

20-6276

No. _____

Supreme Court, U.S.
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In The
Supreme Court of the United States

AREK R. FRESSADI,

Petitioner,

v.

STATE OF ARIZONA; ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Arizona

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Whether failures to apply mandatory language of the U.S. Constitution, U.S. Supreme Court rulings, state law, and court rules are violations of the Due Process and Equal Protection Clauses of the Fourteenth Amendment and/or rights to petition Government for a redress of grievances per the First Amendment?

2) Whether abuses of Oaths of Office, Oaths of Admission, Codes of Judicial Conduct, Rules of Professional Conduct, inefficiencies or clear errors of the judicial process are fraud on the court to be judicial takings?

3) Whether failures or delays of entitled/mandatory venue transfers render judgments in the initial venue void?

4) Whether suspension of driver's licenses for inability to pay fines violates the U.S. Constitution's Eighth Amendment?

PARTIES TO THE PROCEEDING

Petitioner Arek R. Fressadi was Petitioner in Arizona Supreme Court, and was Plaintiff-Appellant and Defendant/Counterclaimant-Appellant in merged cases from Pima County Superior Court at Arizona Court of Appeals Division Two.

Respondents from Arizona Supreme Court are State of Arizona; Tim Lane, Arizona Department of Transportation (“ADOT”) Director; Pima County; Pima County Sheriff’s Department; Leslie Miller; Brenden Griffin; Adam Watters; Chris Holguin, Hearing Officer of Pima County Consolidated Justice Court. The State of Arizona was both Plaintiff/Counterdefendant-Appellee and Defendant-Appellee while all other Respondents were Defendants-Appellees or Real Parties in Interest in merged cases from Pima County Superior Court at Arizona Court of Appeals Division Two.

RELATED CASES

Arek R. Fressadi v. State of Arizona, et al., No. CV-19-0279-PR, Arizona Supreme Court. Decision entered June 3, 2020.

Arek R. Fressadi v. Hon. Chris Holguin, et al., No. CV-19-0194-PR, Arizona Supreme Court. Decision entered Nov. 19, 2020.

Arek R. Fressadi v. State of Arizona, et al., No. 2 CA-CV 2019-0153, Arizona Court of Appeals, Division Two. Decision entered Oct. 8, 2019.

Arek R. Fressadi v. State of Arizona, et al., No. 2 CA-SA 2019-0031, Arizona Court of Appeals, Division Two. Decision entered June 10, 2019.

Arek R. Fressadi v. State of Arizona, et al., No. CV2019-095124, Maricopa County Superior Court. No final decision.

Arek R. Fressadi v. State of Arizona, et al., No. CT20190001, Pima County Superior Court. Decision entered June 6, 2019; Finality of Judgment entered July 8, 2019.

Arek R. Fressadi v. State of Arizona, et al., No. C20184203, Pima County Superior Court. Decision entered Oct. 12, 2018.

State of Arizona v. Arek Fressadi, No. TR18-014819-CV, Pima County Consolidated Justice Court. Default Judgment entered July 30, 2018; Decision entered Dec. 20, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Arek R. Fressadi (“Fressadi”) respectfully petitions for a writ of certiorari to review repeated misconduct by Arizona courts ignored by Arizona’s Supreme Court.

OPINIONS BELOW

Arizona Supreme Court’s denials of Statutory Special Action and Review in CV-19-0279-PR are unpublished. *Infra*, Appendix (“App.”) 1a. Arizona Court of Appeals (“AZCOA”) Division Two’s decision in 2 CA-CV 2019-0153 that it lacked appellate jurisdiction to review a merged trial *de novo* in Pima County Superior Court and omitted Injunction/Temporary Restraining Order of C20184203 (“TRO”) originally filed in the same superior court is unpublished. App. 2a-3a. AZCOA’s denied rehearing in conflict of interest is unpublished. App. 4a. AZCOA’s denials in 2 CA-CV 2019-0153 to correct the caption, waive supersedeas bond, stay judgment execution, and stay the appeal pending Arizona Supreme Court review in CV-19-0192-PR for AZCOA Special Action 2 CA-SA 2019-0031 that AZCOA falsely stated was not pending are unpublished. App. 5a. Arizona Supreme Court’s partial grant of Petition for Review in CV-19-0192-PR of AZCOA Special Action 2 CA-SA 2019-0031 is unpublished. App. 6a-7a. AZCOA’s denial of Special Action jurisdiction in 2 CA-SA 2019-0031 is unpublished. App. 8a-9a. Pima County Superior Court’s decision in CT20190001 of a trial *de novo*, from erroneous default judgment in TR18-014819-CV at Pima County Consolidated Justice Court (“Justice Court”), lacked personal jurisdiction as required statutory venue transfer was invoked due to conflict of interest (App. 10a-13a), then denied New Trial/Rehearing (App. 14a); the confused court later entered judgment language (App. 15a), all unpublished. Pima County Superior Court treated CT20190001 also as an appeal of the TRO, but the Court in CT20190001 misconstrued jurisdictional challenges, refused review of the TRO, barred counterclaims despite a timely-filed Notice of Claim, and declined holding opposing counsel in contempt, unpublished (App. 16a-17a). The TRO, filed as new case C20184203 in Pima County Superior Court, was misconstrued as an appeal from TR18-014819-CV, remanded to Justice Court despite exceeding

Justice Court's jurisdictional limit and requiring statutory venue transfer for conflict of interest (App. 18a-19a); denied reconsideration for mandatory venue change, falsely stating that counterclaims were not raised in Justice Court while again misconstruing the case as an appeal (App. 20a-21a); and denied correction (App. 22a); all unpublished. Justice Court entered default judgment for "failure to appear" despite appearance (App. 23a), declined to lift suspended driver's license claiming lack of jurisdiction due to appeal (App. 24a), then denied vacating judgment, barred counterclaims before Notice of Claim was due, and denied the TRO (App. 25a); all unpublished. Ergo, no court of competent jurisdiction reviewed a fraudulent speeding ticket and unlawful 5.5-month suspension of Fressadi's driver's license.

JURISDICTION

Fressadi invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a writ of certiorari per this Court's COVID-19 order filed March 19, 2020, within 150 days of the Arizona Supreme Court's decision entered June 3, 2020, and tolled to this Court's next business day per Rule 30.1.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Relevant portions of constitutional and statutory provisions are reproduced in an appendix to this petition. App. 26a-38a, *infra*.

INTRODUCTION

Courts and its judges have basic duties to abide by mandatory language of Oaths of Admission and Office, Rules and Codes of Professional and Judicial Conduct, U.S. and State Constitutions and Statutes, U.S. and State Supreme Court Rulings, and court rules to properly administer cases, determine jurisdiction prior to proceeding on the merits, and implement the laws of the land. But Arizona courts in many instances violate fundamental rights of equal protections and due process to redress grievances per the U.S. Constitution's 1st and 14th Amendments, and impose excessive fines or cruel and unusual punishments in violation of the 8th Amendment—without recourse.

Applicable laws and rules in this and related matters use “language of an unmistakably mandatory character, requiring that certain procedures ‘shall,’ ‘will,’ or ‘must’ be employed,” creating constitutionally protected interests. *Hewitt v. Helms*, 459 U.S. 460, 471 (1983).

Justice is sacrificed when courts fail to abide by mandatory laws and procedures to be complicit in parties’ frauds upon courts. See *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (noting the importance of “preserv[ing] both the appearance and reality of fairness,” which “generat[es] the feeling, so important to a popular government, that justice has been done”) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)); *Offutt v. United States*, 348 U.S. 11, 14 (1954) (“[J]ustice must satisfy the appearance of justice”); *Ex parte McCarthy*, 1 K.B. 256, 259 (1924) (“[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done”).

