18-8351

No. _____

In The
Supreme Court of the United States

AREK R. FRESSADI,

Petitioner,

v.

ARIZONA MUNICIPAL RISK RETENTION POOL (AMRRP), *ET AL*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Government bears the burden to establish the essential nexus of rough proportionality to exact private property for grant of entitlements per *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and pay just compensation for taking property per *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). Due process requires notice and opportunity of a hearing prior to deprivation of life, liberty, or property per *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950).

But based on the Ninth Circuit's rulings on review, any government entity can evade required *Nollan/Dolan* protections to take property without paying just compensation by failing to provide notice per *Mullane*. Government invokes statues of limitations to evade liability, even though their violations of federal, state and/or local law are ongoing.

Just days prior to the Ninth Circuit's denial of rehearing this matter, the Tenth Circuit determined in *M.A.K. Investment Group, LLC v. City of Glendale*, 889 F.3d 1173 (10th Cir. 2018), no matter if a property owner " 'should have been more diligent,' that fact [or presumption] 'does not excuse the government from complying with its constitutional obligation of notice [per *Mullane*]' " before taking private property, regardless of published statutes of limitations. *M.A.K.*, 889 F.3d at 1182, 1186 (quoting *Jones v. Flowers*, 547 U.S. 220, 232, 234 (2006)). Other circuits also enforce pre-deprivation notice requirements. See, e.g., *Brody v. Vill. of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (concluding due process requires condemnors to give as much notice practicable to inform affected property owners of proceedings that threaten to deprive owners of property interests).

The questions presented are:

1) Whether a failure by government to provide *Mullane* notice, *Nollan/Dolan* burden-shifting protections, and/or *Lucas/First English* just compensation are "ongoing violations" that cannot be time-barred by statutes of limitations.

2) Whether government must pay just compensation for a judicial takings per the Takings Clause in the Fifth Amendment, and as applied to the States per the Fourteenth Amendment, as conferred in *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 [government] 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 [government] had physically appropriated it or destroyed its value by regulation." (emphasis in original)

PARTIES TO THE PROCEEDING

Petitioner Arek R. Fressadi was a Plaintiff in the District Court of Arizona and an Appellant in the Ninth Circuit Court of Appeals. Fressadi Does I-III were Plaintiffs in the District Court and Appellants at the Ninth Circuit, but do not join as Petitioners per this Court's constraints.

The following Respondents were Defendants in the District Court and made appearances as Appellees in the Ninth Circuit:

- Arizona Municipal Risk Retention Pool (AMRRP)
- Town of Cave Creek
- Cave Creek Does IV-XX
- Maricopa County
- Maricopa County Does XXI-XXX
- State of Arizona
- Members of the Judicial Branch of the State of Arizona Does XXXI-L

The following parties were Defendants in District Court, but did not file an appearance in the Ninth Circuit:

- BMO Harris Bank F/K/A M&I Bank
- Michael T. Golec
- Keith Vertes
- Kay Vertes
- Salvatore DeVincenzo
- Susan DeVincenzo
- Tammara A. Price
- Tammara A. Price Trust
- Michele O. Scott
- Real Estate Equity Lending, Inc. (REEL)
- Mark D. Murphy
- Rhonda F. Murphy
- Charlie 2 LLC
- Linda Bentley
- Jay Powell, Esq. *et ux* D/B/A The Powell Law Firm, PLLC
- Berk & Moskowitz, P.C.
- Cheifetz, Iannitelli, Marcolini, P.C.

The following named Defendants in District Court evaded service of process and did not file an appearance in District Court nor in the Ninth Circuit:

- Conestoga Merchants, Inc. D/B/A The Sonoran News
- Donald Sorchych *et ux*

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PETITION FOR A WRIT OF CERTIORARI

Arek R. Fressadi ("Petitioner") respectfully petitions for a writ of certiorari to review judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion in 15-15566 is unpublished. App. 1-3. The Ninth Circuit's order denying rehearing and rehearing *en banc* is not reported. App. 4. District Court of Arizona's opinion in 2:14-cv-01231-DJH is unpublished. App. 5-15. District Court of Arizona's denial of reconsideration is not reported. App. 16-18.

JURISDICTION

The judgment of the court of appeals was entered on October 26, 2017. Petitions for rehearing and rehearing *en banc* were timely filed on April 23, 2018, pursuant to granted extensions of time. The court of appeals denied rehearing and rehearing *en banc* on May 17, 2018. On August 7, 2018, Chief Justice Roberts extended the time to file a petition up to and including October 12, 2018. On November 2, 2018, this Court ordered petition revision per Rule 14.5 to reduce pages and resubmit within 60 days. On January 4, 2019, this Court requested that unrepresented Does I-III be removed as Petitioners; that Petitioner resubmit by March 5, 2019. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Relevant portions of the following are reproduced at stated Appendix pages: U.S. Constitution's First, Fifth, Eighth & Fourteenth Amendments and Supremacy Clause at App. 19; United States Codes 42 U.S.C. §§ 1983, 1985, 1988 and 28 U.S.C. § 2106 at App. 20-21; Arizona's Constitution Article 2 §§ 1, 2, 3, 4, 11, 13, 17 and Article 18 § 6 at App. 22-23; Arizona Revised Statutes ("A.R.S.") at App. 24-72 (*see especially* A.R.S. §§ 9-500.12 and 9-500.13 at App. 55-57); Town of Cave Creek's Zoning Ordinance at App. 73-75; Cave Creek's Subdivision Ordinance at App. 76-85; and Cave Creek's Town Codes at App. 86-89. *See* Appendix Table of Contents, App. i-iv.

INTRODUCTION

This case presents nationally-unresolved constitutional conflicts. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), this Court held "government may not require a person to give up a constitutional right" under the doctrine of "unconstitutional conditions"—that government must establish an exaction is necessary to mitigate impacts caused by the proposed development. *Id.* at 385. Otherwise, the condition will be unconstitutional and invalid. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604-05 (2013). But based on rulings below, government can take private property without paying just compensation by depriving *Mullane*[1] notice and *Nollan/Dolan* protections, then evade liability by exploiting statutes of limitations, regardless of ongoing violations.

States are bound by the United States Supreme Court's interpretation of the United States Constitution. See *Cooper v. Aaron,* 358 U.S. 1, 18 (1958).

Arizona requires municipalities to provide *Mullane* notice and *Nollan/Dolan* protections, and pay just compensation to property owners for taking private property as required by *Lucas*[2]*/First English*[3], per Arizona Revised Statutes ("A.R.S.") §§ 9-500.12 & 9-500.13 (App. 55-57). However, on August 29, 2016, the Town of Cave Creek admitted[4] that the Town has not provided *Mullane* notice to continuously violate *Nollan/Dolan* protections as its official policy since 2001. Consequentially, Cave Creek retaliated against political enemies or extorted property from hundreds of property owners without paying just compensation. Cave Creek is advised on land use and insured by Arizona Municipal Risk Retention Pool (AMRRP), which con-

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[1] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). "[D]eprivation of...property by adjudication [must] be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Id.* at 313.

[2] *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003 (1992)

[3] *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987)

[4] In response to Petitioner's Freedom of Information Act ("FOIA") request (App.99-129).

sists of 76 municipalities. Petitioner applied for a lot split in 2001. Cave Creek violated *Nollan/Dolan* protections by omitting *Mullane* notice to convert his property into an illegal subdivision under color of law that remains unlawful to develop, rent, or sell per the plain language of state statutes and municipal ordinances.[5] Cave Creek's Zoning Ordinance §1.7(A)[6] applies the Continuing Violations Doctrine; each day Cave Creek or its actors cause continued violations is a separate criminal offense. Cave Creek issued void permits to conceal its criminal conduct and convert an *ultra vires* publicly-used sewer extension to the Town without paying for Petitioner's installation and maintenance of it. Town Ordinances require the use of *ultra vires* improvements be discontinued and the lots be vacated until remedied. That day awaits.

Property rights are well-established.[7] As such, taking private property by a government entity requires pre-deprivation notice[8] and a hearing.[9] The Takings

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[5] *Garneau v. City of Seattle*, 147 F3d 802, 811 (9th Cir. 1998): "The rationale for this burden shifting appears to rest on the Court's concern that where the government demands individual parcels of land through adjudicative, rather than legislative, decision making, there is a heightened risk of extortionate behavior by the government," citing *Nollan*, 483 U.S. at 837, and *Ehrlich v. City of Culver City*, 911 P.2d 429, 459 (Cal. 1996) (ad hoc decision making aimed at individuals increases risk of extortionate government behavior).

[6] "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 Subdivision Ordinance and Town Codes are incorporated into Zoning Ordinance §1.7 per §1.1(B) (App. 78, 76).

[7] "From these passages it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and ***unalienable* rights** of man." *Vanhorne v. Dorrance*, 2 U.S. 304, 310-12 (1795) (emphasis added). See also *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1884), discussing the Declaration of Independence as relevant to the Fourteenth Amendment of the U.S. Constitution, quoting Adam Smith's Wealth of Nations, Bk. I. Chap. 10: "Among these ***unalienable* rights**, as proclaimed in that great document, is the right of men [and women] to **pursue their happiness**, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment...It has been well said that '**the property which every man [and woman] has in his [or her] own labor, as it is the original foundation of all other property**, so it is the most **sacred** and **inviolable**.'" (emphasis added)

[8] Notice is sufficient for due process purposes if it is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" or claims. *Mullane*, 339 U.S. at 314.

Clause of the Fifth Amendment as applied to the States through the Fourteenth Amendment[10] is self-executing: "No person shall be... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Cave Creek/AMRRP did not disclose the Town's failure to provide notice and violate *Nollan/Dolan* as a constructive fraud[11] to obtain favorable court rulings that claims are time-barred.[12] Rulings below applied synthetic statutes of limitations to unalienable rights or ongoing violations.[13] Statutes of limitations incentivize fraud by government, like civil asset forfeiture incentivizes policing for profit in violation of the Privileges and Immunities clause of the Fourteenth Amendment. See *Timbs v. Indiana,* 138 S.Ct. 2650 (2018). Statutes of limitations can be abused as punitive. *Austin v. United States*, 509 U.S. 602 (1993). However, Bill of Rights protections apply against both the Federal Government and the States. *McDonald v. Chicago*, 561 U.S. 742, 766, n. 14 (2010).

"For decades, United States Supreme Court Justices have noted the continuing need for clarification [of *Nollan/Dolan*]."[14] *American Furniture Warehouse Co. v.*

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[9] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) (citations omitted).

[10] *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001), citing *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897).

[11] As argued in Petitioner's Complaint, Cave Creek's fraud can be challenged at any time per Fed./Ariz.R.Civ.P. Rule 60(d)(3). "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v. Throckmorton*, 98 U.S. 61, 64 (1878).

[12] "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 original), citing *State ex rel. Reynolds v. Dinger*, 14 Wis. 2d 193, 204 (1961).

[13] Per unfulfilled due process of A.R.S. § 12-821.01(C) (App. 59), equitable doctrines due to constructive fraud, and/or Petitioner's right to quiet title per A.R.S. §§ 12-1101 to 12-1104 (App. 60-61) and case law: "As long as the cloud exists, the statute of limitations does not run against a plaintiff bringing a quiet title action who is in undisturbed possession of his property." *Cook v. Town of Pinetop-Lakeside,* 303 P.3d 67, 70 (Ariz.Ct.App.2013). Petitioner retains undisturbed possession of the lot exacted by Cave Creek to convert his lot split into an illegal subdivision.

