

19-8789

No. _____

ORIGINAL

Supreme Court, U.S.
FILED
JUN 17 2020
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Susana E. Verduzco — PETITIONER

(Your Name)

VS.

Kimberly A. Mulligan, Arizona Medical Board — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS STATE OF ARIZONA DIVISION ONE

NINTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Susana E. Verduzco

(Your Name)

REDACTED

(Address)

REDACTED

(City, State, Zip Code)

REDACTED

(Phone Number)

QUESTIONS PRESENTED

I. Do the U.S. Constitution and federal law(s) grant Mr.'s Donald Trump and William Barr, the **absolute power** to order, allow or strong-arm a state to solicit, support and illegally endorse the **unwarranted federal government intrusion** in a state's legal action between a citizen of a State and a person who is a resident of the same state for a cognizable breach of a "doctor-patient" contract and overt violations of that state's laws if the U.S. Executive order blurs the lines of federalism, categorically overthrows the state government and is racially driven and not in the interest of the U.S. Judicial integrity, or the People?

II. Do the U.S. Constitution and federal law(s) grant Donald Trump and William Barr, the power to grant **absolute immunity** to a state or federal government employee who, with grave indifference, **knowingly, willingly, intentionally, and deliberately: (1) stepped outside** the standard of care as an American anesthesiologist; **(2) acted in bad faith; (3) breached the express terms** of a contract; **(4) admitted to** the commission of the violent crime of **attempted murder** and **aggravated assault** with deadly force, and a deadly instrument against the victim and then bar the victim of this heinous and violent crime from filing a police report and a personal law suit against the federal government employee(s) because Petitioner is a citizen of a foreign state in Mexico?

III. Do the U.S. Constitution and federal law(s) grant the U.S. Executive Branch, under the direction of Mr. Trump and Mr. Barr, the power to **collude** and **conspire to obstruct justice with no due process** in this case because of Petitioner's gender and immigration status or are all of the bad actors racist and un-American?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Federal Actors

Donald J. Trump

William Barr

Kimberly A. Mulligan (Respondent)

Judge Dominic Lanza

Michael Bailey

Kwan Piensook

Peter Lantka

Cynthia Hernandez

Federal Agency

U.S. President

OAG/DOJ

VHA Employee

AZ Fed. D. Ct

US Atty. for AZ

US Asst. Atty. AZ

US Atty. AZ

VA - OGC

State Actors

Judge Sherry Stephens

Kimberly A. Mulligan (Respondent)

Patricia McSorley (Respondent)

Mark Brnovich

Carrie Smith

Doug Ducey

Krysten Sinema

Ruben Gallego

State Agency

PHX S. Ct.

AZMB

AZ Medical Board

AZ OAG

AZ Asst. OAG

AZ Governor

Sen. AZ (R)

Rep. AZ (D)

RELATED CASES

City of Phoenix Police Department Case No.: 2020-98058 (Active).

U.S. DOJ: CV-2019-007-642/ CV-19-04745/ CV-20-00049 (Declined & Returned)

VA Administrative Tort Claim No.: GCL # 406970 (Denied).

Verduzco v. Hon. Judge Lanza, USCA Ninth Circuit: 20-15255 (Dismissed).

Verduzco v. Mulligan, CV-19-04745-PHX-DWL (Dismissed).

Verduzco v. Hon. Judge Stephens, 1 CA-SA 20-0063 (Dismissed).

AZ Medical Board Case No.: MD-19-0504A (Dismissed).

AZ State Attorney General Case No.: 2020-0156 (Declined).

Verduzco v. US Attorney's Office et al., CV-20-00049-PHX-DGC (Active).

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- APPENDIX B Decisions of the US District Court of AZ (Dismissed)
- APPENDIX C Decision of AZ Court of Appeals, Div. 1 (Dismissed).
- APPENDIX D Decision of AZ Maricopa County Superior Court (**Open**)
- APPENDIX E Department of Justice (Contradictory Statements).
- APPENDIX F Decision of the HHS and the VA (Denied).
- APPENDIX G Decision of AZ Medical Board (Dismissed).
- APPENDIX H Decision of AZ State Attorney General (Declined).
- APPENDIX I AZ Representative Gallegos, Ruben (D) (Declined Oversight)
- APPENDIX J AZ Senator Sinema, Krysten (R) (Ignored Oversight Request)
- APPENDIX K Statement to proceed in Forma Pauperis filed by Petitioner at the Maricopa County Superior Court.
- APPENDIX L Statement to proceed in Forma Pauperis filed by Petitioner at the Ninth District US Court of Appeals.
- APPENDIX M Statement to proceed in Forma Pauperis filed by Petitioner acknowledged by AZ Court of Appeals, Div. 1.

TABLE OF AUTHORITIES CITED (p.1)

Medical Malpractice Cases:

Barnett v. Bachrach, 34 A.2d 626 (Munn. App. D.C., 1943): invasive procedure **performed without consent while anesthetized** – removal of appendix (emphasis added).18, 23

Boyce v. Brown, 51 Ariz. 416 (Ariz. 1938): “In order to sustain a verdict for the plaintiffs in an action for malpractice, the **standard of medical practice in the community must be shown by affirmative evidence**, and, unless there is evidence of such a standard, a jury may not be permitted to speculate as to what the required standard is, or whether the defendant has departed therefrom (emphasis added).18, 23

Cavero v. Franklin General Benevolent Soc., 36 Cal. 2.d 301: **death by erratic administration of anesthetic agents** (emphasis added).18, 23

Civil Rights Cases, 109 U.S. 3 (1883): “The **wrongful act of an individual, unsupported by state [or federal] authority in the shape of laws, customs, or judicial or executive proceedings, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party**” (emphasis added).18, 22, 23, 31

Edwards v. Roberts, 12 Ga. App. 140, 76 S.E. P 1054: invasive procedure **performed without consent while anesthetized** – removal of ovary (emphasis added).18, 23

Franklyn v. Peabody, 249 Mich. 363, 228 N.W. 68: invasive procedure **performed without consent while anesthetized** – removal of *fascia lata* (emphasis added).18, 23

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Medical Malpractice Cases (cont.):

Hively v. Higgs, 120 Ore. 588, 253 P. 363, 53 A.L.R. 1052: invasive procedure **performed without consent while anesthetized** – removal of tonsils (emphasis added).19, 24

Mohr v. Williams, 95 Minn. 261, 104 M.W. 12 (1905): invasive procedure **performed without consent while anesthetized** – left ear surgery (emphasis added).....19, 24

Pollard v. United States, 384 F. Supp. 304 (M.D. Ala. 1974): death from invasive procedures **performed without consent** (emphasis added).....19, 24

Revels v. Pohle, 101 Ariz. 208 (Ariz. 1966): “expert testimony is not required where ***** the negligence is so grossly apparent that a layman would have no difficulty in recognizing it.**’ *Boyce v. Brown*, supra, at page 421, 77 P.2d at page 457.” (emphasis added).19, 24

Rolator v. Strain, 39 Okla. 572, 137 P.96. 50 L.R.A. (N.S.) 880: invasive procedure **performed without consent while anesthetized** – removal of bone (emphasis added).19, 24

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Medical Malpractice Cases (cont.):

Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92 (1914): “**a surgeon who performs an operation without his patient’s consent commits an assault for which he is liable in damages ...**” (emphasis added).....**19, 22, 24**

Sinz v. Owens, 33 Cal.2d 749 [11]: “Applying that rule to the facts of the present case and considering the indefinite and conflicting evidence upon the degree of disability suffered by Sinz, the **lack of a clear showing** that the leg could have been completely cured in the exercise of due care, and his life expectancy, it cannot be said that the trial court abused its discretion in granting the new trial...” (emphasis added).**19, 24**

Tripp et al. v. Arizona Board of Regents, C20150725 (Ariz. Sup. Ct., Pima County): Brain damage caused by drug-to-drug interaction.....**19, 24, 28**

Ybarra v. Spangard, (1944): **injured shoulder sustained during appendectomy while anesthetized** (emphasis added).**19, 24**

Zoterell v. Repp, 187 Mich. 319, 153 N.W. 692: invasive procedure **performed without consent while anesthetized** – removal of ovary (emphasis added).**19, 24**

TABLE OF AUTHORITIES CITED (p.4)

Relevant Arizona State Laws:

A.R.S. 12-542(1) – “Injury to person; **(1) For injuries done to the person of another including causes of action for medical malpractice** as defined in section 12-561” (emphasis added). [Appendices C, D, G – J].....**18, 20, 22**

A.R.S. 12-561(2) – “Cause of action for medical malpractice: **an action for injury or death against a licensed health care provider based upon such provider's alleged negligence, misconduct, errors or omissions, or breach of contract** in the rendering of health care, medical services... **without express or implied consent**” (emphasis added). [Appendices C, D, G – J].....**18, 20, 22**

A.R.S. 13-105 – Pertinent Definitions: “‘Culpable mental state’ means intentionally, knowingly, recklessly or with **criminal negligence** as those terms are defined in this paragraph [Appendices C, D, G – J]:

(a) ‘Intentionally’ or ‘with the intent to’ means, with respect to a result or to conduct described by a statute defining an offense, that **a person's objective is to cause that result or to engage in that conduct** (emphasis added).

