APPENDIX

Docket No. 15-15566

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AREK R. FRESSADI, ET AL.,

Plaintiffs - Appellants,

vs.

ARIZONA MUNICIPAL RISK RETENTION POOL ("AMRRP"), ET AL.,

Defendants - Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA
DISTRICT COURT NO. CV-14-01231-PHX-DJH
THE HONORABLE DIANE J. HUMETEWA, DISTRICT JUDGE

PLAINTIFFS-APPELLANTS' 2nd MOTION TO STAY AND RECALL/AMEND MANDATE FOR ADJUDICATION OF PETITION FOR REHEARING AT THE U.S. SUPREME COURT DUE TO JURISDICTIONAL CHALLENGES AND DEFENDANTS-APPELLEES' FRAUDULENT CONCEALMENT, FRAUD ON THE COURT, AND CONTINUING VIOLATIONS OF FEDERAL, STATE, MUNICIPAL LAW; MOTION TO REMAND

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Plaintiffs-Appellants Arek R. Fressadi and Fressadi Does I-III ("Appellant"/ collectively "Appellants") incorporate pending requests (DktEntries 144 & 145) recalling the Ninth Circuit's mandate originally issued May 25, 2018 (DktEntry 141) to request a stay of mandate per FRAP 41(d)(4) until the Supreme Court of the United States ("SCOTUS") adjudicates Appellant's Petition for Rehearing due June 7, 2019. Appellants file this 2nd request to recall this Court's mandate and amend its decisions (DktEntries 124-1 and 139) by incorporating Appellant's Petition for a Writ of Certiorari (**Exhibit A**) with Appendix (**Exhibit B**, "Pet.App."). SCOTUS review is discretionary[1], but, per U.S. S.Ct. Rule 44, intervening circumstances, a split circuit decision[2], and jurisdictional challenges affect this court's rulings.

1. Challenges to Jurisdiction

There is a "***long-settled understanding*** that the ***mere presence*** of a federal issue in a state cause of action **DOES NOT** ***automatically confer*** federal-question jurisdiction." *Merrell Dow Pharms., Inc. v. Thompson,* 478 U.S. 804, 813 (1986) (emphasis added). *See, e.g., Textile Workers v. Lincoln Mills,* 353 U.S. 448, 470 (1957) (Frankfurter, J., dissenting) (defining inquiry as "the degree to which federal law must be in the forefront of the case and not collateral, peripheral or remote"); *Gully v. First*

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[1] As the court has capacity to grant only ~1% of cert petitions (~80 of 7000-8000 submitted per year), law clerks typically recommend cases for review that have amici briefs, published decisions, high-profile parties, and preferred topic areas. Law clerks, who are recent college graduates, average only 20-30 minutes review of each petition. https://www.scotusblog.com/reference/educational-resources/supreme-court-procedure/; https://oxfordre.com/politics/abstract/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-91

[2] *See* Petition in Exhibit A at 24-29 featuring *M.A.K. Investment Group, LLC v. City of Glendale*, 889 F.3d 1173 (10th Cir. 2018), decided May 14, 2018.

National Bank, 299 U.S. 109, 115 (1936) ("Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit"). The matter before this Court ***does not*** "arise under" federal law (*e.g.* 28 U.S.C. §§ 1331 & 1441(a)&(c)(1)(A)), but is a "state-created cause of action" (*i.e.* state/administrative due process violations per Arizona Revised Statutes "A.R.S." §§ 9-500.12 & 9-500.13; Pet.App.55-57) with "a presence of a federal issue" in a 3rd Claim arising from and based on pre-requisite state claims or procedures that must first be adjudicated to determine unripe/reserved collateral federal issues, such that this court lacks jurisdiction. *Merrell*, 478 U.S. at 808-810. Plaintiff's federal issues "are not ones in the forefront of the case, but are more collateral in nature, and are not substantial in relation to the claim as a whole, which is in essence one under state law." *Willy v. Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988), relying on *Merrell* (no "single, precise definition" of §1331 "arising under" jurisdiction to require consideration of exceptions to jurisdiction).