[14] See *Lingle v. Chevron,* 544 U.S. 528, 539 (2005) (noting the Court's "regulatory takings jurisprudence cannot be characterized as unified"); *accord Parking Ass'n of*

Town Of Gilbert, No. 1 CA-CV 16-0773 (Ariz.Ct.App. July 10, 2018). U.S. Supreme Court rulings are not adequate if government entities like the Town of Cave Creek can usurp unalienable property rights by violating mandatory due process protections and take property with court approval[15] by invoking synthetic statues of limitations.

According to Chief Justice Marshal in *Marbury v. Madison,* 5 U.S. 137, 1 Cranch 137, 163-64 (1803), based on Common Law derived from the Charter of Liberty in its 39th article per the Magna Carta, Art. XXXIX (1215), every violated legal right "must have a remedy." This petition should be granted as this case provides an optimal vehicle to clarify constitutionally protected rights and provide equitable remedy.

STATEMENT OF THE CASE

I. FACTUAL AND STATUTORY BACKGROUND

A. The Setting, Statutes and Ordinances.

Cave Creek's motto is "Where the Wild West Lives." It was "settled[16]" in 1870 and incorporated in 1986 as a small town just north of Phoenix, Arizona.

Cave Creek's 1987 Zoning Ordinance ("ZO") provided a Zoning Administrator to enforce the Ordinance under the Town Manager per A.R.S. § 9-462.05(C)&(D) (App. 31). Cave Creek's Subdivision Ordinance ("SO") was adopted in 1995 and incorporated into Cave Creek's Zoning Ordinance per ZO §1.1(B) (App. 76).[17]

A.R.S. §§ 9-500.12 & 9-500.13 (App. 55-57) were also enacted in 1995. A.R.S. § 9-500.13 requires that municipalities "***SHALL*** **COMPLY** with... Dolan..., Nollan..., Lucas..., and First English..., and Arizona and federal appellate court decisions that are binding on Arizona cities and towns interpreting or applying those cases."

Georgia, Inc. v. City of Atlanta, 515 U.S. 1116, 1118 (1995) (Thomas, J., joined by O'Connor, J., dissenting from denial of certiorari).

[15] To affect a judicial takings per *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection*, 560 U.S. 702, 130 S.Ct. 2592 (2010).

[16] Cave Creek is named for an 1873 Christmas Day battle between the U.S. Cavalry and the Tonto Apaches that took place in a large cave next to a creek. The cave has petroglyphs and pictographs that date back 2,000 years.

[17] Cited Ordinances herein refer to those in effect in 2003.

A.R.S. § 9-500.12 provides due process[18] of: 1) a "requirement by a city or town of a dedication or exaction as a condition of granting approval for the use, improvement or development of real property," or 2) "adoption or amendment of a zoning regulation by a city or town that creates a taking of property in violation of section 9-500.13." Subsection A of A.R.S. § 9-500.12. Per *Id.* subsection B:

> The city or town **SHALL NOTIFY the property owner** that the property owner **has the right to appeal** the city's or town's action **pursuant to this section** and **SHALL PROVIDE a description of the appeal procedure.**[19] The city or town **SHALL NOT request the property owner to waive the right of appeal or trial de novo at any time** during the consideration of the property owner's request.

Subsection C gives property owners only 30 days to appeal municipalities' actions per subsection A, which cannot be done without notice per subsection B, and the municipality "shall" submit a takings impact report to its Hearing Officer. Per subsection D, the Hearing Officer "shall" schedule a hearing within 30 days of receiving a property owner's appeal, and provide at least 10 days notice of the hearing to property owners unless the property owner agrees to a shorter period. Per subsection E:

> In all proceedings under this section the **city or town HAS THE BURDEN TO ESTABLISH** that there is an **essential nexus between the dedication or exaction** and a **legitimate governmental interest** and that the **proposed dedication, exaction or zoning regulation is roughly proportional to the impact of the proposed use, improvement or development** or, in the case of a zoning regulation, that the **zoning regulation does not create a taking of property in violation of section 9-500.13**. If more than a single parcel is involved **this requirement applies to the entire property**.

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[18] *Mervyn's Inc. v. Superior Court,* 697 P.2d 690, 693 (Ariz. 1985) ("[A]ny procedure which deprives an individual of a property interest must satisfy due process.").

[19] On June 16, 1997, Cave Creek approved Ordinance 97-16 (App. 86-87) to comply with A.R.S. §§ 9-500.12, 9-500.13, 12-821.01(C) by Town Code §150.02 (App. 89): "The Town Manager and Town Attorney shall approve forms which the town **SHALL USE** to **notify** persons of the **procedures for appealing** a dedication or exaction by the Town. The town **SHALL distribute** the notification forms **to property owners...** subject to the requirement of a dedication or exaction by the town." (emphasis added) A.R.S. § 9-462.04(A)(3) requires notice to property owners by first class mail for rezoning initiated by municipalities, *i.e.* Cave Creek's conversion of lot splits into subdivisions. (App. 29)

Per subsection F:

> The **hearing officer SHALL DECIDE** the appeal within five working days after the **appeal is heard. If the city or town does not meet its BURDEN under subsection E** of this section, the **hearing officer SHALL**: 1. **Modify or delete the requirement** of the dedication or exaction appealed under subsection A, paragraph 1 of this section. 2. In the case of a zoning regulation appealed under subsection A, paragraph 2 of this section, the **hearing officer SHALL transmit a recommendation to the governing body of the city or town.**

Subsection G provides process for property owners to appeal the Hearing Officer's decision within 30 days for trial *de novo* in superior court; that the court may "exercise any legal or equitable interim remedies that will permit the property owner to proceed with the use, enjoyment and development of the real property." Per subsection H, matters per §9-500.12 have preference on superior court's calendar, the court "shall" have authority to award attorney fees to the prevailing party, and may "award damages that are deemed appropriate to compensate the property owner for **direct and actual delay damages** on a finding that the city or town **acted in bad faith.**" (Emphasis added *supra.*) If notice is not provided per subsection B, then subsections C-G are eviscerated to warrant direct and actual delay damages per subsection H as Cave Creek continuously refuses to remedy ongoing illegalities in bad faith.

Nollan/Dolan protections in A.R.S. §§9-500.12 and 9-500.13 do not function without notice per A.R.S. §9-500.12(B) to align with A.R.S. § 12-821.01(C) (App. 59):

> [C]laims that must be submitted to... [a] review process pursuant to a statute [*i.e.* A.R.S. §§ 9-500.12 & 9-500.13]... **SHALL NOT ACCRUE**... until all such procedures, processes or remedies have been exhausted. [Accrual] shall run from the date on which a final decision or notice of disposition is issued in an... administrative claim process or review process. [emphasis added]

The Zoning Administrator has the ongoing duty to provide notices, takings reports, and hearings[20] per *Nollan/Dolan* because the Zoning Administrator "***shall*** have the following duties" per ZO § 2.3(C)(2) (App. 78-80): "To perform all administrative actions required by this Ordinance, including the giving of notice, scheduling of

[20] Cave Creek terminated its Hearing Officer in 2001 as Official Policy; Town Council does not perform required Hearing Officer functions, A.R.S. § 9-462.04(G) (App. 30).

hearings, preparation of reports, receiving and processing appeals, the acceptance and accounting of fees, and the rejection or approval of site plans as provided by this Ordinance." Per SO § 6.3(A) (App. 75): "All Lot Splits ***shall*** be approved by the Zoning Administrator and ***shall*** comply with this Ordinance. Failure to comply with this Ordinance ***shall*** render the property **unsuitable for building** and **NOT entitled** to a building permit." Per ZO § 1.4(A) (App. 77): "Any permit issued in conflict with the terms or provisions of this Ordinance ***shall*** **be VOID**." Per SO § 1.1(B)(1) (App. 74): "The Zoning Administrator for the Town ***shall*** enforce this [Subdivision] Ordinance." Per ZO § 1.5(A) (App. 77): "The Zoning Administrator ***shall*** interpret, apply and enforce the provisions of this [Zoning] Ordinance." (Emphasis added *supra.*) Per A.R.S. § 9-462.05(C) (App. 31): "The zoning administrator is charged with responsibility for enforcement of the zoning ordinance." As with SO, Town Codes are incorporated into ZO per §1.1(B) (App. 76). If Cave Creek and its Zoning Administrator do not enforce the ZO/SO, Town Codes, or fail to provide *Nollan/Dolan* protections, then the Continuing Violations Doctrine in ZO §1.7(A) applies *criminal consequences*.[21] *See* n.6.

Statutes of limitations cannot apply because the Town's continuous violations of federal[22] and state law incorporated into Town Ordinances are ongoing.

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[21] Class One Misdemeanor for *each day* of violation per ZO § 1.7(A) and A.R.S. §§ 13-707, 13-802, 13-803: Up to 6 months prison, $20,000/day/corporation (incorporated Cave Creek/AMRRP), $2,500/day/person. Per equal protection of the laws: "It is hardly in the public's interest for the Government to deal dishonestly or in an unconscientious manner." *United States v. Georgia-Pacific Co.*, 421 F.2d 92 (9th Cir. 1970). State law increases penalties for repeated offenses. In 2005, in bad faith at behest of the Town's Prosecutor and Planning Department (Planning Director/Zoning Administrator), Town Council reduced penalties in ZO §1.7(A) from a Class One Misdemeanor to a Civil Code Infraction ($500/day, no prison) and *removed* reference to state law in attempt to limit Town and Zoning Administrator liability for converting lot splits into illegal subdivisions and issuing void permits for *ultra vires* improvements, most notably the sewer. (App. 128-129) Municipalities are required to establish procedures to hear and determine civil offenses per A.R.S. § 9-500.21 (App.57). *See* ZO§1.7(B),(C).

[22] Arizona's Constitution, Art. 2 § 3, states the U.S. Constitution is "the supreme law of the land." (App. 22) Art. 2 § 4 aligns with the Fifth and Fourteenth Amendments: "No person shall be deprived of life, liberty, or property without due process of law."

B. The Property

In 2001, Petitioner bought 6 acres in Cave Creek's core, zoned R1-18 (1 house per 18,000 square foot lot). The 6 acres comprised adjacent parcels 211-10-010 ("010") and 211-10-003 ("003"). As Petitioner had never split or subdivided land in Arizona, he detrimentally relied on Town Manager Usama Abujbarah, Planning Director / Zoning Administrator Ian Cordwell, and Town attorneys Dickinson Wright, PLLC, to develop an artistic enclave of adobe homes in compliance with state law and Town ordinances. Petitioner acquired the 6 acres by specific performance because the sellers sold the lots twice. The losing buyer had assembled 47 acres near Petitioner's 6 acres for a mixed-use project and asked Petitioner to support the mixed-use project at a town council meeting. There, Petitioner corrected false statements made by Don Sorchcych, publisher of the Sonoran News, Cave Creek's Official newspaper. Unknown to Petitioner at the time, 80%-90% of Town officials and staff are elected or retained by Sonoran News endorsements, and anyone who does not adhere to Sorchych's politics faces ruin in First Amendment retaliation[23] (App. 19) through the Town's newspaper. Since the council meeting, Town officials and staff conspired with Sorchych to harm Petitioner's reputation and small building business as a "political enemy."

