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No. 20-1633

In The
**SUPREME COURT OF THE UNITED STATES**

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FRANK SALAZAR,

*Petitioner,*

*v.*

ANTHONY ANDERSON; KEVIN KIHN;
GOLDEN AUTOMOTIVE GROUP TRADE NAME
PLANET HONDA; LEO PAYNE;
BLACK HILLS FEDERAL CREDIT UNION;
DEEANN DIETRICH; KITTY GUST,

*Respondents.*

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*On Petition for a Writ of Certiorari to the Colorado Court of Appeals*

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# PETITION FOR A WRIT OF CERTIORARI

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Petitioner *pro se*

## QUESTIONS PRESENTED

This case is important because it involves lower court decisions that flout this Court's binding precedent, and, denies the fundamental constitutional rights of an individual considered unpopular for suing government employees and is not represented by an attorney. Colorado courts denied Petitioner access to the courts, and substantive and procedural due process rights to bring and prosecute claims against fellow government employees; and, let stand violations and deprivations of Fourth and Fourteenth Amendment rights of the individuals whose property was seized without due process of law by government employees under the influence of rich and powerful private corporate interests. The questions presented are:

1. Whether a Fourteenth Amendment violation and deprivation of substantive and procedural due process rights and equal protection rights occurs where a district court denies a plaintiff's valid Notice of Dismissal under C.R.C.P. 41(a)(1)(A), and, where the Court of Appeals purportedly affirms the district court action that denied the Notice.

2. Whether there is a violation of the Fourth Amendment right against unreasonable seizures, and whether a Fourteenth Amendment violation and deprivation of substantive and procedural due process rights and equal protection rights occurs where a Division of Motor Vehicles ("DMV")

employee seizes the use of a motor vehicle, with no basis in law, and does so before and without notice and a hearing.

## PARTIES TO THE PROCEEDING

Petitioner Frank Salazar is an individual, which during the pendency of the action has been a citizen and resident of South Dakota.

Respondent Black Hills Federal Credit Union ("Black Hills-Federal" or "BHF") is a federally chartered corporation located in South Dakota. Respondents DeeAnn Dietrich ("Dietrich") and Kitty Gust ("Gust") are employees and managers of BHF and are individuals and citizens of South Dakota.

Respondents Anthony Anderson ("Anderson") and Kevin Kihn ("Kihn") were employees of the Colorado Division of Motor Vehicles at the time of the transactions and occurrences alleged.

Respondent Golden Automotive Group LLC trade name Planet Honda ("Planet-Honda") is a Colorado corporation. Respondent Leo Payne ("Payne") is the owner of Planet-Honda.

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## INTRODUCTION

This case is of special importance because the Colorado Supreme Court refused review, and showed deliberate indifference to the issue whether the rights of the affected *individuals* conferred by the supreme law of the land, of great concern to the Founding Fathers, will stand against the combined oppression and arrogance of government and private power.

Frank and Stephanie Salazar (the "Salazars") purchased, in full, a brand new car ("Vehicle") and drove it home to enjoy it ... so they thought. Employees at the DMV later ruled that they did not own the car they purchased. App.247a-249a.

To recover ownership of their Vehicle, first, DMV employees required a so-called title-transfer with which the Salazars agreed to comply that was rescinded. App.248-249, 256a¶¶13-14, 257a¶21, 260a¶66. Second, Adams County Motor Vehicles ("ACMV") required bonding for title, with which the Salazar's complied, App.254a-255a¶5, ¶¶8-9, but DMV employees took action to override ACMV and the bond for title statute which would have resulted in the perfection of title for the Salazars. App.249a-250a. Third, after overriding ACMV and the bonding statute, App.255a-256a¶¶10-11, 256a¶¶14-16, DMV employees issued a Notice of Recall ("NOR") that deemed the Salazars' title to their

Vehicle "invalid" and seized their title, use and ownership of the Vehicle. App.248a, 257a¶17. Then they required the Salazars to sign a security agreement with Black-Hills-Federal *before* recovery of ownership of the Vehicle, App.249a, a legally unenforceable contract requiring the Vehicle to be pledged as collateral, which the Salazars could not in good faith warrant that they were the owners. App.227a-229a, 261a-262a¶¶68-71. The DMV employees subverted and abrogated the bonding statute by the NOR, in contradiction to the established policy and practice of the DMV and authorized agents in Colorado following the statute in like circumstances presented here. App.131a-134a, 250a-253a. Fourth, on May 18, 2017, DMV employees at the request of the Respondents, rescinded the prior security agreement requirement, and instead required the Salazars to obtain release of a purported lien that the Respondents *knew* and admitted in prior court actions Black-Hills-Federal did not hold or perfect under Colorado law. They did this knowing that an additional condition, unknown to the Salazars, would be added by Black-Hills-Federal – the payment of purported attorney fees of over $3,000 as a condition to obtain release of the purported lien. App.177a-179a, 224a-225a, 253a-254a, 258¶48, 258a-259a¶¶50-51, 259a-260a¶¶57-62, 261a¶67, 262a¶74, 262a-263a¶77; 32a-37a, 263a-264a¶¶109-113.

The Respondents created, and are wholly responsible for this set of facts and conditions that has no basis in law and they can point to no case precedent that supports the actions taken against the Salazars. This is a pattern-and-practice over a period of several years as the apparent policy of DMV employees to single-out the Salazars from the rest of the motor vehicle owners and operators in Colorado not subject to such treatment, where each rescission is a breach of the previous requirement that denies the Salazars recovery of ownership of their Vehicle. Ostensibly, the Respondents intend to continue this pattern of retaliation and punishment against the Salazars indefinitely, which constitutes an outright seizure and taking of property without remedial solution for the property owners. It is unique in Colorado jurisprudence. App.134a-137a.