(b) ‘Knowingly’ means, with respect to conduct or to a circumstance described by a statute defining an offense, that **a person is aware or believes that the person's conduct is of that nature or that the circumstance exists**. It does not require any knowledge of the unlawfulness of the act or omission (emphasis added).....**18, 19, 20**

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Relevant Arizona State Laws (cont.):

A.R.S. 13-105 – "Culpable mental state" (cont.) [Appendices C, D, G – J]:

(c) 'Recklessly' means, with respect to a result or to a circumstance described by a statute defining an offense, **that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.** The risk must be of such nature and degree that disregard of such risk constitutes a **gross deviation from the standard of conduct** that a reasonable person would observe in the situation. A person who creates such a risk but who is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk (emphasis added).....18, 19, 20

(d) 'Criminal negligence' means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. **The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation"** (emphasis added).....18, 19, 20

11. 'Dangerous drug' means dangerous drug as defined in section 13-3401.

12. 'Dangerous instrument' means **anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury"** (emphasis added).

TABLE OF AUTHORITIES CITED (p.6)

Relevant Arizona State Laws (cont.):

A.R.S. 13-105 – "Culpable mental state" (cont.) [Appendices C, D, G – J]:

13. 'Dangerous offense' means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person (emphasis added).....18, 19, 20

14. 'Deadly physical force' means force that is used with the purpose of causing death or serious physical injury or in the manner of its use or intended use is capable of creating a substantial risk of causing death or serious physical injury (emphasis added).....18, 19, 20

20. 'Government' means the state, any political subdivision of the state or any department, agency, board, commission, institution or governmental instrumentality of or within the state or political subdivision (emphasis added).18, 19, 20

21. 'Government function' means any activity that a public servant is legally authorized to undertake on behalf of a government" (emphasis added).....18, 19, 20

A.R.S. 13-110 – "Immunity from personal liability: Members, agents and employees of the board, members of advisory committees and statutorily established committees of the board and registrants volunteering professional

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Relevant Arizona State Laws (cont.):

services to emergency services personnel at the scene of a disaster as part of an authorized board program are **immune** from personal liability with respect to acts done and actions taken in **good faith** within the scope of their authority” (emphasis added). [Appendices C, D, G – J].....**18, 20**

A.R.S. 13-1001 (A)(1)(2) – Attempt; classifications: “A. A person commits attempt if, acting with the kind of culpability otherwise required for commission of an offense, such person:

1. **Intentionally engages** in conduct which would constitute an offense if the attendant circumstances were as such person believes them to be; or
2. **Intentionally does or omits to do** anything which, under the circumstances as such person believes them to be, is any step in a course of conduct planned to culminate in commission of an offense” (emphasis added). [Appendices C, D, G – J].....**18**

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Relevant Arizona State Laws (cont.):

A.R.S. 13-1204 – “A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:

1. If the person **causes serious physical injury** to another (emphasis added). [Appendices C, D, G – J].....**18, 20, 22**

2. If the person **uses a deadly weapon or dangerous instrument** (emphasis added). [Appendices C, D, G – J].**18, 20, 22**

3. If the person commits the **assault by** any means of **force** that causes temporary but substantial disfigurement, temporary but substantial loss or **impairment of any body organ** or part or a fracture of any body part” (emphasis added). [Appendices C, D, G – J].....**18, 20, 22**

A.R.S. 13-3401 – Definitions: “In this chapter, unless the context otherwise requires: 1. "**Administer**" means to apply, inject or facilitate the inhalation or ingestion of a substance to the body of a person; 21. "**Opium**" means any compound, manufacture, salt, isomer, salt of isomer, derivative, mixture or preparation of the following but does not include apomorphine or any of its salts: “... (p)... "**Hydromorphone**” (emphasis added). [Appendices C, D, G – J].**18, 20**

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Relevant Arizona State Laws (cont.):

A.R.S. 32-1491(B)(E)(G) – “(B) A doctor of medicine **MAY NOT** dispense a schedule II controlled substance that is an **opioid**, **EXCEPT** for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders”; (E) “A doctor **SHALL DISPENSE ONLY** to the doctor's own patient and only for conditions being treated by that doctor. The doctor shall provide ‘direct supervision’ of a medical assistant, nurse or attendant involved in the dispensing process. . . [which] means that a doctor is present and makes the determination as to the legitimacy or the advisability of the drugs or devices to be dispensed”; (G) “For the purposes of this section, ‘**dispense**’ means the delivery by a doctor of medicine of a prescription drug or device to a patient” (emphasis added). [Appendices C, D, G – J].**18, 19, 20, 22**

A.R.S. 32-3201.01 – Definition of medication-assisted treatment: “... ‘medication- assisted treatment’ means the use of **pharmacological medications that are approved by the United States Food and Drug Administration**, in combination with counseling and behavioral therapies, to provide a whole patient approach to the treatment of substance use disorders” (emphasis added). [Appendices C, D, G – J].....**18, 19, 20**

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Relevant Arizona State Laws (cont.):

ARCP Rule 12(a)(1)(A)(i) – Defenses: “(a) Time to File and Serve a Responsive Pleading. (1) *Generally*. Unless another time is specified by rule or statute, the time for filing and serving a responsive pleading is as follows: (A) A **defendant** or third-party defendant **must file and serve an answer** or other responsive pleading: (i) **within 20 days after being served with the summons and complaint**, except as otherwise provided in Rules 4.2(d)(3) and (m)...” (emphasis added). [Appendices C & D].....16

ARCP Rule 36(4) – “**A matter is admitted unless, within 30 days after being served**, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be agreed to by the parties or ordered by the court” (emphasis added). [Appendices C & D].....16

ARCP Rule 55 (a)(1) – “**(a) Entering a Default.** (1) *Generally*. If a party against whom a judgment for affirmative relief is sought has **failed to plead or otherwise defend as provided in these rules, default may be obtained under the procedures set forth in this rule**” (emphasis added). [Appendices C & D].....16

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Federal Scope of Employment for Anesthesiologists:

Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTCA): “Makes such Act the exclusive remedy for actions brought against the United States for injury or loss of property, personal injury, or death resulting from the negligent or wrongful act or omission of a Government employee acting within the scope of his or her office or employment; **EXCEPT** that **this restriction shall not apply to cognizable actions against Government employees for money damages for a violation of the Constitution**” (emphasis added). [Appendices A – J].....18

Veterans Health Administration (VHA) Scope of Employment for Anesthesia Services:

VHA Handbook 1004.01(4)(c) – Informed Consent for Clinical Treatment and Procedures: “VHA does not recognize ‘general’ or ‘blanket’ consent for medical treatment, but **requires the patient’s separate consent for each treatment, procedure,** therapeutic course of treatment for a particular problem or condition.” (emphasis added). [Appendix F]17

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VHA Scope of Employment for Anesthesia Services (cont.):

VHA Directive 1004.08 – Disclosure of Adverse Events to Patients (3)(d) “For purposes of this directive, **disclosure of adverse events refers to the forthright and empathetic discussion of clinically-significant facts between providers or other VHA personnel** and patients or their personal representatives **about the occurrence of a harmful adverse event, or an adverse event that could result in harm in the foreseeable future**” (emphasis added). [Appendix F].....**18, 23**

VHA Directive 1070 – “Adverse Drug Event Reporting and Monitoring (2) **must be reported to the national VA Adverse Drug Event Reporting System (VA ADERS), and the FDA**” (emphasis added). [Appendix F].....**18, 23**

VHA Directive 1108.01 (2)(f) – “Diversion means the **diversion of controlled substances from legal and medically necessary uses towards uses that are illegal and typically not medically authorized or necessary**” (emphasis added). [Appendix F]**18, 20**

VHA Handbook 1123(3)(a)(c) – Scope of Anesthesia Services (3) “The practice of anesthesiology includes, but is not limited to the: (a) Assessment of, **consultation for, and preparation of patients for anesthesia...** (c) **Monitoring and**