"In light of the congressional intent to restrict federal court jurisdiction, as well as the importance of preserving the independence of state governments, federal courts construe the removal statute narrowly, resolving any doubts against removability." *Shamrock Oil & Gas Corp. v. Sheets,* 313 U.S. 100, 108 (1941)). *See also Syngenta Crop Prot., Inc. v. Henson,* 537 U.S. 28, 31 (2002) (noting that "statutory procedures for removal are to be strictly construed"). "If at **ANY TIME** before final judgment [in a removed case] it appears that the district court lacks subject matter jurisdiction, the case **SHALL be remanded**." 28 U.S.C. § 1447(c) (emphasis added).

Appellants challenged jurisdiction in District Court and requested remand per *Williamson*[3] and other state matters prior to final judgment. *See, e.g.*, Docs. 23 & 115.

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[3] *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

Until state administrative remedies are exhausted[4] or determination is made per A.R.S. § 9-500.12(H) for the wipeout of Appellants' investment-backed expectations, the unripe, reserved, collateral §1983 claims intertwined with pre-requisite state claims must be remanded per 28 U.S.C. §§ 1441(c)(2), 1367(c)(1),(2),(4), and/or abstention doctrines[5]. SCOTUS expanded abstention per *Younger v. Harris*, 401 U.S. 37 (1971),

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[4] Continuing violation as §§ 9-500.12 & 9-500.13 were not enforced/implemented, initiated by notice per §9-500.12(B), but circumvented by Cave Creek's intentional ongoing silence. *See* Appellant's unanswered request to fix ongoing illegalities of subject properties (Pet.App.140-145) per Zoning Ordinance §2.3(E) (Pet.App.80).

[5] "Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction to review determinations of state court judgments or claims that are 'inextricably intertwined' with state court judgments." *In re Application of Nina Urbanowski*, Dist. Court, CD Illinois 2013 (emphasis added), citing *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Reusser v. Wachovia Bank, NA*, 525 F.3d 855, 859 (9th Cir. 2008). A claim is inextricably intertwined under *Rooker-Feldman* if it "succeeds only to the extent that the state court wrongly decided the issues before it [or] if the relief requested...would effectively reverse the state court decision or void its ruling." *Charchenko v. City of Stillwater,* 47 F.3d 981, 983 (8th Cir. 1995). Per the *Burford* Abstention (*Burford v. Sun Oil Co.,* 319 U.S. 315, 332 (1943)), the Supreme Court held that when an issue "clearly involves basic problems of [state] policy[,]... equitable discretion should be exercised to give the [state] courts the first opportunity to consider them." This includes interpretation of state statutes. The *Pullman* Abstention is "proper in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication." *Harman v. Forssenius*, 380 U.S. 528, 534 (1965), citing *R.R. Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 501 (1941). "*Pullman* abstention does not exist for the benefit of either of the parties but rather for 'the rightful independence of the state governments and for the smooth working of the federal judiciary.'" *San Remo Hotel v. City and Cnty. of San Francisco*, 145 F.3d 1095, 1105 (9th Cir. 1998) (quoting *Pullman*, 312 U.S. at 501) (internal quotation marks omitted). **"[D]istrict court was *required* to abstain under *Younger* [Abstention]"** because "(1) a state-initiated proceeding is ongoing [*i.e.* ongoing CV2006-014822 from which this Special Action arises]; (2) the proceeding implicates important state interests [*i.e.* adherence to law of state and its political

from a criminal context to quasi-criminal, civil, and administrative proceedings[6]. *Younger* Abstention is "required" in this civil matter regarding ongoing violations of administrative proceedings per A.R.S. § 9-500.12 & 9-500.13 for exactions of land, easements, and improvements Cave Creek required that cause ongoing violations of, and are punishable under, state and municipal law. *San Jose*, n.5 herein. Alternatively, Supplemental Jurisdiction was required for Mandamus to cease continuous violations of state statutes and municipal ordinances as a prerequisite to ripen federal claims.