This Court's review is needed to alleviate the stark choice Colorado offers to those who, like the Salazars, buy a new car with their hard-earned money: either obtain release of a purported lien, or suffer indefinite and increasingly worse punishment under the DMV requirements upheld by the Colorado courts.

Colorado Rules of Civil Procedure ("C.R.C.P.") 41(a)(1)(A), the voluntary dismissal provision ("Colorado-Provision"), and its federal counterpart Federal Rules of Civil Procedure 41(a)(1)(A)(i)

("Federal-counterpart") is a unique provision under Rule 41(a) where *without court order*, one party – the plaintiff – has the absolute and unqualified right to unconditionally and voluntarily dismiss-without-prejudice all claims brought against an adverse party that has not filed or served an answer or motion for summary judgment. Most, if not all states have a virtually identical provision. This Court, the federal circuit courts, and the state high courts, have all, historically and universally, as a matter of law treated the claims dismissed-without-prejudice under the Colorado-Provision or Federal-counterpart as never filed or brought in the original action ("Null-action"), and, construed the Colorado-Provision and Federal-counterpart to confer on the plaintiff the absolute and unqualified right to bring the same claims in another jurisdiction and venue of their choice ("First-action").

Dismissals-without-prejudice restore the parties to the exact situation as if the original complaint had never been filed, and render the proceedings a nullity and leave the parties as if the action had never been brought. *In re Piper Aircraft Dist. Sys. Antitrust Lit.*, 551 F.2d 213, 219 (8thCir.1977). The original filing is a "nullity" and is a Null-action that puts Salazar in a legal position where he never brought the first suit, and the leading federal practice treatise supports this. *See* 9 Charles Alan Wright & Arthur R. Miller, Fed. Prac.

And Proc. §2367 (3d.ed.2018) ("*Wright & Miller*"). *Click-to-Call Technologies v. Ingenio, Inc.*, 899 F.3d 1321, 1351-52 & n.2 (Fed.Cir.2018). App.183a.

## DECISIONS BELOW

The Colorado Court of Appeals decision is unpublished and reproduced at App.1a. The Supreme Court of Colorado's order denying the Petition for Writ of Certiorari of March 1, 2021 is unpublished and reproduced at App.22a.

The district court orders are unpublished and reproduced at App.23a-27a. The oral rulings of the district court at a hearing on June 20, 2019 is unpublished and reprinted at App.42a-66a.

The district court orders of a related case, and Petitioner's Response to an Order to Show Cause are unpublished and the orders are reproduced at App.28a-31a, and the Response reprinted at App.192a-220a.

A previous opinion of the Colorado Court of Appeals (App.39a-41a) is unpublished, and, the earlier orders of the district court (App.38a) from which the appeal was taken are unpublished.

## STATEMENT OF JURISDICTION

On March 1, 2021 the Colorado Supreme Court issued an order denying Petitioners' Petition for Writ of Certiorari, thus leaving in place the Colorado Court of Appeals decision rejecting Petitioner's appeal of the district court order that denied Petitioner's Notice of Dismissal under C.R.C.P. 41(a)(1)(A), and, rejecting as time-barred, Petitioner's claims. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

## PERTINENT CONSTITUTIONAL PROVISIONS

The text of the Fourth and Fourteenth Amendments to the United States Constitution appears at App.65a-66a. 42 U.S. Code § 1983 is reprinted at App.67a. The relevant portions of C.R.C.P. 41(a) and Fed.R.C.P. 41(a) are reprinted at App.68a-69a.

The relevant portions of C.R.S. §§42-6-120 & 121 are reprinted at App.70a-71a.

## STATEMENT OF THE CASE

The imposed requirements by DMV employees, on behalf of Payne/Planet-Honda and Black-Hills-Federal/Dietrich/Gust, co-conspirators in a joint-action conspiracy, show arbitrary and capricious

action that is wholly inconsistent and contradictory with no basis in law. The Respondents repeatedly reneged on every purported remedy of their own making where the Salazars complied, and as such, at no time were the Salazars offered a viable or legal remedy to recover use and ownership of their Vehicle.

A. Factual Background

The material facts are not in dispute. The Respondents pleaded no facts. App.110a. On May 8, 2017 Salazar filed a lawsuit to recover use and ownership of the Vehicle. In that replevin action, Jefferson County District Court case number 17CV186 ("17CV186") on May 16, 2017 Anderson filed a motion to dismiss with an attached affidavit. App.32a.

Anderson's motion and affidavit stated under oath that no lien was perfected that secured the Salazars' Vehicle, and attached supporting documentation to the affidavit that verified Anderson's affiant testimony, a letter, sent to the Salazars that stated the same, that it was up to the Salazars to perfect the lien on the Vehicle as a condition to recover ownership and use of their Vehicle, demanded by Black-Hills-Federal and Payne/Planet-Honda and required by DMV employees on their behalf. App.85a.

Despite the loss of use of their Vehicle and seizure of their property, the Salazars continued to make timely payments on both loans financed with Black-Hills-Federal to purchase the Vehicle, showing their good faith, honesty, and upright character to perform on their obligations. App.224a-225a, 228a-229a.

On May 18, 2017, the 17CV186-court instructed the Salazars to comply with the DMV requirements. App.18a n.3. Payne, by and through his lawyer, attempted to influence, and influenced DMV employees Anderson and Kihn to reverse their earlier ruling and requirement, and requested a new condition that required the Salazars to obtain release of a purported lien not held by Black-Hills-Federal to recover use of the Vehicle. App.74a-75a.