TABLE OF AUTHORITIES CITED (p.13)

VHA Scope of Employment for Anesthesia Services (cont.):

restoration of homeostasis during the perioperative period, as well as homeostasis **in the critically ill**, injured, or otherwise seriously ill patient (f) **Evaluation of respiratory function** and application of respiratory therapy **in all its forms”** (emphasis added). [Appendix F].18

VHA Directive 1123 – Scope of Anesthesia Services (4)(b) “During all anesthetics, the patient’s **oxygenation, ventilation, circulation, and temperature** must be **continually evaluated**. For body temperature, this means continual monitoring when significant changes in body temperature are intended, anticipated, or suspected” (emphasis added). [Appendix F].....18

TABLE OF AUTHORITIES CITED (p.14)

Immunity:

Butz v. Econonmou, 438 U.S. 478 (1987): “2. Without congressional directions to the contrary, it would be untenable to draw a distinction for purposes of immunity law between suits brought against state officials under 42 U.S.C. § 1983, *Scheuer v. Rhodes*, 416 U. S. 232, and suits brought directly under the Constitution against federal officials, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388. **Federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers.** Pp. 438 U. S. 496-504” (emphasis added). [Appendices A – J]23

Clinton v. Jones, 520 U.S. 681 (1997): “The Constitution does not grant a sitting president immunity from civil litigation except under highly unusual circumstances.” [Appendices A – E].....23

Harlow v. Fitzgerald, 457 U.S. 800 (1982): “**Qualified immunity** applies to presidential aides regarding their official actions, and it **can be penetrated only when they have violated clearly established statutory or constitutional rights**” (emphasis added). [Appendices B & E].23, 24

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Immunity (cont.):

United States v. Nixon, 418 U.S. 683: the Court held that neither the doctrine of separation of powers nor the generalized need for confidentiality ... can sustain absolute, unqualified, presidential privilege... “**the fundamental demands of due process of law in the fair administration of justice**” (emphasis added).

[Appendices B & E].....24

Aiding and Abetting [Appendix E]:

United States v. Chavez, 119 F.3d 342 (5th Cir. 1997);

United States v. Chin, 83 F.3d 83 (4th Cir. 1996);

United States v. DePace, 120 F.3d 233 (11th Cir. 1997);

United States v. Leos-Quijada, 107 F.3d 786 (10th Cir. 1997);

United States v. Lucas, 67 F.3d 956, 959 (D.C. Cir. 1995);

United States v. Pipola, 83 F.3d 556 (2d Cir.), *cert. denied*, U.S., 117 S.Ct. 183, 136 L.Ed.2d 122 (1996);

United States v. Powell, 113 F.3d 464 (3d Cir. 1997);

United States v. Sayetsitty, 107 F.3d 1405 (9th Cir. 1997);

United States v. Spears, 49 F.3d 1136 (6th Cir. 1995).

United States v. Spinney, 65 F.3d 231 (1st Cir. 1995);

United States v. Stands, 105 F.3d 1565 (8th Cir.), *cert. denied* (October 6, 1997) (No. 96-9541).....30

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Federalism Cases:

Arizona v. the United States, 567 U.S. 387: Provisions of S.B. 1070 were **preempted by federal immigration law related to immigration concerns** (emphasis added). [Appendices A – J].31

Civil Rights Cases, 109 U.S. 3 (1883): “The **wrongful act** of an individual, **unsupported by state [or federal] authority in the shape of laws, customs, or judicial or executive proceedings, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party**” (emphasis added). [Appendices A – J]18, 22, 23, 31

Material Misrepresentation Cases:

Franks v. Delaware, 438 U.S. 154 (1978): (c) “If, after a hearing, a defendant establishes by a **preponderance of the evidence that the false statement was included in the affidavit by the affiant knowingly and intentionally, or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause, then the search warrant must be voided, and the fruits of the search excluded from the trial to the same extent as if probable**

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Material Misrepresentation Cases (cont.):

cause was lacking on the face of the affidavit. Pp. 155-156” (emphasis added).
[Appendix E].....31

United States v. Clearfield, 358 F. Supp. 564 (E.D. Pa. 1973): “The elements of an offense under Section 1001 are: (1) that the **defendant made a statement**; (2) that the statement was false and the **defendant knew it was false**; (3) that the statement was made **knowingly and willfully**; (4) that the statement was **within the jurisdiction of a federal agency**; (5) that *the statement was material*” (emphasis added). [Appendix E].31

United States v. Schaffer, 600 F.2d 1120, 1122 (5th Cir. 1979): “**We find this instruction** as used here to be proper. Under recognized precedents for a prosecution under 18 U.S.C. § 1001 “**reckless indifference**” **can be equated with “knowingly and willfully”** (emphasis added). [Appendix E]31

United States v. West, 666 F.2d 16, 19 (2d Cir. 1981): “appellant’s claim of authorization constituted a valid affirmative defense which, once raised, **the government was required to disprove beyond a reasonable doubt ...**” (emphasis added). [Appendix E]32

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Fourth and Fourteenth Amendment & Due Process Cases:

Arizona v. the United States, 567 U.S. 387: Provisions of S.B. 1070 were **Preempted by federal immigration law related to immigration concerns** (emphasis added). [Appendices A – E].31

Brown v. Board of Education, 347 U.S. 483 (1954) “(c) “Where a State has undertaken to **provide an opportunity** for an education in its public schools, **such** an opportunity is a right which **must be made available to all on equal terms**. P. 493” (emphasis added). [Appendices A – J]...28, 31, 38

Guarro v. United States, 237 F.2d 578, 580 (D.C. Cir. 1956): “Assault at common law is ‘**an attempt with force or violence to do a corporal injury to another**; and may consist of any act tending to such corporal injury, **accompanied with such circumstances as denote at the time an intention, coupled with the present ability, of using actual violence against the person.**’ *Patterson v. Pillans*, 1915, 43 App. D.C. 505, 506-507.” (emphasis added). [Appendices A- J]19, 31

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Fourth and Fourteenth Amendment & Due Process Cases (cont.):

Illinois v. Gate, 462 US 213 (1983): totality of circumstances. [Appendix E].

Katz v. U.S., 389 US 347 (1967): **Expectation of privacy is one that society (through the Court) accepts as objectively reasonable** (emphasis added).

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Maryland v. King, 133 S. Ct. 1958 (2013): King’s expectation of privacy was greater than in Maryland’s interest in using DNA for identification purposes”

[Appendix E].....**31**

Mincey v. AZ, 437 U.S.C. 437 U.S. 385 (1978): “(b) Nor can the search be justified on the ground that a possible homicide inevitably presents an emergency situation, especially since **there was no emergency threatening life or limb**, Pp.

437 U. S. 392-393” (emphasis added). [Appendices C – E and G – J]**31**

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Fourth and Fourteenth Amendment & Due Process Cases:

Roe v. Wade, 410 U.S. 113 (1972): **protects against state action the right to privacy**, including a woman's qualified right to terminate her pregnancy (emphasis added). [Appendix E]**26, 28, 31, 38**

Schloendorff v. Society of New York Hospital, 211 N.Y. 125, 105 N.E. 92 (1914): **“a surgeon who performs an operation without his patient’s consent commits an assault for which he is liable in damages ... except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained.”** (emphasis added). [Appendix A – J]...**19, 22**

Shelley v. Kraemer, 334 U.S. 1 (1948): **Racially restrictive covenants supported by judicial enforcement in a State court is a violation of the Equal Protection Clause of the Fourteenth Amendment** (emphasis added). [Appendices A – J]**31**

Smith v. Am. Express Travel Related Servs. Co., Inc., 876 P.2d 1166, 1170 (Ariz. Ct. App. 1994): **“performing a service in furtherance of [the] employer’s business”** *Id.* at 1171) (citing *Ohio Farmers Ins. Co. v. Norman*, 594 P.2d 1026, 1028 (Ariz. Ct. App. 1979)” (emphasis added). [Appendices A – J].**31**

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Fourth and Fourteenth Amendment & Due Process Cases (cont.):

United States v. Leon, 468 U.S. 897 (1984): “**reasonable reliance** on a search warrant [or “Scope of Employment” certification] ... **ultimately found to be unsupported by probable cause.**” *Id.* at P. 468 U.S. 901 (emphasis added). [Appendix E].....31

United States v. Place, 462 U.S. 696 (1983): “**the prolonged seizure** of respondent's luggage **exceeded the limits of the type of investigative stop permitted by *Terry v. Ohio***, 392 U. S. 1, and hence amounted to a seizure without probable cause in violation of the Fourth Amendment. . . [T]he evidence obtained from the subsequent search of the luggage was inadmissible, and respondent's conviction must be reversed. Pp. 462 U. S. 700-710” (emphasis added). [Appendix E].....31