The genesis of this case starts in CV2006-014822. In January 2014, Appellant moved to amend CV2006-014822 to address the Town of Cave Creek's continuous criminal conduct in collusion with other indispensible parties (*i.e.* Appellees). The amended complaint requested mandatory transfer of venue from Maricopa County Superior Court per A.R.S. § 12-408[7] as Maricopa County was added as a party.

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subdivisions]; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the state proceeding [Arizona's Constitution declares the U.S. Constitution supreme and that state judges must abide]; and (4) the federal court action would enjoin the proceeding or have the practical effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves [*i.e.* effect of Special Action and federal courts interference with state interests and due process]." *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087, 1089, 1092 (9th Cir. 2008) (emphasis added), citing *Younger v. Harris*, 401 U.S. 37 (1971).

[6] *See, e.g., Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975) (doctrine of non-interference in state matters applied to quasi-criminal proceedings such as nuisance actions); *Trainor v. Hernandez*, 431 U.S. 434 (1977) (*Younger* abstention applied to state civil enforcement action of recovery of fraudulently obtained welfare payments); *Moore v. Sims*, 442 U.S. 415 (1979) (Supreme Court refused to enjoin state proceeding to determine whether abusive parents would be deprived of child custody).

[7] A.R.S. § 12-408: "In a civil action pending in the superior court in a county where the county is a party, the opposite party is entitled to a change of venue to some other county without making an affidavit therefor."

When his motion was denied, he drafted a new complaint to consolidate into CV2006-014822, also invoking A.R.S. § 12-408. Maricopa County Superior Court Clerks filed Appellant's Complaint as a Special Action for Mandamus in the Superior Court's Lower Court.[8] After assignment of case number LC2014-000206, Appellant filed a motion for mandatory transfer to another county per A.R.S. § 12-408, which was ignored. Lower Court had not accepted Special Action[9] jurisdiction when LC2014-000206 was removed to federal court. ***Appellants' Federal claims***

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[8] Appellant's Complaint, Doc. 1-1 at ¶2 states Appellants "request special action per A.R.S. §§ 12-408 [required transfer of venue to a different county], 9-500.12(H) [direct and actual delay damages on finding that Cave Creek acted in bad faith], 12-821.01(C), (G) [takings claims are not ripe until an administrative hearing occurs or issues of material fact as to whether administrative hearing occurred must first be adjudicated in the state's trial court], 12-1101 *et seq*. [state Quiet Title action], 13-2314.04(B) [state RICO]" for adjudication prior to other claims, including unripe, reserved, collateral federal claims. Claim 1 requested special action declaratory relief as a pre-requisite to determining other claims: Breach of Contract, Due Process / Equal Protection / Takings pursuant 42 U.S.C. § 1983 & 1988 **AND** numerous sections of the **State's** Constitution, RICO per A.R.S. § 13-2314.04, Negligence, Bad Faith, Fraud, Negligent Misrepresentation, Quiet Title, and False Light. Per A.R.S. § 12-2314.04(B): "The **superior court has jurisdiction** to prevent, restrain and remedy a pattern of racketeering activity or a violation of section 13-2312 involving a pattern of racketeering activity, after making provision for the rights of all innocent persons affected by the violation and after a hearing or trial, as appropriate, by issuing appropriate orders." (emphasis added)

[9] *See* Special Action Rule 1, Comment (b): "...Arizona also extensively uses certiorari and mandamus as a kind of special or **administrative review by statute** [*i.e.* A.R.S. §§ 9-500.12 & 9-500.13]. These special applications of these writs differ from the common law writs; they are **not at all discretionary** and they are not subordinate to a right of appeal--they are the right of appeal." (emphasis added) Upon remand from District Court, Lower Court erroneously declined mandatory Special Action jurisdiction and dismissed Appellants' claims based on Defendants-Appellees' fraudulent concealment and fraud on the court, which can be addressed in an amended complaint.

were reserved pending Special Action. Special Action review of state statutes is mandatory per *Williamson* prior to invoking Federal jurisdiction. *See* n. 8-9. See also *Arbaugh v. Y & H Corp.,* 546 U.S. 500, 514 (2006) (subject-matter jurisdiction involves a court's power to hear a case, and can never be forfeited or waived). The requirement that this Court have original subject matter jurisdiction is "nonwaivable." *Ruhrgas Ag v. Marathon Oil Co.*, 526 U.S. 574 (1999).