Akin to the hobby kit in *Parratt v. Taylor*, 451 U.S. 527 (1981), the monetary damage of this case may appear insignificant—\$284.75 for a fraudulently-issued speeding ticket. But this matter has massive national implications on extortion by government and courts facilitating abusive police power with no redress. Across the nation, states and their political subdivisions violate constitutional rights to issue illicit traffic violations as a profit center. Courts routinely uphold fines to keep their doors open and fund law enforcement. It is financially futile to hire an attorney at greater cost than imposed fines. Courts deny appointment of counsel for civil traffic violations. Drivers grumble, but pay fines for fraudulent citations rather than spend time and resources to research law and challenge injustices even when innocent. Impoverished drivers who cannot pay fines have their driver’s licenses suspended, to be incarcerated with vehicle impounded if caught driving to work without a license to pay the fine—a vicious cycle. Prolific due process violations are difficult to defend.

Liberties are conceded. Law enforcement and courts violate Constitutions of the U.S. and State as government tyranny, what the Founding Fathers sought to avoid. This model case is a manifestation of tyranny.

Arizona attempts to mitigate due process prejudices and equal protection by mandatory venue transfer at least for cases in superior courts, but courts routinely delay or ignore implementation as in this case. Arizona Revised Statute ("A.R.S.") § 12-408(A) (App. 28a) states¹:

In a civil action pending in the superior court in a county where the county is a party, the opposite party is entitled to a change of venue to some other county without making an affidavit therefor.

Arizona Courts previously upheld the law with integrity. "When it was shown that the real parties in interest were entitled to a change of venue as a matter of right, the respondent court had no jurisdiction to do anything other than transfer the case." *Cochise County v. Helm*, 635 P.2d 855, 130 Ariz. 262, 263 (App. 1977), citing *Miles v. Wright*, 194 P. 88, 22 Ariz. 73 (1920). *Prima facie ab initio*, the county is shown to be a named party, real party in interest, indispensable/necessary party per court rules, or other form of "party" in its own court. "When a county is a party to a suit in the Superior Court of the same county and a change of venue is properly requested, it must be granted." *Yuma County v. Keddie*, 647 P.2d 1150, 1151, 132

¹ In Arizona, traffic citations are civil infractions. All cases related to this matter are filed in civil (not criminal) divisions of local and state courts. See A.R.S. § 28-1591(A) (App. 34a): "A violation of a statute relating to traffic movement and control...shall be treated as a civil matter as provided in chapter 3 of this title or this chapter," including for Fressadi's inapplicable and fraudulently-issued speeding citation per A.R.S. § 28-701(A) (App. 34a) ("A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing. A person shall control the speed of a vehicle as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the highway in compliance with legal requirements and the duty of all persons to exercise reasonable care for the protection of others.")

Ariz. 552, 553 (1982) (en banc), citing *Massengill v. Superior Court*, 416 P.2d 1009, 3 Ariz. App. 588 (App. 1966). See also 56 Am.Jur. Venue § 72²; 92 C.J.S. Venue § 135³; *GAC Properties, Inc. of Arizona v. Farley*, 481 P.2d 526, 528, 14 Ariz. App. 156, 158 (1971), quoted in *Yuma* (emphasis and omitted citations in original):

The legislature, in requiring no affidavits in support of a motion for a change of venue when a county is a party to an action, has indulged in a presumption that trial in the very county which is a party to the suit would be unfair to the county's adversary. We have held that when a proper request of venue has been made, the cause *must* be transferred. [citations omitted] Under A.R.S. § 12-408, change of venue is mandatory and the petitioners having made proper application to the trial court, were entitled to the granting of their motion.

Repeated failures by Arizona Courts to implement the invoked statute and uphold other mandatory laws affected not only this traffic ticket matter, but other cases, including Fressadi's personal injury matter from getting hit and run over by a truck due in part to Pima County's failure to keep its roads safe. While incapacitated from the injuries, the County stole and sold the motorcycle he was riding in a fraudulent civil asset forfeiture scheme—another illicit profit center.

This case presents questions of national importance to uphold mandatory law and procedures protected by the U.S. Constitution and decisions of this Court. See state-by-state analysis at App. 41a-59a and Statement of Interest by the U.S. Department of Justice ("DOJ") at App. 60a-81a. This Court should grant certiorari.

² "The power of the legislature to authorize changes of venue in civil actions has rarely been questioned in the courts. Regulations for changes of venue are designed to secure to parties fair and impartial trials of causes, and to secure the right to trials at such places as are most convenient for the parties and witnesses; the extent to which such regulations may go, for the accomplishment of these purposes, is addressed to a sound legislative discretion, in view of the nature of the case to be provided for and the probable conditions likely to arise."

³ "The statutes providing for and governing changes of venue manifest a purpose and intent to secure to every litigant the right to a trial of his cause before a fair and impartial tribunal and to provide the procedure whereby such right may be enforced and protected."

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

In 2014, Fressadi was hit and run over by a truck due in part to Pima County's bad roads. Prior to being airlifted to the hospital due to his life threatening injuries, he told Pima County Sheriff's Department ("PCSD") to tow the vintage motorcycle he was riding to his garage using his free towing insurance. Instead, PCSD used its private joint partner towing company Rod Robertson Enterprises Inc. ("RRE") to extort \$3,000 in storage fees knowing Fressadi would be incapacitated in the hospital, then sold the motorcycle for RRE's and PCSD's profit. Fressadi sued.

As Fressadi lives in Pima County, he had to file in Pima County Superior Court. Pima County is a named party in C20153956 at its own court. But Pima County Superior Court refused to timely file the case on Application for Waiver or Deferral of Court Fees and Costs ("Waiver Application") and, once filed, the judge in C20153956 delayed mandatory venue transfer per invoked A.R.S. § 12-408(A) until AFTER judgments were entered to favor Pima County. The State was dismissed because the Court's Clerk would not file the Complaint until a judge ruled on the Waiver Application, which takes 2-3 weeks. The Court did not apply required tolling provisions per A.R.S. § 12-821.01(B),(C),(D) (App. 29a) for incapacitation, fraudulent concealment, impossibility of earlier discovery, and an administrative hearing that had yet to occur. At trial, RRE admitted to filing a false unsigned document to the State of Arizona Department of Transportation ("ADOT") to fraudulently obtain title to the vintage motorcycle, which was fully restored just before the incident and easily repairable thereafter; RRE sold it for Pima County's financial benefit. The Pima County Superior Court judge "retired" after issuing the judgments.

Pima County initially declared the subject road was built to required safety and design standards, but admitted its liability in 2016 as the road was not built to any standards. The County also admitted to an opaque kickback contract with RRE

for civil asset forfeiture. Fressadi filed a 2nd case (CV201601438), consolidated in Pinal County Superior Court with the 1st case (renamed CV201600937 in Pinal then collectively S1100CV201600937) to address due process violations and discoveries concealed by the Defendants. Despite lacking federal jurisdiction, Pima County went judge shopping and removed the matter to Phoenix District Court for the same judge that messed up Fressadi's ongoing real estate matter, which also involves A.R.S. § 12-408(A).⁴ District Court failed to remand the 1st state-consolidated case in CV-16-03260-PHX-DJH that had no federal claims for three years. Remand of the 2nd state-consolidated case is pending at the Ninth Circuit, 19-16480.