Under duress, the Salazars paid-off the two loans before the term of the loans expired, and, Salazar requested the lien release. However, Senior Vice President & Chief Lending Officer Dietrich denied issue of the lien release and demanded payment of purported attorney fees of over three-thousand-dollars ($3,000) as a condition to be satisfied for release of the purported lien. App.84a.

This came as a complete surprise to the Salazars. The only representations made to the Salazars regarding attorney fees allegedly incurred

during Ms. Salazar's bankruptcy came in the motion filed by BHF that requested fees of $876, which was not granted by Judge Tallman, and in communications with Black-Hills-Federal's lawyer that Payne/Planet-Honda was liable for payment of attorney fees. App.259a¶56, 262a¶76.

Subsequently, in September/October, 2018, Collections Manager Kitty Gust retaliated against the Salazars and froze their assets on account with BHF, threatened to confiscate the monies on deposit as payment toward the purported attorney fees, and suspended the credit union membership of both Frank and Stephanie. App.264a-268a¶¶126-138.

B. Procedural Background

Salazar filed suit on December 19, 2018, well within the limitations period. App.18a ¶32. Salazar's Verified Complaint brought a C.R.C.P. 57 claim for injunctive relief and was accompanied by copious documentation, evidence that verified his pleaded testimony. App.78a-79a.

In an Amended Complaint and Jury Demand Salazar filed claims of Fourth and Fourteenth Amendment violations and deprivations, civil theft, and fraud. App.90a-96a. Salazar also included his C.R.C.P. 57 petition loosely denominated as a quiet title action. App.78a-81a.

Respondents responded with motions to dismiss for failure to state a claim and raised the affirmative defense of issue and claim preclusion, and, statute of limitations, and requested attorney fees and costs on alternate grounds that Salazar's claims were without substantial justification, were vexatious and interposed to harass them. App.231a-233a.

On February 6, 2019 Judge Robert Kiesnowski ("Kiesnowski"), presiding over the case, issued an order that granted the Payne/Planet-Honda motion to dismiss Salazar's claims on grounds of issue preclusion citing two prior lawsuits where allegedly, the same facts were purportedly adjudicated, and granted an award of attorney fees, requested by Payne/Planet-Honda, ruling that Salazar's claims were substantially frivolous, groundless, and vexatious, and lacked substantial justification. App.73a, 86a-89a, 102a-106a. This order was issued before Salazar had responded to the motion, and as such did not comply with the Rules of Civil Procedure, and was premature ("Premature-order"). App.172a-175a, 230a.

On March 5, 2019 Kiesnowski issued an order that dismissed Salazar's C.R.C.P. 57 claim against Defendant Kihn, and used the Premature-order as a template for the actual order of dismissal. Subsequently, Kiesnowski issued orders that

dismissed Salazar's claims on April 5, 2019 against Defendants Black-Hills-Federal/Dietrich/Gust; on April 10, 2019 against Defendants Payne/Planet-Honda; and, on April 24, 2019 against Defendants Anderson/Kihn, that were virtually identical to, and used the same verbiage of, the Premature-order, except to insert the names of the Defendants that were granted their motion and award of attorney fees and costs. App.23a-25a, 77a.

All these orders were perfunctory imitations of the Premature-order.

In responses to Defendants' motions to dismiss and in motions for reconsideration, Salazar argued (1) there were not two prior lawsuits, only one prior lawsuit that did not adjudicate Salazar's claims on the merits; (2) the facts that gave rise to his claims accrued on May 18, 2017, and (a) occurred after the commencement of the earlier lawsuit; and (b) were new facts that gave rise to new issues and claims. App.73a, 234a-243a.

Nevertheless, Kiesnowski let stand his earlier orders (1) without any analysis of Salazar's claims, required where a defendant moves for dismissal for failure to state a claim, App.18a ¶37, 173a, 181a; (2) without finding-of-fact; and, (3) based on conclusory allegations, which were mixed statements of law and fact that are false and misrepresentations of material fact, that the facts

in this case were the same facts in two prior lawsuits, that are unsupported and contradicted by the record.

Salazar had never sued Defendants Black-Hills-Federal/Dietrich/Gust and it was impossible as a matter of law and in fact for the facts that gave rise to any previous lawsuit to be the basis for dismissal of Salazar's claims against these particular Defendants. On March 24, 2019 Salazar filed a Notice to Dismiss Defendants BHF/Dietrich/Gust under C.R.C.P. 41(a)(1)(A), and on that very same day Kiesnowski issued an order that purportedly denied Salazar's Notice ("Denial-order"), on grounds that these Defendants had already been dismissed on April 5, 2019. App.26a, 175a.

On May 13, 2019 Salazar filed a C.R.C.P. 60(b)(3) motion to vacate Judge Kiesnowski's April 24 order that denied his Notice, and argued that Kiesnowski did not have jurisdiction to prevent a voluntary dismissal, and that the purpose of the Denial-order was to sanction Salazar where the Defendants played upon the "passions and prejudices" of Judge Kiesnowski, and in their motions attempted to influence him with knowing misrepresentations of material fact regarding previous facts and prior lawsuits, and that Kiesnowski erred when he attempted to

purportedly reinstate the case against Defendants Black-Hills-Federal/Dietrich/Gust.

Judge Kiesnowski set a hearing on June 20, 2019 ("June20-hearing") for Salazar to challenge the award of attorney fees and costs. On May 16, Judge Kiesnowski denied Salazar's C.R.C.P. 60(b)(3) motion. App.27a.