Remand to state court was also required per 28 U.S.C. §§ 1441(c)(2) or 1446(b). "The Supreme Court long ago established, under a predecessor removal statute, that removal based on a federal question ***requires*** the ***unanimous*** consent of **ALL** defendants." *Griffioen v. Cedar Rapids and Iowa City Ry. Co.*, 785 F. 3d 1182 (8th Cir. 2015) (emphasis added), citing *Chi., Rock Island, & Pac. Ry. Co. v. Martin,* 178 U.S. 245, 248 (1900). **ALL of the Defendants did not consent to removal.** Per the "Rule of Unamity," Defendants failed to join or consent in the removal, which cannot be cured beyond the 30-day limit. *Beard v. Lehman Bros. Holdings, Inc.*, 458 F. Supp. 2d 1314 (MD Ala. 2006), citing many federal courts explaining "there is no such thing as 'implied joinder or consent.' Instead, 'an official, affirmative and unambiguous joinder or consent to ... [the] notice of removal' is required" by each Defendant facing a federal claim. *Id.* at 1320 (citation omitted). Filing documents in court other than a written and clearly expressed consent specific to the removal, such as an Answer or Response, is "**legally insufficient.**" *Id.*, at 1320-21 (emphasis added).

District Court's and Ninth Circuit's jurisdiction is non-existent because removal to federal court was improper. "If a federal court takes action in a dispute over which it lacks subject matter jurisdiction, that action is a nullity." *Federal National*

Mortgage Association v. Underwood, Dist. Court, No. 4: 17-cv-2370-NCC (E.D. Mo. Nov. 8, 2017), citing *American Fire & Casualty Co. v. Finn*, 341 U.S. 6, 17-18 (1951).

2. Fraudulent Concealment, Fraud on the Court, Continuing Violations, and Split Circuit Decisions

On August 29, 2016, the Town of Cave Creek *admitted* and produced *new evidence* that it fraudulently concealed its criminal violations of federal law codified in A.R.S. §§ 9-500.12 & 9-500.13 to deprive Appellants of constitutional rights in violation of 18 U.S.C. § 242.[10] *See* DktEntry 56. By fraud on the court and fraudulent concealment in collusion with other Appellees, Cave Creek obtained numerous statutes of limitations rulings in state court on which District Court and this Court relied to dismiss §1983 claims. But Cave Creek's violations of federal, state, and municipal law are continuous. The subject lots remain illegal by plain language of law. Equitable estoppel, tolling, and continuing violations doctrines apply. Appellants' Complaint alleged fraudulent concealment, fraud on the court, and continuing illegalities in 2:14-cv-01230-PHX-DJH. District Court acknowledged but did not address these allegations when it dismissed Appellants' §1983 claims such that the fraud and violations continue, which this Court overlooked or misapprehended. It is well-established that "a defendant whose affirmative acts of fraud or concealment have misled a person from either recognizing a legal wrong or seeking timely legal redress may not be entitled to assert the protection of a statute of limitations." *White v. Aurora Loan Services LLC*, No. CV-14-01021-PHX-JAT (D.Ariz. July 5, 2016), citing *Porter v. Spader*, 239 P.3d 743, 747 (Ariz.Ct.App.2010).

[10] Section 242 is intended to "protect all persons in the United States in their civil rights, and furnish the means of their vindication." *Screws v. United States*, 325 U.S. 91, 98 (1945) (quoting legislative history).

See *Bailey v. Glover*, 88 U.S. 342, 348 (1875):

> [W]here the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.

