

No. 17-1153

In The
Supreme Court of the United States

SIERRA PACIFIC INDUSTRIES, INC., et al.,

Petitioners,

v.

UNITED STATES,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF *AMICI CURIAE* MICHAEL COLE, TOM
HOFFMAN, FRANK HOLBROOK, PAUL BERTAGNA,
JAMES VINEYARD, TERRY MACKEY AND CHRIS
VALLERGA, RETIREES OF THE CALIFORNIA
DEPARTMENT OF FORESTRY AND FIRE
PROTECTION, IN SUPPORT OF PETITIONERS**

MICHAEL E. HAGLUND
Counsel of Record
JULIE A. WEIS
HAGLUND KELLEY LLP
200 SW Market Street
Suite 1777
Portland, OR 97201
(503) 225-0777
mhaglund@hk-law.com

Attorneys for Amici Curiae

TABLE OF CONTENTS

	Page
INTERESTS OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	4
ARGUMENT	6
A. The Court Should Grant the Petition for Writ of Certiorari Because Fire Prevention and Protection on Public and Private Lands Depends on the Public Having Confidence that Wildfires are Investigated and Prosecuted with Honesty, Care and Professionalism	7
B. The Illegal Use of the Wildland Fire Investigation Training and Equipment Fund (WiFITER) Uncovered After Petitioners’ Federal Settlement Particularly Undermines Public Confidence in Honest and Professional Fire Investigations and Related Law Enforcement and Judicial Processes	11
C. Because Petitioners’ Federal Settlement Rests on a Foundation of Corrupt and Tainted Conduct, it Continues to Harm the Interests of <i>Amici</i> and the Public	15
CONCLUSION.....	19

TABLE OF AUTHORITIES

	Page
CASES	
<i>County of Santa Clara v. Superior Court</i> , 50 Cal. 4th 35 (2010)	8
<i>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</i> , 322 U.S. 238 (1944)	11
<i>Marshall v. Jerrico, Inc.</i> , 446 U.S. 328 (1980)	14
OTHER AUTHORITIES	
Supreme Court Rule 37.6.....	1
http://cdfdata.fire.ca.gov/incidents/incidents_stats?year=2017	17
http://www.auditor.ca.gov/pdfs/reports/2013-107.pdf	13
Jeremy Berke, <i>California’s Devastating Wildfire Season is Part of a Larger Trend – Here’s How Much Worse it Has Gotten</i> , BUSINESS INSIDER, Dec. 11, 2017, http://www.businessinsider.com/ventura-county-la-fires-california-worsening-trend-2017-12	17

INTERESTS OF *AMICI CURIAE*¹

Amici Curiae are retirees of the California Department of Forestry and Fire Protection (Cal Fire) referred to jointly herein as Cal Fire Retirees. The Cal Fire Retirees have a strong interest in this case because of their long tenures as Cal Fire professionals working diligently as honorable public servants and sworn peace officers in the area of wildland fires, like California's 2007 Moonlight Fire. The Cal Fire Retirees understand the critical importance of instilling and maintaining public confidence in the fire prevention and fire investigation processes, and the related law enforcement and judicial proceedings. These fundamental goals were undermined by the federal rulings below.

Michael Cole's public service career included 37 years with Cal Fire before he retired as a Fire Prevention-Law Enforcement Battalion Chief in 2006. Tom Hoffman's public service career included 23 years with Cal Fire, preceded by 10 years working as a forester and fire fighter for the U.S. Forest Service, before

¹ The parties were given at least ten days' notice of *amici's* intention to file a brief, and all have consented to this filing. Petitioners have filed a letter of blanket consent to the filing of *amicus* briefs, which is lodged with the Clerk. Respondent has consented to the filing of this brief. Pursuant to this Court's Rule 37.6, the *amici* submitting this brief and their counsel hereby represent that no party to this case nor their counsel authored this brief in whole or in part, no party to this case nor their counsel made a monetary contribution toward the preparation or submission of this brief, and that the American Forest Resource Council, an Oregon non-profit corporation, made a monetary contribution to fund the preparation and submission of this brief.