On May 16, 2019, Salazar filed notice of appeal to the Colorado Court of Appeals, and appealed the Denial-order and orders of dismissal entered in the district court. On the same day Salazar also filed a First-action against Defendants Black-Hills-Federal/Dietrich/Gust in Adams County District Court case number 19CV60 ("19CV60"), pursuant to his absolute right conferred by the Colorado-Provision.

On or about May 22-24, 2019 Judge Kiesnowski attempted to influence, and influenced his judicial colleagues Judges Jacklyn Brown ("Brown"), Edward Moss ("Moss") and Chief-Judge of the Seventeenth Judicial District Emily Anderson ("Anderson") to strike Salazar's First-action Complaint and transfer 19CV60 to Judge Kiesnowski. Subsequently, Judge Sharon Holbrook ("Holbrook") rotated in as presiding judge in the division formerly presided over by Judge Kiesnowski and enforced the actions taken by her judicial colleagues and denied Salazar the right to

bring and prosecute claims in 19CV60 by taking no action. (Judges Brown, Moss, Anderson, Kiesnowski, and Holbrook, collectively, "Judicial-officers"). App.28a-31a, 107a-108a, 216a-219a.

Counsel for Defendants BHF/Dietrich/Gust did not appear at the June20-hearing and Salazar had no opportunity to challenge counsel's affidavit for attorney fees and costs. App.43a, 47a-52a, 55a-56a.

At the June20-hearing Kiesnowski stated reasons for his grant of dismissal and award of attorney fees and costs, and said that 19CV60 looked a lot like all the other lawsuits and "in large part that's what drove the bus for me here" showing his state of mind at the time he entered the Premature-order, and prejudgment of the case, influenced by misrepresentations of material fact made by the Respondents in their motions. App.56a-59a, 173a-175a.

In retaliation and to punish Salazar, Kiesnowski, without jurisdiction or authority, also issued an order that enjoined Salazar from filing *any* lawsuit, against *any* defendant regarding *any* subject-matter in Adams County District Court, unless Salazar was represented by an attorney or an attorney filed an affidavit, attached to the complaint, that certified Salazar had brought claims that did not lack substantial justification. App.58a-61a.

Most disturbing is the conflict Kiesnowski's injunction order has with historical, universal, and unanimous precedent that holds, where a plaintiff is required to be represented by an attorney it is an outright bar of access to the courts and is plainly unconstitutional.

*Procup v. Strickland*, 792 F.2d 1069, 1071 (11thCir.1986) (injunction vacated that required Plaintiff file suits only through an attorney); *Karr v. Williams*, 50 P.3d 910, 914-15 (Colo.2002) (both the Tenth Circuit and the Eleventh Circuit have reversed district court orders conditioning access to the federal courts solely on representation by an attorney, finding "this reasoning both persuasive and applicable").

Kiesnowski also chastised Salazar for filing 19CV60 and stated, "When is this going to end?" and "Again, there is really no reason for this to continue!" These comments plainly show that Kiesnowski was prepared to dismiss 19CV60 without any consideration, just as he had dismissed Salazar's claims brought in the Null-action.

These actions, rulings, and orders taken by the Judicial-officers in 19CV60 implicate violation of Salazar's absolute and unqualified rights under the Colorado-Provision to file a First-action after voluntary dismissal, and constitute an absolute bar

to bring and litigate his claims against Defendants Black-Hills-Federal/Dietrich/Gust that is an unconstitutional substantive due process violation that denies access to the courts, and a violation and deprivation of procedural due process and the Equal Protection Clause.

Salazar timely appealed the district court rulings to the Colorado Court of Appeals and argued that (1) the Denial-order was void and issued without jurisdiction; (2) the April 5, 2019 order that dismissed with prejudice claims against Defendants Black-Hills-Federal/Dietrich/Gust was rendered void by Salazar's Notice under the Colorado-Provision; (3) the Court of Appeals was required to rule the Denial-order and April 5 order were void and ordered vacated; and the Court of Appeals was without jurisdiction to review the void April 5 order that purported to adjudicate Salazar's claims on the merits pursuant to a voluntary dismissal under the Colorado-Provision and was required to order Salazar's cause against the particular Defendants dismissed-without-prejudice; and, (4) his claims were not barred by issue and claim preclusion, nor were they time-barred.

The Colorado Court of Appeals rejected a proper reading of the Colorado-Provision that would have upheld Salazar's absolute and unqualified rights under the Colorado-Provision and instead held that Salazar's Notice "had no

effect" on the prior April 5, 2019 order that dismissed with prejudice his claims. App.10a¶¶22-23.

The Colorado Court of Appeals then rejected Salazar's argument that he pleaded, under oath, with attached documentary evidence that showed his claims accrued on May 18, 2017, and "declined" to affirm the district court on grounds of issue and claim preclusion, requested by the Respondents on appeal, App.18a¶36, and instead affirmed the dismissal of claims on alternate grounds that they were time-barred. App.15a-16a¶35. In so doing, the court mischaracterized facts that gave rise to a replevin claim brought in a prior lawsuit as the same facts that gave rise to Salazar's claims in the district court, effectively dismissing Salazar's claims on alternate grounds based on the same erroneous conclusory allegation made by the district court.

## REASONS FOR GRANTING THE WRIT

The Fourteenth Amendment prohibits the government from denial of access to the courts and due process to bring and prosecute claims, and, most importantly, from telling any *single* citizen that they do not have a right to equal protection of the laws.

Neither should Colorado courts prevent Salazar from exercising his absolute and unqualified rights under the Colorado-Provision. But the district court ruled that is exactly what the law requires and the Court of Appeals upheld that ruling on appeal.