Shortly after the meeting, Cave Creek's Zoning Administrator Ian Cordwell, under color of law, told Petitioner to downsize his 6-acre project from a 20 unit PUD[24] to 8 lots with 8 SFRs by a "series of lot splits." Cordwell assured Petitioner that a "series of lot splits" was legal,[25] and avoid a Sorchych referendum. As such, Petitioner applied to split parcel 010 (4.2+ acres) into 3 lots in October 2001 (App. 130).[26]

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[23] "[A] plaintiff who fails to allege a chilling effect may still state a claim if he alleges he suffered some other harm" as a retaliatory adverse action. *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir.2009), citing *Rhodes v. Robinson*, 408 F.3d 559, 568 n.11 (9th Cir.2005). Timing of events surrounding alleged retaliation constitute circumstantial evidence of retaliatory intent. *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1316 (9th Cir.1989).

[24] Planned Unit Development (PUD) would allow 12 Single Family Residences (SFRs) plus 8 Habitat for Humanity units, or 98 condos per Town attorney as Petitioner repaired and extended the public sewer for 100 homes.

[25] ZO § 2.3(C)(7), duty to "interpret the Zoning Ordinance to the public" (App. 88).

[26] The 1.5+ acre parcel 003 was sold to The Cybernetics Group, Ltd.

Without notice or a hearing to establish the essential nexus of proportionality per *Nollan/Dolan*, Cave Creek surreptitiously required the surveyor to omit 25 feet of land along Schoolhouse Road on Petitioner's "metes and bounds" survey to approve the split of parcel 010 on December 31, 2001, Maricopa County Recorded Document ("MCRD") 2002-0256784 (App. 131). Believing 010 was lawfully ***split*** into ***three*** lots, Petitioner applied for driveway & sewer permits, with promised sewer reimbursement.

To finalize sewer permits, the Town required the surveyor to revise the lot split survey of parcel 010 to add public easements and "convey" the omitted 25-foot wide strip of land along Schoolhouse Road to Cave Creek as "Parcel A," without notice or hearing per *Nollan/Dolan*, or Petitioner's consent. The Town required the surveyor to record the changes (April 17, 2003, MCRD 2003-0488178, App. 132) and told the surveyor it would "handle the paperwork" for the conveyance as certified by Cordwell and the Town Clerk on the survey. However, Petitioner retains undisturbed possession of "Parcel A."[27] Without providing *Mullane* notice or a hearing per *Nollan/Dolan* in A.R.S. §§ 9-500.12 & 9-500.13, Cave Creek extorted public easements over original Lots 1,2,3 and new Parcel A to grant driveway and sewer permits in 2002.

Under color of law per ZO § 2.3(C)(7), Cordwell assured Petitioner that a subdivision in Cave Creek is "**5** or more **lots**" to cause Petitioner to believe the 2003 survey of parcel 010 into "**Lots**" 1, 2, 3 and "Parcel A" was lawful. However, a subdivision is **4** or more lots per SO § 1.1(A)(3)&(4) (App. 73) and A.R.S. §§ 9-462 *et seq.* & 9-463 *et seq.* (App. 24-33, 34-55). Maricopa County assesses taxes on "Parcel A" as a 4th lot.[28] Therefore, Maricopa County's ongoing taxation on illegal lots that have no value per A.R.S. § 9-463.03 is unlawful. Maricopa County never provided *Mullane*

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[27] Petitioner's property is on a dead end road going up a mountain. Cave Creek never explained its need to exact and convey "Parcel A." "Parcel A" (a/k/a 010D / 010K) was not conveyed to Cave Creek as Cordwell and Town Clerk Carrie Dyrek certified, causing the 010 survey to be an illegal subdivision and recorded as a false document in violation of A.R.S. § 33-420 (App. 71).

[28] Maricopa County assessed and recorded Lots 1,2,3 as 010A,B,C; Parcel A as 010D.

notice to Petitioner that the property is unlawful since it first assessed the 4 lots. By evading *Mullane* notice and Petitioner's *Nollan/Dolan* protections, Cave Creek's exaction of the 25-foot wide strip of land that converted 010 into an illegal subdivision to cause a series of predicate acts violative of state and federal law and town ordinances was never vetted by a Hearing Officer per A.R.S. § 9-500.12.

The Cybernetics Group Ltd., a Nevada Corporation, applied for a 2-lot split of parcel 003 that Cave Creek's Town Council denied on August 5, 2002, claiming Petitioner's 1/8 interest in Cybernetics would cause parcel 010 *in combination with* the proposed split of 003 to be an unlawful subdivision. But Petitioner's interest in Cybernetics was irrelevant because 010 was already illegally subdivided by Cave Creek, which the Town and its actors continued to conceal.

Cybernetics sold 003 to mitigate damages from Cave Creek denying the lot split. The 003 sale was contingent on buyer Keith Vertes obtaining a lot split. Without *Mullane* notice or *Nollan/Dolan* protections, Cave Creek required 25 feet of land from 003 along Schoolhouse Road, and for the 003 lots to connect into Petitioner's sewer to approve the lot split. The Town's Clerk, Zoning Administrator, and Mayor certified on September 18, 2003, that the strip of land had been dedicated to Cave Creek as "Parcel A" on the 003 "metes and bounds" survey, MCRD 2003-1312578 (App. 133). Vertes, on behalf of GV Group LLC, executed the Declaration of Easement and Maintenance Agreement ("DEMA," MCRD 2003-1472588, App. 134-138) with Petitioner on October 16, 2003, to share easements and extend sewer to the 003 lots as required by Cave Creek. The DEMA incorporated the Town-approved surveys of parcel 010 (MCRD 2003-0488178) and parcel 003 (MCRD 2003-1312578)[29] for reciprocal

[29] In 2012, Petitioner discovered 003's "Parcel A" was never dedicated to the Town, but sold to Jocelyn Kremer as lot 211-10-003D, MCRD **2010**-0067254. Lot 003D blocked access to the other 003 lots, violating ZO § 5.1(C)(2) ("No zoning clearance will be issued for any building or structure on any lot or parcel unless that lot or parcel has permanent legal access to a dedicated street) and ZO § 5.1(C)(3) ("route of legal and physical access shall be the same"). Cave Creek caused MCRD 2003-1312578 to contain material misstatements per A.R.S. § 33-420 and void the DEMA.

easement access and utilities (sewer) to lots 010A,B,C and 003A,B,C. The DeVincenzos from New York bought lot 010C ***subject to*** the DEMA on October 22, 2003.[30]

After Maricopa County Health Department approved Petitioner's public sewer installed in dedicated easements, Cave Creek claimed there was no Town Code for a reimbursement development agreement.[31] To mitigate unreimbursed expenses, and believing at the time 010 was lawfully split, Petitioner tried to sell lot 010A subject to further lot split. On December 19, 2003, without *Nollan/Dolan* protections, Cave Creek required that Petitioner gift lot 010D to Cave Creek for the Town to approve the prospective buyer's split of lot 010A into three lots. The buyer cancelled purchase of 010A due to Cave Creek's unexplained request.

As a consequence of Cave Creek's conduct, Petitioner had to borrow $245,000 from BMO Harris Bank ("BMO" f/k/a M&I Bank) on January 12, 2004 (MCRD 2004-0030880), secured by his home on lot 010A, to pay for DEMA infrastructure.

Petitioner invoiced Cave Creek for the sewer on February 21, 2004. In response, Cave Creek placed Petitioner under "investigation" for the 010 and 003 "**lot splits**... initiated by [Petitioner] and/or Cybernetics" for an alleged "***attempt*** to violate" Town Code and state statutes (emphasis added)—*i.e.*, for doing EXACTLY what the Town told Petitioner to do under color of law. Cave Creek "red-tagged" permits to exact fines and conspired with the Sonoran News to publish an article about the bogus "criminal investigation" *before* Petitioner received Cave Creek's letter. The "investigation" went nowhere. It was a fraudulent scheme of the Town and the Sonoran News to paint Petitioner (and his family) in false light for over a decade, a chilling effect.

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[30] Cave Creek's exaction of a strip of land illegally subdivided the survey of 010 to affect interstate commerce because the sale of lot 010C must be rescinded as it violates A.R.S. § 9-463.03 and SO § 1.1(A)(2) (App. 41, 73).

[31] The Town required Petitioner to build a sewer big enough to serve 100 homes at the base of the mountain, which the public continues to use. The Town misled Petitioner by reviewing 13 draft reimbursement agreements throughout sewer installation.

On October 27, 2005, Petitioner rescinded the DEMA due to breach *ab initio*[32] by the 003 lot owners, and put the Town on notice. Litigation commenced in 2006 (DEMA); 2009 (sewer, 003 code violations); 2010 (003 variances, 010A foreclosure); 2011 (bankruptcy); and 2014 (Quiet Title/RICO). *See* Procedural Background below. Cave Creek did not disclose to fraudulently conceal its failure to provide *Mullane* notice and *Nollan/Dolan* protections until 2016 in order to mislead the Courts in all the above litigation such that Cave Creek obtained favorable judgments based on statutes of limitations. Without just compensation for takings, Cave Creek engaged in theft as a fraudulent scheme in violation of A.R.S. §§ 13-1802, 13-2310, 13-2311. (App. 61-62, 65)

By failing to provide *Mullane* notice and *Nollan/Dolan* protections, Cave Creek caused the DEMA-incorporated surveys of parcels 010 and 003 to be recorded as illegal subdivisions without a final recorded plat map (A.R.S. § 9-463, App. 34-35), voiding the DEMA *ab initio*. However, from 2003 to 2011(+), the Town issued void permits to the 003 lots using access and utilities from Petitioner's property based on the DEMA in violation of A.R.S. §§ 33-420, 9-462.05, 9-462.06(H)(1), 9-500.12, 9-500.13 (App. 71, 31, 33, 55-57); SO §§1.1, 6.1, 6.3(A) (App. 73-75); and ZO §§ 1.1(B), 1.4, 1.5, 1.7, 2.3, 5.1(C), 5.11(G)(2) (App. 76-85). As a consequence of bearing DEMA costs with sewer, Maricopa County Sheriff's Office ("MCSO") sold Petitioner's foreclosed home on lot 010A in 2011 to BMO (MCRD 2011-0892620) per court order in CV2010-013401 in violation of A.R.S. §§ 9-463.03 and SO § 1.1(A)(2)&(4) (App. 41, 73).[33]

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[32] After the DEMA was executed, Petitioner discovered that GV Group LLC did not exist when Vertes executed the DEMA. It did not own any 003 lots, and Lot 003A was sold by Vertes and Michael Golec prior to DEMA execution such that it was not bound to the DEMA to block required reciprocal access. The 003A buyer Kremer disavowed the DEMA in September 2005. Petitioner later discovered 4th lot "Parcel A"/ 003D was never conveyed to block access *ab initio* and 003 is an illegal subdivision.

[33] On November 28, 2011, the night before an early morning hearing for BMO's summary judgment in CV2009-050821, MCSO tasered and incarcerated Petitioner for "trespassing" on his other 010 lots, and barred him from getting a change of clothes.

In January 2013, Petitioner discovered Maricopa County's Assessor's Office classified the 010 lots as an "undefined subdivision" on its website. On inquiry, Maricopa County took down the webpage and went silent. In 2014, Cave Creek split the unlawfully subdivided lot 010A into lots 010M,N,O without requiring the dedication of lot 010D. Splitting a lot in an unlawful subdivision creates additional unlawful lots. Cave Creek then issued void permits to the unlawful 010M,N,O lots in ensuing years.