Mr. Hoffman retired from Cal Fire in 2009 as the Chief of Fire Prevention and Law Enforcement. Mr. Cole's area of practice and expertise centered around wildland fire investigation whereas Mr. Hoffman's area of practice and expertise centered around fire prevention and law enforcement. Messrs. Cole and Hoffman are joined by fellow Cal Fire Retirees and *amici* Frank Holbrook, who retired at the level of Assistant Chief after 38 years of service; Paul Bertagna, who retired at the level of Battalion Chief after 32 years of service; James Vineyard, who retired at the level of Captain after 35 years of service; Terry Mackey, who retired at the level of Captain after 31 years of service; and Chris Vallerga, who retired at the level of Captain after 24 years of service. All were sworn peace officers.

In the aftermath of the 2007 Moonlight Fire, which burned about 65,000 acres of private and federal forestland before its containment, both the federal and state (California) governments sued petitioners in separate actions in an effort to recover damages associated with the Moonlight Fire. As was later revealed by the Honorable Leslie C. Nichols, the state court judge appointed to preside over the consolidated state court proceedings, the joint state-federal investigation and subsequent prosecution of the Moonlight Fire case was shockingly corrupted, so much so that Judge Nichols in February 2014 imposed sanctions that included termination of the case, a decision upheld on appeal.

Petitioners desire to set aside their earlier settlement of the federal case, which occurred almost two years before the full extent of the corrupted investigation and case prosecution was discovered and laid bare by Judge Nichols. *See* Pet. Cert. Br. at 13 (referring to petitioners' July 2012 federal settlement). But petitioners' efforts to set aside the judgment embodying their federal settlement due to evidence of fraud on the court were denied by a U.S. District Court judge for the Eastern District of California in a decision later affirmed by the Ninth Circuit Court of Appeals. The Ninth Circuit's decision is the subject of petitioners' request for a writ of certiorari.

The Cal Fire Retirees believe that denying petitioners a full opportunity to set aside the settlement of the federal case severely undermines public confidence in the fire prevention, investigation and related law enforcement and judicial processes, sullies their own professional reputations and that of other honorable Cal Fire professionals, and does a disservice to citizens, including *amici*, who as taxpayers support these critical efforts with the reasonable expectation that fire investigations and cost recovery actions will be handled with the highest degree of professionalism and integrity, not with an eye towards targeting those viewed as having deep pockets. The Cal Fire Retirees thus support petitioners' request that this Court grant certiorari to review the Ninth Circuit's affirmance of the district court's decision, which rejected petitioners' effort to set aside the judgment embodying their

ill-informed settlement despite evidence that the settlement was tainted by fraud on the court.



INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court should grant the petition for certiorari to protect the integrity of, and public confidence in, fire investigation and related law enforcement and judicial processes. The Cal Fire Retirees dedicated decades of their professional careers to wildland fire investigation and/or fire prevention while also serving as sworn law enforcement officers in that arena. As such, *amici* have played a role in joint wildfire investigations involving both Cal Fire and the U.S. Forest Service, like the joint state-federal Moonlight Fire investigation which is the subject of petitioners' request for Supreme Court review. While working in their capacity as Cal Fire employees, *amici* understood that the public depended on Cal Fire to conduct its wildland fire work carefully and honestly so as to promote fire prevention and protection goals while also being good stewards of taxpayer resources. In retirement, *amici* look to Cal Fire with the same expectations, only from the vantage point of citizens who rightfully expect Cal Fire to safeguard the fire prevention, fire investigation and related law enforcement and judicial processes with the utmost of integrity. The Moonlight Fire case was an affront to those fundamental goals and remains so due to the lower courts' denial of petitioners' efforts to set aside their federal settlement, despite evidence of fraud on the

court that finally saw the full light of day in the subsequent state court proceedings.