Colorado state law does not prevent Salazar from exercising his rights under the Colorado-Provision and the Fourteenth Amendment protects Salazar's right to do so. That protection turns on fundamental Fourteenth Amendment principles: the right of access to the courts, and, the right to procedural due process to bring and prosecute claims against the adverse party in a jurisdiction and venue of Salazar's choice in a First-action, and deserves strong Fourteenth Amendment protection.

Colorado's high court has held that the use of motor vehicles on the public highways "of this state is an adjunct of the constitutional right to acquire, possess, and use property which cannot be taken away without due process of law." *Elizondo v. State, Dept. of Revenue, Etc.*, 570 P.2d 518, 522 (Colo.1977).

The DMV requirement that compels release of a lien to use the Vehicle, and summarily seizes the property without due process, deserves Fourth and Fourteenth Amendment protections for the Salazars. App.70a-71a. This Court should grant the petition for the following reasons.

First, the Colorado Court of Appeal's reasoning turns the Colorado-Provision on its head. In other words, the court upheld the district court order that purportedly dismissed with prejudice Salazar's claims.

This circular reasoning threatens the continued application of *stare decisis* to the Colorado-Provision and operates to arbitrarily subvert and abrogate the Colorado-Provision by Colorado courts, and directly conflicts with this Court's precedent and the historical and universal precedent of the federal circuit courts that properly construes the Colorado-Provision and its Federal-counterpart, App.160a. App.161a-163a, 183a-185a.

Second, it is undisputed that Colorado courts do not deny other plaintiffs the right to dismiss-without-prejudice under the Colorado-Provision, and where they do deny, the Court of Appeals has reversed, and vacated the district court orders, *in accord* with this Court and federal circuit court precedent, except Salazar, who has been denied the same treatment as every other plaintiff under the Colorado-provision that implicates a Fourteenth Amendment Equal Protection Clause violation.

Third, the Colorado Court of Appeals' reasoning that Salazar's claims are time-barred misconstrued Salazar's pleadings and erroneously affirmed the

district court dismissal with prejudice of Salazar's claims on alternate grounds. App.164a-170a. Instead of concluding that the district court erred, where it dismissed based on a conclusory allegation that the facts in this case were the same facts in two prior lawsuits, the Colorado Court of Appeals found, erroneously, that facts previous to May 18, 2017 that gave rise to a replevin claim in a prior lawsuit were the same facts that gave rise to Salazar's claims in this lawsuit, where the previous facts only show the conditions extant when the prior lawsuit was filed, *in contrast*, to the new facts and worsening conditions beginning on May 18, 2017.

## I. The Colorado Court of Appeals' decision is Directly Contrary to and Flouts the Voluntary Dismissal Precedent of this Court, and is in Conflict with the Voluntary Dismissal Decisions of the Federal Circuit Courts, the Colorado High Court, and Colorado Court of Appeals

"Rule 41 (a) (1) preserves this unqualified right of the plaintiff to a dismissal without prejudice prior to the filing of defendant's answer." *Cone v. West,* 330 U.S. 212, 217 (1947).

Prior to the enactment of Rule 41(a) the common law rule established the same absolute right for plaintiffs before verdict or judgment. *Ex*

*Parte Skinner & Eddy Corp.*, 265 U.S. 86, 93 (1924) ("At common law a plaintiff has an absolute right to discontinue or dismiss his suit at any stage of the proceedings prior to verdict or judgment, and this right has been declared to be substantial.").

Salazar filed his Notice to dismiss-without-prejudice Respondents Black-Hills-Federal/Dietrich/Gust that did not file or serve an answer or motion for summary judgment. "Circuit courts have consistently held that Fed.R.Civ.P. 41(a)(1) *unambiguously* gives a plaintiff the right to dismiss an action before the defendant serves an answer or motion for summary judgment." *Eastalco Aluminum Co. v. US*, 995 F.2d 201, 203-04 (Fed.Cir.1993) (*emphasis* in original; citation omitted). "The pertinent language of that portion of Rule 41(a)(1)(i) is clear and seemingly not subject to misinterpretation." *Scam Instrument Corp. v. Control Data Corp.*, 458 F.2d 885, 888 (7thCir.1972) (same).

"Most federal courts have adopted a bright line rule permitting a notice of dismissal pursuant to Fed.R.Civ.P. 41, so long as an answer or motion for summary judgment has not been filed, even though" as here, "the merits of an action may be reached by procedural devices other than an answer or a motion for summary judgment." *Burden v. Greeven*, 953 P.2d 205, 207 (Colo.App.1998) (citing *Moore's Federal Practice*).

Salazar's Notice carried down with it "previous proceedings and orders in the action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff's claim[s]." *In re Piper Aircraft Dist. Sys. Antitrust Lit.*, 551 F.2d at, 219. "Federal courts construing Fed.R.Civ.P. 41(a)(1) have held that, where a plaintiff files a voluntary dismissal under that rule, any ruling on a defendant's motion to dismiss the plaintiff's complaint is void unless such motion was treated as a motion for summary judgment," *Alpha Spacecom, Inc. v. Hu*, 179 P.3d 62, 64 (Colo.App.2007), and have also held that any rulings on the merits of a plaintiff's complaint that were made *before* the plaintiff filed a voluntary dismissal are void, and the division of the Colorado Court of Appeals in *Alpha* was "persuaded by the numerous federal court decisions holding that an adjudication on the merits of a plaintiff's claims made prior to a valid voluntary dismissal under Rule 41(a)(1) is void." *Id.* at 65.