With ironic coincident or retaliation for exposing Pima County's civil asset forfeiture fraud, a Pima County Deputy issued Fressadi a traffic citation on 6/8/18 in the same area he was hit and run over by a truck due to Pima County's bad roads. The radar scan set off Fressadi's radar detector. Fressadi and his passenger noticed that their speed was 49 M.P.H. in a 50 M.P.H. zone. Fressadi reduced his speed to 40 M.P.H. prior to entering a 40 M.P.H. zone, but the Deputy cited Fressadi for driving 49 M.P.H. in a 40 M.P.H. zone—another “out-and-out plan of extortion” per *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

⁴ After Fressadi won three appeals in Maricopa County Superior Court case CV2006-014822, he moved to amend his complaint to add indispensable parties and invoked A.R.S. § 12-408(A) to address ongoing illegalities by Maricopa County. When his motion was denied in conflict with appellate rulings, he filed a new complaint required to be filed in Maricopa County's Superior Court to invoke A.R.S. § 12-408(A) *ab initio*. However, the Maricopa County Superior Court Clerk filed the case as a Special Action and failed to transfer venue as required. Defendants removed the case with an unripe/non-final/reserved federal claim to Phoenix District Court, CV-14-01231-PHX-DJH, which was appealed at the Ninth Circuit in 15-15566 and this Court in 18-8351. Although District Court lacked subject matter jurisdiction per *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), it ruled that Fressadi's claims were “time-barred” despite unconstitutional conditions and continuing violations caused by Arizona and its political subdivisions violating mandatory requirements of U.S. Supreme Court rulings in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Petitioner filed Motions to Recall the Mandate at the Ninth Circuit in 15-15566 based on this Court's rulings.

II. PROCEDURAL BACKGROUND

See “Opinions Below” section *supra*.

On July 30, 2018, Fressadi timely appeared in Pima County Justice Court per court order in TR18-014819-CV for a “10 minute” hearing. App. 39a. As Fressadi waited for a clerk to provide courtroom instructions not on the order, Hearing Officer Chris Holguin entered default judgment for “FTA,” “failure to appear.” App. 23a. Fressadi expressed his grievance. Holguin retaliated by ordering Fressadi to pay \$284.75 by 5:00 P.M. or his driver’s license would be suspended. Due to his real estate matter pending recall at the Ninth Circuit, and getting hit and run over by a truck, Fressadi is indigent, which Holguin did not consider when he fined Fressadi. As punishment for expressing his grievance and poverty, Fressadi’s driver’s license was immediately and indefinitely suspended, ultimately for over five months—an enormous hardship as Fressadi lives in a rural area with no public transportation. The grocery store and medical care necessary to treat ongoing injuries from getting hit and run over by a truck are 20+ miles away. Fressadi filed a motion to stay proceedings to file an injunction, and motion to change venue to Superior Court as counterclaims exceed Justice Court’s jurisdiction. App. 40a. No response was filed.

On July 31, 2018, ADOT sent Fressadi notice that his license was suspended and a warrant may be issued for his arrest. Justice Court / ADOT violated A.R.S. § 28-1601 (App. 34a-36a), which allots a 30-day payment window with extension and payment plans for indigents before suspending a license for non-payment.

Mailed August 3 and filed August 9, 2018, Fressadi submitted a Notice of Appeal with a Motion to Vacate Default Judgment. Supersedeas bond was never established to stay enforcement of judgment to frustrate A.R.S. § 28-1600(B) (“The posting of an appeal bond stays enforcement of the judgment.”) App. 34a. Fressadi would not be able to pay it anyway, and his license remained suspended.

Also on August 3, 2018, Fressadi filed C20184203 for injunctive relief with Temporary Restraining Order (TRO)⁵ in Pima County Superior Court to cease the license suspension and potential warrant, and challenge due process violations. He invoked mandatory venue transfer *ab initio* per A.R.S. § 12-408(A) in the TRO and motions as Pima County is one of the named parties. Pima County Attorney Amy Ruskin represented all parties, including the State of Arizona. C20184203 is a new civil case. Ruskin fraudulently construed it as an appeal⁶ of TR18-014819-CV. Cases beginning with “CT” are appeals from Civil Traffic cases in Justice Court.

On September 19, 2018, Fressadi filed into Justice Court a Motion to Lift Suspension and Motion to Stay Appeal until his TRO is resolved. Justice Court switches judges without prior notice to parties, and orders often do not include legible names with judges’ signatures. Hearing Officer Chris Holguin remained assigned to the case, but Presiding Judge Adam Watters made rulings thereafter. Judge Watters did not lift the suspension, stating the court lost jurisdiction after a Notice of Appeal was filed and that the matter is before Superior Court. App. 24a.

On October 12, 2018, without jurisdiction per A.R.S. § 12-408(A) and relying on false statements by Pima County’s Attorney, Pima County Superior Court Judge Leslie Miller “stayed” TRO case C20184203 deemed an “Appeal” and “remanded” to Justice Court. App. 18a-19a. Fressadi requested reconsideration, again invoking A.R.S. § 12-408(A). On November 2, 2018, Judge Miller’s Law Clerk denied mandatory venue transfer by inventing that limited Justice Court rules apply to the Superior Court, again misconstruing the TRO case as an “appeal,” and falsely stating “[t]he

⁵ The TRO addresses Justice Court’s due process violations, and was an injunction to stop the 5.5-month license suspension and arrest warrant per Pima County’s extortionate harassment over a fraudulent traffic citation that Fressadi could not and should not be required to pay.

⁶ Fressadi requested a stay of appeal in Justice Court since the Justice Court hearing on 7/30/18 to file counterclaims exceeding Justice Court’s jurisdiction. App. 40a.

Counterclaims are asserted for the first time on appeal. App. 20a-21a. Counterclaims were first asserted in Justice Court on the day default judgment was entered. App. 40a. Fressadi's license remained suspended.

On November 9, 2018, Fressadi filed a 2nd Motion to Lift Suspension in Justice Court. No response was filed and Justice Court remained silent.

On December 20, 2018, Presiding Judge Adam Watters refused to set aside the default judgment and, exceeding his jurisdiction, denied venue change and the TRO improperly "remanded" to Justice Court as an "appeal," and prematurely barred counterclaims by stating no Notice of Claim was filed. App. 25a. On January 2, 2019, Fressadi timely filed a Notice of Appeal of Justice Court's December 20th ruling, from which Pima County Superior Court initiated CT20190001, assigning Judge Brenden J. Griffin. After nearly half a year of license suspension, Judge Watters indicated that Fressadi could drive again on January 9, 2019.

Fressadi timely filed his "Appellate Memorandum" including all issues in Justice Court's order on 12/20/18, with motion to change venue *ab initio* per A.R.S. § 12-408(A) for the appeal in Superior Court. No Responsive Memorandum was filed, thus the State of Arizona and Pima County waived defenses. Justice Court failed to transfer court records from TR18-014819-CV to CT20190001, including from remanded C20184203.

Judge Griffin ordered a joint status report. Fressadi objected, invoking A.R.S. § 12-408(A). Although transfer of CT20190001 to another county is mandatory per A.R.S. § 12-408(A), Judge Griffin denied transfer, refused to hear the TRO, barred counterclaims, but ordered trial *de novo*. App. 16a-17a. Fressadi gave notice to Judge Miller in C20184203 of Justice Court's 12/20/18 ruling denying the TRO, the trial *de novo* in CT20190001, and again requested the Court's mistakes be corrected so the TRO can be adjudicated in another county's Superior Court. On May 9, 2019,

Judge Miller's Judicial Administrative Assistant stated the matter was "remanded" and, "no further matters pending in this Court, the Court finds that Plaintiff's Notice/Motion is MOOT." (Emphasis in original, App. 22a.) As such, there was no hearing or appeal of the TRO by a court of competent jurisdiction.

Challenging jurisdiction, misuse of court rules, and denial of claims heard throughout Pima County's court proceedings, Fressadi sought to stay the trial by Special Action, 2 CA-SA 2019-0031. AZCOA declined Special Action Jurisdiction, but noted Causes CT20190001 and C20184203 were at issue in the trial. App. 10a-11a.