When Cal Fire on August 9, 2009 brought suit against petitioners in an effort to recover damages associated with the Moonlight Fire, it was reasonably presumed that Cal Fire was proceeding in good faith and in furtherance of its public duties. But four and a half years later it became painfully apparent that Cal Fire had acted very much to the contrary. On February 4, 2014, the Honorable Leslie C. Nichols, the California Superior Court Judge tasked with presiding over the state action brought by Cal Fire against petitioners, issued an extraordinary Order Granting Sierra Pacific's Motion for Fees, Expenses and Monetary and Terminating Sanctions on the grounds that "Cal Fire has, among other things, engaged in the pervasive and systematic abuse of California's discovery rules in a misguided effort to prevail against these Defendants, all of which is an affront to this Court and the judicial process." Pet. App. 190.

Even though Judge Nichols took the extraordinary action of terminating the state court action based on Cal Fire's egregious conduct, the Cal Fire Retirees believe that petitioners' ill-informed prior settlement of the high stakes federal action against them should be set aside in the interests of justice and to protect the integrity of the judicial process. *Amici* fear that the dishonorable conduct of Cal Fire in connection with the joint state-federal Moonlight Fire investigation and prosecution undermines public faith in the conduct of government employees working in the areas of fire

prevention, fire investigation and related law enforcement. Because the incidence of wildland fires in the western states is only increasing both in terms of frequency and severity, the need for honest and diligent investigation of wildland fires, and public confidence in same, grows only more compelling. Thus, equally compelling is the need for this Court to grant certiorari to provide guidance on the standard for setting aside judgments alleged to be tainted by fraud on the court.



ARGUMENT

Petitioners rightfully seek Supreme Court review in their effort to obtain a full and fair opportunity to set aside their federal Moonlight Fire settlement due to evidence of fraud on the district court uncovered only as a result of the subsequent state court proceedings. But the Cal Fire Retirees believe that certiorari should be granted for a reason more fundamental than petitioners' private interests. The Cal Fire Retirees believe that certiorari is warranted to afford an opportunity to remedy the harm inflicted on the public's interest in honest wildland fire investigations and related judicial proceedings by the tainted joint state-federal investigation of the Moonlight Fire.

A. The Court Should Grant the Petition for Writ of Certiorari Because Fire Prevention and Protection on Public and Private Lands Depends on the Public Having Confidence that Wildfires are Investigated and Prosecuted with Honesty, Care and Professionalism.

Carefully and truthfully determining the origin and cause of fires plays a key role in fire prevention and the protection of lives and property. For decades, the Cal Fire Retirees worked to further these important goals as public servants and sworn law enforcement officers employed by Cal Fire. This Court should grant review to shore up these goals and protect the integrity of the wildfire investigation and law enforcement processes.

Public confidence in the work performed by government servants investigating wildland fires is a key element to successful fire prevention and protection work. Likewise, “[p]ublic confidence in the integrity of the investigation and prosecution of governmental claims against its citizens must be scrupulously maintained.” Pet. App. 263. This is particularly true when “witnesses at issue are law enforcement officers who have access to the scene, are charged with gathering and documenting the evidence, and are responsible for determining who is to blame.” Pet. App. 253. Indeed:

“A fair prosecution and outcome in a proceeding brought in the name of the public is a matter of vital concern both for defendants and for the public, whose interests are represented by the government and to whom a duty is owed

to ensure that the judicial process remains fair and untainted. . . .”

Pet. App. 202 (quoting *County of Santa Clara v. Superior Court*, 50 Cal. 4th 35, 57 (2010)).