Once the notice of dismissal was filed by Salazar, "the district court loses jurisdiction over the dismissed claims and may not address the merits of such claims or issue further orders pertaining to them." *Janssen v. Harris*, 321 F.3d 998, 1000-01 (10thCir.2003) (collecting cases). *Netwig v. Georgia-Pacific Corp.*, 375 F.3d 1009, 1010-11 (10thCir.2004) (citing *Janssen* and holding

the same). *See also* 8 Moore's Federal Practice ¶ 41.33[6][e], at 41-84 (3d.ed.1999) (same).

The plaintiff "'[N]eed do no more than file a *notice* of dismissal with the Clerk. That document itself closes the file. * * * [A]nd the court has no role to play. * * * There is not even a perfunctory order of court closing the file * * *.'" *Alexander v. Morrison-Knudsen Company*, 444 P.2d 397, 403 (Colo.1968) (citing the Fifth Circuit).

The Colorado Court of Appeals held that Salazar had no absolute and unqualified rights that he exercised under the Colorado-Provision based on the feeble justification that Salazar's Notice "had no effect" because he got what he wanted, dismissal with prejudice by court order on April 5, 2019, and barred the right to bring the same claims in a First-action. Whereas what Salazar wanted by filing his Notice was dismissal-*without*-prejudice, and the absolute right to file a First-action in the jurisdiction and venue of his choice, *without court order*.

This Court's precedent holds just the opposite of that held by the Colorado Court of Appeals. Under the Court of Appeals' rationale the Colorado-Provision would cease to exist.

Under this Court's precedent such government attempts that assault the *individual* protected

under the Fourteenth Amendment from government oppression and that deny, violate, and deprive exercise of fundamental Fourteenth Amendment rights of due process and equal treatment cannot stand.

### A. The Colorado Court of Appeals' Ruling Directly Conflicts with the Rulings of the Federal Circuit Courts

A "trial judge has no discretion to *prevent* a voluntary dismissal in the first instance," *Randall v. Merrill Lynch*, 820 F.2d 1317, 1320 (D.C.Cir.1987) (*emphasis* in original); *Thorp v. Scarne*, 599 F.2d 1169, 1176 (2dCir.1979) (holding that "notices of dismissal filed in conformance with the explicit requirements of Rule 41(a)(1)(i) are not subject to vacatur"); *Universidad Cent. Del Caribe, Inc. v. Liaison C. on Med. Ed.*, 760 F.2d 14, 19 (1stCir.1985) (follows the clear weight of authority evidenced by sister federal circuit cases and holding *in accord* with *Thorpe* that "notices of dismissal ... are not subject to vacatur"); *DC Electronics, Inc. v. Nartron Corp.*, 511 F.2d 294, 298 (6thCir.1975) ("This is a matter of right running to the plaintiff and may not be extinguished or circumscribed by adversary or court"); *Janssen v. Harris*, 321 F.3d at 1000 (same; collecting cases). App.182a-184a.

Yet the Colorado Court of Appeals upheld the district court determinations that Salazar's Notice

was DENIED and his claims dismissed with prejudice. This ruling squarely conflicts with this Court's precedent and with decisions by the Federal Circuit Courts. This Court should resolve the conflict. App.184a-185a.

### B. The Colorado Court of Appeals did not have Jurisdiction to Affirm the District Court Order that Purportedly Adjudicated Salazar's Claims on the Merits

In *Dept. of Revenue, MVD v. Borquez*, 751 P.2d 639, 640 & n.1 (Colo.1988) the Colorado high court reversed the judgment of the court of appeals and held that where a district court lacks jurisdiction to consider the subject-matter "on the merits, the court of appeals likewise lacked jurisdiction to resolve the appeal on the basis of a review of the merits."

Colorado high court precedent prior to *Borquez* holds the same. The district court having no jurisdiction to determine the subject-matter could enter no valid judgment or order. Any action, therefore, from its inception, was void. "'A void judgment cannot be made valid and operative by * * * the taking of an appeal from it, or even by an affirmance on appeal'" and "'The affirmance of a void judgment imparts no validity to it, especially if such affirmance is put upon grounds not touching its validity. Thus an appeal cannot confer upon the

reviewing court jurisdiction of the subject matter that the Court below did not possess.'" *Geisler v. People*, 308 P.2d 1000, 1004 (Colo.1957).

The Court of Appeals had no jurisdiction to so act. Here, the Court of Appeals affirmance did not touch on the validity of the district court order of dismissal, where the order of dismissal was void pursuant to Salazar's Notice, and neither the Denial-order nor the affirmance of that order, or the dismissal order by the Colorado Court of Appeals, imparted to the district court orders any force or validity. App.185a-186a.

This case would definitely have come out the other way had it been heard in federal court. Only this Court may decide whether the Federal Circuits' conclusion or the Colorado Court of Appeals' conflicting conclusion and ruling is correct.

## II. The Colorado Court of Appeals' Ruling Treads on Salazar's Fourteenth Amendment Right to Equal Treatment

The Court of Appeals affirmance singles-out Salazar for punishment. There is no Colorado precedent that affirms a district court denial of a valid voluntary dismissal; to the contrary, plaintiffs that sought relief on review from a district court vacatur of their voluntary dismissal had the relief granted, and the district court order of vacatur

ruled void, reversed and vacated by Colorado intermediate courts.

**This case is a *Recurrence* of Colorado Court of Appeals' decisions that flout this Court's voluntary dismissal precedent.**

Of concern to this Court should be an unpublished decision by the Colorado Court of Appeals, 17CA882, where a separate division of the same court, as did the Court of Appeals in this case, purported to have jurisdiction to hear and affirm a district court order that adjudicated and dismissed a plaintiff's claims where the plaintiff filed a Notice to Dismiss the claims without prejudice under the Colorado-Provision.