Petitioner requested Cave Creek to remedy illegal subdivisions since discovery. On December 23, 2017, per ZO §§ 2.3(E) & 1.7 (App. 80, 78), Petitioner again requested the Town to correct continuing violations on the subject lots. *See* App. 140-145. Per ZO § 2.3(E), Cordwell never sent Petitioner any notice of any decision by certified mail so that Petitioner could request review by Cave Creek's Board of Adjustment (BOA). On January 30, 2018, Cordwell claimed to be reviewing Petitioner's request, but, as of this date, Cordwell has not "decided" nor forwarded Petitioner's request to the BOA.

Two days before the Ninth Circuit denied rehearing, the DEMA was declared void *ab initio* on May 15, 2018, MCRD 2018-0372838 (App. 139) to void permits and rulings based on the DEMA, affecting all underlying/related cases. A 6th supplemental Notice of Claim was submitted on June 21, 2018. Notice of Appeal in CV2006-014822 was timely filed and Petitioner's Opening Brief is due April 21, 2018, stay denied.

II. PROCEDURAL BACKGROUND

A. Causation for Rule 60(d)(1) Complaint per Rules 60(b)(4),(5),(6) and 60(d)(3); Proceedings in Superior Court

Arizona applies the discovery rule. See, *e.g., Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.,* 898 P.2d 964, 966-67 (Ariz. 1995) (recounting history of discovery rule in Arizona). The key "inquiry in applying the discovery rule is whether the plaintiff's injury or the conduct causing the injury is difficult for plaintiff to detect." *Id.* at 968.

From October 2001 until August 29, 2016,[34] Cave Creek did not disclose to

[34] See FOIA evidence, Ninth Circuit, 15-15566, DktEntry 56, App. 90-127, *excerpt.*

continuously conceal or deny true causes of action. Cave Creek intentionally evaded *Mullane* notice and *Nollan/Dolan* burden-shifting protections to exact land, easements, and improvements without providing just compensation—affecting hundreds of land owners in Cave Creek including Petitioner (App. 118-127). Arizona broadly recognizes the doctrine of fraudulent concealment: "[F]raudulent concealment occurs with nondisclosure of the facts pertaining to" the relevant cause of action. *Walk v. Ring,* 44 P.3d 990, 999 (Ariz. 2002) (*en banc*). "Fraud practiced to conceal a cause of action will prevent the running of the statute of limitations until its discovery." *Id.* "In instances involving equitable tolling, courts have recognized that, as a matter of equity, 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." *Porter v. Spader,* 239 P.3d 743, 747 (Ariz. Ct. App. 2010).

Petitioner acquired his Cave Creek property in 2001 by specific performance based on what he knew at the time, CV2000-011913.[35]

In 2006, Petitioner filed CV2006-014822, to resolve the DEMA between the 003 and 010 lots. In the course of winning three appeals in ***2013*** (1 CA-CV 11-0728, 1 CA-CV 12-0438, 1 CA-CV 12-0601), Petitioner discovered that Cave Creek had not disclosed to fraudulently conceal its continuous procedural/regulatory violations.[36] By surreptitiously violating federal and state law and its own ordinances, Cave Creek avoided consolidating related cases[37] and being added to CV2006-014822 as an indispensible party by making limited appearance in 2010 to obtain favorable rulings that claims against the Town were time-barred. However, statutes of limitations are

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[35] Superior Court cases herein were filed in Maricopa County Superior Court.
[36] While on appeal, Petitioner discovered 003D was never conveyed to the Town to block access and void the DEMA *ab initio*, found the "undefined subdivision" designation of his property on Maricopa County's website, and found A.R.S. §§ 9-500.12 & 9-500.13 buried in a "Miscellaneous" section with unrelated Arizona statutes (*i.e.* for adult escort advertising and drug disposal programs) to be very difficult to find.
[37] CV2009-050821, CV2009-050924, LC2010-000109-DT, CV2010-013401.

tolled per A.R.S. § 12-821.01(C) (App. 59) until administrative processes are complete per A.R.S. § 9-500.12. Other violations of State and Town law are ongoing per ZO§1.7.

On remand, Maricopa County Superior Court defied Appellate Decisions as the law of the case (*i.e.* providing opportunity to amend complaint to add indispensible parties and "summary judgment [against Petitioner] is not proper" due to issues of material fact whether the DEMA is void), such that CV2006-014822 is again on appeal, 1 CA-CV 18-0429. Plaintiff's requested venue change per A.R.S. § 12-408 from Maricopa County Superior Court as Maricopa County is an indispensible party, denied.

In CV2009-050821, Petitioner sought declaratory relief that 010 was lawfully split (based on what he was made to believe at the time) and argued breach of contract, that Cave Creek reneged on sewer reimbursement. Cave Creek falsely claimed that there was no takings as Petitioner must pay for sewer[38] repair and extension per Town Code §50.031[39] (App. 88). As Cave Creek falsely claimed "the Town is not aware of any case or controversy regarding the classification of Plaintiff's property," State Court did not determine the legal status of the subject parcels. Cave Creek falsely told the court that "Parcel A" was an "easement." However, Maricopa County taxes "Parcel A" as a 4th lot, 010K f/k/a 010D—easements are not taxed as lots. There are no statutes of limitations to Quiet Title on "Parcel A." *See* n. 13 & 64 herein. In CV2009-050821 and its appeal (1 CA-CV 12-0238), Cave Creek did not disclose its failure to comply with mandatory *Mullane* and *Nollan/Dollan* protections to wipeout Petitioner's investment-backed expectations in violation of Article 2 §§ 1, 2, 3, 4, 11, 13, 17 and Article 18 § 6 of Arizona's Constitution (App. 22-23), and the Fifth and Fourteenth Amendments (App. 19). Based on DEMA rulings unfavorable

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[38] The sewer is *ultra vires* as the sewer permits are void due to Cave Creek causing the illegal subdivision. Petitioner should not have to pay for sewer that serves the public. Placing burdens on property owners to pay for public sewer is unconstitutional.

[39] Section 50.031 was not disclosed to Petitioner per *Mullane* nor vetted per A.R.S. § 9-500.13. Section 50.031 does not comply with *Nollan/Dolan* nor the Fifth Amendment as the sewer extension, built in solid bedrock, was for public use—not just Petitioner. As such, §50.031 is a regulatory taking as applied.

to Petitioner in 2010 (later reversed on appeal), and Cave Creek's reneged sewer reimbursement, BMO foreclosed on Petitioner's 010A home in CV2010-013401 without paying just compensation for 010 access, easements, and sewer to BMO's adjacent 003 lots B,A,D also obtained through foreclosure from Kremer and Golec.

In state courts, Cave Creek never mentioned A.R.S. §§ 9-500.12 & 9-500.13 and its noncompliance. Prior to complying with Petitioner's FOIA request on August 29, 2016, Cave Creek falsely claimed to federal courts since 2014 that *mentioning* A.R.S. § 9-500.12 in a zoning amendment that *was never adopted* into Town Ordinances provided notice per *Mullane*. But mentioning a published statute, A.R.S. § 9-500.12, does not suffice per *Mullane*. It does not provide pre-deprivation notice of the Town's actions. Nor does it comply with *Nollan/Dolan* protections and its burden ***to establish*** the essential nexus of rough proportionality for "required" exactions. As such, ongoing violations that cause state takings claims have not been adjudicated per ZO §1.7 and A.R.S. §§ 9-500.12, 12-542 & 12-821.01(C) (App. 20, 78, 55, 58, 59).

B. Proceedings in the District Court

On April 24, 2014, Petitioner's Quiet Title / RICO complaint was filed as a Special Action (LC2014-000206) because the 1st claim sought declaratory relief. State claims are RICO, Quiet Title / Rescission, breach of contract, negligence, bad faith, fraud[40], negligent misrepresentation, and false light. The complaint preserved 42 U.S.C. §§ 1983 & 1988 claims (App. 20, 21) "[w]ithout waiving any other claim or allegation," and plead "in the alternative, or in conjunction with other claims" as state claims had to be adjudicated prior to federal claims being ripe or final.

BMO removed the state special action complaint to Federal Court on June 1, 2014. Petitioner challenged removal and District Court's jurisdiction per *Williamson*, and abstention doctrines for matters of complex state law and parallel court

[40] Petitioner's well-pled complaint alleged constructive fraud and fraud on the court, that Cave Creek violated A.R.S. §§ 9-500.12 and 9-500.13.

proceedings.[41] Rather than remand the entire case back to state court per *Williamson* and abstention doctrines, District Court declined supplemental jurisdiction of prerequisite state claims after dismissing Petitioner's preserved §1983 claims[42] based on state statutes of limitations rulings in CV2009-050821 and 1 CA-CV 12-0238 that Cave Creek obtained by constructive fraud and fraud on the court. District Court constructed non-sequiturs to falsely conclude Petitioner "should have known" his property was a "subdivision," but did not consider the *illegality* of the subdivision caused by Cave Creek (App. 12-14)—that Petitioner's takings claims were based on ongoing illegality of Cave Creek's invalid exactions the Town obtained by its continuous failure to provide *Mullane* notice and *Nollan/Dolan* protections. District Court did not address Quiet Title that has no statute of limitations (*see* n.13). Instead, District Court determined *pro se* Petitioner's complaint was ***not*** well-pled[43]

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[41] *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) ("until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" and "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation."); *Younger* Abstention (*Younger v. Harris*, 401 U.S. 37, 43-55 (1971)); *Colorado River* Abstention (*Colorado River Water Conservation District v. United States*, 424 U.S. 800, 800 (1976)); *Pullman* Abstention (*Railroad Commission v. Pullman Company*, 312 U.S. 496 (1941)); *Burford* Abstention (*Burford v. Sun Oil Co.*, 319 U.S. 315 (1943)). According to the Ninth Circuit, courts should "strictly construe the removal statute against removal jurisdiction." *Gaus v. Miles*, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Doubts as to removability should be resolved in favor of remanding the case to the state court. *Id.*

[42] " '[T]he mere presence of a federal issue in a state cause of action does not automatically confer federal-question jurisdiction' " if they "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, 1168, 1771 (5th Cir.1988), quoting *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804 (1986) (no "single, precise definition" of section 1331 "arising under" jurisdiction to consider jurisdictional exceptions).

[43] A cause of action "arises under" federal law when "the plaintiff's **well-pleaded** complaint raises issues of federal law." *City of Chicago v. International College of Surgeons*, 522 U.S. 156, 163 (1997) (emphasis added), quoting *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987).

to deny amendment as futile.[44] (App. 10) It strains credulity how District Court could time bar takings claims for ILLEGAL exactions and ONGOING violations. Unlike Pennsylvania in *Knick*[45], Arizona has no inverse condemnation procedure. On remand, Lower Court declined Special Action jurisdiction, causing a wipeout.