Judge Griffin held the new trial (*i.e.* not an appeal) on June 5, 2019, despite challenges to jurisdiction and Fressadi stating he was unprepared due to conflicts in other litigation, including a Petition to this Court. App. 12a-15a. As this was a civil case in *Superior* Court, Judge Griffin was required to conduct the case per Arizona Rules of Civil Procedure ("ARCP") Rule 1 ("[t]hese rules govern the procedure in all civil actions and proceedings in the superior court of Arizona") and/or Superior Court Rules of Appellate Procedure-Civil ("SCRAP-Civ") per its Rule 1(a) ("[t]hese rules govern the procedures in all civil appeals"), which incorporates ARCP per mandatory language in Rule 1(c)⁷. Instead, Judge Griffin used *Justice* Court Rules of Procedure for Civil Traffic and Civil Boating Violations ("Civil Traffic Rules") to deny Fressadi discovery, a jury trial, the TRO, counterclaims, and redress of his grievances in a court of competent jurisdiction without conflict of interest.

Despite Fressadi's and his witness's detailed testimony, Judge Griffin decided the PCSD Deputy's vague and conflicting perjury⁸ in violation of A.R.S. § 12-349⁹

⁷ "The Arizona Rules of Civil Procedure and Local Rules of Practice in the Superior Courts shall govern the proceedings before the Superior Court where no rule is specified herein, and insofar as such rules are practicable." No rule specifies otherwise for civil traffic cases, and "practicable" can be subjectively abusive if not unconstitutional.

⁸ The "Deputy" had no identification to prove he was a Deputy, not even a driver's

(App. 27a-28a) was “more credible” to find Fressadi “responsible” for the fraudulent traffic citation to financially benefit the court and PCSD as conflict of interest—the type of bias and prejudice A.R.S. § 12-408(A) was enacted to prevent, and why the invoked constitutional request for jury trial had to be implemented.

Judge Griffin’s Judicial Administrative Assistant denied Fressadi’s request for new trial and rehearing on June 24, 2019 (App. 14a). Judge Griffin was confused why language of finality was required per ARCP 54(c) and that Fressadi’s Notice of Appeal had motions and notices for AZCOA, not Superior Court. However, after exclusively relying on Civil Traffic Rules, Judge Griffin issued finality per ARCP 54(c) on July 8, 2019 (App. 15a). Fressadi filed a Motion to Stay Enforcement of Judgment Pending Appeal of the *de novo* trial in CV20190001 with request that Superior Court establish and waive Supersedeas Bond. Pima County’s Court denied the stay of judgment and failed to address Supersedeas Bond, which is a requisite for AZCOA appeals and not specified in state law or Waiver Applications as a waivable court fee or cost. *Id.*

On July 11, 2019, Fressadi timely filed a Petition for Review at Arizona Supreme Court, CV-19-0194-PR, supplemented on August 12, 2019, addressing denial of Special Action with challenges to due process violations and Superior Court’s jurisdiction.

license, such that it was not possible to prove whether he issued the fraudulent citation. The Deputy incorrectly described Fressadi’s vehicle, could not state Fressadi’s or the Deputy’s location when he took the radar reading, and falsely stated that Fressadi said he was on his way to a trial when the citation was issued. The Deputy’s false statements were based on Attorney Ruskin’s coaching based on incorrect statements submitted and later corrected with evidence.

⁹ A.R.S. § 12-349 awards fees, costs and damages to parties affected by opposing parties and their attorneys filing or defending unjustified actions, harassing, causing delays, and engaging in discovery abuses. The statutory exception in A.R.S. § 12-349(D) for civil traffic violations and criminal proceedings incentivizes issuance of fraudulent conduct and malicious prosecutions. This matter involves other issues besides an alleged civil traffic violation per A.R.S. § 12-349(D).

Fressadi's opportunity to file an Opening Brief for the main appeal at AZCOA in 2 CV-CA 2019-0153 from trial *de novo* was hijacked. The same judges that declined jurisdiction in 2 CA-SA 2019-0031 and are parties at Arizona Supreme Court in CV-19-0194-PR decided 2 CV-CA 2019-0153 in conflict of interest. On October 3, 2019, AZCOA denied correction of appellate parties' names, denied addressing Supersedeas Bond, and declined a stay of the appeal by falsely claiming the Petition in CV-19-0194-PR for 2 CA-SA 2019-0031 was "not pending in the Arizona Supreme Court." App. 5a. Arizona filed many false and misleading statements in an unsigned Motion to Dismiss the Appeal on October 7, 2019.¹⁰ Without providing time allotted for Fressadi to file a response, AZCOA granted the State's motion the following day on October 8, 2019 (App. 2a), claiming the court lacked appellate jurisdiction on a trial *de novo* and TRO, but citing A.R.S. § 12-2101(B), which *supports* appellate jurisdiction per A.R.S. § 12-2101(A)(1),(2),(3),(4),(5)(a)&(b),(6). App. 29a-30a. AZCOA denied reconsideration, recusal, and sanctions without reason. App. 4a.

On November 7, 2019, Fressadi attempted to resolve the obstructed appeal and mandatory implementation of law and court rules by filing a Petition for Review of 2 CV-CA 2019-0153 with Petition for Statutory Special Action at Arizona Supreme Court, CV-19-0279-PR. Fressadi moved for consolidating CV-19-0194-PR and CV-19-0279-PR as issues in CV-19-0194-PR were incorporated in CV-19-0279-PR.

¹⁰ For example, Pima County's Attorney on behalf of Arizona attempted to rename the appeal from 2 CA-CV 2019-0153 to 2 CA-CR 2019-0153 on the caption page to again falsely argue the matter is "criminal" to block Fressadi's right to transfer the "civil" trial *de novo* to another county per A.R.S. § 12-408(A). They conceded at the Superior Court level that this is a civil matter. *See* A.R.S. § 28-1591(A) (App. 34a); *Taylor v. Sherrill*, 819 P.2d 921, 169 Ariz. 335, 342 (1991) (en banc): "We conclude, therefore, that proceedings involving civil traffic violations are civil in nature." Plus, the appeal involves the civil TRO, which was denied review at Superior Court and AZCOA. They intentionally excluded "*et al.*" in the AZCOA case title, attempting to omit Pima County as a party. Many false statements were made of the history, nature, and issues of the appeal.

The court denied consolidation. On November 19, 2019, Arizona Supreme Court granted CV-19-0194-PR regarding the AZCOA Special Action case 2 CA-SA 2019-0031 to the extent of ordering AZCOA to reverse its denial of Fressadi's Waiver Application¹¹, but denied review of the Special Action regarding mandatory venue transfer, jurisdiction, misuse and clarification of guiding court rules, abuses of process, and violations of the U.S. and Arizona Constitutions. App. 6a-7a. On June 3, 2020 in CV-19-0279-PR, the Court denied Fressadi's Petition for Review and Petition for Statutory Special Action regarding the main appeal 2 CV-CA 2019-0153. App. 1a.

All rulings in AZCOA are unsigned. Fressadi timely files this Petition.

REASONS FOR GRANTING THE PETITION

I. This Matter Provides Compelling Reasons to Correct Nationwide Problems: Ensuring Integrity of Courts and Barring States from Suspending Driver's Licenses for Non-Payment of Fines/Fees

This matter comports with Rule 10(b) and (c) by way of lower courts' disregard for mandatory law and denied review that cause "conflicts with the decision of another state court" and "deciding an important federal question in a way that conflicts with relevant decisions of this Court." This matter requests reform of the judicial process and accountability of its courts when they fail to uphold the U.S. Constitution.