For purposes of the Due Process and Equal Protection Clauses it is of little significance that this decision went unpublished and is not binding precedent. Nevertheless, the current Court of Appeals decision also unpublished and not binding precedent, like the earlier unpublished opinion, is a ***recurrence*** in the Colorado Court of Appeals of a decision on review that is in conflict with this Court's precedent.

First, if unchecked this ***recurrence*** is likely to continue, and swept under the rug by the procedural mechanism of "not for publication" and *denied review* by the Colorado Supreme Court for

the purpose that this judicial practice continue to go undetected by courts outside Colorado.

Second, the repeated erroneous decision regarding the Colorado-Provision, in the face of historical and universal precedent cannot be construed to be an "error" but a knowing disregard of and deliberate indifference to *stare decisis*, and determining points in litigation pursuant to the Colorado-Provision not according to precedent, but according to the arbitrary judgment of the divisional judges of the Colorado Court of Appeals that is approved by the Colorado high court refusal to review.

Third, both decisions were rendered in regard to Mr. Salazar, that implicates a discriminatory motive to single-out Salazar and deny Salazar his Fourteenth Amendment rights and Colorado-Provision rights, ***afforded every other plaintiff*** that exercises their rights under the Colorado-Provision without being prevented by Colorado courts.

This Court's review is urgently needed to revive for Salazar the rights conferred by the Colorado-Provision, particularly, where, as here, Colorado courts ***only*** deny Salazar his rights under the Colorado-Provision but not other plaintiffs that exercise their rights under the same, or if they are denied, the district court is overruled by the

Colorado intermediate courts, unlike with Salazar. App. App.38a, 39a-41a, 86a, 102a-104a, 269a-273a.

In this case, the Colorado Court of Appeals like its sister division before it, without jurisdiction, knowingly and erroneously reviewed the district court April 5, 2019 court order on the merits and *repeated* the error.

The first error of review where there was no jurisdiction to affirm, in 17CA882 might be considered an isolated incident, but only by a stretch of reason that is incredible, which posits that professional jurists were completely incompetent and misconstrued both the Colorado-Provision and its plain language and the universal precedent that construed the Colorado-Provision and its Federal-counterpart, which included prior decisions in the Colorado Court of Appeals and Colorado Supreme Court, which state high court decision is binding. But, the second incident, in this case, where the Court of Appeals was noticed about the first error, establishes a pattern of retaliation and punishment against self-represented litigant Salazar. App.180a-181a.

This Court is the only judicial body that can deter the judicial conduct of the Colorado Court of Appeals taken with impunity and under shield of absolute immunity where it has taken punitive action against what appellate judges consider

unpopular litigants, for whatever reason, and particularly in this case a self-represented litigant, and winked-at by the Colorado Supreme Court *en banc*. This Court has a deep respect for the historical role it has played to maintain law and order, and uniformity of the law in the history of the United States of America, and has cherished its authority to rule justly and consistently for all, and should exercise its authority to deter continued judicial abuses in the lower courts that are bound by its precedent, rulings, and holdings, and in this case re-establish the rule of law.

"We can never forget that the rule of law is the law of rules." *See* Antonin Scalia, *The Rule of law as a Law of Rules,* 56 U. CHI. L. REV. 1175 (1989).

And few rules are more important than the ones that limit a court's jurisdiction and hence legitimize its exercise of it. This case gave the Colorado Court of Appeals, and the Colorado high court, a chance to address the inconsistencies with its jurisdictional precedents presented by the decisions in this case that are in conflict with Colorado's own published appellate court decisions and high court precedent. Instead, they made them worse. It doesn't appear that Colorado courts will come back and fix these errors, but will continue to aggravate and compound them where Salazar is concerned. *Cf. United States v. Castillo-Rivera,* 853

F.3d 218, 237 (5thCir.2017) (en banc) (Smith, J., dissenting) (observing, of an *en banc* court's refusal to tackle an issue presented for *en banc* consideration, that "[r]efusing to take this fork in the road is the easy way, but not the right one").

This case presents an important question, over which the Court of Appeals and Colorado Supreme Court are openly and intractably divided with this Court and the federal circuit courts. Here, a state appeals court blatantly disregards Supreme Court precedent and ruled in a way diametrically contrary to what the Supreme Court has said, not once, ***but twice,*** and has gone unreviewed by the Colorado Supreme Court.

This Court alone may reestablish that the Colorado-Provision and its Federal-counterpart "preserves this unqualified right of the plaintiff to a dismissal without prejudice prior to the filing of defendant's answer," *Cone,* 330 U.S. at 217, and correct the Colorado Court of Appeals' fundamental error; and restore Salazar's constitutional right of access to the courts and Fourteenth Amendment rights under the Due Process Clause and Equal Protection Clause.

## III. The Colorado Court of Appeals' Reasoning Misconstrued Salazar's Pleadings and Erroneously Upheld Violations and Deprivations of Salazar's Fourth and Fourteenth Amendment Rights

"'[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law.'" *U.S. v. Jones*, 132 S.Ct. 945, 949 (2012) (citing Entick v. Carrington, 95 Eng. Rep. 807 (C.P. 1765)).

The May 18, 2017 DMV requirement that the Salazars obtain release of a lien as a condition to use their Vehicle is unprecedented in Colorado, and puts the cart before the horse. It is also illogical and impossible, as a matter of law and fact, that anyone who does not own an automobile can encumber the car with a lien.

