created in the Los Angeles County Superior Court ("LASC") by attorneys who acted as judges' "Court Counsel" (and who previously represented LA County Sheriff Lee Baca, now in prison). They were to identify and silence certain attorneys and litigants who had been deemed "difficult" by the judges. One was deemed to be "difficult" if the judges were embarrassed by successful challenges for disqualification, and/or by frequent reversals of their trial court decisions.

As part of the scheme, honest judges in LASC were kept silent about "difficult" litigants and attorneys by threatening to give them "bad" judicial assignments (e.g. by assigning them to traffic court) in the vast Los Angeles County Superior Court system.

As part of the scheme, some state court judges were promoted (e.g. Judge Grimes, Judge Lavin) to state appellate court justices after their "win/loss" records improved (e.g. by preventing appeals by Kinney).

As a result of the scheme, the "difficult" attorneys and litigants would be unable to succeed in getting the adverse decisions overturned. Sometimes fake evidence would be created to impose punitive measures on them. Sometimes disciplinary charges would be brought by the Cal. State Bar to subject the "difficult" attorneys to sanctions or disbarment. All of this has happened to Kinney and his attorneys.

As part of the scheme, the Court Counsel and those judges have expanded the unconstitutionally-vague VL law to include attorneys [e.g. In re Kinney, 201 Cal.App.4th 951 (Cal. 2011) in an appeal in which Kinney was never a party or appellant] **and** represented litigants [e.g. Kinney v. Clark, 12 Cal.App.5th 724 (Cal. 2017) as to Kinney's attorneys] ***without*** Legislative authority. Note that *Kinney v. Clark* identifies bankruptcy law violations by debtor Michele Clark; her listed-creditor attorneys David Marcus etc; contract attorney Eric Chomsky; LASC Judge Barbara Scheper; **and** COA2 Justices Frances Rothschild, Victoria Chaney, and Jeffrey Johnson.

From 2008 onward, special retaliation and VL rules have been applied to Kinney regardless of whether Kinney was an *in pro se* litigant, an attorney for a client (e.g. defendant), a defendant **or** a non-party.

By their ***ongoing*** acts, this Ninth Circuit panel has:

(1) denied Kinney his rights to appeal or seek redress of grievances [e.g. for the pending appeals involving bankruptcy law violations by discharged Chapter 7 debtor Clark and her own attorneys; for violations of the Clean Water Act in the ocean by Laguna Beach; and for violations of the ADA due to obstructed public rights-of-way in Los Angeles];

(2) denied Kinney his inherent right to "honest services" from state and federal judges [e.g. since Judge Gutierrez refused to rule on Kinney's counter-claim that was based on bankruptcy law] **and**

(3) interfered with Kinney's ongoing interstate commerce under color of official right [e.g. since Kinney owns property outside of Cal.; and has suppliers of products and ongoing businesses outside of Cal., which have been damaged by these rulings].

The acts by this panel violate 18 U.S.C. Secs. 1346 and/or 1951, and create new civil rights and/or RICO claims (e.g. since Marcus and Chomsky ran a RICO "enterprise"). *See* United States v. Inzunza, 638 F.3d 1006 (9th Cir. 2009); United States v. Frega, 179 F.3d 793 (9th Cir. 1999); United States v. Carbo, 572 F.3d 112 (3rd Cir. 2009); United States v. Stephenson, 895 F.2d 867 (2nd Cir. 1990); United States v. Burkhart, 682 F.2d 589 (6th Cir. 1982); United States v. Frazier, 560 F.2d 884 (8th Cir. 1977); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980).

As for Commerce Clause violations, when Kinney was an attorney in Calif., he was granted *pro hac vice* status in Colorado for cases on his mineral interests. That operation is an ongoing interstate business. Keith v. Kinney, 961 P.2d 516 (Colo. App. 1997); Kinney v. Keith, 128 P.3d 297 (Colo. App. 2005); Keith v. Kinney, 140 P.3d 141 (Colo. App. 2006).

On Jan. 19, 2018, the Ninth Circuit issued a global pre-filing review order against Kinney in #17-80256. Before the Jan. 2018 order, the Ninth Circuit ***knew the entire history*** of the ongoing punishment and

retaliation against Kinney because these issues were briefed by Kinney in the Ninth Circuit's reciprocal disbarment matter #15-80090 with a hearing before Appellate Commissioner Peter Shaw (who ignored all ongoing violations of law). The oral proceedings were transcribed and sent to the Ninth Circuit by Kinney.