United States v. Wilson, 796 F.2d 55 (4th Cir. 1986), *cert. denied*, 479 U.S. 1039 (1987): Speaking to 18 U.S.C. §1512(b)(1) – “That statute reads in part: (b) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from – attending or testifying in an official proceedings applies only to conduct that actually s testimony.” The statute, and the

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Fourth and Fourteenth Amendment & Due Process Cases (cont.):

indictment upon which Wilson was tried, both state that ‘**attempts to dissuade testimony are sufficient for conviction**’ (emphasis added). [Appendices A – J].32

OTHER:

Food & Drug Administration (FDA): national warning about an increase in adverse and deadly drug-to-drug interactions specifically caused by hydromorphone (a schedule II controlled substance that is an opioid) with SSRI’s (“Serotonin syndrome – FDA” published 03/22/2016, www.fda.gov). [Appendices A – J].....32

American Society of Anesthesiologists – written standards for “anesthesia care and basic monitoring and are intended to encourage quality patient care” (<https://www.asahq.org/standards-and-guidelines>). [Appendices A – J].....32

American Medical Association – Code of Medical Ethics: “... articulated values to which physicians commit themselves as members of the medical profession” (<https://www.ama-assn.org/delivering-care/ethics>) [Appendices A – J].....32

the judgment below.

at Appendix _____ to

_____ ; or,
ported; or,

Appendix _____ to

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is court

_____ ; or,
ported; or,

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 02/27/2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 04/27/2020.
A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: 05/08/2020, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

U.S. CONSTITUTIONAL PROVISIONS INVOLVED

(obtained from senate.gov):

Article VI Clause 2: “**This Constitution**, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding” (emphasis added). [Appendices A – J].

“**The Senators and Representatives** before mentioned, and the **Members of the several State Legislatures, and all executive and judicial Officers**, both of the United States and of the several States, **shall be bound by Oath or Affirmation, to support this Constitution ...**” (emphasis added). [Appendices A – J].

U.S. CONSTITUTIONAL PROVISIONS INVOLVED

(obtained from senate.gov):

Amendment I (1791): freedom of speech and the **right of the people** to petition the Government for a redress of grievances (emphasis added).

Amendment IV (1791): the **right of the people** to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated (emphasis added).

Amendment V (1791): **No person** shall be deprived of life, liberty, or property, without due process of law (emphasis added).

Amendment VI: The Court has held that the Sixth Amendment, in addition to guaranteeing the right to retained or appointed counsel, also **guarantees a defendant the right to represent himself**.

Amendment VII (1791): In suits at common law, where the value in controversy shall exceed twenty dollars, the **right of trial by jury** shall be preserved (emphasis added).

Amendment VIII (1791): **Cruel and unusual punishment inflicted** (emphasis added).

Amendment IX (1791): The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained **by the people** (emphasis added).

Amendment X (1791): **The powers** not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or **to the people** (emphasis added).

Amendment XI (1795/1798): The Judicial power of the United States SHALL NOT be construed to extend to any suit in law commenced against a **United States Citizen by a Citizen of any Foreign State** (emphasis added).

Amendment XIV (1868): **No State** shall deprive **any person** of life, liberty, or property, without any **due process of law**; nor deny to any person within its jurisdiction the **equal protection of the laws** (emphasis added).

FEDERAL STATUTORY PROVISIONS INVOLVED

18 U.S.C. §2 – **Principals**: “(a) Whoever commits an offense against the United States or **aids, abets, counsels, commands**, induces or procures its commission, is punishable as a principal. (b) Whoever **willfully causes** an act to be done which if directly **performed by** him or **another** would be an offense against the United States, is punishable as a principal” (emphasis added). [Appendices A -J].

18 U.S.C. §3 – **Accessory after the fact**: “Whoever, **knowing that an offense** against the United States **has been committed**, receives, relieves, comforts or assists the offender in order to **hinder or prevent his apprehension, trial or punishment**, is an accessory after the fact” (emphasis added). [Appendices A -J].

18 U.S.C. §4 – **Misprison of felony**: “Whoever, **having knowledge** of the actual commission of a felony **cognizable by a court of the United States**, **conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States**, shall be fined under this title or imprisoned not more than three years, or both” (emphasis added). [Appendices A -J].

FEDERAL STATUTORY PROVISIONS INVOLVED

18 U.S.C. §16 – **Crime of Violence Defined:** “The term ‘crime of violence’ means— (a) an offense that has as an element **the use, attempted use, or threatened use of physical force against the person or property** of another, or (b) **any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense**” (emphasis added).

[Appendices A -J].

18 U.S.C. §208 – **Federal Conflict of Interest:** “the basic criminal conflict of interest statute, **prohibits an executive branch employee from participating personally, and substantially in a particular Government matter that will affect his own financial interests, as well as the financial interests of: [h]is spouse or minor child; [h]is general partner**” (emphasis added). [Appendices A -J].

18 U.S.C. §1001(a) – **Statements or Entries Generally:** “Except as otherwise provided in this section, **whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully— (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any**

FEDERAL STATUTORY PROVISIONS INVOLVED

false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned..." (emphasis added). [Appendices A – J].

18 U.S.C. §1512 – **Tampering with a witness, VICTIM, or an informant:** "... Harassment, **threat by physical force and intentional hinderance of the judicial process**" (emphasis added). [Appendices A – J].

21 U.S.C. §812(b)(2)(B) – **Placement on schedules: Schedule II:** "The drug or other substance has a currently accepted medical use in treatment in the United States or a **currently accepted medical use with severe restrictions**" (emphasis added). [Appendices A – J].

21 U.S.C. §841(a) – **Controlled Substance:** "It shall be **unlawful for any person** to knowingly or intentionally... distribute or dispense or possess with intent to... distribute or dispense a controlled substance... **except where authorized**" (emphasis added). [Appendices A – J].

22 U.S.C. §2702 – **Malpractice Protection:** "a suit **against** the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful acts or omissions of federal employees taken within the

FEDERAL STATUTORY PROVISIONS INVOLVED

scope of their office or employment” (emphasis added). [Appendices A – J].

28 U.S.C. §547(1)(2) – **Duties:** “Except as otherwise provided by the law, each United States attorney, within his district shall – (1) prosecute for all **offenses against the United States**; (2) prosecute or defend, **for the Government**, all civil actions, suits or proceedings in which the United States **is concerned...**” (emphasis added). [Appendices A – J].

28 U.S.C. §1332(a)(1), (2) – **District Court Jurisdiction:** “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between— (1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state, **except that the district courts shall not have Original jurisdiction** under this subsection **of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State.**” (emphasis added). [Appendices A – J].

28 U.S.C. §2679(b)(2) – **Exclusive Remedy:** “Paragraph (1) **does not extend or apply** to a civil action against an employee of the Government – (A) which is

FEDERAL STATUTORY PROVISIONS INVOLVED

brought for a violation of the Constitution of the United States, or (B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized” (emphasis added).

[Appendices A – J].

28 U.S.C. §2679(d)(1)(2) – **Exclusiveness of Remedy.**

38 U.S.C. §7331 – **Informed Consent:** “**all medical** and prosthetic research carried out, and, to the maximum extent practicable, all patient care furnished under this title shall be carried out **only with the full and informed consent of the patient** or subject...” (emphasis added). [Appendices A – J].

42 U.S.C. 1986 – **Action for Neglect to Prevent:** “[**anyone**] having **knowledge** that any of [wrong] to be done ... **and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed shall be liable to the party injured ... for all damages caused by such wrongful act, which such person, by reasonable diligence could have been prevented.**” (emphasis added). [Appendices A – J].

1551 U.S.C. §20137(c) – **Malpractice and Negligent Suits:** “Upon a certification by the **Attorney General** that any person described in subsection (a)

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was acting in the scope of such person’s duties or employment at the time of the incident out of which the suit arose, **any such civil action** or proceeding commenced in a State court **shall be removed** without bond at any time before trial by the Attorney General to the district court of the United States...” (emphasis added). [Appendices A – J].