C. Proceedings in the Ninth Circuit Court of Appeals

Petitioner challenged District Court's jurisdiction and its bifurcation of state and federal claims to dismiss Petitioner's preserved §1983 claims without opportunity to amend the complaint. The Ninth Circuit rubber-stamped District Court's application of generic §1983 statutes of limitations for personal injury claims to ***property*** claims. (App. 2) Personal injury claims do not require specified notice. Property claims require *Mullane* notice and *Nollan/Dolan* protections ***prior to*** deprivation of rights, privileges, and immunities; and property rights are unalienable, *supra.*[46]

The Ninth Circuit refused to take judicial notice of FOIA evidence obtained on August 29, 2016[47]—that Cave Creek did not provide *Mullane* notice to exact land,

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[44] Although dates were incorporated from public records, District Court stated that the Complaint lacked dates, yet constructs a false story on dates to determine §1983 claims are time-barred. Petitioner was not provided an opportunity to plead to federal standards post-removal. *Runnion Ex Rel. Runnion v. Girl Scouts*, 786 F.3d 510, 519 (7th Cir. 2015): "plaintiff[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." (citations omitted)

[45] *Knick v. Scott Township*, No. 17-647, currently on review in this Court.

[46] **The Fifth & Fourteenth Amendments and 42 U.S.C. § 1983 do not contain statutes of limitations.** The very nature of constitutional rights is that they cannot be interfered with by a legislature, a principle that extends back to at least *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176-77 (1803): "It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act." Further, §1983 protects unalienable rights as it "provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States." *Wilder v. Virginia Hosp. Ass'n,* 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). See also *Monroe v. Pape*, 365 U.S. 167, 187 (1961) (holding that, in enacting Section 1983, Congress intended to provide a private right of action under federal law to parties deprived of their constitutional rights, privileges, or immunities by an official's abuse of his position) *overruled on other grounds by Monell.*

[47] Received by Cave Creek and filed after Petitioner's Opening Brief was filed, but weeks before Answering Briefs were due. Respondents refused to address the evidence.

easements, and improvements without *Nollan/Dolan* protections since 2001 as its official policy. (App. 2-3) The Ninth Circuit's unpublished decision is silent on its basis to not make precedent, but its context contravenes or eviscerates a plethora of U.S. Supreme Court and Ninth Circuit rulings, notably *Mullane*, *Nollan/Dolan*, *Lucas*, *First English*, *Lingle*[48], and *Loretto*[49]. *See* App. 146-154. Panel rehearing and rehearing *en banc* were denied on May 17, 2018, without considering judicial takings[50].

In contrast, on May 14, 2018, the 10th Circuit correctly determined **Statutes of Limitations do not apply when government is required to provide pre-deprivation *Mullane* notice to property owners. *M.A.K. Investment Group, LLC v. City of Glendale*, 889 F.3d 1173 (10th Cir. 2018).**[51] As such, Arizona, Maricopa County, and Cave Creek are joint and severally liable for illegal exactions and rulings that wiped out Petitioner's investment-backed expectations, including delay damages and interest per ZO §1.7(A) and A.R.S. § 9-500.12(H) (App. 78, 56). [52]

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[48] This matter is a Takings requiring just compensation. "[G]overnment regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster—and...such 'regulatory takings' may be compensable under the Fifth Amendment." *Lingle*, at 538. This matter also involves due process violations requiring remedy. "Due process violations cannot be remedied under the Takings Clause, because 'if a government action is found to be impermissible-for instance because it fails to meet the 'public use' requirement or is so arbitrary as to violate due process-that is the end of the inquiry. No amount of compensation can authorize such action." *Lingle*, at 543.

[49] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (where government requires an owner to suffer a permanent physical invasion of property to prevent possession, use or exclusion in bundle of rights, it must provide just compensation), *i.e.* takings of easements, sewer, money for void permits and *ultra vires* improvements, 4th lot exaction causing wipeout of investment-backed expectations.

[50] "In sum, the Takings Clause bars the [government] 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 [government] had physically appropriated it or destroyed its value by regulation." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection*, 560 U.S. 702, 715, 130 S. Ct. 2592, 2602 (2010) (emphasis in original).

[51] In addition, the DEMA was declared void *ab initio* on May 15, 2018 (App.139), to affect all court proceedings involving the *res* of Petitioner's property in Cave Creek.

[52] Lisa J. Bowey, Director of Litigation for Maricopa County Assessor's Office in

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because the Ninth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court" (Sup. Ct. Rule 10(c)), "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" (Sup. Ct. Rule 10(a)), and "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." *Id.*

I. The Petition Raises Questions of Exceptional Importance for Property Owners in Arizona and All Across America

Justice Alito began the majority's opinion in *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 600 (2013), by stating that the Court's decisions in *Nollan* and *Dolan* "provide important protection against the misuse of the power of land-use regulation." However, *Nollan/Dolan/Koontz* are just Paper Tigers[53] if government entities can ignore these requirements and obtain illegal exactions by exploiting synthetic statutes of limitations.

Violations of due process and taking of private property without payment of just compensation can continue to be duplicated all across America, unless this Court intervenes to provide equal protection safeguards against government harms. In Cave Creek alone, over 300 property owners were deprived of constitutional rights to property and due process. App. 118-127. This Court must stop government from extorting private property without notice in order to defy *Nollan/Dolan* protections and evade liability by lower courts applying generic "statutes of limitations for *personal injury* actions" to property **rights** claims (App. 2, emphasis added).

2014: "If the Court enters a Judgment striking the split(s), please forward a copy of the Judgment to us and we will make the necessary changes."

[53] Municipalities are money ahead to deny notice of *Nollan/Dolan/Koontz* protections and obtain exactions without paying just compensation. AMRRP underwrites the "risk" of continuously violating *Nollan/Dolan/Koontz* protections.

Arizona enacted A.R.S. §§ 9-500.12 & 9-500.13 after Chief Justice Rehnquist delivered *Dolan*. The Fifth Amendment is self-executing[54], applicable to the States. *See* n. 7, 10. Government must provide due process notice and pay just compensation for taking private property, per "Equal Protection" and "Privileges and Immunities" clauses of the Fourteenth Amendment. Every property owner is entitled to *Mullane* notice to insure *Nollan/Dolan* protections.

By denying *Mullane and Nollan/Dollan* protections, Cave Creek down-zoned parcels 010 and 003, converted the parcels into illegal subdivisions by exacting 4th lots, and exacted public easements, sewer improvements, and fees on void permits. By denying *Mullane and Nollan/Dollan* protections, Cave Creek reneged on its false promise to reimburse Petitioner for repairing and extending the *ultra vires* sewer that serves the public causing the foreclosure of his home on a portion of his property. The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49 (1960); *Palazzolo,* 533 U.S. at 616-18 (2001). "Thus, government action that works a taking of property rights necessarily implicates the 'constitutional obligation to pay just compensation.'" *First English*, 482 U.S. at 315, quoting *Armstrong*, 364 U.S. at 49.

If *Lucas* defines a regulatory taking, then violating *Nollan/Dolan* is an inverse regulatory taking. Cave Creek caused permanent physical invasion of private proper-

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[54] The Fifth Amendment has a "self-executing character...with respect to compensation." *First English*, 482 U.S. at 315 (1987). As Justice Brennan noted, "[t]his Court has consistently recognized that the just compensation requirement in the Fifth Amendment is not precatory: once there is a 'taking,' compensation must be awarded." *San Diego Gas & Electric Co. v. San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting) (citing *Jacobs v. United States*, 290 U.S. 13 (1933)); *see also First English*, 482 U.S. at 316 n.9 ("[I]t is the Constitution that dictates the remedy for interference with property rights amounting to a taking"). Once a taking has been found, the requirement to pay just compensation is self-executing and cannot be limited or impaired by legislation or ordinance. *People ex rel. Wanless v. Chicago*, 38 N.E.2d 743, 746 (Ill. 1941).

ty by violating regulations to exact land and easements, and for Petitioner to bear the costs of public utilities, to affect a total wipeout of his investment-backed expectations. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (taking occurred where state law required landlords to allow cable companies to install cable equipment in their apartment buildings). See also *Armstrong*, *supra*; and *Lucas*, 505 U.S. at 1019. In *Lucas*, this Court held that the government must pay just compensation for such "total regulatory takings." *Id.* at 1026. In *First English*, this court held that government must pay just compensation for temporary takings.

Property rights are unalienable.[55] For deprivation of private property rights to be constitutional, there must be *Mullane* notice and an opportunity to be heard per *Nollan/Dolan/Koontz* protections in order to apply statutes of limitations.[56] A.R.S. §§ 9-500.12 & 9-500.13 require *Mullane* notice for *Nollan/Dolan* protections that cannot be waived[57] during the administrative hearing process. This Court must compel compliance with its rulings and the Constitution. To incentivize or reward government taking of life, liberty, or property without notice, hearing, or just compensation by exploiting statutes of limitations is unconstitutional.[58] If government

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[55] "We hold these truths to be self-evident, that all men [and women] are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness [property/business]. That to secure these rights, governments are instituted among men [and women], deriving their just powers from the consent of the governed." Declaration of Independence (US 1776). *See* n. 7 herein.

[56] Government "can be sued directly under §1983 for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690 (1978).

[57] "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938). " '[C]ourts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiescence in the loss of fundamental rights.' " *Id.* (footnoted citations omitted).

[58] Without *Mullane* notice, there is no equal protection. Publication of statutes does not provide proper notice. Even Supreme Court Justices do not know all the laws as admitted in *Knick v. Scott Township*, No. 17-647, October 3, 2018. The poor and less educated, are most harmed by lack of civic knowledge and complexities of law on

"declares that what was once an established right of private property no longer exists, it has taken that property." *Stop the Beach*, 560 U.S. 702, 715 (2010).[59] "It would be absurd to allow [government] to do by judicial decree what the Takings Clause forbids it to do by legislative fiat." *Id.* at 711. (internal citation omitted)

II. There are Circuit Splits Regarding Notice Requirements for Due Process as to the Taking of Property

Three days before the Ninth Circuit denied Petitions for Rehearing in this matter, the Tenth Circuit issued a ruling in a similar case that supports Petitioner's argument. See *M.A.K. Investment Group, LLC v. City of Glendale*, 889 F.3d 1173 (10th Cir. 2018). The *M.A.K.* Court upheld that *Mullane* notice is an absolute requirement prior to deprivation of property rights. See *Hart v. Bayless Investment & Trading Co.*, 346 P.2d 1101, 1106, 1108 (Ariz. 1959) (well-settled principle that notice and hearing requirements in zoning enabling acts are conditions precedent[60] to the proper exercise of the zoning authority); *Jones v. Flowers*, 547 U.S. 220 (2006) (property owners are entitled to specific notice, designed to provide actual notice); and *Brody v. Vill. of Port Chester*, 434 F.3d 121, 132 (2d Cir. 2005) (concluding due process requires condemnors to give as much notice practicable to inform affected property owners of proceedings that threaten to deprive owners of property interests).

The rulings below did not consider Cave Creek's failure to provide notice and

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abrogation of rights. To expect citizens to know all laws, buried among thousands of statutes, is tyranny. Government's duty is to protect citizens, not exploit them.

[59] "[W]hat counts is not what [the Framers] envisioned but what they wrote." *Stop the Beach* at 717. If the Framers "envisioned" time limits on constitutional rights (*i.e.* due process property rights), then they would have incorporated limitations into the Constitution. The Fifth Amendment is self-executing to embody unalienable rights. Per the Fourteenth Amendment, Statutes of Limitations ("SOL") are unconstitutional because "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." *See generally* Barton H. Thompson, Jr., *Judicial Takings*, 76 Va. L. Rev. 1449 (1990) (examining the history and evolution of judicial taking jurisprudence). According to Google Scholar, *Stop the Beach* has been cited in ~800 law review articles and ~800 court decisions.