The First Amendment does not restrict redress of grievances. App. 26a. The Fourteenth Amendment concerns due process and correct administration of justice in all state courts, incorporating the Fifth Amendment¹². *Id.* This Court of last

¹¹ Causing extra litigation, AZCOA denied a Waiver Application in 2 CA-SA 2019-0031, but granted a Waiver Application based on the same information in 2 CV-CA 2019-0153, requiring examination of state statutes and court procedures involving waiver or deferral of court costs, including how it affected Fressadi's personal injury matter. Arizona's Supreme Court reversed denial of court costs/fees, but declined to address Pima County's policy of not filing complaints with the Waiver Application.

¹² The Fourteenth Amendment stated throughout herein incorporates the Fifth Amendment, including for takings (judicial and otherwise) and just compensation.

resort must address violations of due process, takings, and equal protection in this case to correct or prevent injustices in other cases nationally by mandating a new trial *de novo* and TRO hearing by jury per the Seventh Amendment (*Id.*) and Ariz. Const. Art. 2, §§ 3(A), 4, and Art. 6, § 17 (App. 27a), in a superior court of a different county to find liability for excessive suspension of driver's licenses per Ariz. Const. Art. 2, § 15 (*Id.*) and the Eighth Amendment (App. 26a), and place safeguards for the public when courts and law enforcement violate their duties to uphold law. If not, the judicial process is ineffectual.

Suspending a driver's license for trivial fines is bad for the economy, bad for the Courts, and really bad for the driver who cannot get to work, buy groceries, see a doctor, or get to school. Taking away the means for a person to pay a fine by depriving them of their driving privilege is an ass-backward solution. This unconstitutional punishment causes significant loss of tax revenue.

If drivers cannot pay a fine but have to drive, they risk going to jail, akin to Debtor's Prisons from the Middle Ages. Impounding vehicles to be sold at auction to benefit the state is extortion. Suspending a driver's license for a period of time proportional to the alleged infraction and the driver's life and work circumstances should wipe out the fine. In lieu of detrimental suspension, community service may be explored. When Fressadi sought to redress grievances per the First Amendment, he was unjustly fined and his driver's license was immediately suspended for over five months in violation of the Eight and Fourteenth Amendments.¹³

Palazzolo v. Rhode Island, 533 U.S. 606, 617 (2001). The Due Process Clause of the Fourteenth Amendment incorporates the first 10 Amendments in the Bill of Rights. *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968).

¹³ Justice court later gave Fressadi option to "pay" the fraudulent fine with 25 hours of community service, but it would detrimentally affect his urgent litigation deadlines and his license remained suspended such that he could not drive to a community organization.

Millions of Americans are affected. Most grumble and succumb. Fressadi is temporarily indigent to redress these wrongs of national importance for the large class of constituents similarly situated. "If not me, who? If not now, when?"

II. State Courts and Law Enforcement Must Uphold Mandatory Laws—Not Break Them; Misconduct Amounts to Fraud on the Court and/or Judicial Takings

Without recourse, courts or law enforcement violate constitutional interests where laws or rules "used language of an unmistakably mandatory character, requiring that certain procedures 'shall,' 'will,' or 'must' be employed." *Hewitt v. Helms*, 459 U.S. 460, 471 (1983). "In interpreting statutes, our central goal 'is to ascertain and give effect to the legislature's intent.'" *Yarbrough v. Montoya-Paez*, 147 P.3d 755, 759, 214 Ariz. 1, 5, ¶ 12 (App. 2006). If a statute's language is clear, it is "the best indicator of the authors' intent and as a matter of judicial restraint we 'must apply it without resorting to other methods of statutory interpretation, unless application of the plain meaning would lead to impossible or absurd results.'" *Winterbottom v. Ronan*, 258 P.3d 182, 183, 227 Ariz. 364, ¶5 (App. 2011), quoting *North Valley Emergency Specialists, L.L.C. v. Santana*, 93 P.3d 501, 503, 208 Ariz. 301, ¶9 (2004) (en banc). States and their actors must abide by the Supremacy Clause, U.S. Constitution Art. VI, ¶2. The Fourteenth Amendment guarantees due process and equal protection. Why must The People abide by law but not law enforcement or the courts? Government immunity cannot facilitate illegalities. "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958). "Of course a violation of the law does not attain legality by lapse of time." *State Bar of Arizona v. Arizona Land Title & Trust Co.*, 366 P.2d 1, 90 Ariz. 76, 94 (1961) (en banc) (emphasis in original), quoting *State ex rel. Reynolds v. Dinger*, 14 Wis. 2d 193, 204 (1961).

This matter concerns courts and illicit government practices all over the

doctrine provides that “the government may not deny a benefit to a person because he exercises a constitutional right.” *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). In this instance, Fressadi exercised his First Amendment right to express grievance with Arizona Courts. As a consequence, he was denied benefits from his rights to drive. Arizona must be held liable and compensate Fressadi for its frauds upon its courts and judicial takings by its courts.

Applicable to judges and law enforcement personnel, “while [they] may strike hard blows, [they are] not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). “The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.” *Ex parte Young*, 209 U.S. 123, 160 (1908). The U.S. Supreme Court in *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974) (emphasis in original), citing *Ex parte Young*, stated “when a state officer acts under a state law in a manner violative of the Federal Constitution, he ‘comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual conduct.” Immunity for law enforcement and judges causes recklessly rampant wrongdoing.

III. Obstructed Access to Courts and Judicial Procedures are Violations of the U.S. and Arizona Constitutions, State Laws, and Court Rules, But Some Laws and Rules are Unconstitutional; Abrogating Rights and Enforcing Void Judgments Shall Not Be Tolerated

Jurisdiction matters. As Superior Court lacked personal jurisdiction or jurisdiction to render a ruling per proper invocation of A.R.S. § 12-408(A) *ab initio*, all rulings and judgment are void in underlying Pima County Superior Court cases C20184203 and CV20190001. “A judgment or order is ‘void’ if the court entering it lacked jurisdiction.” *In re Marriage of Dougall*, 316 P.3d 591, 595, 234 Ariz. 2, ¶ 12 (App. 2013). “If a court lacks jurisdiction over a party, then it lacks ‘all jurisdiction’

to adjudicate the party's rights, whether or not the subject matter is properly before it." *Rankin v. Howard*, 633 F.2d 844, 848 (9th Cir. 1980), *cert. denied*, 451 U.S. 939 (1981). When a judgment is void due to lack of jurisdiction, "the court has no discretion, but must vacate the judgment." *Springfield Credit Union v. Johnson*, 599 P.2d 772, 776 n.5, 123 Ariz. 319, 323 n.5 (1979). "[A] judgment may not be collaterally attacked unless it is void. A judgment is void if the rendering court lacked personal jurisdiction, subject matter jurisdiction, jurisdiction to enter the particular order involved, or if the court acted in excess of its jurisdiction. Additionally, a judgment may be void if 'extrinsic' fraud is involved." *Sonya C. By and Through Olivas v. ASDB*, 743 F. Supp. 700, 709 (D. Ariz. 1990), citing *Bill v. Gossett*, 647 P.2d 649, 651, 132 Ariz. 518, 520 (App. 1982). "Fraud on the court is a variety of extrinsic fraud." *McNeil v. Hoskyns*, 337 P.3d 46, 49, 236 Ariz. 173 (App. 2014), citing *Dockery v. Central Arizona Light & Power Co.*, 45 P.2d 656, 662-63, 45 Ariz. 434, 450-51 (1935). Fressadi and his passenger witness declare that the traffic citation was fraudulently-issued. "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments." *United States v. Throckmorton*, 98 U.S. 61, 64 (1878). Fressadi and his passenger witness further declare that the Deputy perjured himself in a court that lacked jurisdiction. "All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose." 46 Am.Jur. 2D Judgments § 31 (1994).