21 CFR Part 1300 – END – DEA Diversion Control. [Appendices A – J]

21 CFR §1308.12(b)(1)(vii) – Schedules of Controlled Substances.

38 CFR 17.38(a)(2)(iii), (b) – DEA Diversion Control. [Appendices A – J]

FRCP Rule 12(a)(1)(A)(i), (C), and (3) – “(a) TIME TO SERVE A RESPONSIVE PLEADING. (1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows: (A) A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint ...” and “(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time” and (3) *United States Officers or Employees Sued in an Individual Capacity*. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on

FEDERAL STATUTORY PROVISIONS INVOLVED

the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim **within 60 days** after service on the officer or employee or service on the United States attorney, whichever is later" (emphasis added). [Appendices A – J].

FRCP Rule 55(a)(2), (d): "(a) ENTERING A DEFAULT. **When a party** against whom a judgment for affirmative relief is sought **has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise**, the clerk must enter the party's default..." (emphasis added).

DOJ CRIMINAL RESOURCES MANUAL:

661. §2000aa. Privacy Protection Act of 1980 – Work Product Materials: "... **it shall be unlawful for a government officer or employee**, in connection with the investigation or prosecution of a criminal offense, **to search for or seize any work product materials possessed by a person** reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication" (emphasis added). [Appendices A – J].

665. Determining Jurisdiction – "When instances are reported to the United States Attorney of offenses committed on land or in buildings occupied by

FEDERAL STATUTORY PROVISIONS INVOLVED

agencies of the Federal government -- **unless the crime reported is a Federal offense regardless of where committed**...the United States has jurisdiction only if the land or building is within the special territorial jurisdiction of the United States” (emphasis added). [Appendices A – J].

902. 1996 Amendments to 18 U.S.C. §1001 – “The new section 1001 contains several important features. First, section 2 of the FSAA restores the Department's **ability to prosecute false statements made to the judicial and legislative branches.**” (emphasis added). [Appendices A – J].

906. Jurisdictional Requirements Satisfied – “Section 1001’s jurisdictional requirements are satisfied if: (1) **the agency had the power to act on the statement**, *United States v. DiFonzo*, 603 F.2d 1260, 1264 (7th Cir. 1979) *cert. denied* 444 U.S. 1018 (1980); (2.) **there was an "intended" relationship between the act and the Federal government**, *United States v. Stanford*, 589 F.2d 285, 297 (7th Cir. 1978) *cert. denied* 440 U.S. 983 (1979); or (3.) **the act was calculated to induce government action**, *United States v. Barbato*, 471 F.2d 918, 922 (1st Cir. 1973)” (emphasis added). [Appendices A – J].

908. Elements of 18 U.S.C. §1001 – “Section 1001's statutory terms are violated if someone: 1.) **'falsifies, conceals or covers up by any trick, scheme or**

FEDERAL STATUTORY PROVISIONS INVOLVED

device a material fact’; 2.) ‘makes any false, fictitious or fraudulent statements or representations’; 3.) ‘makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry’; and, 4.) ‘for cases arising after the 1996 amendments, the item at issue was material’” (emphasis added). [Appendices A – J].

909. False Statement – “For a violation of 18 U.S.C. § 1001, a false statement may be written or oral, sworn or unsworn, voluntarily made in regard to information sought as or required by law, signed or unsigned. *See generally United States v. Beacon Brass Co.*, 344 U.S. 43, 46 (1952); *United States v. Poindexter*, 951 F.2d 369, 387-88 (D.C. Cir. 1991) *cert. denied*, 506 U.S. 1021 (1992), *cert. denied*, 406 U.S. 1021 (1992); *United States v. Massey*, 550 F.2d 300, 305 (5th Cir. 1977); on remand, 437 F. Supp. 843 (1977); *United States v. Isaacs*, 493 F.2d 1124, 1156-57 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974)” (emphasis added). [Appendices A – J].

910. Knowingly and Willingly – “A defendant is not relieved of the consequences of a material misrepresentation by lack of knowledge when the means of ascertaining truthfulness are available. In appropriate circumstances, the

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government may establish the **defendant's knowledge of falsity by proving that the defendant either knew the statement was false or acted with a conscious purpose to avoid learning the truth**" (emphasis added). [Appendices A – J].

912. Falsity – “Section 1001 of Title 18, United States Code, requires that the statement or representation actually be false, and **the government has the burden of establishing the alleged falsity of the statement**” (emphasis added).

[Appendices A – J].

914. Concealment - Failure to Disclose – “Although 18 U.S.C. § 1001 is often referred to as a false statement statute, its scope extends beyond statements. **The statute proscribes the acts of making false statements, falsifying, concealing or covering up.** The statute also covers half-truths if there is a duty to speak the truth. *See generally United States v. Lutwak*, 195 F.2d 748 (7th Cir. 1948), *aff'd*, 344 U.S. 604 (1953)” (emphasis added). [Appendices A – J].

925. Obstruction or Impairing Legitimate Government Activity – “**Obstructing**, in any manner, a legitimate governmental function” (emphasis added). [Appendices A – J].

FEDERAL STATUTORY PROVISIONS INVOLVED

1610. Assault – 18 U.S.C. 351(e) – “Absent a statutory definition of assault, the courts have looked to the common law and have concluded that an "assault" is: An **attempt with force or violence to do a corporal injury** to another; may consist of any act tending to such corporal injury, accompanied with such circumstances as denotes at the time an intention, coupled with present ability, of using actual violence against the person” (emphasis added). [Appendices A – J].

1752. Subornation of Perjury – “perjury was committed; that **the defendant procured the perjury corruptly, knowing, believing or having reason to believe it to be false testimony**; and that **the defendant knew**, believed or had reason to believe **that the perjurer had knowledge of the falsity** of his or her testimony” (emphasis added). [Appendices A – J].

2474. Elements of Aiding and Abetting- “The elements necessary to convict under aiding and abetting theory are “**1. [t]hat the accused had specific intent to facilitate the commission of a crime by another**; **2. [t]hat the accused had the requisite intent of the underlying substantive offense**; **3. [t]hat the accused assisted or participated in the commission of the underlying substantive offense**; and **4. [t]hat someone committed the underlying offense**” (emphasis added). [Appendices A – J].

STATEMENT OF THE CASE

THE ACTORS:

I. For the record, this is a simple civil tort case of personal injury and medical malpractice, arising out of a cognizable “doctor-patient” breach of contract; Petitioner neither named the United States as a defendant nor was Petitioner seeking compensation from the United States for Respondent Mulligan’s private actions, which was the legal cause of Petitioner’s irreversible brain damage. The lines of federalism have been sinisterly blurred by the Department of Justice, under the direct order of Mr. Trump and Mr. Barr.

The origin of the convoluted procedural history of this case reveals that this case: (1) was rightfully filed by a private person (a lawfully admitted citizen of a foreign state) at the Maricopa County Superior Court in Phoenix, Arizona against a U.S./State citizen for personal injury and medical malpractice **arising out of** Respondents Mulligan’s **intentional breach of the express terms** of an enforceable “doctor-patient” verbal contract [Appendix D]; (2) has unveiled a repugnant, pernicious and **racially motivated** breach in the U.S. Executive Branch and Arizona state government’s [Appendices A – J] and (3) has revealed a maliciously flagrant and **un-American abuse of power** by the State and federal actors and agencies named herein [Appendices A – J].

STATEMENT OF THE CASE

MARICOPA COUNTY SUPERIOR COURT

Case No. CV2019-007-642

II. The incontrovertible medicolegal and forensic evidence – including the real-time-stamp electronic confession of Respondent Mulligan – coupled with the written statements made by over 5 medical experts from two different hospitals (Phoenix VA Hospital and Barrow Neurological Institute in Phoenix) and over 20 medical licensed professionals/witnesses (most having firsthand knowledge) remain undisputed by Respondent Mulligan, and Respondent Arizona Medical Board (AZMB). Acting on an order from Mr. Trump and Mr. Barr, the DOJ appointed attorneys, Mr. Michael Bailey, Ms. Kwan Piensook and Mr. Peter K. Lantka, to obstruct justice and dismiss this case but, like most Trump’s executive orders and ideas in the business world, did not succeed. Additionally, Mr. Trump and Mr. Barr ordered all state and federal agencies involved to deny, bar, or dismiss any relief or redress to Petitioner. All Mr. Trump and Mr. Barr managed to do was keep this case open for over 365 days, create a conflict of interest for all actors, suborn perjury and many other nefarious legal complications because Mr. Trump and Mr. Barr are traitors of the United States Constitution.

STATEMENT OF THE CASE

The evidence of this case clearly shows that on 05/22/2019, Petitioner and Respondent Mulligan formed an enforceable “doctor-patient” verbal contract whereby Respondent Mulligan was going to: (1) anesthetize and render the Petitioner unconscious for a one-hour elective hemorrhoidectomy; (2) in a safe and non-invasive manner; (3) by administering anesthetic gases through a facemask in exchange for payment tendered by the Phoenix VA hospital.