[60] "An attempted exercise of [zoning/regulatory] authority without compliance with the statutory conditions precedent is utterly void and of no effect." *Id.*

a hearing as ongoing[61] violations of *Nollan/Dolan* burden-shifting requirements since 2001. A.R.S. §§ 9-500.12 & 9-500.13 contain shortened limitations periods to appeal a municipality's "requirement" for an exaction, dedication, or zoning regulation, and disallows waiver of rights to appeal. When a statute or rule provides for shortened limitations periods, the Due Process[62] Clause of both the federal and Arizona Constitutions (App. 19, 22) require a government entity to give express and conspicuous notice of the time period and avenues for redress or it is ineffective. See *Brody*, at 132; *Hart*, at 1108.

Cave Creek admits no takings impact report was ever filed for Petitioner's property (A.R.S. § 9-500.12(C); App. 55) and "[t]here are a lot of questionable lot splits" in Cave Creek. *See* App. 93-94. Cave Creek's failure to provide Petitioner notice of his appellate rights and procedures had the effect of *imposing* waiver for Respondents to obtain favorable rulings based on statutes of limitations.

In *Brody*, New York laws require that a property owner challenging a taking of property by eminent domain object in a special procedure, and do so within 30 days. The Second Circuit held "where, as here, a condemnor provides an *exclusive procedure for challenging* a public use determination, it must also provide notice in accordance with the rule established by *Mullane* and its progeny. . . . '[R]easonable notice' under these circumstances *must include mention of the commencement of the thirty-day challenge period.*" *Brody*, at 132 (emphases added). Notice must be "conspicuous" of the challenge period "to satisfy due process." *Id.* at 130. See also *Jones v. Flowers*. "*Mathews* is the test for both when a hearing is required (i.e. pre- or post-deprivation) and what kind of procedure is due a person deprived of liberty or property." *Brody*, at 135, citing *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

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[61] The court also failed to consider that the ongoing due process violations caused compounding harms of other ongoing violations as a series of acts without remedy.

[62] "[T]he 'fundamental requirement of due process'" is "'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *City of Los Angeles v. David,* 538 U.S. 715, 717 (2003) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

Per *M.A.K.*, property owners "cannot be deprived of [a] state-given cause of action without due process....[The property owner] clearly has a protected property interest in the statutory right to judicial review." *M.A.K.*, at 1181. Here, Petitioner has protected property interests per *Mullane*, *Nollan/Dolan*, and the statutory right to judicial review per A.R.S. § 9-500.12(A)(1) as the exactions required by Town officials were discretionary; and per § 9-500.12(A)(2), as Cave Creek's adoption of its official policy of non-compliance has the effect of "amending" zoning regulations to "create[ ] taking[s] of property in violation of section 9-500.13." Per ZO § 2.3 and A.R.S. § 9-462.04(G), it is the duty of the Zoning Administrator and Cave Creek's "governing body" to provide Petitioner with ***all*** procedural protections in A.R.S. §§ 9-500.12 & 9-500.13 regarding exactions of land, easements and improvements that wiped out his investment-backed expectations.[63] Until Petitioner discovered Maricopa County Assessor's Office defined his property as an "undefined subdivision" in 2013, Petitioner "never found out [his] property was so designated." *M.A.K.*, at 1186. When Petitioner inquired, Maricopa County took down the web page and went silent. The obstructed discovery caused Petitioner to argue, for the first time on appeal in 1 CA-CV 12-0238, that parcel 010 was *illegally*[64] *subdivided* by violating Petitioner's unalienable property rights. Arizona's Court of Appeals did not address illegality such that the illegalities are ongoing violations.

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[63] FOIA evidence indicates Cave Creek made "final decision[s]" appealable in Superior Court per A.R.S. § 9-500.12(G)&(H) up to September 2001 (App. 56, 95-119). Petitioner applied for his 3-lot split in October 2001.

[64] Respondent Judge Gould issued the ruling in 1 CA-CV 12-0238 on May 9, 2013. *Cook v. Pinetop Lakeside* was issued May 28, 2013, that statutes of limitations do not run when the party requesting quiet title retains possession of the property as in this instance. On January 16, 2014, Judge Gould ruled on a similar situation as here, in *Halt v. Sunburst Farms East, Inc.*, 1 CA-CV 12-02376, ¶25: "Because the court cannot enforce an illegal contract, 'the illegality of a contract may be raised for the first time on appeal by the court on its own initiative,' or by the parties. *Mitchell v. Am. Sav. & Loan Ass'n,* 593 P.2d 692, 693-94 (Ariz. Ct. App. 1979); *see also Bank One, Arizona v. Rouse,* 887 P.2d 566, 569 (Ariz. Ct. App. 1994) ("[W]hen the illegality 'appears on the face of the contract...' the defense is preserved.")." As such, applying all underlying and related cases prospectively is no longer equitable, Fed./Ariz.R.Civ.P. 60(b)(5).

Petitioner raised defective notice issues in his 2014 Quiet Title/RICO Complaint. "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 must take reasonable steps to provide enough notice for reasonable persons to realize they must investigate possible remedies." *MA.K.,* at 1182. As in *M.A.K.*, Petitioner 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.**" *MA.K.,* at 1182. (emphasis added)

As such, Arizona, Maricopa County, and Cave Creek have continuous, mandatory duties to abide by federal and state law. Cave Creek must also abide by its town ordinances. In *Jones v. Flowers*, the Supreme Court "held the plaintiff's deficiencies did not excuse the government from following *Mullane*'s rule." *M.A.K.,* at 1182. Even if government entities argue property owners " 'should have been more diligent,' that fact [or presumption] 'does not excuse the government from complying with its constitutional obligation of notice.' " *Id.*, citing *Jones v. Flowers* at 232, 234. See also *Mennonite,* 462 U.S. at 799; *Garcia-Rubiera v. Fortuno,* 665 F.3d 261, 276 (1st Cir. 2011) (explaining this rule). *Hart*, at 1108:

> [The Supreme Court of Arizona] has held that, "where a jurisdictional notice is required to be given in a certain manner, any means other than that prescribed is ineffective. See *Yuma County v. Arizona Edison Co.*, 65 Ariz. 332, 180 P.2d 868 [1947]. This is so even though the intended recipient of that notice does in fact acquire the knowledge contemplated by the law. Such a rule is no mere 'legal technicality;' rather it is a fundamental safeguard assuring each citizen that he will be afforded due process of law. Nor may the requirement be relaxed merely because of a showing that certain complaining parties did have actual notice of the proceedings.

The *Brody* Court held that the burden on the government to provide notice is "comparatively small" to appraise property owners of their limited opportunity to redress infringement of their property rights. *Brody*, at 132.[65] The fiscal and adminis-

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[65] The Second Circuit rejected the argument that specific notice was unnecessary because the condemnee had actual and constructive notice of the taking. The focus in

trative burden to mail a certified letter explaining the process of appeal to the affected property owner for a required exaction is insignificant per *Mullane*, and mandatory per A.R.S. § 9-500.12(B) to preserve and exercise property rights. "The Supreme Court has repeatedly held that notice by mail is practically 'a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party.' " *M.A.K.*, at 1189, quoting *Mennonite Bd.*, 462 U.S. at 800. The *M.A.K.* Court held that "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." *Id.*

Cave Creek did not provide *Mullane* notice for a *Nollan/Dolan* hearing per A.R.S. § 9-500.12 to require the omitted 25 feet of land on 010 be labeled "Parcel A" and recorded as "conveyed" on the 2003 survey to be assessed and taxed as a 4th lot by Maricopa County. As such, Cave Creek and Maricopa County caused the "metes and bounds" survey of parcel 010 to be recorded as a false document, MCRD 2003-0488178, in violation of A.R.S. § 33-420. In bad faith under color of law, Cave Creek instructed and assured Petitioner that a subdivision was "5 or more lots" instead of 4 or more. As *M.A.K.*'s concludes, Petitioner inquired about discrepancies regarding the subject properties, but was deprived of due process when "told not to worry about it." *M.A.K.*, at 1189. As such, Petitioner did not know of his deprivation of due process, that the 25-foot-wide strip of land would convert the survey into an unlawful subdivision.

To cloud the deprivation of due process, the Town issued sewer and driveway

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due process is on what efforts the government undertook to provide notice, not what the owner knew. The court also rejected the argument the government had no obligation "to inform the reader of the significance of the publication (i.e., that it began the thirty-day appeal period), or of the statutory procedure for challenging the determination." *Brody*, at 126. The court held the government must inform a party it has taken an action, and that the party has a certain amount of time to challenge it. The court rejected the government's call for a blanket rule that an owner is always on constructive notice of the details of legal processes for appealing. However, *Brody* Court asserting at 132 "beyond that, property owners are generally charged with knowledge of the laws relating to property ownership" is contravened by *M.A.K.* and public's interest in equal protection for class of non-lawyers and non-government citizens. *See* n.58.

permits to the 010 lots as if they were lawfully split. But unlawful subdivisions are not entitled to permits such that the sewer and driveway permits are *void*.

Underlying and related cases rely on void permits and illegality to render the rulings void per Fed./Ariz.R.Civ.P. Rule 60(b)(4).

In bad faith per A.R.S. § 9-500.12(H), Cave Creek has yet to establish the essential nexus of proportionality as to why the Town required the survey to be altered and falsely record that a strip of land was conveyed to Cave Creek; why did the Town need easements to issue *void* permits for an *ultra vires* sewer due to the Town's deliberate conversion of Petitioner's parcel into an *illegal* subdivision—unsuitable for building and not entitled to permits per SO § 6.3 (App. 75). Cave Creek did not provide notice per A.R.S. § 9-500.12(B) because there is no essential nexus of proportionality as to the strip of land or easements to render the exactions invalid.

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 1187 (emphasis in original). Ergo, Cave Creek is not excused from its constitutional obligation to provide pre-deprivation notice and a hearing. Cave Creek's failure to comply is an ongoing violation in bad faith until it provides *Nollan/Dolan* "*right* to review" protections per A.R.S. §§ 9-500.12 & 9-500.13. *Id.* Cave Creek's bad faith violations wiped out Petitioner's investment-backed expectations and property interests that may not return to its pre-illegal status to require payment of just compensation for actual and delay damages plus interest.

As such, the split-circuit decisions require review to preserve property rights.

III. The Continuing Violations Doctrine Must Apply to *Mullane/Nollan/Dolan/*Lucas*/First English* Burden-Shifting Requirements

Under the Continuing Violations Doctrine, "when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such instance, the court will grant relief for the earlier related acts that would otherwise be time-barred."

Cowell v. Palmer Twp., 263 F. 3d 286, 292 (3d Cir. 2001) (citation omitted). Here, there is no last act until Cave Creek cures the illegalities and pays just compensation per *Lucas* and/or *First English. Mullane* notice, *Nollan/Dolan* protections, and *Lucas/First English* just compensation payment per A.R.S. §§ 9-500.12 & 9-500.13 must be ongoing duties. If not, the protections are inadequate.

