No. 18A_____

IN THE
SUPREME COURT OF THE UNITED STATES
October 2017 Term

AREK R. FRESSADI, FRESSADI DOES I-III,
Applicants,

v.

ARIZONA MUNICIPAL RISK RETENTION POOL (AMRRP), TOWN OF CAVE CREEK, CAVE CREEK DOES III-XX, LINDA BENTLEY, DONALD SORCHYCH *et ux*, CONESTOGA MERCHANTS, INC D/B/A THE SONORAN NEWS, STATE OF ARIZONA, MEMBERS OF THE JUDICIAL BRANCH OF THE STATE OF ARIZONA DOES XXXI-L, MARICOPA COUNTY, MARICOPA COUNTY DOES XXI-XXX, BMO HARRIS BANK, MICHELE O. SCOTT, MARK D. MURPHY, RHONDA F. MURPHY, TAMMARA A. PRICE, TAMMARA A. PRICE TRUST, CHARLIE 2 LLC, MICHAEL T. GOLEC, KEITH VERTES, KAY VERTES, SALVATORE DEVINCENZO, SUSAN DEVINCENZO, REAL ESTATE EQUITY LENDING, INC. (REEL), BERK & MOSKOWITZ, P.C., JAY POWELL, ESQ. *et ux* D/B/A THE POWELL LAW FIRM, PLLC, AND CHEIFETZ, IANNITELLI, MARCOLINI, P.C.,
Respondents.

Application for an Extension of Time to File Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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APPLICATION TO THE HONORABLE
JUSTICE ANTHONY M. KENNEDY AS CIRCUIT JUSTICE
OR HIS CONFIRMED REPLACEMENT
OR NEXT JUNIOR JUSTICE CLARENCE THOMAS

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APPLICATION FOR EXTENTION OF TIME

Pursuant to this Court's Rules 13.5, 22, and 30.3, applicants Arek R. Fressadi and Fressadi Does I-III hereby request a 60-day extension of time, to and including October 14, 2018, within which to file a joint petition for a writ of certiorari in this case per this Court's Rule 12.4. Per Supreme Court Rule 30.1, the requested date extends to and includes Monday, October 15, 2018.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment sought to be reviewed is the decision of the United States Court of Appeals for the Ninth Circuit in *Fressadi, et al. v. Arizona Municipal Risk Retention Pool, et al.*, No. 15-15566 (9th Cir. 2017), attached as Exhibit A.

JURISDICTION

The Ninth Circuit issued its decision on October 26, 2017. On May 17, 2018, the Ninth Circuit denied petitions for panel rehearing and petitions for rehearing *en banc*, attached as Exhibit B. Pursuant to this Court's Rules 13.1, 13.3, and 30.1, petitions for a writ of certiorari would be due for filing on August 15, 2018. This application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicants respectfully request a 60-day extension of time, to and including October 14, 2018, to include Monday, October 15, 2018, within which to file a joint petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case.

1. This case involves intentional, continuous, criminal violations of due process and property rights by a municipality. The State of Arizona enacted Arizona Revised Statutes ("A.R.S.") §§ 9-500.12 and 9-500.13 to require cities and towns to

comply with the burden-shifting requirements *of Nollan, Dolan, Mullane,*[1] and other Supreme Court and appellate rulings regarding exactions for entitlements. However, the Town of Cave Creek, a suburb of Phoenix, Arizona, continuously and criminally violated its Subdivision and Zoning Ordinances since 2001 to evade the heightened scrutiny of *Nollan/Dolan* codified in A.R.S. §§ 9-500.12 and 9-500.13 as its Official Policy. By doing so, Cave Creek violated the Supremacy Clause to harm hundreds of Cave Creek property owners, including Applicants, by taking property without due process and just compensation. Since Arizona Municipal Risk Retention Pool ("AMRRP") advises and represents 76 municipalities including Cave Creek, the results of this case affect all Arizona property owners with national implications. The Ninth Circuit affirmed District Court's ruling that continuous criminal violations of U.S. Supreme Court rulings can be time-barred by statutes of limitations. If the Ninth Circuit's decision is allowed to stand, it eviscerates the well-established requirements in *Nollan*, *Dolan*, *Mullane*, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), and appellate court decisions that are binding on Arizona cities and towns interpreting or applying those cases.