This matter also constitutionally questions the structure and application of laws created by Arizona's legislature, and court rules created and administered by Arizona Supreme Court. AZCOA had jurisdiction to review lower court jurisdictional challenges, overturn void judgments, and per A.R.S. § 12-2101(A)(5)(a) due to Superior Court's refusal to grant a new trial and an injunction that both Superior Court cases refused to hear or grant (i.e. "dissolved") per A.R.S. § 12-2101(A)(5)(b)).

Compare Order at App. 2a *with* law at App. 29a-30a. Fressadi challenges Superior Court's use of A.R.S. Title 22 "Justice and Municipal Courts" statutes to override A.R.S. Title 12 "Courts and Civil Proceedings" for Superior and other Courts. If a trial *de novo* in Superior Court can somehow be construed as an "appeal" and assuming *arguendo* that only A.R.S. Title 22 and Civil Traffic Rules apply, AZCOA also had appellate jurisdiction per A.R.S. § 22-375(A) (App. 33a) because the "action involves the validity of a tax, impost, assessment, toll, municipal fine or statute." Fressadi challenges the validity of A.R.S. § 22-375(A) referencing "municipal" fines if there is no equivalent statute for fines issued by counties. Fressadi challenges validity of Superior Court's reliance on Justice Court statutes A.R.S. § 22-202¹⁶ (App. 32a) and abusively discretionary § 22-204¹⁷ (App. 32a-33a) to deny mandatory venue transfer of the Superior Court cases per A.R.S. § 12-408(A). Fressadi challenges validity of Justice Court jury statute A.R.S. § 22-220(B)¹⁸ (App. 33a) as unconstitutional, conflicting with the U.S. Constitution's Seventh Amendment (App. 26a), Ariz. Const. Art. 2, § 23¹⁹ (App. 27a), and ARCP 38(a)²⁰. *See also* A.R.S. § 22-220(C)²¹ (App. 33a). Fressadi demanded his right to a jury prior to trial in Superior Court repeatedly. Fressadi challenges the validity to exclude applicability of civil traffic violations and criminal cases in "Unjustified actions" statute A.R.S. § 12-349(D)

¹⁶ A.R.S. § 22-202(B): "Actions filed in justice court against a person who is alleged to have committed a civil traffic violation shall be brought in any precinct in which the violation is alleged to have occurred." Though "brought," it can be transferred.

¹⁷ Per § 22-204(C), denied venue change is appealable, but AZCOA denied review.

¹⁸ A.R.S. § 22-220(B): "Either party may demand a jury before trial, and if not then demanded, trial by jury shall be deemed waived. This subsection does not apply to civil traffic violations for which citations are issued under title 28."

¹⁹ Ariz. Const. Art. 2, § 23: "The right of trial by jury shall remain inviolate."

²⁰ ARCP 38(a): "The right of trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a party need not file a written demand or take any other action in order to preserve its right to trial by jury."

²¹ A.R.S. § 22-220(C): "When a jury is demanded, the trial may be postponed until a jury is assembled."

(App. 27a-28a) as a legislative loophole for government misconduct and malicious prosecutions. Fressadi challenges the validity of impost as a tax, assessment, or toll for a fraudulent traffic citation and unlawful excessive suspension of his driver's license. Fressadi's rights to a valid trial by jury and appeal were abrogated, to be a judicial takings that must be corrected and compensated. *Stop the Beach, supra*.

ARCP Rules, which provide rights and procedures for discovery, jury trials, and counterclaims, apply to trials *de novo* from Justice Court traffic violations. *See, e.g., Campbell v. Superior Court*, 479 P.2d 685, 106 Ariz. 542 (1971) (en banc). In trials *de novo* or "upon a proper appeal from a justice court which had jurisdiction, the superior court must in all manners follow the procedures which it does in a case in which it had original jurisdiction." *Horne v. Superior Court*, 361 P.2d 547, 89 Ariz. 289, 293 (1961) (reversing dismissal of counterclaim because filing is permitted per ARCP). Fressadi was blocked from filing counterclaims in Justice Court and Superior Court. Fressadi was "entitled to file such pleadings as were proper to answer the complaint and to have the matter determined as it would have been in a case of original jurisdiction in the superior court." *Horne v. Superior Court*, 89 Ariz. at 293. *See also Rojas v. Kimble*, 361 P.2d 403, 89 Ariz. 276, 279 (1961) (citing cases), stating it "repeatedly held that a trial *de novo* means a new trial 'as though it were one of original jurisdiction in the superior court.'"

Fressadi's right to a jury trial is preserved inviolate per ARCP 38(a) and Ariz. Const. Art. 2, § 23 ("The right of trial by jury shall remain inviolate") and Art. 6, § 17 ("The right of jury trial as provided by this constitution shall remain inviolate"). App. 27a. Judge Griffin denied a jury trial in violation of the U.S. Constitution's Seventh Amendment, incorporated into Ariz. Const. Art. 2, § 3(A) ("The Constitution of the United States is the supreme law of the land to which all government, state and federal, is subject.") App. 27a.

As such, Fressadi was entitled to ARCP rules in another county's Superior Court to have all matters heard in the civil actions in a new trial *de novo*, including the TRO and related cases involving intertwined claims, parties, and matters of state law, *before a jury*.

If rules and statutes conflict, the constitution must prevail. Judge Griffin noted on April 22, 2019, that "none of [Fressadi's] potential claims arising out of the underlying civil traffic event are barred by claim preclusion, issue preclusion, or any other related legal concept." App. 17a. Therefore, Fressadi filed a new case in Maricopa County Superior Court, CV2019-095124, which was intended to file in Pima County Superior Court with transfer to Pinal County Superior Court per A.R.S. § 12-408(A) to join his personal injury matter. But, once again, Pima County's Superior Court refused to timely file Fressadi's complaint as he was concurrently submitting a Waiver Application. As such, Maricopa County Superior Court became the only option per state law as the State Attorney General's main office is located in Maricopa County. The matter was initially stayed pending resolution of this case, but then dismissed "without prejudice."

Misconduct by AZCOA Judges in 2 CA-SA 2019-0031 was on review in CV-19-0194-PR such that they should not have ruled on Fressadi's main appeal in 2 CV-CA 2019-0153. The AZCOA Judges had a duty to recuse themselves, but did not. App. 4a. *See also* Arizona Code of Judicial Conduct, Canon 1 *et seq.*²²; *Horne v. Polk*, 394 P.3d 651, 656, 242 Ariz. 226, ¶ 17 (2017) (emphasis added):

²² Rule 1.1: "A judge shall comply with the law, including the Code of Judicial Conduct." Rule 1.2: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Rule 1.3: "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

In *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955), the United States Supreme Court recognized the due process principle that “no man can be a judge in his own case and **no man is permitted to try cases where he has an interest in the outcome.**” *Murchison* entailed a “one-man grand jury,” in which a judge acting as a grand jury charged two witnesses with perjury and then convicted them, which the Court held violated due process. *Id.* at 133-34, 75 S.Ct. 623... “Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.” *Id.* at 136, 75 S.Ct. 623; *accord Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980) (“**[J]ustice must satisfy the appearance of justice**, and this stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” (internal citation and quotation marks omitted))

This principle also applies to lower court judges adjudicating traffic citation cases. As with counties and municipalities throughout the United States, Pima County has financial incentives to issue fraudulent traffic citations and have its courts rule in the County’s favor via the State as a party in a shared court with the County, in collusion with Pima County attorneys, because Pima County relies on revenue from traffic citations for the County, its law enforcement, courts’ operating expenses, and judges’ salaries.²³ Venue transfer per A.R.S. § 12-408(A) and equivalent statutes in other states avoid conflict of interest as equal protection for and by due process.