For the Moonlight Fire, the “origin and cause investigation was jointly conducted by agents from Cal Fire and the United States Forest Service.” Pet. App. 211. Yet as the state court proceedings revealed, “Cal Fire investigator Joshua White . . . created a false ‘Origin and Cause Investigation Report,’” Pet. App. 139, and both state and federal investigators testified “untruthfully” regarding the origin and cause investigation. Pet. App. 145. Judge Nichols determined that Cal Fire had engaged in such improper conduct as (1) “gross violations of the discovery rules . . . some of which . . . were purposeful and calculated to enhance [Cal Fire’s] chance of success on the merits,” Pet. App. 209; (2) abuse of “the legal process through the false testimony of its lead investigator on the Moonlight Fire, Joshua White,” Pet. App. 211; (3) “obfuscation and bad faith denials of the truth,” Pet. App. 215; (4) specific incidences of conduct on the part of both Cal Fire and its counsel indicating “that they perceive themselves as above the rule of law,” Pet. App. 224; and (5) “evasive, misleading, contradictory and false deposition testimony on numerous topics, from the origin and cause investigation, to the suppression of witness information, to WiFITER [Wildland Training and Equipment Fund].” Pet. App. 225.

These non-exhaustive examples of improper conduct supported Judge Nichols' conclusion that:

Cal Fire's agents not only betrayed their oath "to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all men to liberty, equality and justice," but, as it pertains to this Court, they betrayed the primary purpose of judicial system – to reveal the truth.

Pet. App. 225 (citation omitted in original). Although Judge Nichols declined to hold that Cal Fire counsel had "directed or advised the egregious and reprehensible conduct of" Cal Fire, Pet. App. 301, he conveyed intense "disappointment and distress" over "the conduct of the Attorney General [which] so thoroughly departed from the high standard it represents. . . ." Pet. App. 302. Judge Nichols ultimately imposed terminating sanctions, Pet. App. 235, a decision upheld by a California appeals court based on evidence of Cal Fire's "egregious and deliberate misconduct." Pet. App. 163.

The Cal Fire Retirees believe that officials involved in the Moonlight Fire investigation and prosecution compromised Cal Fire's reputation and ability to promote a culture of accountability and integrity at Cal Fire, the detrimental effects of which carry over to Cal Fire's federal partner the U.S. Forest Service. Cal Fire's "many acts of evasion, misdirection, and other wrongful acts and omissions," Pet. App. 304, have besmirched the professional reputations of honest,

hard-working Cal Fire law enforcement officers. In doing so, the dishonorable conduct that tainted the joint state-federal investigation and prosecution have undercut the confidence of the general public, as well as landowners and those in the timber industry, that government officials can be trusted to pursue the real cause or culprit of a wildland fire instead of pursuing those individuals or entities best positioned to replenish government coffers.

Because the Moonlight Fire investigation and prosecution was, like so many of the wildfire cases *amici* have worked on, a joint state and federal effort from the first day of the fire, the Cal Fire Retirees believe the federal government's prosecution of petitioners was infected with the corruption and taint of Cal Fire's misconduct. As a result of Cal Fire's "Joint Prosecution Agreement with the United States," there was necessarily an inherent and "substantial overlap between the [state and federal] cases." Pet. App. 272. Yet the governmental corruption and taint only became fully evident in its manifold elements well *after* settlement of the federal case brought against petitioners. That is why the Cal Fire Retirees support petitioners' request that this Court review the Ninth Circuit's decision, which declined to disturb the district court's decision to leave intact petitioners' ill-informed federal settlement of the federal Moonlight Fire case.

After more than four years of litigation, depositions and discovery, Judge Nichols reached for these words in ruling against Cal Fire and imposing terminating sanctions in the state court proceedings: "The

plaintiffs went ‘all in,’ and in this case it meant all in to win at any cost. . . . The cost of Plaintiff Cal Fire’s conduct is too much for the administration of justice to bear.” Pet. App. 308. Likewise, *amici* assert that the egregious misconduct that was too much for the administration of justice to bear in the state court proceedings warrants granting petitioners a full and fair opportunity to set aside their ill-informed settlement of the federal Moonlight case, which petitioners allege was tainted by fraud on the district court. As this Court rightly stated in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), the seminal “fraud on the court” decision discussed at length by petitioners, *see generally* Pet. Cert. Br. at 16, 17-18, 19-20, 22-28, fraud on the court “does not concern only private parties. There are issues of great moment to the public” as well. *Hazel-Atlas*, 322 U.S. at 246. Respectfully, because both the private and public interests implicated by the Moonlight Fire case call for this Court’s intervention, certiorari should be granted.