The previous requirement that the Salazars encumber a Vehicle that DMV employees have deemed the Salazars purportedly do not own is *per se* lawfully unenforceable. But, where the Salazars were presented by Black-Hills-Federal with a security agreement that required them to warrant that they were the owners of the Vehicle; under that set of facts and conditions, if signed by the

Salazars would be a fraudulently executed promise that results in a legally unenforceable contract. Further, this was made very clear to Black-Hills-Federal by the Salazars in federal court, where Judge Howard Tallman at a motion hearing plainly explained to Black-Hills-Federal, by and through its lawyer, that the Salazars had acted in good faith with Black-Hills-Federal and were not at fault for the fact that BHF did not hold a lien securing the Vehicle. Judge Tallman agreed with the Salazars that they could not in good faith sign a security agreement with Black-Hills-Federal because the Salazars purportedly did not own the Vehicle, per, the NOR issued by DMV employees, and therefore were correct to not sign a security agreement. App.223a-229a.

On May 18, 2017, when the Respondents reversed and rescinded their previous requirement, DMV employees, under the influence of the actual tortfeasors Payne/Planet-Honda and Black-Hills-Federal, once again, put the cart before the horse, and imposed requirements that were null and void and legally unenforceable, and legally impossible for the Salazars to satisfy on grounds that no one can be required to obtain release of a lien that the lender does not hold and did not perfect, on a car that they purportedly do not own. This absurd requirement is aggravated by the fact that it is legally unenforceable to require anyone to obtain release of a lien to *use* their vehicle. App.74a-75a.

These facts give rise to Salazar's constitutional claims against the Respondents of violation and deprivation of his Fourth and Fourteenth Amendment rights brought pursuant to federal law §1983 that accrued on May 18, 2017. App.186a-190a.

It was necessary for Salazar to plead the previous facts to *show the new facts* and worsening conditions that give rise to the claims for relief in this lawsuit. App. 82a-85a. In other words, the Court of Appeals, where it erroneously concluded that the date of the previous facts was the date on which Salazar's claims accrued and dismissed his claims as time-barred, upheld the violations and deprivations of Salazar's Fourth and Fourteenth Amendment rights that Salazar pleaded occurred on May 18, 2017. App.89a-96a, 164a-165a, 190a-192a.

This Court has held, in a recent unanimous decision, that two suits are not based on the same cause of action, where the conduct presently complained of was all subsequent to the prior judgment and it cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in the previous case. "This is for good reason: Events that occur after the plaintiff files suit often give rise to new '[m]aterial operative facts' that 'in

themselves, or taken in conjunction with the antecedent facts,' create a new claim to relief." *Lucky Brand Dungarees v. Marcel Fashions Group*, 140 S. Ct. 1589, 1596 (2020) (citing *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955). App.110a-116a.

Plainly, the same reasoning that applies to issue and claim preclusion, *necessarily* applies to statute of limitations. If, a claim is not barred by *res judicata* where it was not ripe at the time a prior lawsuit was commenced, and it is subsequently brought in a new lawsuit, it necessarily accrues after the commencement or judgment entered in the prior lawsuit, where there are new facts and conditions, or new facts and conditions attached to previous conditions that give rise to new claims, "and it cannot be given the effect of extinguishing claims" as time-barred. App.169a. Here, "new facts created new claims," *Id.*. On May 18, 2017, the Salazars became aware that DMV employees (1) attached new conditions that denied use of their Vehicle without release of the purported lien, and, (2) attached new conditions to previous conditions, that denied ownership without release of the purported lien, that gives rise to new conditions for recovery of ownership of their Vehicle, and new "material operative facts."

Here, *new* factual developments on May 18, 2017, not present at the commencement of

17CV186, show constitutional harm that is "in fact indisputable." In this Court's view, "such changed circumstances will give rise to a new constitutional claim. This approach is sensible, and it is consistent with our precedent." *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2306 (2016). App.119a-121a.

The lien-release requirement, the purported attorney fee payment requirement, and the DMV employee NOR that seized the Salazars' ownership of the Vehicle are all violations of separate provisions of Colorado law that operate on different and independent regulatory requirements. "Challenges to distinct regulatory requirements are ordinarily treated as distinct claims." *Id.* App.122a-124a.

As such, the date on which the claims accrued is *necessarily after the filing of 17CV186*, were timely filed within the limitations period, and are not time-barred.

Yet the Colorado Court of Appeals erroneously concluded that Salazar's Fourth Amendment claims accrued in 2013, despite acknowledgment that Salazar pleaded §1983 claims that accrued on May 18, 2017. But all of the after-arising claims this Court has recognized as new claims for relief for more than sixty-five years have been claims that arise from new facts themselves, or new facts

in conjunction with previous facts. Under the Colorado Court of Appeals' rationale the precedent of this Court that holds after-arising claims filed in a new lawsuit that had not accrued before the filing of a previous lawsuit, or were not adjudicated on the merits in a previous lawsuit, would cease to exist as binding legal precedent under the principle of *stare decisis*.

This Court's review is urgently needed, and is of vital importance, to maintain this Court's precedent as binding on all lower courts, particularly, where as here, Colorado flouts this Court's holdings, and the Colorado Supreme Court denies review. Under this Court's precedent, such knowing government attempts to undermine, subvert, and abrogate Salazar's pleadings, at the motion stage where his pleadings must be taken as true, on the pretext that properly pleaded claims are time-barred, denies and violates Salazar's constitutional rights and cannot stand.

## CONCLUSION

For the foregoing reasons, the Petition should be granted.

Respectfully submitted,

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