OPINIONS BELOW

On Nov. 8, 2018, a three judge panel of the Ninth Circuit dismissed Kinney's pending appeal because of "insubstantial" issues. [Appendix A, 1[1]] However, over $500,000 in damages due to ongoing violations of federal law **clearly** presents "substantial" issues.

That ruling violated Kinney's "federal" constitutional rights (e.g. First Amendment) and civil rights under color of authority or official right (e.g. 42 U.S.C. Sec. 1983), so judicial immunity was eliminated with respect to any "***prospective***" injunctive relief against those judges. Fitzpatrick v. Bitzer, 427 U.S. 445, 448 (1976); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 102-106, 123 n. 34 (1984); Patrick v. Burget, 486 U.S. 94, 101-104 (1988); Pennsylvania v. Union Gas Co., 491 U.S. 1, 57 (1989); F.T.C. v. Ticor Title Ins. Co., 504 U.S. 621, 631-638 (1992).

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code ("U.S.C."), Secs. 1254(1), 1257(a), and/or 2101(c).

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[1] Citation method is Appendix ("App."), exhibit letter, and sequential page number.

This Ninth Circuit panel has denied Kinney's First Amendment rights with respect to bankruptcy law violations and to overbroad applications of VL laws.

This panel has been compelling ***silence*** on Kinney, **and** acting as ***prosecutors*** of Kinney under color of official right, which has resulted in losses to Kinney's interstate commerce businesses and his property, and resulted in the loss of "honest services" from state and federal courts. American Railway Express Co. v. Levee, 263 U.S. 19, 20-21 (1923); Cohen v. California, 403 U.S. 15, 17-18 (1971); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 159-161 (1954).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to address violations of state and federal law by the state judicial courts (e.g. Cal. Court of Appeal and Cal. Supreme Court), by the U.S. District Courts, and/or by the Ninth Circuit.

Here, the federal courts had exclusive and original jurisdiction under 28 U.S.C. Sec. 1331, 1343, 1441, 1443 and 1452, and under 42 U.S.C. Sec. 1983 etc, to consider violations of federal *constitutional* rights (e.g. First Amendment rights) **and** violations of other federal laws [e.g. violations of the Commerce Clause; of the "honest services" law; of the Hobbs Act; of 11 U.S.C. Sec. 524(a)(1) and (2); and/or of bankruptcy fraud which is a crime under 18 U.S.C. Secs. 152 etc].

Here, as has been done in the past, the Ninth Circuit panel is willfully ignoring all of the ***substantial*** issues being presented by Kinney's pending appeal.

STATEMENT OF THE CASE

This petition involves a Ninth Circuit panel who summarily dismissing Kinney's ongoing appeal about overbroad VL laws and violations of bankruptcy law.

This panel is compelling *silence* on Kinney as to ongoing bankruptcy law violations since Kinney was a "listed" bankruptcy creditor who has been made liable for over $500,000 in pre- and post-petition attorney's fee awards based on pre-petition contracts in favor of Chapter 7 discharged-debtor Clark.

SUMMARY OF LOWER COURT PROCEEDINGS

On Nov. 8, 2018, Kinney had a pending appeal that was dismissed per *In re Thomas* (508 F.3d 1225), but that does **not** apply to "void" orders under 11 U.S.C. Sec. 524(a)(1) and ongoing violations of Sec. 524(a)(2).

Kinney's petition addresses: (1) ongoing retaliation against him by *forcing his silence* **and** (2) ongoing federal law violations to his detriment as a listed-creditor by "taking" his property (.g. over $500,000); by damaging his interstate commerce businesses; and by ignoring his rights as a specifically-named creditor in Clark's 2010 Chapter 7 "no asset" bankruptcy.

STATEMENT OF FACTS

In July 2010, seller Michele Clark filed a Chapter 7 "no asset" bankruptcy petition, and listed Kinney as a creditor. As a result, all pre-petition contracts (e.g. the 2005 real estate purchase contract between seller Clark and buyers Kinney etc; and 2007 hourly-fee retainer between client Clark and attorneys Marcus) were unenforceable. State courts have ignored the facts and law, **but** conceded in *Kinney v. Clark* that violations of 11 U.S.C. Sec. 524(a) ***have occurred.***

As ***admitted*** in the 2017 state court opinion, after Clark's bankruptcy in 2010 and discharge in 2012, the state courts kept granting attorney's fee awards to discharged-debtor Clark (against listed-creditor Kinney) based on pre-petition contracts for post-petition legal work by attorney Marcus, which are *automatically* <u>*void*</u> under 11 U.S.C. Sec. 524(a)(1).