B. The Illegal Use of the Wildland Fire Investigation Training and Equipment Fund (WiFITER) Uncovered After Petitioners’ Federal Settlement Particularly Undermines Public Confidence in Honest and Professional Fire Investigations and Related Law Enforcement and Judicial Processes.

Cal Fire’s wrongful use of the Wildland Fire Investigation Training and Equipment Fund (WiFITER) exemplifies in a special way the fraud upon the district

court in the federal case. It also underscores the harm done to Cal Fire’s reputation, which undermines public confidence in wildfire investigations and related law enforcement and judicial processes. The Cal Fire Retirees wondered why Cal Fire investigators were so intent on going after petitioners. Petitioners apparently suspected it had something to do with WiFITER after lead Cal Fire investigator Joshua White sent a letter to each of the then-defendants demanding that they pay a portion of the costs of fire suppression and investigation into the WiFITER fund rather than into California’s General Fund. Pet. App. 195. But Cal Fire worked at every turn to keep defense counsel in the dark about WiFITER. *See, e.g.*, Pet. App. 206 (discussing Cal Fire’s withholding of documents related to WiFITER in violation of court orders, which was ruled “akin to spoliation”); Pet. App. 209 (concluding that Cal Fire’s withholding of documents was “purposeful and calculated to enhance [Cal Fire’s] chance of success on the merits”). As the California appeals court concluded in affirming Judge Nichols’ imposition of terminating sanctions, there was “certainly evidence in the record to suggest that the existence of the WiFITER fund caused investigators to have a motive for bias in their investigation of wildfires that may result in a civil cost recovery.” Pet. App. 163.

Only in October 2013 – more than a year after petitioners’ federal settlement and quite by happenstance – did petitioners learn some of the details regarding WiFITER due to the publication of the otherwise nondescript California Auditor’s report

2013-107, titled “Accounts Outside the State’s Centralized Treasury System.” *See* <http://www.auditor.ca.gov/pdfs/reports/2013-107.pdf>. The report prominently featured Cal Fire’s WiFITER and concluded it was being used “in violation of California law.” Pet. App. 196. Subsequently, documents belatedly produced by Cal Fire in the state court proceedings showed that Cal Fire officials had been intent on replenishing the WiFITER fund at the time of the Moonlight Fire and that they had worked to hide the true nature of the fund. Pet. App. 207 (discussing documents showing that Cal Fire was “fixated on the cash flowing in and out of the illegal WIFITER [sic] account” and noting that Cal Fire’s general counsel had cautioned Cal Fire “‘to keep a low profile’” to avoid “‘look[ing] fishy’”) (quoting from produced documents).

Judge Nichols, noting the “pervasive nature of Cal Fire’s discovery abuses,” Pet. App. 205, concluded that the belatedly-produced documents revealed “information that is inconsistent with the testimony of Cal Fire’s witnesses and with Cal Fire’s representations to this Court regarding Cal Fire’s own understandings regarding WiFITER and whether it was legal.” Pet. App. 206. From the Cal Fire Retirees’ perspective, that egregious conduct not only interfered with the truth-finding goal of the judicial process, but it also called into substantial doubt whether Cal Fire investigators working on the joint state-federal Moonlight Fire investigation and prosecution could be trusted to fairly, honestly, and professionally administer their duties.