2. By violating federal and state due process in A.R.S. §§ 9-500.12 and 9-500.13, the Town downzoned Applicants' property from a build out of 14 lots to 8, then exacted a sliver of land to approve an initial lot split of 3 lots. The exaction served no valid or legitimate purpose. In collusion with Maricopa County and without providing Applicants notice, Cave Creek's exaction became a fourth lot that converted Applicants' property into an illegal, non-conforming subdivision, and blocked access to the 3 lots. The Town then exacted easements for access and sewer without an essential nexus or

[1] *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994), *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

rough proportionality, to then issue permits to adjoining property owners based on access and utilities from Applicants' unlawful subdivision. As such, the permits are void per §1.4 of its Zoning Ordinance. See *Kaiser Steel Corp. v. Mullins,* 455 U.S. 72, 77 (1982) ("[O]ur cases leave no doubt that illegal promises will not be enforced in cases controlled by the federal law."). Applicants' property remains unlawful to sell, unsuitable for building, and not entitled to permits according to the plain language of state law and Town Ordinances. "Of course *a violation of the law does not attain legality by lapse of time.*" *State Bar of Arizona v. Arizona Land Title & Trust Co.*, 90 Ariz. 76, 94 (1961) (emphasis in the original), citing *State ex rel. Reynolds v. Dinger*, 14 Wis.2d 193, 204 (1961). "Additionally, we refuse to allow the courts to be used to enforce a contract that is contrary to law and common sense." *Bank One, Arizona v. Rouse,* 887 P.2d 566, 569, 181 Ariz. 36, 39–Ariz. Ct. of Appeals, 1st Div., Dept.D (1994).

3. The Continuing Violations Doctrine is incorporated in Cave Creek's Zoning Ordinance §1.7: "Any person [*i.e.* Cave Creek as a corporate person and its 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) In 2016, Cave Creek provided evidence and admitted to violating A.R.S. §§ 9-500.12 and 9-500.13 since 2001 as its Official Policy. Until Cave Creek provides mandatory notice, instructions for the Town's appellate process, an opportunity for an administrative hearing with a takings report that establishes the essential nexus of proportionality, and just compensation per A.R.S. §§ 9-500.12 and 9-500.13, the Town's *criminal* violations remain continuous according to its Zoning Ordinance. As such, statutes of limitations do not run until

administrative remedies are exhausted per A.R.S. §§ 9-500.12(H) and 12-821.01(C)[2].

4. Applicants sought declaratory relief in their Complaint, i.e. Quiet Title, to exhaust administrative remedies. Contrary to the Ninth Circuit's decision, there is no statute of limitations for Quiet Title of private property in Arizona when the Petitioner remains in possession. "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." *Cook v. Town of Pinetop-Lakeside,* 303 P.3d 67, 70 (App. 2013) (quoting *City of Tucson v. Morgan,* 475 P.2d 285, 287 (Ariz. Ct. App. 1970)). Government is not estopped "from correcting a mistake of law." *Thomas & King, Inc. v. City of Phoenix,* 92 P.3d 429, 436 (Ariz. App. 2004) (internal citation omitted), *quoting Valencia Energy v. Arizona Dept. of Rev.,* 191 Ariz. 565, ¶¶ 36, 41 (1998).

5. In the decision below, the Ninth Circuit upheld District Court's dismissal based on a State court ruling that did not consider Cave Creek's failure to abide by the burden-shifting requirements of *Nollan, Dolan*, and *Mullane* in A.R.S. §§ 9-500.12 and 9-500.13 that cause continuous criminal violations of federal law, other state statutes, and Town ordinances. "[T]he Takings Clause bars the State [or federal government] from taking private property without paying for it, no matter which branch is the instrument of the taking." *Stop the Beach Renourishment, Inc. v. Florida Dept. of Envtl. Protection,* 560 US 702, 714 (2010). "[I]f...a court declares that what was once an established right of private property no longer exists, it has taken that property."

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[2] "C. Notwithstanding subsection A, any claim that must be submitted to a binding or nonbinding dispute resolution process or an administrative claims process or review process pursuant to a statute, ordinance, resolution, administrative or governmental rule or regulation, or contractual term shall not accrue for the purposes of this section until all such procedures, processes or remedies have been exhausted. The time in which to give notice of a potential claim and to sue on the claim shall run from the date on which a final decision or notice of disposition is issued in an alternative dispute resolution procedure, administrative claim process or review process. This subsection does not prevent the parties to any contract from agreeing to extend the time for filing such notice of claim."

Id. at 715. "[C]ourts cannot estop the Constitution." *Office of Personnel Management v. Richmond*, 496 U.S. 414, 434 (1990).