Discharged-debtor Clark and her listed-unsecured creditor attorneys Marcus etc continue to file state court motions for fees based on pre-petition contracts that are *prohibited* by 11 U.S.C. Sec. 524(a)(2).

On Nov. 8, 2018, Kinney's pending appeal in the Ninth Circuit was dismissed by the panel [App. A, 1].

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari Should Be Granted Because Both State and Federal Courts <u>Continue to Violate Federal Law</u> Which Violates Kinney's First Amendment Rights; And The Method and Application of "Alleged" Due Process by the Ninth Circuit Severely Impairs Meaningful Review of Important Questions of Federal Law, And Severely Impairs Rights Guaranteed Under The First, Fourth, Fifth And Fourteenth Amendments; And Is In Conflict With Decisions Of This Court And Other United States Court Of Appeals.

This Ninth Circuit panel (and both the district courts and state courts) are *compelling silence* upon Kinney in direct violation of the *Janus, NIFLA* and *Riley* decisions <u>**and**</u> in direct violation of bankruptcy law given Kinney's status as a "listed" creditor. [App. A, 1;

App. B, 3; App. C, 5] Janus v. American Federation of State, County and Municipal Employees, Council 31, 585 U.S. __ (2018); National Institute of Family and Life Advocates v. Becerra, 585 U.S. ___ (2018); Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781, 796-797 (1988).

This panel has acted as *prosecutors* of Kinney, **not** as *neutral arbitrators* of disputes, when they dismissed his appeal. This panel has violated Kinney's federal constitutional and civil rights, the "honest services" law, and the Hobbs Act. [App. A, 1; App. B, 3; App. C, 5] Supreme Court of Virginia v. Consumers Union, 446 U.S. 719, 736 and n. 15 (1980); Hafer v. Melo, 502 U.S. 21, 25-31 (1991); Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001); Canatella v. State of California, 304 F.3d 843, 847-854, n. 6 and 14 (9th Cir. 2002); Bauer v. Texas, 341 F.3d 352, 356-360 (5th Cir. 2003); In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 24 (1st Cir. 1982); United States v. Murphy, 768 F.2d 1518, 1523-1539 (7th Cir. 1985); Zarcone v. Perry, 572 F.2d 52, 54-57 (2nd Cir. 1978).

This panel's dismissal was retaliation against Kinney (and similar to the *In re Kinney* and *Kinney v. Clark* decisions). That caused irreparable injury to Kinney, and to his property, interstate businesses, cases, appeals, and clients. 42 U.S.C. Sec. 1983; Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

This panel's acts were done to restrict Kinney's First Amendment rights (e.g. as to his appeals), to restrict his fair access to the courts, **and** to retaliate against him. Hooten v. H Jenne III, 786 F.2d 692 (5th Cir. 1986); United States v. Hooten, 693 F.2d 857, 858 (9th Cir. 1982); Sloman v. Tadlock, 21 F.3d 1462, 1470 (9th Cir. 1994); Soranno's Gasco, Inc. v. Morgan, 874 F.2d

1310, 1313-1320 (9th Cir. 1989); Lacey v. Maricopa County, 693 F.3d 896, 916 (9th Cir. 2012).

Kinney has the right "to petition the Government for a redress of grievances" including a right to a review by appeal which is being consistently denied to Kinney without just cause in both state and federal courts. That First Amendment Right is "one of the most precious of the liberties safeguarded by the Bill of Rights". BE & K Constr. Co. v. NLRB, 536 U.S. 516, 524 (2002) [quoting United Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222 (1967)].

A standard of strict scrutiny should be applied to procedural barriers made by rule or statute, as applied in appellate courts, which chill or penalize the exercise of First Amendment rights, and act to limit direct review by a higher court. "The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense." NAACP v. Alabama ex rel. Flowers, 377 U.S. 288, 297 (1964).

Fundamental to the Fourteenth Amendment's right to due process of law is the opportunity to be heard. Grannis v. Ordean, 234 U.S. 385, 394 (1914).

When a person is deprived of his rights in a manner contrary to the basic tenets of due process, the slate must be wiped clean in order to restore the petitioner to a position he would have occupied if due process had been accorded to him in the first place. Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 86-87 (1988).

Although a particular state is not required to provide a right to appellate review, procedures which adversely affect access to the appellate review process, which the state has chosen to provide, requires close judicial scrutiny. Griffin v. Illinois, 351 U.S. 12 (1956). This applies to all courts.