Further, because the taint of the WiFITER debacle permeated the joint state-federal Moonlight Fire investigation, which was the foundation on which both the state and federal judicial proceedings rested, it implicated significant concerns under the Due Process Clause of the Fifth Amendment. *See generally Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980). In *Jerrico*, this Court acknowledged that the Due Process Clause imposes limits on the partisanship of actors in the law enforcement and related judicial processes. *Id.* at 249-50 (“A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions.”). Although the facts in *Jerrico* did not rise to the level of a due process violation due to the ways in which the federal agency pursuing and collecting civil penalties was insulated from benefitting from such monies, *id.* at 250-52, the risk and/or appearance of bias in this case was far from remote and hence implicates serious constitutional questions.

Put simply, the WiFITER debacle uncovered after petitioners’ settlement of the federal case undermines public trust in the law enforcement and related judicial institutions, which are central to the rule of law. The WiFITER debacle thus is another reason that the Cal Fire Retirees support the petitioners’ request for certiorari. This Court’s review of the underlying Ninth Circuit decision is needed to restore and protect public confidence in the fire prevention, fire investigation and related law enforcement and judicial processes.

C. Because Petitioners' Federal Settlement Rests on a Foundation of Corrupt and Tainted Conduct, it Continues to Harm the Interests of *Amici* and the Public.

As explained above, Cal Fire's "corrupt and tainted" conduct infected the federal government's case against petitioners due to the joint state-federal nature of the Moonlight Fire investigation and prosecution. Pet. App. 140 (quoting state trial court). Cal Fire's dishonest conduct as part of the joint investigation and prosecution team is why the Cal Fire Retirees support petitioners in asking this Court to review the Ninth Circuit's decision, which declined to disturb the district court's refusal to afford petitioners a full and fair opportunity to set aside their ill-informed federal settlement despite evidence of fraud upon the court.

Judge Nichols' ultimate rulings in the state court case, particularly the imposition of terminating sanctions upheld by a California appeals court, provide some measure of justice to remedy the dishonorable conduct that infected the Moonlight Fire proceedings. *See generally* Pet. App. 189-279 (Order Granting Sierra Pacific's Motion for Fees, Expenses and Monetary and Terminating Sanctions); Pet. App. 162-63 (affirming trial court's imposition of terminating sanctions). But the Cal Fire Retirees fear the continued existence of the federal settlement has two contrary effects which are detrimental to the rule of law in general and the dispensation of justice in this particular case.

First, the continued existence of the federal settlement suggests to the public that petitioners must have been responsible for the Moonlight Fire, as a result of which the federal prosecution presumably was just. Otherwise, one might ask, why would petitioners have settled the federal case and agreed to pay \$55 million plus transfer 22,500 acres of valuable timberland to the federal government. Pet. App. 7. The public surely is unaware of the breathtakingly expansive damages sought by the federal government against petitioners, which approached a billion dollars in damages allegedly flowing from the Moonlight Fire. Pet. App. 5. Nor does the public likely appreciate that when petitioners entered into the federal settlement under the threat of crippling potential damages that imperiled their very existence, petitioners were unaware of the full extent of the corrupt nature of the joint state-federal Moonlight Fire investigation and prosecution.

Second, to the extent the public does know about Judge Nichols' post-federal settlement findings of "corrupt and tainted" governmental conduct uncovered in the consolidated state cases, the public surely is left to wonder – as are the Cal Fire Retirees – why the federal government got away with a tainted settlement that had the effect of transferring substantial assets from private parties to federal coffers. In an era of damaging public cynicism about our federal government and government employee conduct, the notion that petitioners were forced into a settlement before the full extent of the corruption tainting the Moonlight Fire investigation and prosecution was discovered only fuels such

public cynicism. When “corrupt and tainted” government conduct leads to termination of state court proceedings without a similar outcome in the parallel federal court proceeding simply because the federal case settled prior to full discovery of the corruption and taint, public cynicism of our federal government rightfully *should* increase, with a concomitant decrease in confidence in our public officials.