Respondent Mulligan performed and fulfilled the specifications of the verbal agreement by anesthetizing and rendering Petitioner unconscious for the one-hour elective hemorrhoidectomy; (2) in a safe and non-invasive manner; (3) by administering anesthetic gases through a face mask. Respondent Mulligan, however, **knowingly, willingly, intentionally** and in bad faith engaged in conduct which resulted in criminal offenses and unequivocally breached the express terms of the verbal contract mutually assented to. In the process, Respondent Mulligan violated federal statutes and the United States Constitution provision of the Fourth Amendment fundamental right of People to be secure in their Person. Respondent Mulligan’s private actions as an American anesthesiologist also violated the Arizona Medical Board governing laws (FELRTCA; 18 U.S.C. §16; 21 U.S.C §812(b)(2)(B); 21 U.S.C. §814(a); 38 U.S.C. §7331; 42 U.S.C 1986; 21 CFR Part 1300 – END; 21 CFR §1308.12(b)(1)(vii); A.R.S. 12-542(1); A.R.S. 12-561(2);

STATEMENT OF THE CASE

A.R.S. 13-105(a)-(d)(11)-(14); A.R.S. 13-110; A.R.S. 13-1001(A)(1)(2); A.R.S. 13-1204(1)(2)(3); A.R.S. 13-3401; A.R.S. 32-1491(B)(E)(G); A.R.S. 32-3201.01; VHA Handbook 1004.01; VHA Directive 1004.08; VHA Directive 1070; VHA Directive 1108.01 (2)(f); VHA Handbook 1123(3)(a)(c); VHA Directive 1123(4)(b). See *Barnett v. Bachrach*; *Boyce v. Brown*; *Cavero v. Franklin General Benevolent Soc.*; *Civil Rights Cases*, 109 U.S. 3; *Edwards v. Roberts*; *Franklyn v. Peabody*; *Guarro v. United States*; *Hively v. Higgs*; *Mohr v. Williams*; *Pollard v. United States*; *Revels v. Pohle*; *Rolator v. Strain*; *Schloendorff v. Society of New York Hospital*; *Sinz v. Owens*; *Tripp et al. v. Arizona Board of Regents*; *Ybarra v. Spangard*; *Zoterell v. Repp*.

III. The medical and forensic evidence of this case reveals and Petitioner recalls that: **(1)** Respondent Mulligan **intentionally, knowingly, and with criminal negligence**, violated her employer’s established and explicit “national” directives as well as federal and State statute(s) by not presenting, discussing or obtaining Petitioner’s written consent for each treatment, procedure or therapeutic course of treatment or which specific anesthetic drugs were going to be used – specifically hydromorphone [VHA Handbook 1004.01; VHA Handbook 1123 (3)(a); 21 U.S.C. §812(b)(2)(B); 21 U.S.C. §841(a); 38 U.S.C. §7331; A.R.S. 12-561(2); and A.R.S.

STATEMENT OF THE CASE

13-105]; (2) Respondent Mulligan was in possession of a known and specified schedule-II controlled substance that is an opioid (hydromorphone/dilaudid) - known by Mr. Barr and Mr. Trump as well as all other State and Federal actors named herein, to be a “**dangerous drug**” – and completely illegal to possess, dispense/administer unless authorized for medicinal purposes and as provided by State law A.R.S. 32-1491 (B)(E)(G); A.R.S. 32-3201.01. (3) Respondent Mulligan, **with a culpable mental state, intentionally, knowingly, deliberately and with criminal negligence dispensed/administered** the illegal opioid (hydromorphone) and used an actual physical **dangerous instrument** to commit a **dangerous offense of aggravated assault and attempted murder with deadly physical force** when she forcefully overdosed Petitioner’s body with the opioid after Petitioner was completely **unconscious**, anesthetized, **bound/restrained** and **unable to fight or defend herself**. Respondent Mulligan **knowingly, willingly, and intentionally** commanded and directed the **forceful** endotracheal intubation of Petitioner’s person **without Petitioner’s consent** or a documented medical need or emergency, and in a manner that was inconsistent with and/or in violation of her practice and employment directives set forth by federal and State statutes and the governing entity of Respondent Mulligan’s practice [VHA Handbook 1004.01; VHA Directive 1108.01 2(f); VHA Handbook 1123 and VHA Directive 1123; 18 U.S.C.

STATEMENT OF THE CASE

§16; 21 U.S.C. §812(b)(2)(B); 21 U.S.C. §841(a); 38 U.S.C. §7331; A.R.S. 12-542(1); A.R.S. 12-561(2); A.R.S. 13-110; A.R.S. 13-105; A.R.S. 13-1204; A.R.S. 13-3401; A.R.S. 32-1491(B)(E); A.R.S. 32-3201.01 A.R.S. 12-561(2), A.R.S. 13-1204, A.R.S. 32-1491(B)(E)(G), and A.R.S. 32-3201.0); (4) Respondent Mulligan did not discuss the administration of the opioid as well as the **invasive procedure** of endotracheal intubation with Petitioner and Respondent Mulligan **NEVER** obtained informed consent from Petitioner at any time while Petitioner was conscious for the allowance of an intentional overdose of the opioid and/or the ultrahazardous intrusive and forceful invasive procedure of endotracheal tube placement (21 U.S.C. §841(a) defined by A.R.S. 32-1491(B)(E) which resulted in a violation of 18 U.S.C. §16 because Respondent Mulligan violated 38 U.S.C. §7331); (5) endotracheal intubation is frequently used in the operating rooms in the U.S. and is also an established and authorized standard medical procedure in the practice of Western medicine which requires an intrusive invasion of a person's body so that an unconscious or anesthetized person can breathe or receive medicine – intubation is not typically performed voluntarily or at the request of a conscious patient who is not manifesting any measurable subjective signs or symptoms of severe breathing problems but is rather reserved for the patient

STATEMENT OF THE CASE

experiencing respiratory failure or who has lost their central nervous system control of breathing, neuromuscular respiratory failure, or impairment of gas exchange; (6) Petitioner's blood oxygen level was effectively, immediately and foreseeably compromised; Respondent Mulligan violated employer's VHA Directive 1123; (7) Petitioner subsequently became critically ill during the surgical procedure and began to have an undocumented amount of seizures; (8) Respondent Mulligan, as an American licensed physician, fell short of her oath to "first do no harm" and breached the inherent doctrine of good faith and fair dealings when she failed to call a "time-out" from the elective low-risk surgical procedure to correct and stabilize Petitioner's new onset seizures; Petitioner's significantly low respiration rate, Petitioner's dangerously high levels of carbon dioxide retention and the subsequent decline in oxygen levels, thus violating (VHA Handbook 1123 (3)(c)(f) and VHA Directive 1123 (4)(b)); (9) Respondent Mulligan, with grave indifference, consciously but unethically and immorally allowed Petitioner's declining respiratory status to clinically progress into respiratory failure in violation of employer's VHA Directive 1123 (4)(b); (10) Respondent Mulligan with a calculated culpable mind, and malice in the heart, knowingly, willingly and intentionally withheld and refused to administer the FDA designated antidote for

STATEMENT OF THE CASE

the opioid overdose in violation of 42 U.S.C. 1986. See *Civil Rights Cases; Schloendorff v. Society of New York Hospital*; (11) Respondent Mulligan knowingly, willingly, and intentionally used more dangerous and deadly drugs on Petitioner than had been consented to by Petitioner and caused permanent brain injury in violation of A.R.S. 12-542(1), A.R.S. 12-561(2), A.R.S. 13-1204 as well as VHA Handbook 1004.01; (12) within hours of the incident, Respondent Mulligan fled the scene, did not self-report and did not, in the interest of Petitioner's life or that of her small children, disclose or communicate her transgressions to the other medical doctors in ICU taking over Petitioner's care or any other appropriate person, thus violating Respondent Mulligan's employer's directive (VHA Directive 1004.08, VHA Directive 1070, VHA Handbook 1123, VHA Directive 1123); and (13) Respondent Mulligan sought absolute immunity from the DOJ knowing that the U.S. Constitution, federal statutes and Arizona State law would not and could not offer immunity.