Under the Continuing Violations Doctrine, the limitations period does not begin to run as soon as an injury occurs, or when a plaintiff becomes aware of a valid cause of action. A claim builds to absorb new wrongful acts for so long as the defendant perpetuates its misconduct, and statutes of limitations begin to run upon the entirety of accumulated malfeasance only when the defendant's misbehavior terminates. See *O'Rourke v. City of Providence*, 235 F.3d 713, 730 (1st Cir. 2001). Under the Continuing Violations Doctrine, discriminatory acts that are not individually actionable may be aggregated to make out a hostile work environment claim; such acts "can occur at any time so long as they are linked in a pattern of actions which continues into the applicable limitations period." *O'Connor v. City of Newark*, 440 F.3d 125, 127 (3d Cir. 2006) (citing *National Railroad Passenger Corporation v. Morgan,* 536 U.S. 101, 105 (2002) (explaining courts may consider the "entire scope of a hostile work environment claim . . . so long as any act contributing to that hostile environment takes place within the statutory time period"). "Provided that an act contributing to the [hostile work environment] claim occurs within the filing period, the entire time period of the hostile environment may be considered by the court for the purposes of determining liability." *Id.* at 117.[66]

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[66] "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge,* 424 U.S. 319, 332 (1976). It is a ***taking*** of *liberty* and *happiness* to deny Petitioner's architectural passion of building aesthetic homes as an occupation protected by the Fourteenth Amendment, and the Declaration of Independence. "[T]he right of the individual to contract, to engage in any of the common occupations of life...as essential to the orderly pursuit of happiness by free men [and women]" has been repeat-

A municipality violating federal and state law and its own ordinances creates a hostile work environment for a small builder. Cave Creek's inverse regulatory takings, and ongoing online publication of false light articles in the Town's newspaper, continuously create a hostile work environment to wipe out Petitioner's investment-backed expectations. Justice Scalia noted the regulation of land use and building permit process can be "an out-and-out plan of extortion." See *Nollan*, 483 U.S. at 837.[67] Per A.R.S. § 13-2301(D)(4)(b)(v)&(ix), extortion and theft are racketeering crimes. (App. 64) *See* Arizona's Racketeer Influenced and Corrupt Organizations ("RICO") Act, A.R.S. § 13-2314.04.[68] (App. 66-70) Per Rule 15(a)(2),(b)(2),(c)(1)(B), adding extortion and conspiracy per 42 U.S.C § 1985 (App.20-21) and 18 U.S.C. § 1961-1968[69]

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edly recognized by this Court as falling within the concept of liberty guaranteed by the Fourteenth Amendment. *Board of Regents v. Roth,* 408 U.S. 564, 572 (1972), quoting *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923), citing many cases.

[67] "Whatever may be the outer limits of 'legitimate state interests' in the takings and land-use context, this is not one of them. In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but 'an out-and-out plan of extortion.' *J. E. D. Associates, Inc. v. Atkinson,* 121 N. H. 581, 584, 432 A. 2d 12, 14-15 (1981); see Brief for United States as *Amicus Curiae* 22, and n. 20. See also *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U. S. [419], at 439, n. 17 [1982]."

[68] Other relevant RICO crimes: Forgery, bribery, participating in a criminal syndicate, obstructing or hindering criminal investigations or prosecutions, asserting false claims through fraud, intentional or reckless false statements or publications concerning land for sale or lease or sale of subdivided lands, resale of realty with intent to defraud, scheme or artifice to defraud, restraint of trade or commerce in violation of § 34-252. A.R.S. § 13-2301(D)(4)(b)(iv),(vi),(xiii),(xiv),(xv),(xvi),(xvii),(ix),(xxiv). (App. 72, 64)

[69] Federal RICO. RICO can apply to public officials "employed by or associated with any enterprise engaged in, or the activities of which affect interstate or foreign commerce [*i.e.* sale of 010C to DeVincenzos, Cybernetics condition precedent of *legal* lot split for 003], to conduct or participate...in the conduct of such enterprise's affairs through a pattern of racketeering activity." RICO requires a pattern include at least two acts of racketeering activity, one of which occurred after the effective date of the statute (October 15, 1970), and the last of which occurred within ten years of a prior act of racketeering activity. As such, Petitioner's claims are not time-barred as ongoing violations occur daily, and different but related predicate acts have arisen each year. Cave Creek continuously violating U.S. Supreme Court rulings to extort exactions and commit theft for ~20 years is a "regular way of doing business" of the alleged RICO enterprise. *H.J., Inc. v. Northwestern Bell,* 492 U.S. 229, 250 (1989).

are basic because A.R.S. § 13-2314.04 was pled throughout the state-filed Complaint.[70] This Court applied continuing violations to RICO price fixing conspiracies where each overt act that injures a 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). Petitioner argues that Arizona, Maricopa County, Cave Creek, and respective state actors continuously violated the Supremacy Clause (App. 19) to affect a wipeout of Petitioner's investment-backed expectations.[71] In opposition to well-established law,[72] District Court and the Ninth Circuit did not consider Petitioner's allegations as true. The Town did not disclose its violations since 2001 as part of its extortion and other RICO crimes in a series of predicate acts. Consequentially, Petitioner's property remains unlawful to develop, rent, or sell by plain language of law such that the criminal violations are ongoing.

The Continuing Violations Doctrine must be applied to *Nollan/Dolan* violations

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[70] *Haines v. Kerner*, 404 U.S. 519-20 (1972); *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007): "A document filed *pro se* is 'to be liberally construed,' *Estelle v. Gamble,* 429 U.S. [97,] 106 [1976], and 'a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,' *ibid.* (internal quotation marks omitted)." FRCP Rule 8(e) ("Pleadings must be construed so as to do justice"). See *Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538 (2010) to determine when a mistake is cognizable under Rule 15(c). The *Krupski* Court held that the first question is whether the defendant knew or should have known that "absent some mistake," the plaintiff would have brought suit against him or her. *Id.* Any mistake—factual or legal—is sufficient under Rule 15(c). *Id.*

[71] 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.

[72] "[O]n a Rule 12(b)(6) motion, the facts alleged must be taken as true." *Phillips v. County of Allegheny*, 515 F. 3d 224, 231 (3d Cir. 2008), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 548 (2007). In ruling on a Rule 12(b)(6) motion to dismiss, the Court accepts as true all well pleaded facts in the complaint and views them in a light most favorable to plaintiff. *Zinermon v. Burch*, 494 U.S. 113, 118 (1990).

to align with Quiet Title standards, which have no statutes of limitation when the property owner retains undisturbed possession. See *Cook v. Town of Pinetop-Lakeside*, n.13 herein; *Bangerter v. Petty*, 225 P.3d 874, 879 (Utah 2009); *Salazar v. Thomas*, 236 Cal. App. 4th 467, 477 (2015), as modified on denial of reh'g (May 28, 2015) ("[A]s a general rule, the statute of limitations [for a quiet title action] does not run against one in possession of land."), also quoted in equity actions involving fraud, *e.g.*, *Anderson v. King*, 93 NW 2d 762 (Iowa 1958), citing 34 Am.Jur., Limitation of Actions, § 381.

Here, Cave Creek continuously violates *Mullane*, *Nollan*, *Dolan, Lucas* and *First English* as its official policy to cause three surveys and the DEMA to be recorded as false documents in violation of A.R.S. § 33-420.[73] The surveys falsely claim to be lot splits as attested and certified by Cave Creek to require the continuous cloud of illegality to be removed by Quiet Title (Complaint, Claim 9). See *Calmat of Ariz. v. State ex rel. Miller,* 859 P.2d 1323, 1325 (Ariz. 1993):

> [A]uthority [for inverse condemnation compensation] stems directly from Ariz. Const. art. 2, § 17, which provides that private property shall not be taken without just compensation. *State v. Hollis,* 93 Ariz. 200, 203, 379 P.2d 750, 751 (1963); *Pima County v. Bilby,* 87 Ariz. 366, 370, 351 P.2d 647, 649 (1960). This constitutional provision is self-executing. *Mohave County v. Chamberlin,* 78 Ariz. 422, 429-30, 281 P.2d 128, 133 (1955). An injured party must therefore be compensated, even though no specific statutory procedure governs this recovery. *Chamberlin,* 78 Ariz. at 429-30, 281 P.2d at 132-33.

Based on well-established rulings, Cave Creek must comply with state law and apply its land use regulation power "within the limits and in the manner prescribed in the grant." *City of Scottsdale v. Scottsdale, Etc.*, 583 P. 2d 891 (Ariz. 1978), quoting *City of Scottsdale v. Superior Court*, 439 P. 2d 290 (Ariz. 1968).

Cave Creek's Zoning Administrator has no discretion;[74] he "shall" provide

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[73] Surveys: MCRD 2002-0256784, 2003-0488178, 2003-1312578; DEMA: MCRD 2003-1472588. Cave Creek falsely attested in the surveys that the strips of land Cave Creek required to approve the lot split were conveyed or dedicated to the Town. Instead, they became 4th lots to render the parcels illegal and blocked reciprocal easement access, rendering the DEMA void *ab initio*.

[74] Applicable federal, state, and municipal law in this matter use "language of an unmistakably mandatory character, requiring that certain procedures 'shall,' 'will,' or 'must' be employed," creating a constitutionally protected interest. *Hewitt v. Helms*, 459 U.S. 460 (1983).

notice, takings reports that establish the essential nexus of rough proportionality, and hearings to establish the legal status of the property and just compensation. Cave Creek and its Zoning Administrator "shall" strictly comply with its regulatory Subdivision and Zoning Ordinances and cease criminality per ZO § 1.7. *See* n. 6, 19-22. Zoning Ordinances are presumed valid; *Euclid v. Ambler Realty Co.,* 272 U.S. 365 (1926). See *Federal Crop Ins. Corp. v. Merrill,* 332 U.S. 380, 387-388 (1947) (Jackson, J., dissenting): "It is very well to say that those who deal with the Government should turn square corners. But there is no reason why the square corners should constitute a one-way street."

Petitioner has a continuous right of entitlement that the State of Arizona and all its political subdivisions comply with all U.S. Supreme Court Rulings regarding constitutional rights. "A threshold requirement to a substantive or procedural due process claim is the plaintiff's showing of a liberty or property interest protected by the Constitution." *Wedges/Ledges of California, Inc. v. City of Phoenix,* 24 F.3d 56, 62 (9th Cir. 1994). "A protected property interest is present where an individual has a reasonable expectation of entitlement deriving from 'existing rules or understandings that stem from an independent source such as state law.' " *Id.,* quoting *Bd. of Regents v. Roth,* 408 U.S. 564, 577 (1972). *See* A.R.S. §§ 9-500.12 and 9-500.13.

To time-bar property rights violations without notice or *Nollan/Dolan* protections conflicts with established policies of estoppel. See *Utah Power & Light Co. v. United States,* 243 U.S. 389, 408-409 (1917), government "is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit." See also *Office of Personnel Mgmt. v. Richmond,* 496 U.S. 414, 422 (1990)), *cert. denied;* 519 U.S. 807 (1996) (noting that the Supreme Court has reversed every finding of estoppel against the government that it has reviewed).[75] "[I]t is appropriate that the Govern-

[75] "[C]ourts cannot estop the Constitution." *Office of Personnel Management v. Richmond*, 496 U.S. 414, 434 (1990). "[T]he Supreme Court has repeatedly indicated that an estoppel will rarely work against the government." *Conforti v. United States,* 74 F.3d

ment now be estopped from raising the Statute of Limitations against [Petitioner]... in order to prevent manifest injustice." *Walsonavich v. United States*, 335 F. 2d 96, 101 (3rd Cir. 1964). See also *Portmann v. United States*, 674 F. 2d 1155 (7th Cir. 1982), citing numerous cases where Government oversteps its authority to commit constitutional violations to be estopped from committing further violations.