²³ “To make up for the extra salary expense, the state recommends that counties add more fees and fines for those in the justice system.” *Judge pay of \$2.5M could hit county*, Arizona Daily Star, Oct. 31, 2009. https://tucson.com/news/local/crime/judge-pay-of-2-5m-could-hit-county/article_d2cb734c-2bda-5ae6-8926-2ef7493956ab.html; <https://goldwaterinstitute.org/article/city-court-money-pressure-and-politics-make-it-tough-to-beat-the-rap/> (municipal and county courts used as incentivized revenue centers); *Know Your Pima County Citizen’s Handbook of Government* (2018): https://pdfsecret.com/download/know-your-pima-county-league-of-women-voters-of-greater-tucson_5abb3c55d64ab200168b6dd7_pdf at 116: “While the Superior Court is a state court, each county has its own division and pays one-half of the judges’ salaries and most of the court costs. The courts are known, therefore, as county courts and exercise a degree of independence. At present there are more than one hundred superior court judges statewide.” *See also* County and Appellate Judges’ salaries: <https://www.library.pima.gov/content/arizona-state-officials-salaries/>.

IV. Fressadi is Entitled to a Trial *De Novo* by Jury in a Superior Court of Competent Jurisdiction Guided by ARCP Rules Without Conflict of Interest—Otherwise the Judicial Process is Ineffective, Unjust, and Unconstitutional

The concept of *de novo* trials is to start fresh, a clean state, an initial trial redone, because prior proceedings are flawed, tainted, or otherwise void. Common sense and court rules say trials *de novo* in Superior Court must abide by the rules of the Superior Court, including ARCP and Local Rules; that default judgment from Justice Court was not a trial that had an appeal and CT20190001 was the first and only trial. However, AZCOA falsely treated the trial *de novo* as an “appeal” to block review, and did so before Fressadi’s time to file a response to Arizona’s Motion to Dismiss the Appeal. The AZCOA appeal involved jurisdictional issues and well-established caselaw that a void judgment may be challenged at any time. See, e.g., *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) (judgment set aside at any time due to fraud on the court); *CYPRESS ON SUNLAND HOMEOWNERS, ASS’N. v. Orlandini*, 257 P.3d 1168, 1178, 227 Ariz. 288 (App. 2011) (Arizona version of *Chambers*); *Cooper v. Commonwealth Title of Arizona*, 489 P.2d 1262, 15 Ariz. App. 560, 564 (App. 1971) (“a judgment which is void on its face ... may be attacked at any time, collaterally or otherwise”); *State v. Carpio*, No. 1 CA-CR 15-0635, n.6 (Ariz. Ct. App. June 22, 2017) (“[I]t is apparent the jurisdictional issues raised therein are identical to those presented to this Court on appeal and have not been waived.”) CT20190001 was a trial *de novo* because Justice Court issued a default judgment despite Fressadi’s appearance and failed to transfer court records. “As a general proposition, a default judgment is void if it is ‘outside the cause of action stated in the complaint and if the defendant was not given a fair opportunity to defend against the claim on which the judgment was based.’” *Tarnoff v. Jones*, 497 P.2d 60, 65, 17 Ariz. App. 240, 245 (App. 1972) (quoting Restatement of Judgments § 8(c) (1942)).

Judge Griffin's trial ruling defied physics, lacked integrity, and was without jurisdiction per A.R.S. § 12-408(A) to be void. Justice and Superior Courts' refusal to hear the TRO and allow Fressadi to file counterclaims caused his driver's license to be suspended for over 5 months in violation Ariz. Const. Art. 2, § 15 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted" App. 27a), and the Eight Amendment of the U.S. Constitution (App. 26a). See *Stinnie v. Holcomb*, 396 F. Supp. 3d 653, 660 n.4 (W.D. Va. 2019)²⁴; *Timbs v. Indiana*, 139 S.Ct. 682 (2019) (barring policing for profit and punishment for poverty).

No law or case law states that a Superior Court case arising from a lower court cannot be transferred per A.R.S. § 12-408(A). The Court's fabricated conclusion obstructs the state legislature's statute and intent to mitigate conflicts of interest where the county is a party in its own court. Pima County Superior Court lost jurisdiction *ab initio* to make any rulings or conduct a trial *de novo* on Fressadi's proper invocation of A.R.S. § 12-408(A), thus *no valid trial has occurred*. Fressadi has a right to a valid trial with hearing of his TRO in a neutral venue, with discovery, counterclaims, and a jury as requested. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quotation omitted).

V. Fifth / Fourteenth Amendment Guarantee of Procedural Due Process, Takings Prohibitions, and Equal Protections, Bars Suspension of a Driver's License, Impound, or Arrest for Failure to Pay Court Debt Absent Notice and Meaningful Opportunity to be Heard; Circumstances and Proportionality Must be Considered per the Eighth Amendment

²⁴ "*Compare Thomas v. Haslam*, 303 F.Supp.3d 585 (M.D. Tenn. 2018) (concluding that the challenged license suspension statute violated the plaintiffs' constitutional rights as established by *Griffin v. Illinois*, 351 U.S. 12, 18, 76 S.Ct. 585, 100 L.Ed. 891 (1956) and its progeny because the statute, in effect, imposed harsher consequences on defendants based on their indigence), *with Mendoza v. Garrett*, 358 F. Supp. 3d 1145 (D. Or. 2018) (holding that none of the rights or issues present in the *Griffin* line of cases is present where defendants contest a license suspension scheme)."

Forty-six states and the District of Columbia have issues suspending licenses over fines, causing constitutional violations. See “Driven by Dollars: A State-By-State Analysis of Driver’s License Suspension Laws for Failure to Pay Court Debt” by Mario Salas and Angela Ciolfi of the Legal Aid Justice Center in 2017 (App. 41a-59a) and the DOJ issuing a “Statement of Interest of the United States” in a 2016 Virginia class action addressing a similar situation as this case (App. 60a-81a, “Statement”²⁵)—incorporated herein. A 2016 survey²⁶ found that 63% of Americans do not have enough money in savings to cover a \$500 emergency such that fines depriving protected interests²⁷ cause great risk to health and livelihood, now exacerbated by the COVID-19 pandemic. The indefinite suspension of Fressadi’s driver’s license to extort \$284.75²⁸ caused him to miss medical appointments and rely on volunteers to drive him into town for groceries.

Suspending a person’s driver’s license, impounding vehicles, or arresting drivers for failing to pay fines or fees to penalize indigent individuals due to their poverty is a violation of the Due Process, Takings²⁹, and Equal Protection Clauses of

²⁵ See DOJ’s summary of its Statement filed in *Stinnie v. Holcomb*, 355 F.Supp. 3d 514 (W.D. Va. 2018): <https://www.justice.gov/opa/pr/justice-department-files-brief-address-automatic-suspensions-driver-s-licenses-failure-pay>

²⁶ Maggie McGrath, *63% Of Americans Don't Have Enough Savings To Cover A \$500 Emergency*, FORBES, Jan. 6, 2016, <https://www.forbes.com/sites/maggiemcgrath/2016/01/06/63-of-americans-dont-have-enough-savings-to-cover-a-500-emergency/>

²⁷ A 2010 study showed 86% of Americans believe that a car (i.e. the ability to drive) is a necessity. Pew Research Center, *The Fading Glory of The Television and Telephone* (2010), <http://assets.pewresearch.org/wp-content/uploads/sites/3/2011/01/Final-TV-and-Telephone.pdf>. Research indicates that a suspended driver’s license in New Jersey had the greatest impact on low income individuals and senior citizens. See, e.g., Robert Cervero, et al., *Transportation as a Stimulus of Welfare-to-Work: Private versus Public Mobility*, 22 J. PLAN. EDUC. & RES. 50 (2002); Alan M. Voorhees, et al., *Motor Vehicles Affordability and Fairness Task Force: Final Report*, at xii (2006), https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf.