An appeal cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the federal Equal Protection Clause. Smith v. Bennett, 365 U.S. 708 (1961).

Certiorari should be granted to provide guidance on the method and manner in which the federal and state courts apply, restrict or summarily deny the right of access to the courts and force silence on "difficult" attorneys and *pro se* litigants.

As to the acts of this panel of the Ninth Circuit, an appearance of impropriety, whether such impropriety is actually present or proven, weakens our system of justice. "A fair trial in a fair tribunal is a basic requirement of due process. In re Murchison, 349 U.S. 133, 136 (1955).

While claims of bias generally are resolved by common law, statute, or professional standards of the bench and bar, the Due Process Clause of the Fourteenth Amendment "establishes a constitutional floor." Bracy v. Gramley, 520 U.S. 899, 904 (1997).

This panel ignored that prior fee award orders were all "void" (e.g. 11 U.S.C. 524); and "void" orders cannot support subsequent decisions. Sinochem Intl. Co. v. Malaysia Intl. Ship Corp., 549 U.S. 422, 430 (2007); Plaza Hollister Ltd. Ptsp v. Cty of San Benito,72

Cal.App.4th 1, 13-22 (Cal. 1999); Airlines Reporting Corp. v. Renda, 177 Cal.App.4th 14, 19-23 (Cal. 2009).

By their acts, this panel has ignored the: (1) adverse impacts on Kinney as a listed-creditor in debtor Clark's 2010 Chapter 7 "no asset" bankruptcy; (2) the 11 U.S.C. Sec. 524 violations by listed-creditor Marcus; (3) the adverse impacts on Kinney's interstate commerce businesses; **and** (4) Kinney's right to be free from retaliation, all of which is subject to review by federal courts who have the obligation to determine the issues. In re Isaacs, 895 F.3d 904, 910-911 (6th Cir. 2018) [*Rooker-Feldman* doctrine does not apply when "a state court interprets the discharge order incorrectly"; that state court order is "void *ab initio*"]; In re McLean, 794 F.3d 1313, 1321-1325 (11th Cir. 2015) [discharge injunction can be violated by creditor]; Bulloch v. United States, 763 F.2d 1115, 1121-1122 (10th Cir. 1994) ["fraud on the court" can occur because of false statements]; McCarthy v. Madigan, 503 U.S. 140, 146 (1992); Colorado River Water Conservation District v. United States, 424 U.S. 800, 817-818 (1976) [courts must exercise the jurisdiction given to them];

The *Bosse* decision requires all courts to follow the law, but no court has done that for the last 8+ years as to listed creditor Kinney. Bosse v. Oklahoma, 580 U.S. __, 137 S.Ct. 1 (2016); Orner v. Shalala, 30 F.3d 1307, 1309-1310 (10th Cir. 1994) ["relief is not a discretionary matter; it is mandatory"].

CONCLUSION

This petition and all of the relief requested below should be granted.

This Court should "void" all of the orders, judgments and sanctions issued from July 28, 2010 onward in favor of Chapter 7 "no asset" discharged-debtor Michele Clark, listed unsecured-creditor attorneys David Marcus etc, and/or their contract attorney Eric Chomsky with respect to listed-creditors Charles Kinney and/or Kimberly Kempton (his business partner and co-buyer of Clark's property in 2005) pursuant to 11 U.S.C. Sec. 524(a)(1).

This Court should declare that listed unsecured-creditor attorneys David Marcus etc, and/or contract attorney Eric Chomsky have been violating 11 U.S.C. Sec. 524(a)(2) by repeatedly filing more motions for attorney's fees after Clark filed a petition for a "no asset" Chapter 7 bankruptcy on July 28, 2010.

This Court should refer this to the US Attorney's Office and FBI via 18 U.S.C. Sec. 158 to investigate whether "crimes" under Secs. 152 and/or 157 have occurred due to the pre- and post-petition acts of listed unsecured-creditor attorneys David Marcus etc and/or their contract attorney Eric Chomsky.

Here, "crimes" could include willful acts by creditor Marcus and Chomsky with respect to: (A) making false oaths under 18 U.S.C. Sec. 152(2); (B) making false declarations under 18 U.S.C. Sec. 152(3); (C) presenting false claims under 18 U.S.C. Sec. 152(4); (D) receiving material property from debtor Clark under 18 U.S.C. Sec. 152(5); **and/or** (E) repeatedly making false or fraudulent representations under 18 U.S.C. Sec. 157(3). All these "crimes" occurred here.

Dated: 1/29/19 By:___/s/___Charles Kinney__
Charles Kinney, in pro se