On August 29, 2016, Cave Creek revealed that it has ***continuously*** violated the mandatory notice and burden-shifting / heightened scrutiny requirements of *Mullane, Nollan, and Dolan* to extort land, easements, and improvements without paying just compensation per *Lucas*, *First English*, and *Koontz*[11] ***as its Official Policy since 2001***, affecting over 300 Cave Creek property owners, including Appellants. *See* Motion for Judicial Notice, DktEntry 56; and A.R.S. §§ 9-500.12 & 9-500.13 in Exhibit B, Pet.App.55-57. As part of a fraudulent scheme, Cave Creek surreptitiously converted Appellants' property into an illegal subdivision by violating A.R.S. §§ 9-500.12 and 9-500.13 without Appellants' knowledge or consent.[12] Per A.R.S. § 9-500.12(B) and Cave Creek's Zoning Ordinance ("ZO") §2.3, Cave Creek was

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[11] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Nollan v. California Coastal Comm'n*, 483 US 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987); *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

[12] Circumventing due process, Cave Creek covertly instructed a surveyor to alter Appellants' land survey by omitting a 25-foot wide strip of land from "Lot 1" of 3 lots and then defining it as "Parcel 1," an exaction that Maricopa County assessed as a 4th lot. In violation of A.R.S. § 33-420 for causing recordation of false documents, the Town instructed the surveyor to falsely state on the survey that the 4th lot was dedicated to Cave Creek, and record the survey. However, Appellants still own and is continuously taxed on the 4th lot that converted Appellant's lot split into an illegal subdivision. There is no public use for the 4th lot adjacent to a residential road on the side of a mountain that is not part of the Town's expansion plans.

required to provide due process notice and a hearing to review the exaction of a fourth lot that converted Appellants' lot split into an illegal subdivision. Exploiting Appellants' detrimental reliance under color of law, Cave Creek conned Appellant by claiming a subdivision is "5 or more lots" instead of "4 or more" per state and municipal law. These ongoing violations cause the subject lots to be continuously unlawful to develop or sell per A.R.S. § 9-463.03 (Pet.App.41) and Cave Creek's Subdivision and Zoning Ordinances (Pet.App.73-81). The illegal lots caused by Cave Creek require Quiet Title[13] per Appellants' Complaint Claim 9. Appellants still own the 4th lot Cave Creek illegally exacted. As such, statutes of limitations do not apply to Quiet Title or continuing violations[14]. These continuous violations must be adjudicated in state court by Special Action or Quiet Title for Appellants' federal claims to ripen into finality as required by *Williamson.* Per *Williamson*, this matter cannot be in District Court as administrative remedies are not exhausted such that statutes of limitations do not run per A.R.S. § 12-821.01(C) (Pet.App.63). Abstention doctrines also apply, *supra.*

Per A.R.S. § 9-500.12(H), Appellants are entitled to an evidentiary hearing to determine an award of delay damages for Cave Creek acting in bad faith (Pet.App.56).

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[13] See *Cook v. Town of Pinetop-Lakeside,* 303 P.3d 67 (Ariz.Ct.App.2013): "a cause of action to quiet title for the removal of the cloud on title is a **CONTINUOUS** one and **NEVER barred by limitations** while the cloud exists." (emphasis added).

[14] "The continuing violation doctrine is an 'exception to the normal knew-or-should-have-known accrual date.'" *Shomo v. City of New York,* 579 F.3d 176, 181 (2nd Cir. 2009), quoting *Harris v. City of New York,* 186 F.3d 243, 248 (2d Cir. 1999). Each overt act that injures the plaintiff "starts the statutory period running again, regardless of the plaintiff's knowledge of the alleged illegality at much earlier times." *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997).

A Court with competent jurisdiction must use Cave Creek's ZO §1.7(A) as a metric for determining delay damages (Pet.App.78), which incorporates the Continuing Violations Doctrine[15]: "Any person [***including Cave Creek as a corporate person and all its state actors***] who violates **ANY** provision of this Ordinance, and any amendments thereto, **SHALL *be guilty*** of a Class One misdemeanor punishable as provided in the Cave Creek Town Code and state law; and ***each day of continued violation*** **SHALL *be a separate offense***, punishable as described." (emphasis added) Cave Creek's violations of its Subdivision Ordinance and Town Codes are incorporated into ZO §1.7(A) per ZO §1.1(B) (Pet.App.76). Appellants are entitled to treble damages per A.R.S. § 13-2314.04(A)&(D) (Pet.App.66-67) for Appellees' racketeering scheme and per A.R.S. § 33-420(A)&(C) (Pet.App.71) for causing recordation of false documents (*i.e.* several land surveys Cave Creek required altering without Appellants' knowledge or consent and the reciprocal easement agreement between subject properties that relied on the land surveys).