6. Review by the Supreme Court is also necessary due to a split-circuit decision relevant to this case made 3 days prior to the Ninth Circuit's decision. See *M.A.K. Investment Group, LLC v. City of Glendale*, Court of Appeals (10th Cir. 2018): "When in the absence of notice, property owners are likely to lose a property right—in a cause of action or otherwise—the *Mullane* rule applies. At that point, the state [municipality] must take reasonable steps to provide enough notice for reasonable persons to realize they must investigate possible remedies." *M.A.K.* at §II(B)(1). The Applicants and *M.A.K.* also cited *Mennonite Bd. of Missions v. Adams,* 462 U.S. 791, 799 (1983): "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." Even if government entities argue that property owners ""should have been more diligent" [although Appellants were as diligent as possible with what they knew at the time], that fact "does not excuse the government from complying with its constitutional obligation of notice."" *M.A.K.* at §II(B)(1), citing *Jones v. Flowers*, 547 U.S. 220, 232, 234 (2006). "The fundamental requisite of due process of law is the opportunity to be heard." *Mullane* at 314 (quoting *Grannis v. Ordean,* 234 U.S. 385, 394 (1914)). "Th[e] right to be heard has little reality or worth unless one is informed that the matter [affecting one's property rights] is pending and can choose for himself whether to appear or default, acquiesce or contest." *Id.* See also *City of West Covina v. Perkins,* 525 U.S. 234, 240 (1999) ("A primary purpose of the notice required by the Due Process Clause is to ensure that the opportunity for a hearing is meaningful."). The Supreme Court's decision in *Mathews v. Eldridge,* 424 U.S. 319 (1976), sets forth the criteria courts are to consider when asked to determine

what process is due. One of these factors is "the risk of an erroneous deprivation of . . . [a liberty or property] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* In this instance, Applicants never had a timely opportunity to be heard in accordance with *Mullane, City of West Covina,* and *Matthews.* "For decades, United States Supreme Court Justices have noted the continuing need for clarification in [*Nollan/Dolan*]. This opinion continues down that uncertain path and, in doing so, perhaps affords courts asked to consider this opinion an opportunity to further clarify the law, particularly following *Koontz.*" *American Furniture Warehouse Co. v. Town Of Gilbert*, Ariz: Court of Appeals, 1st Div. (2018), citing *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013).

7. On May 15, 2018, two days prior to the Ninth Circuit's denial of rehearing petitions (below), the 2003 reciprocal easement contract between Applicants' property and adjacent lots was declared void *ab initio*. See Maricopa County Recorded Document ("MCRD") #2018-0372838, recorded on May 16, 2018. Cave Creek violated Applicants' right to exclude by issuing permits to adjoining lots using Applicants' property for access and utilities without *Nollan/Dollan* heightened scrutiny or just compensation. This requires review as it is evidence not previously available.

8. Review by the Supreme Court is also necessary because any perceived deficiencies in pro se Applicants' Complaint could be cured by amendment. District Court abused its discretion by denying amendment to the Complaint. The Ninth Circuit rubber-stamped District Court's "time-barred" ruling with no reason. The Ninth Circuit also erred by denying supplemental jurisdiction over defendants for mandamus, a condition precedent to establishing a date certain for §1983 claims.

9. Applicants respectfully request a 60-day extension of time to prepare petitions for a writ of certiorari. The extension is warranted because Applicants will file a joint petition per Supreme Court Rule 12.4. As this matter is complex, spanning 17 years with multiple parties engaged in a series of predicate acts, and involve several related cases, Applicants require more time to coordinate and streamline their arguments for convenience to all parties and this Court.

10. Applicants require a 60-day extension to draft a RICO / 28 U.S.C. §1983 complaint due by August 28, 2018, based on Cave Creek's admission and evidence from Applicants' Freedom of Information Act ("FOIA") request of the Town's Official Policy to violate federal law codified in A.R.S. §§ 9-500.12 and 9-500.13. The extra time will allow for potential settlement in this matter. As Applicant Arek R. Fressadi is an indigent pro se, it is beyond his capacity to write the petition while complying with §1983 deadlines, plus appeal and amend the Complaint in ongoing CV2006-014822 (Maricopa County Superior Court), from which this case arises, to reverse earlier rulings based on a contract that recently has been declared void *ab initio*. A 60-day extension would provide needed time to complete the petition for a writ of certiorari per Supreme Court rules and standards to properly address issues of national importance.

11. In further hardship to require a 60-day extension, and as Respondents are fully aware, Applicant Arek R. Fressadi suffered life-threatening injuries during the course of this litigation from getting hit and run over by a full-size pickup truck, subject of CV-16-03260-PHX-DJH. Due to sustained injuries, including worsening glaucoma, Applicant is unable to sit at a computer for the necessary lengths of time to write the petition for a writ of certiorari within the current timeframe.

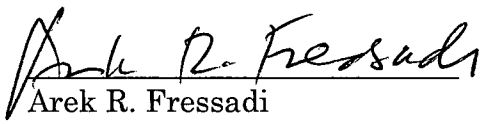
CONCLUSION

For the foregoing reasons, Applicants respectfully request that this Court grant them a 60-day extension of time, to and including October 14, 2018, to include Monday, October 15, 2018, per Supreme Court Rule 30.1, within which to file a joint petition for a writ of certiorari per Rule 12.4.

Applicants wish to express their appreciation to Justice Anthony M. Kennedy for his distinguished service upon his retirement.

Dated: July 25, 2018.

Respectfully submitted,



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