IV. The State of Arizona has not only attempted to dismiss this case on two occasions, with no due process, no contention or response against the allegations, and no jury trial but has also refused to apply the letter of their existing laws to this case and opted, instead, to collude with the federal government to aid and abet

STATEMENT OF THE CASE

Respondent Mulligan and deprive Petitioner of the fundamental right to bring a civil tort case of personal injury and medical malpractice, arising out of a cognizable “doctor-patient” breach of contract against a U.S./State citizen at the state level simply because of Petitioner’s immigrant status. See *Barnett v.*

Bachrach, Boyce v. Brown, Butz v. Econonmou, Cavero v. Franklin, Civil Rights Cases, Clinton v. Jones; Edwards v. Roberts, Franklyn v. Peabody, General Benevolent Soc., Harlow v. Fitzgerald, Hively v. Higgs, Mohr v. Williams, Pollard v. United States, Revels v. Pohle, Rolator v. Strain, Schloendorff v. Society of New York Hospital, Sinz v.. Owens, Tripp et al. v. Arizona Board of Regents, United States v. Nixon, Ybarra v. Spangard, Zoterell v. Repp.

V. This case has been open for more than 1 year and the Phoenix Police Department would not take Petitioner’s complaint for more than 5 months. After that time, a police report of attempted murder would not be recorded but the charge of aggravated assault with a deadly chemical and weapon was registered more than 5 months ago. The Phoenix Police Department has failed to properly handle this case either out of fear of losing their jobs, or because Respondent Mulligan is a white educated American. The FBI, the DEA, the DOJ, Arizona Medical Board,

STATEMENT OF THE CASE

the Arizona State Attorney General Office and the Phoenix VA were instructed, by the racist actors to deny and dismiss Petitioner's complaint.

Respondent Mulligan has violated her sacred oath to the Practice of Western Medicine. Petitioner took the same sacred oath and is repulsed by Respondent Mulligan's unethical and immoral deafening silence but is willing to stipulate that Respondent Mulligan, Mr. Jason Isaak, from the State of Arizona Attorney General's Office, and Ms. Rona Lige, of the Office of the General Counsel for the Veterans Administration, may have been bullied or unduly coerced into silence because the vile businessman gone mob-boss was confident this Mexican citizen from Zamora, Michoacan would be too scared and not know how to fight back.

Petitioner's victim's rights were trampled on by all of the bad actors of the U.S. federal government, the Arizona state government and the corresponding agencies named herein.

Mr. Trump and Mr. Barr have declared a personal war against Petitioner and against the United States Constitution through his putrid and repugnant ill-spirited private acts against minorities and lawfully admitted citizens of a foreign state. It is apparent, in this case, that Mr. Trump and Mr. Barr were knowingly, willingly,

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intentionally trying to obliterate the U.S. Constitution's Equal Protection Clause that offer legally admitted citizens just to create bad law.

State Judge, Judge Sherri Stephens refuses to take jurisdiction. As such, Judge Stephens knowingly and willingly violated 28 U.S.C. §1332(a)(1)(2) by prejudicially refusing to honor her oath and fulfill her fiduciary duty as an impartial judge in this case by claiming she does not have jurisdiction because the federal government (a) has jurisdiction, (b) removed this case to the Arizona Federal District Court, (c) dismissed Respondent Mulligan from this case and (d) dismissed this case.

On 01/24/2020 Petitioner presented to the Maricopa County Superior Court for a scheduled Status Hearing on this case and got ambushed by 6 Clerks who, under Judge Stephens' direct verbal orders harassed, intimidated and threatened with physical force if Petitioner did not leave Judge Stephens' courtroom (18 U.S.C. §1512). See *United States v. Wilson*. On 03/20/2020, Petitioner filed a Special Action claim against Judge Stephens, citing blatant violation of state and federal statutes, as well as Petitioner's First, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Fourteenth Amendment – specifically the Equal Protection Clause of the Fourteenth Amendment – and begged the State Court of Appeals for a writ of mandamus and punitive damages. On 03/23/2020 the State Court of

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Appeals declined jurisdiction and vacated the scheduled date for opening arguments (scheduled for 04/14/2020). On 05/08/2020, the Division 1 Court of Appeals ordered a dismissal of the entire appeal for lack of jurisdiction.

VI. In the United States judicial system, the right of a woman to determine what goes on with her body has long been protected by the hallmark case of *Roe v. Wade*: (1) Petitioner did not choose Respondent Mulligan to deliver anesthesia to her; in fact, Respondent Mulligan was not even a staff anesthesiologist at the Phoenix VA Hospital but was a staff anesthesiologist at the VA Hospital in Tucson, AZ; (2) Petitioner did not choose or consent to get lethally overdosed with an illegal opioid only to be left to fight for her life because the antidote was never administered to correct and reverse the lethal effects of the opioid by Respondent Mulligan; in fact, Petitioner had never poisoned her body with the toxic and lethal effects of dilaudid; (3) Petitioner did not choose or consent to get intubated for the hemorrhoidectomy; in fact, Petitioner had been successfully anesthetized from the waist down but remained conscious and did not suffer from seizures or experience any respiratory or neurological adverse effects from the spinal block Petitioner had done for the birth of her two youngest children, one of them being an emergency c-section. Respondent Mulligan intentionally rendered Petitioner completely helpless

STATEMENT OF THE CASE

to object to or defend herself against the intentional violation and harm Respondent Mulligan subjected Petitioner to. The State of Arizona is willfully denying Petitioner an opportunity to petition the State for legal redress and compensation for personal injury arising out of medical malpractice committed by a State licensed physician. The State of Arizona has enacted laws that offer legal redress and compensation that offer its citizens legal redress and compensation for personal injury arising out of medical malpractice. See *Tripp et al. v. Arizona Board of Regents*. The fundamental right to petition the State government for redress for a grievance is one that is embedded in the First Amendment right of the U.S. Constitution; as such, it is incumbent on the State to make that right available to all on equal terms lest the decision of *Brown v. Board of Education* and *Roe v. Wade* be overturned. Both Respondent Mulligan and the DOJ attorney have exceeded the allotted time as prescribed by the Arizona Rules of Civil Procedure and the Federal Rules of Civil Procedures to respond or defend this case for more than 365 days. This case is now in default.

STATEMENT OF THE CASE

ARIZONA COURT OF APPEALS DIVISION 1

Case No. CA-SA-20-0236

VII. On 03/20/2020, Petitioner submitted a special action motion to the State Court of Appeals asking for a writ of mandamus because Judge Stephens' conduct, as a state actor, triggered the 'state action' doctrine; the petition was set for conference or oral arguments on 04/14/2020. On 03/23/2020, the State Court of Appeals declined jurisdiction and vacated all orders.

VIII. Petitioner never intended to politicize or try this simple common law tort cause of action for personal injury and medical malpractice arising out of a breach of "doctor-patient" contract in the court of public opinion or the United States Supreme Court. To the contrary, Petitioner has taken reasonable, countless and unwavering steps in exercising her inalienable right to pursue justice by undertaking the most civil and least intrusive and restrictive legal action against Respondent Mulligan [see Appendices A – J].

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U.S. DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Case No. CV2019-007-642
(aka 2:19-cv-04745)

IX. On 06/13/2019 the DOJ, under the orders of Mr. Trump and Mr. Barr, abused their Executive powers when a DOJ official letter – bearing the seal of the U.S. Department of Justice - was addressed to Petitioner informing Petitioner that Respondent Mulligan could not be sued as an individual because she was a federal employee who had already been granted **absolute immunity under the Federal Tort Claim Act** by the DOJ. On 07/17/2019, the attorney for the DOJ opened a new file against Petitioner, in private and without notice, wrongfully claiming jurisdiction and effectively removed this case from the Maricopa County Superior Court to the District of Arizona under the premise that this case was a federal tort claim governed by the Federal Tort Act and that Plaintiff was moving against the United States. Petitioner never named the United States as a defendant. Additionally, the DOJ categorically denied that Petitioner had asked for a jury trial, knowing this to be a false statement and took active steps to willingly conceal and cover up by way of a fraudulent and defective “Scope of Employment” certification, contrived by the DOJ, only to uphold the farce that Respondent

STATEMENT OF THE CASE

Mulligan was acting within the “Scope of her Employment” as a means of aiding and abetting Respondent Mulligan. See the Department of Justice Criminal Resource Manual: 661. §2000aa. Privacy Protection Act of 1980; 665. Determining Jurisdiction; 902. 1996 Amendments to 18 U.S.C. §1001; 906. Jurisdictional Requirements Satisfied; 908. Elements of 18 U.S.C. §1001; 909. False Statement; 910. Knowingly and Willingly; 912. Falsity; 914. Concealment - Failure to Disclose; 925. Obstruction or Impairing Legitimate Government Activity; 1610. Assault; 1752. Subornation of Perjury; 2474. Elements of Aiding and Abetting *United States v. Chavez*; *United States v. Chin*; *United States v. DePace*; *United States v. Leos-Quijada*; *United States v. Lucas*; *United States v. Pipola*; *United States v. Powell*; *United States v. Sayetsitty*; *United States v. Spears*; *United States v. Spinney*; *United States v. Stands*.