These matters arise from CV2006-014822 in Maricopa County Superior Court. By special appearance in 2010, Cave Creek evaded consolidating related cases and being added as an indispensible party in CV2006-014822 by concealing material facts

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[15] "[A] new injury was inflicted on plaintiffs each day....Consequently, a new limitations period began to run each day as to that day's damage." *Baker v. F & F Inv. Co.,* 489 F.2d 829 (7th Cir.1973). RICO requires a pattern include at least two acts of racketeering activity, one of which occurred after the effective date of the statute and the last of which occurred within ten years of a prior act of racketeering activity. Appellants' claims are not time-barred as ongoing violations occur daily, and different but related predicate acts have arisen each year. ***See* List of Predicate Acts in Appellants' Petition for Rehearing, DktEntry 138 at 45-50.**

and suppressing the truth[16] by arguing statutes of limitations. This ruling is on appeal in 1CA-CV18-0429. Appellant previously won concurrent appeals of CV2006-014822 (1CA-CV11-0728, 1CA-CV12-0435, 1CA-CV12-0601). In the process of writing his winning Briefs, Appellant discovered Cave Creek caused the illegal subdivision of his property by violating *Mullane* and *Nollan/Dolan*. Arizona's Court of Appeals stayed 1CA-CV18-0429, pending resolution per the Supremacy Clause.[17]

See the *M.A.K.* Court, n.2 herein, a split-circuit decision made 3 days before this Court denied rehearing. Until Appellants saw Maricopa County's Assessor's website by happenstance in 2012/2013 that classified Appellants' property as an "undefined subdivision," Appellants "never found out [their] property was so designated" (*M.A.K.*, at 1186), such that statutes of limitations are tolled per the discovery rule. When Appellant inquired, Maricopa County went silent and took down the web page. Even if government entities argue that the property owners "'should have been more diligent,' that fact [or presumption] 'does not excuse the government from complying with its constitutional obligation of notice.'" *M.A.K.*, at 1182, 1186 (quoting *Jones v. Flowers*, 547 U.S. 220, 232, 234 (2006)). Appellant's request that Cave Creek fix the properties remains unanswered. *See* Pet.App.140-145. Cave Creek "might *never* bring a condemnation proceeding. An opportunity for review that may never come cannot replace a statutory *right* to review." *M.A.K.*, at 1181 (emphasis in original).

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[16] Fraud upon the court occurs "[w]hen a party obtains a judgment by concealing material facts and suppressing the truth with the intent to mislead the court." *Cypress on Sunland Homeowners Ass'n v. Orlandini,* 227 Ariz. 288, 299, ¶ 42, 257 P.3d 1168, 1179 (App. 2011).

[17] "The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose,* 496 U.S. 356, 371 (1990).

As the 4th lot has no public purpose, eminent domain is moot, yet the subject lots remain unlawful by plain language of law. A court has yet to address the ongoing illegalities and declare the subject lots illegal. The *M.A.K.* court held "where, as here, a property owner does not otherwise learn about the blight determination, it violates due process for a City not to send direct notice." *M.A.K.*, at 1189. "A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980) (emphasis added), citing *Pennoyer v. Neff,* 95 U.S. 714, 732-733 (1878). District Court and this Court rulings dismiss Appellants' claims by relying on void statute of limitations state rulings. *See* "Challenges to Jurisdiction" section *supra* regarding required remand to state court. District Court made the same mistakes in Appellant's related personal injury case, 2:16-cv-03260-PHX-DJH.

3. This Court is Required to Abide by the U.S. Constitution, Federal Law, and Well-Established SCOTUS Rulings

This Court did not cite any facts to support its decision. *See* Appellant's request for publication (DktEntry 127; Pet.App.146-154), showing that the Court's generic rubber-stamped ruling contravenes numerous federal cases.