The rule of law should not be viewed as a game of beat the clock, but the Cal Fire Retirees fear that the continued existence of the federal settlement has just that effect. And the Cal Fire Retirees know first-hand based on their many years with Cal Fire that public cynicism poses a clear danger when it comes to wildland fire investigation and related law enforcement efforts. Given recent worsening wildfire trends, the resulting harm will only deepen with the passage of time. *See, e.g.,* Jeremy Berke, *California’s Devastating Wildfire Season is Part of a Larger Trend – Here’s How Much Worse it Has Gotten*, BUSINESS INSIDER, Dec. 11, 2017, <http://www.businessinsider.com/ventura-county-la-fires-california-worsening-trend-2017-12> (Berke Wildfire Article).²

² California’s 2017 fire season was the worst on record with 505,956 acres burned. *See* http://cdfdata.fire.ca.gov/incidents/incidents_stats?year=2017. And as pointed out in the above-cited Berke Wildfire Article, “[f]ourteen of the 20 largest fires in California’s history have occurred since the year 2000.” The trend suggests that wildland fires of increased frequency and severity may now be commonplace.

So long as petitioners are denied a full and fair opportunity to set aside their ill-informed federal settlement, these detrimental effects will continue to compromise Cal Fire's reputation and that of its federal partner in wildland fire cases, the U.S. Forest Service, and to sully the professional reputation of honest, hard-working Cal Fire law enforcement officers. Judge Nichols' conclusion that governmental actors played an active role in delaying discovery of the "corrupt and tainted" conduct in connection with the Moonlight Fire adds additional force to the above concerns. The Cal Fire Retirees did not learn of the egregious Moonlight Fire conduct until after Judge Nichols' February 2014 rulings. Likewise, petitioners only uncovered the full extent of the evidence leading up to those rulings as (and after) they prepared for trial in the combined state cases, well after their July 2012 federal settlement. And as Judge Nichols concluded, the investigators and prosecutors in the joint state-federal investigation and prosecution were far from hapless spectators to the ongoing drama that delayed discovery of the egregious conduct. *See, e.g.*, Pet. App. 211 ("[I]t is this Court's responsibility to review whether Cal Fire abused the legal process through the false testimony of its lead investigator on the Moonlight Fire, Joshua White. This Court finds that Cal Fire, through White, repeatedly did so."); Pet. App. 216 ("Cal Fire's lead counsel, officers of this Court who should be 'operating under a heightened standard of neutrality' greatly exacerbated the problem by failing to intercede and put a stop to what their witnesses were doing under oath.") (citation omitted in original). *See also* Pet.

App. 162-63 (affirming trial court's imposition of terminating sanctions based on the "cumulative evidence" of highly improper governmental conduct).

Because of the joint state-federal nature of the Moonlight Fire investigation and prosecution, the federal government was not a mere bystander to the corruption and taint. The Cal Fire Retirees' desire to remedy the harm to their interests and those of the broader public resulting from the continued existence of the federal Moonlight Fire settlement thus causes them to support petitioners' request for certiorari, and to urge this Court to grant review.



CONCLUSION

The Cal Fire Retirees respectfully urge the Court to grant the petition for a writ of certiorari to review the Ninth Circuit's decision and provide much-needed guidance on the standard for setting aside judgments alleged to be tainted by fraud on the court. That decision upheld the district court's refusal to allow petitioners to set aside the judgment embodying their federal settlement despite later-uncovered evidence of fraud on the court. Absent Supreme Court intervention, public confidence in the integrity of wildland fire investigation and law enforcement proceedings will remain dangerously undermined by damaging public

cynicism about the federal government and the conduct of government actors in the wildland fire investigation arena.

Respectfully submitted,

MICHAEL E. HAGLUND

Counsel of Record

JULIE A. WEIS

HAGLUND KELLEY LLP

200 SW Market Street

Suite 1777

Portland, OR 97201

(503) 225-0777

mhaglund@hk-law.com

Attorneys for Amici Curiae

March, 2018