Failing to disclose Government misconduct to obtain favorable court rulings based on statutes of limitations is a form of entrapment. Government "blames" Petitioner for Government wrongs because Petitioner did not discover the misconduct to file claims within artificial timeframes created by Governments' legislatures to dismiss claims—a takings. For example, Cave Creek induced Petitioner into believing that selling lot 010C was lawful because the Town "approved" the lot split surveys of parcel 010 in 2001-2003. However, Cave Creek's exaction of a strip of land was a 4th lot that converted parcel 010 into an illegal subdivision such that sale of any portion thereof is unlawful per A.R.S. § 9-463.03 (App. 41) until a final plat map is recorded in conformance with the Town's subdivision ordinance. Government inducement has precluded a valid conviction (or dismissal of claims in this instance) on the ground of entrapment at least since *Woo Wai v. United States,* 223 F. 412 (9th Cir. 1915). See also *Sorrells v. United States*, 287 U.S. 435, 445 (1932), citing *Newman v. United States*, 299 F. 128 (4th Cir. 1924): "When the criminal design originates, not with the accused, but is conceived in the mind of the government officers, and the accused is by persuasion, deceitful representation, or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor."[76] As pled in Petitioner's Complaint, argued in Superior and District Courts, and argued in his Ninth Circuit Briefs and Rehearing Petitions—

838, 841 (8th Cir. 1996) (citing *Office,* at 423), *cert. denied,* 519 U.S. 807 (1996). See *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 (Ariz. Ct. App. 2004), relying upon *Valencia Energy v. Ariz. Dep't of Revenue,* 959 P.2d 1256, 1267, ¶ 35 (1998) (government not estopped from correcting mistake of law).

[76] Throughout litigation, Respondents have consistently used *ad hominem* attacks to paint *pro se* Petitioner in false light instead of addressing their ongoing violations.

all to walls of silence—nothing precludes government entities in this case from correcting its property rights violations and compensating for the complete wipeout of Petitioner's investment-backed expectations as provided by law.

IV. "Equity Abhors a Forfeiture" & "Equity Follows the Law:" *Stop the Beach* Needs Review per Just Compensation for Judicial and Other Government Takings; Remedies are Required for Ongoing Violations[77]

The Ninth Circuit decision below is wrong.[78] It ignored U.S. Supreme Court rulings to use *Lukovsky v. City & County of San Francisco*, 535 F.3d 1044, 1047 (9th Cir. 2008) in *de novo* review of District Court's dismissal. (App. 1-2) *Lukovsky* was a generic employment discrimination §1983 case with no continuing violation issues per *Morgan, O'Connor*, and *O'Rourke* above. *Lukovsky* did not require notice per *Mullane, Nollan/Dolan* property rights protections, and *Lucas/First English* just compensation.

The Ninth Circuit cited *Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 974 (9th Cir. 2004) (App. 2) to affirm that District Court "properly" dismissed ALL of Petitioner's §1983 claims based on an artificial application of Arizona's personal injury statutes of limitations, A.R.S. § 12-542 (App. 58). But there was no requirement in *Cholla* for a government entity to provide notice per *Mullane,* protect property rights per *Nollan/Dolan,* and pay just compensation per *Lucas/First English* in mandatory law per A.R.S. §§ 9-500.12 & 9-500.13 designed to protect Petitioner. Cave Creek's continuous statutory violations were exposed and admitted to on August 29, 2016.

District Court relied on state rulings[79] (CV2009-050821 & 1 CA-CV 12-0238)

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[77] "What is the justification for depriving [people] of [their] ***rights***, a pure evil as far as it goes, in consequence of the lapse of time?" Oliver W. Holmes Jr., *The Path of the Law,* 10 Harv. L. Rev. 457, 476 (1897) (emphasis added). In *Republic of Austria v. Altmann,* 541 U.S. 677 (2004), this court bent the Foreign Sovereign Immunities Act (FSIA) to retroactively redress an evil from which the case arose.

[78] See *Barrett v. United States,* 798 F.2d 565, 575 (2d Cir.1986) ("Unconstitutional deprivation of a cause of action occurs when government officials thwart vindication of a claim by violating basic principles that enable civil claimants to assert their rights effectively.").

[79] Petitioner's complaint alleged Cave Creek committed constructive fraud and fraud on the court per Rule 60(d)(3). Petitioner's claims are plausible on their face as Cave Creek's official policy denies *Mullane* notice to defy *Nollan/Dolan* protections to obtain exactions without paying just compensation in violation of *Lucas/First*

that did not address §1983 claims for equal protection, due process violations, and a takings without notice or *Nollan/Dolan* protections. "To determine the preclusive effect of a state court judgment, federal courts look to state law." *Intri–Plex Techs., Inc. v. Crest Group, Inc.,* 499 F.3d 1048, 1052 (9th Cir. 2007) (citation omitted). "Under Arizona law, a claim is barred by res judicata if a court previously issued a final judgment on the merits involving the same cause of action with the same parties." *Chaney Bldg. Co. v. City of Tucson,* 716 P.2d 28, 30 (1986). Arizona uses the "same evidence" test for determining if an earlier action is the same as the current action. *See Phoenix Newspapers, Inc. v. Dep't of Corrections, State of Ariz.,* 934 P.2d 801, 804 (Ariz. Ct. App. 1997). Because the "same evidence" test is quite liberal, it allows a plaintiff to avoid preclusion "merely by posturing the same claim as a new legal theory," even if both theories rely on the same underlying occurrence. *Phoenix Newspapers, Inc.,* 934 P.2d at 805. Petitioner's new legal theories rely on recent discoveries.[80] Cave Creek did not disclose its *Mullane* notice violations to avoid *Nollan/Dolan* protections and *Lucas/First English* just compensation in A.R.S. §§ 9-500.12 & 9-500.13 until 2016. Petitioner's rights have been obfuscated and continuously violated since 2001.[81]

English et progeny per A.R.S. §§ 9-500.12 & 9-500.13. 1 CA-CV 12-0238 also relied on the DEMA, now void *ab initio*, such that the ruling in CV2009-050821 can be vacated per Rule 60(b)(4),(5), or (6). *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 547 (2007).

[80] Until Cave Creek complies with *Nollan/Dolan/Koontz* protections, statutes of limitations do not run per A.R.S. §12-821.01(C) as administrative remedies in A.R.S. §§ 9-500.12 & 9-500.13 are not exhausted, precluding *Williamson* ripeness and finality. See *Asociación de Suscripción Conjunta del Seguro de Responsabilidad Obligatorio v. Juarbe-Jiménez,* 659 F.3d 42, 51 (1st Cir. 2011) (collecting cases "reasoning that because the constitutional injury is not complete until the claim becomes ripe, the statute of limitations cannot accrue before that point in time"); *Royal Manor, Ltd. v. United States*, 69 Fed. Cl. 58, 61 (2005) ("[A] regulatory takings claim will not accrue until the claim is ripe."). See *Nat'l Park Hospitality Ass'n v. Dep't of Interior,* 538 U.S. 803, 807-08 (2003). To determine otherwise "could potentially deprive [property owners] of the ability to file a takings claim at all." *Ladd v. United States,* 630 F.3d 1015, 1024 (Fed.Cir.2010).

[81] "To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." *Bailey v. Glover,* 88 U.S. (21 Wall) 342, 349 (1874).

Petitioner should not have to indefinitely bear the ongoing excessive costs, fines, taxes, delays and losses of investment-backed expectations from *ultra vires* permits and illegal property caused by government. He should not have to endure a life-sentence of litigation fighting for unalienable rights nor be inflicted by cruel and unusual conspired harms due to government's malfeasance and failure to comply with mandatory law. Such burdens amount to a Takings of life, liberty, and property, in violation of the Eight Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Petitioner is entitled to payment of just compensation for land, sewer, downzoning, false light damages, reimbursement for void permits, bad faith delay, treble[82] damages for false documents, RICO, the wipeout of Petitioner's investment-backed expectations, his livelihood, and retirement per *Lingle* at 538, citing *Loretto*, *Lucas*.

Petitioner respectfully requests this Court fashion a remedy per 28 U.S.C. § 2106 (App. 20) to order an evidentiary hearing[83] to award damages per metrics of state law and Town ordinances for the *prima facie* takings of Petitioner's property and wipeout of his investment-backed expectations by Cave Creek violating *Mullane*, *Nollan, Dolan, Lucas, and First English*. AMRRP, the State, and Maricopa County should be jointly and severally liable for payment of just compensation. AMRRP and Cave Creek share attorneys, jointly winning favorable rulings by fraud on the court. AMRRP is liable for advising and insuring Cave Creek in bad faith. Maricopa Coun-

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[82] *i.e.* treble damages per A.R.S. § 13-2314.04 for racketeering and A.R.S. § 33-420 for causing recordation of documents with material misstatements described herein.

[83] Per *Williamson*, this matter never should have been 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) (App.63). Abstention doctrines also apply. Damages are warranted for *prima facie* takings. If remanded to District Court, then Petitioner requests a change of judge to prevent similar errors and biases against Petitioner as manifest in forum/judge-shopping of 2:16-cv-03260-PHX-DJH, his personal injury case from getting hit and run over by a truck, which was also improperly removed from state court. *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 Petitioner's request for extensions and appointing council to grant Respondents' dismissals in this case while he was incapacitated for 8+ months.

ty joined Cave Creek in converting the surveys into illegal subdivision without notifying Petitioner when they assessed and continue to tax the unlawful lots. The State is responsible for actions[84] by its political subdivisions and inadequate legislation to safeguard private property when government actors violate federal law. The State is responsible for its judicial takings in underlying cases that took Petitioner's property. Petitioner also requests sanctions per A.R.S. § 12-349 (App. 58), FRAP 46(b)(c), Ninth Circuit Rule 46-2, and Circuit Committee Notes 46-2.

Paraphrasing Justice Kagan's comments at the UCLA School of Law in 2018: "The court's strength as an institution of American governance depends on people believing it has...legitimacy...that its decision making has...integrity. If people don't believe that, they have no reason to accept what the court does." If courts apply synthetic[85] statutes of limitations to Constitutional rights, then property owners must be warned with *Mullane* notice or people have no reason to accept what the court does.[86]

For Justice Scalia's construction of Judicial Taking per *Stop the Beach* in Questions Presented and n.50 to be congruent with the Fifth Amendment[87], payment of just compensation is due when a Court engages in a takings—not an Escher staircase of unending litigation.

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[84] See n. 71 herein. "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).

[85] There are no statutes of limitations in the First, Fifth, Eighth, Fourteenth or other Amendments in the U.S. Constitution, nor in 42 U.S.C. §§ 1983, 1985, 1988, and many other U.S. Codes enacted by Congress. Statutes of limitations are applied by the courts as a judicial takings, and by legislatures as a legislative takings.

[86] "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). "A judge loses absolute immunity...when [the judge] acts in the clear absence of all jurisdiction or performs an act that is not judicial in nature." *Schucker v. Rockwood,* 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam)

[87] See also *Hughes v. Washington*, 389 U.S. 290, 298 (1967): "[T]he Due Process Clause of the Fourteenth Amendment forbids such confiscation by a State, no less through its courts than through its legislature, and no less when a taking is unintended than when it is deliberate." (Stewart, J., *concurring*)

CONCLUSION

For reasons stated, the Court should grant certiorari and overturn the rulings by the Ninth Circuit Court of Appeals in this matter.

Respectfully submitted.

Arek R. Fressadi, *Petitioner Pro Se*

MARCH 5, 2019.