The U.S. Supreme Court first discussed the Void *Ab Initio* Order Doctrine in *Marbury v. Madison*, 1 Crunch 137, 140 (1803): "Courts are constituted by authority and they cannot beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not just voidable, but simply void, and this even prior to reversal."

Assuming *arguendo* District Court could "manufacture" jurisdiction, then

Appellants' are entitled to amend the complaint to federal pleading standards due to removal from state court (albeit improperly), and request a change of judge[18]. Appellants must be permitted to amend the complaint per Fed./Ariz.R.Civ. 15(c) to incorporate new evidence not previously available in District Court or this Court. Cave Creek, AMRRP, the State of Arizona, and Maricopa County are jointly and severally liable for the *prima facie* wipeout of Appellants' investment-backed expectations. AMRRP is liable for advising and insuring Cave Creek in bad faith to obtain favorable rulings by fraud on the court. Maricopa County conspired with Cave Creek converting the surveys into illegal subdivisions without notifying Appellants to assess and tax lots *as if* they were lawfully split. The State of Arizona is responsible for actions[19] by its political subdivisions and inadequate due process[20] to safeguard

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[18] *Stetson v. Grissom*, 821 F.3d 1157, 1167 (9th Cir. 2016) (granting change of judge to prevent another round of biases and erroneous rulings previously expressed). District Court denied Appellant's request for extensions and appointment of council to grant Appellees' dismissals in this case while he was incapacitated for 8+ months due to his severe personal injuries. Court failed to rule on jurisdictional challenges for a year in 2:16-cv-03260-PHX-DJH and then ruled against 200 years of well-established SCOTUS law requiring remand.

[19] See *Woods v. United States,* 724 F.2d 1444, 1447-48 (9th Cir. 1984) (holding that the State of California can be held responsible for violations of the Food Stamp Act committed by the local administrative unit of San Francisco); *California v. Block,* 663 F.2d 855, 858 (9th Cir. 1981) ("Administration of the [food stamp] program could be delegated to local or state agencies, but the ultimate responsibility for operation of the plan remained with the state"). Here, Arizona delegated to municipalities and counties the responsibility of complying with U.S. Supreme Court rulings. "Joining our sister circuits, we therefore hold that when public officials affirmatively mislead citizens in order to prevent them from filing suit, they violate clearly established constitutional rights and thus enjoy no qualified immunity." *Harbury v. Deutch*, 233 F.3d 596, 611 (D.C. Cir. 2000). Further, the State and its judges did not object to removal to waive Eleventh Amendment immunity. *Lapides v. Board of Regents of Univ. System of Ga.*, 535 U.S. 613 (2002).

[20] Where a state procedure is inadequate, the state is obligated to make available a

private property from government actors violating federal, state, or municipal law. The State is responsible for its judicial takings[21] in underlying cases. Appellants request payment of interest by Appellees at the highest rate per A.R.S. § 44-1201 for their bad faith delays and failure to remedy the illegal properties they caused.

Cave Creek's admission of evidence that it defied *Nollan/Dollan* and *Mullane* as its official policy gives rise to RICO claims. Although Appellants incorporated date-stamped public documents from related cases, District Court claimed the Complaint lacked dates, but based its decision on statutes of limitations using an incorporated 2009 state case where Cave Creek obtained favorable rulings by fraudulent concealment and fraud on the court, which Appellants did not know at the time. Appellants invokes Fed./Ariz.R.Civ.P. 60(b)(4),(5),(6) and 60(d) due to Defendants' fraudulent concealment and fraud on the court as argued in the complaint. Pleadings are to be taken as true when considering a Rule 12(b)(6) dismissal. "[P]laintiff[s] whose original complaint has been dismissed under Rule 12(b)(6) should be given at least one opportunity to try to amend [their] complaint before the entire action is dismissed. We have said this repeatedly." *Runnion Ex Rel. Runnion v. Girl Scouts*, 786 F.3d 510, 519 (7th Cir. 2015). Judgments in CV2006-

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means through which the aggrieved party can receive redress for the deprivation. *Zinermon v. Burch*, 494 U.S. 113, 123 (1990).