X. From 07/17/2019 until 11/23/2019 Petitioner challenged the extrajudicial involvement of the federal government as well as the district court’s jurisdiction and the truthfulness and credibility of the fraudulent “Scope of Employment” signed by the Arizona District prosecuting attorneys for the DOJ, and repetitively petitioned, prayed and begged Federal Judge Dominic Lanza to return Petitioner’s work products and remand the case to the Maricopa County Superior Court,

STATEMENT OF THE CASE

specifically citing the Equal Protections Act of Amendment XI and the federal statute and constitutional violations consisting of: 18 U.S.C. §2; 18 U.S.C. §3; 18 U.S.C. § 4, 18 U.S.C. § 16, 18 U.S.C.18 U.S.C. §16; 18 U.S.C. §208; 18 U.S.C. §1001(a); 21 U.S.C. §812(b)(2)(B); 21 U.S.C. §841(a); 22 U.S.C. §841; 28 U.S.C. §547; 28 U.S.C. §1332(a)(1)(2); 28 U.S.C. §2679(b)(2); 38 U.S.C. §7331; 42 U.S.C. 1986; 21 CFR Part 1300 – END. See *Arizona v. the United States*; *Brown v. Board of Education*; *Civil Rights Cases*; *Franks v. Delaware*; *Guarro v. United States*; *Illinois v. Gate*; *Katz v. U.S.*; *Maryland v. King*; *Mincey v. AZ*; *Roe v. Wade*; *Shelley v. Kraemer*; *United States v. Clearfield*; *Smith v. Am. Express Travel Related Servs. Co. Inc*; *United States v. Leon*; *United States v. Place*; *United States v. Schaffer*; *United States v. Wilson*; *United States v. West*. Federal Judge Lanza unjustly and with now viable authority supported by any theory of federalism or juris prudence, allowed the DOJ to usurp power, substitute itself for Respondent Mulligan, and agreed to dismiss this case at the Arizona District Court without due process, witness testimony, or a jury trial.

STATEMENT OF THE CASE

NINTH CIRCUIT COURT

Case No. 20-15255 (for Case No. 2:19-cv-04745)

XI. On 02/14/2020, Petitioner filed an appeal with the Ninth Circuit Court of Appeals asking for Federal Judge Lanza's decision to be reversed and the case remanded to the State Court. On 02/19/2020, USCA Case number 20-15255 was assigned to this case. On or around 02/23/2020, the appeal was dismissed by the Court Clerk citing that Petitioner had exceeded the time allotted to file for an appeal by 30 days citing FRCP Rule 3 (a)(1)(B)(i)(iii). On 03/31/2020, Petitioner filed a Motion for Extension of Time of 30 days citing excusable neglect and good cause pursuant to FRCP Rule 5(A)(ii) (Petitioner was never informed that the motion to extend time had been granted or denied). On 04/20/2020, Petitioner filed the Opening Brief. On 04/21/2020, the Ninth Circuit Court of Appeals declined to honor the opening brief stating that "Case closed: This case has been dismissed. No further action is necessary." [see Appendices B].

XII. Prior to March 10th 2020, Petitioner was denied compensation from Respondent Mulligan's employer, (the Veterans Administration – "VA") simply because petitioner would not drop the civil suit against Respondent Mulligan. On

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March 10, 2020, Petitioner received a certified letter from the VA denying the claim. Of particular interest is the fact that Respondent Mulligan's employer did not provide a "Scope of Employment" certificate for Respondent Mulligan. The only "Scope of Employment" certification contrived for Respondent Mulligan was the one fraudulently provided by the DOJ.

XIII. On 05/14/2020 Petitioner received correspondence from the DOJ stating: "I have examined it and it appears to reference the complaint that was filed in the District of Arizona. Since this is not a federal tort claim, the Department renders it invalid." This denial of jurisdiction/authority is in stark contrast to the DOJ correspondence Petitioner received 06/13/2019 whereby the U.S. Attorney's Office for the District of Arizona, under the direction of Mr. Trump and Mr. Barr invoked 28 U.S.C. § 2401(b) to illegally and unjustly turn this civil tort into a federal tort. (referencing this case).

REASONS FOR GRANTING THE PETITION

I. The questions presented are recurring and are of national importance to the People of the United States of America. A violent crime of attempted murder and aggravated assault was committed against a minority female who is a citizen of a foreign state. Petitioner sustained permanent brain damage for no medical reason other than the *mens rea and actus rea* of Respondent Mulligan. The only reason Respondent Mulligan is not in jail since the time she committed this crime over two years ago is because she is white, and a U.S. citizen and Petitioner is a Mexican and a citizen of a foreign state. Overt and passive racism **MUST STOP**. Justice must be served equally to the People of the United States of America.

This petition must be granted as a show of good faith in re-establishing law and order and stabilizing the homeostasis of the American heart and spirit by holding the bad actors responsible personally accountable.

II. The language of the Eleventh Amendment of the United States Constitution clearly **PROHIBITS** the federal government from exerting “Judicial power ... in ANY suit in law commenced against ONE of the United States by Citizens of any Foreign State.” Petitioner is a **lawfully admitted** citizen of Michoacan, a foreign state in Mexico, who commenced a suit in law against a United States citizen.

REASONS FOR GRANTING THE PETITION

Petitioner is also a proud U.S. Navy veteran who was honorably discharged from active duty but not from her oath, to God, to support and defend the Constitution of the United States against all enemies, foreign and domestic. The ongoing civil unrest that is transpiring under the watch of our nation's fake President and his reluctance to address the nation and call for unity has unmasked Donald Trump and his mob-boss flunkies as domestic enemies of the Constitution of the United States. Petitioner's oath, to God, to support and defend the Constitution of the United States has been triggered:

Appendix E reveals that Donald Trump and William Barr exerted and abused Executive and Judicial power, as a secrete attack on the U.S. Constitution, by **colluding, conspiring and obstructing justice** when they: **(1)** assigned a federal government attorney to represent and defend a U.S. citizen, Respondent Mulligan; **(2) knowingly and willfully – (a) falsified, concealed, covered up** by trick and scheme a **material fact; (b) made** materially false, fictitious, and fraudulent statements and representations; **(c) made and used** a defective "Scope of Employment" certificate knowing the same to contain materially false, fictitious, and fraudulent statements and entries; **(3) removed** this case from the Maricopa County Superior Court of Arizona to the Federal District Court of Arizona; **(4)**

REASONS FOR GRANTING THE PETITION

willingly, and intentionally attacked and destroyed the Equal Protections Act of the Fourteenth Amendment of the U.S. Constitution in this case and is trying to create bad law. This petition must be granted as a matter of Constitutional law under the Supremacy Clause lest the hallmark decision of *Brown v. Board of Education* and *Roe v. Wade* be overturned, and civil unrest escalate.

Respondents have failed to answer or defend this case for more than 356 consecutive days, and the presiding Judge refuses to deliver justice. Appendix D clearly shows that the Respondents have exceeded the allotted time prescribed by the Arizona Rules of Civil Procedure and the Federal Rules of Civil Procedure.

This petition must be granted in the interest of Justice, in the name of Civility and Democracy, for the restoration of Judicial integrity, and to allow Arizona, like Petitioner, to reclaim sovereignty from the racist Tyranny of this Presidency. Petitioner and the People have had to endure. Petitioner is entitled to relief sought from Respondent Mulligan in the amount of \$50 million and \$50 million from Respondent Arizona Medical Board and punitive damages for all unethical and un-American state actors and agencies named herein, with the exception of AZ Attorney General, Mark Brnovich and Assistant Attorney General, Carrie Smith for the active steps they took in their attempt to aid and abet the federal actors from overthrowing the sovereignty of the state of Arizona.

PRAYER

Petitioner prays that this Court turn back to the fundamental philosophies that gave birth to this great nation and be guided by the following American ideologies:

- (1.) “The two enemies of the People are **CRIMINALS** and **GOVERNMENT**, so let us tie the second down with the chains of the Constitution so the second will not become the legalized version of the first.”

Thomas Jefferson

- (2.) “...that we here highly resolve that these dead shall not have died in vain -- that this nation, under God, shall have a new birth of freedom -- and that government of the people, by the people, for the people, shall not perish from the earth.”

Abraham Lincoln

- (3.) “Injustice anywhere is a threat to justice everywhere.”

Martin Luther King Jr.