[21] See *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection*, 560 U.S. 702, 715, 130 S. Ct. 2592, 2602 (2010): "In sum, the Takings Clause bars state from taking private property without paying for it, no matter which branch is the instrument of the taking.... If a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the state had physically appropriated it or destroyed its value by regulation." (emphasis in original)

014822 and in cases that District Court relied on were obtained by fraud, and the contract[22] on which judgments relied was declared void *ab initio* (due to Defendants' breaches *ab initio*) two (2) days before this Court denied rehearing. The State of Arizona, Maricopa County, Cave Creek, and AMRRP cannot come into court to enforce their illegal conduct, and no court can facilitate or enforce them. "[F]ederal court has a duty to determine whether a contract violates federal law before enforcing it." *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83 (1982). "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *EPIC SYSTEMS CORP. v. Lewis*, Supreme Court 2018 (J. Ginsberg, dissenting), citing *McMullen v. Hoffman*, 174 U.S. 639, 654 (1899). "[Federal Circuit] Court is obligated to take notice of changes in fact or law occurring during the pendency of a case on appeal which would make a lower court's decision...operate to deny litigants substantial justice [*i.e.* DktEntry 56; void *ab initio* contract]....We believe such a denial of justice would result if the District Court's order were to be affirmed..." *Hawkes v. Internal Revenue Service*, 467 F.2d 787, 793 (6th Cir. 1972).

See Petition in **Exhibit A** with supportive documents and laws in **Exhibit B** explaining the factual and procedural history with well-established reasons why this Court must recall its mandate and provide remedy for ongoing illegalities.

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[22] Declaration of Easement and Maintenance Agreement, a reciprocal easement agreement bound by Appellants' and adjacent property owners' illegal lots caused by Cave Creek's illegal exactions.

CONCLUSION / REQUEST FOR RELIEF

For reasons stated herein, unopposed DktEntries 144 & 145, and attached Petition, Maricopa County Courts lacked personal jurisdiction due to failure to comply with A.R.S. § 12-408 and declined jurisdiction, such that District Court does not have jurisdiction. Appellants request that this Court recalls its first mandate (DktEntry 141) to amend its decisions in DktEntries 124-1 and 139, and remand to District Court with instructions to remand to Maricopa County Lower Court. *See, e.g., Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th Cir. 1992).

Appellants request sanctions against Appellees per 28 U.S.C. § 1447(c), A.R.S. § 12-349 (Pet.App.58), FRAP 46(b)&(c), Ninth Circuit Rule 46-2, Circuit Committee Notes 46-2. Appellants also request direct and delay damages per A.R.S. § 9-500.12(H) & ZO §1.7(A) (Pet.App.56,78), treble damages per A.R.S. §§ 13-2314.04(A)&(D) & 33-420(A)&(C) (Pet.App.66-67,71), and any other damages this Court or remanded court deems fit for Appellees' fraudulent concealment, fraud on the court, bad faith delays, racketeering, causing recordation of false documents, and failure to remedy the illegal properties they caused. Appellants request interest per A.R.S. § 44-1201.

Per 28 U.S.C. § 1746, Fressadi declares under penalty of perjury that the foregoing is true and correct.

EXECUTED AND SUBMITTED on this 23rd day of May, 2019.

/s/ Arek R. Fressadi
Arek R. Fressadi, *pro se*

Docket No. 15-15566

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This document complies with the type-volume limitation of Circuit Rule 27-1(1)(d), having 17 pages, and, excluding the parts of the document exempted by Fed. R. App. P. 32(f) & Fed. R. App. P. 27(a)(2)(B), this document contains 5,165 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman type style.

Dated: May 23, 2019.

/s/ Arek R. Fressadi
Arek R. Fressadi, Appellant-Appellant *pro se*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document of Appellant Arek R. Fressadi was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 23, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Arek R. Fressadi
Arek R. Fressadi, Appellant-Appellant *pro se*