²⁸ \$160 fine + \$124.75 court fees (including \$50 for default) = \$284.75. App. 23a.

²⁹ Including judicial takings. As vehicles and their benefits of use are property, so too are licenses, money, and their benefits. *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980).

the Fifth and Fourteenth Amendments with excessive and unusual cruelty per the Eighth Amendment. Here, Arizona and Pima County unconstitutionally deprived Fressadi of his constitutional interests by automatically suspending his driver's license and issuing or threatening a warrant for his arrest for failing to pay court fines and fees on a default judgment for a fraudulently-issued traffic citation. Fressadi was not provided the required information in court orders nor visible kiosk to identify and find the courtroom, and was not afforded reasonable time to make his appearance in support of his "not responsible" plea and counterclaims at a "10 minute" hearing. App. 39a. Due to the Court's inadequate notice, he was delayed at the Court's waiting area to acquire courtroom information. The Court entered an "FTA" ("failure to appear") default judgment even though he was in the building at the scheduled time on the notice of appearance. App. 23a. The Court then assessed fines and fees against Fressadi without establishing his responsibility or ability to pay, or establishing alternative resolution, and immediately suspended his license with threat of arrest during his mandatory allotted time to appeal the Court's ruling—a form of racketeering involving extortion per A.R.S. § 13-2301(D)(4)(b)(ix) (App. 31a). Fressadi's motion for a continuance and change of venue to the Superior Court due to excess of Justice Court jurisdiction for counterclaims were ignored and ultimately denied. App. 40a, 25a. Suspending his driver's license as punishment against poverty in response to a failure to pay a fraudulent court debt without providing adequate notice, a meaningful opportunity to be heard to determine ability to pay prior to suspension, and time to file a notice of appeal constitutes a deprivation of protected interests without due process to violate the Fourteenth Amendment (App. 26a), and Ariz. Const. Art. 2, § 4 (App. 27a).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all

the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections....The notice must be of such nature as reasonable to convey the required information,...and it must afford a reasonable time for those interested to make their appearance..." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1949). The cornerstone of due process is that, when the deprivation of a protected property interest is at stake, the state must provide notice and the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972). A driver's license is a protected interest that, once issued, cannot be revoked or suspended "without that procedural due process required by the Fourteenth Amendment." *Bell v. Burson*, 402 U.S. 535, 539 (1972) (citations omitted).³⁰

The Fourteenth Amendment prohibits "punishing a person for his poverty." *Bearden v. Georgia*, 461 U.S. 660, 671 (1983). As its official policy, besides providing insufficient notices of appearance to cause harm by hijacking hearings on "not responsible" pleas, Pima County and Arizona's Motor Vehicle Department have a practice of automatically suspending the driver's license of any person who fails to pay outstanding court debt. A State and County can be sued "for monetary, declaratory, or injunctive relief where, as here, the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690-91 (1978) (Local governments "may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the

³⁰ Driver's licenses are "privileges," *i.e.* constitutional "rights" of citizenship, per the Fourteenth Amendment's Due Process Clause. *See* Justice Thomas's concurrence in *McDonald v. City of Chicago*, Ill., 561 U.S. 742, 3058-88 (2010).

body's official decision-making channels.") Fressadi was deprived of his First Amendment rights to redress grievances and his driver's license when Arizona courts barred his counterclaims, appeals, and Special Actions with failure to provide a jury trial and other procedures provided per ARCP in a Superior Court of competent jurisdiction without conflict of interest. See DOJ Statement in *Stinnie v. Holcomb*, Doc. 27 at 14-16:

In a long line of cases beginning with *Griffin v. Illinois*, 351 U.S. 12, 16 (1956), the U.S. Supreme Court has made clear that conditioning access or outcomes in the justice system solely on a person's ability to pay violates the Fourteenth Amendment. In *Griffin*, the Supreme Court held that a criminal appellant could not be denied the right to appeal based on an inability to pay a fee, finding that "[i]f [the state] has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity." *Id.* at 24 (Frankfurter, J., concurring). In *Williams v. Illinois*, 399 U.S. 235 (1970), the Court found that a state could not incarcerate an indigent individual beyond the statutory maximum term on account of missed fine and fee payments, because if that incarceration "results directly from an involuntary nonpayment of a fine or court costs we are confronted with an impermissible discrimination that rests on ability to pay." *Id.* at 240-41. And in *Tate v. Short*, 401 U.S. 395 (1971), the Court found that a state could not convert a defendant's unpaid fine for a fine-only offense to incarceration because that would subject him "to imprisonment solely because of his indigence." *Id.* at 397-98.

In *Bearden*, the Court elaborated on this principle in holding that the Fourteenth Amendment prohibits a state from revoking an indigent defendant's probation for failure to pay a fine and restitution without first "inquir[ing] into the reasons for the failure to pay." *Bearden*, at 672. The Court also concluded that, for defendants who could not afford to pay fines or fees imposed for the purposes of punishment, "it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the defendant are available." *Bearden*, at 668-69.

While *Griffin*, *Williams*, *Tate*, and *Bearden* were cases in which a criminal defendant's liberty interest was directly implicated, "*Griffin's* principle has not been confined to cases in which imprisonment is at stake." *M.L.B. v. S.L.J.*, 519 U.S. 102, 111 (1996). Rather, the constitutional principle reaffirmed by these cases prohibits the imposition of adverse consequences against indigent defendants solely because of their financial circumstances, regardless of whether those adverse consequences take

the form of incarceration, reduced access to court procedures, or some other burden. The Supreme Court has, for instance, held that an indigent defendant convicted of non-felony offenses could not be denied an appellate record even though his convictions resulted in fines, not incarceration. See *Mayer v. Chicago*, 404 U.S. 189, 197 (1971) (noting that the “invidiousness of the discrimination that exists when criminal procedures are made available only to those who can pay is not erased by any differences in the sentences that may be imposed”). The Supreme Court has also applied this principle in cases arising in entirely non-criminal contexts. See, e.g., *M.L.B.*, 519 U.S. at 124 (indigent person could not be denied appeal of decision terminating parental rights due to inability to pay court costs); *Boddie v. Connecticut*, 401 U.S. 371, 382-83 (1971) (a married couple’s divorce could not be denied based on inability to pay court costs).

Besides its due process violations that prevented Fressadi from exercising his rights to a hearing on his “not responsible” plea, Pima County’s conduct of issuing fines and fees on default judgment without inquiry to assess and establish Fressadi’s ability to pay, then suspending his driver’s license and issuing a warrant or threat for his arrest for nonpayment, causes a discriminatory effect or intent in violation of the equal protection clause that must be evaluated on a case-by-case basis. See DOJ Statement, at 16-17:

In *Bearden*, the Supreme Court explained that because “[d]ue process and equal protection principles converge in the Court’s analysis in these cases,” the traditional equal protection framework does not apply. *Bearden*, 461 U.S. at 665. Given that “indigency in this context is a relative term rather than a classification, fitting the problem of this case into an equal protection framework is a task too Procrustean to be rationally accomplished.” *Id.* at 666 n.8 (citation and internal quotation marks omitted); see also *M.L.B.*, 519 U.S. at 127 (explicitly declining to apply traditional equal protection clause framework in holding Constitution requires availability of appellate review of the termination of parental rights). Instead, in determining whether a particular practice violates the constitutional prohibition on “punishing a person for his poverty,” courts must assess “the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, [and] the existence of alternative means for effectuating the purpose.” *Bearden*, 461 U.S. at 666-67 (citation omitted; brackets in original).

The interest in a driver’s license may be even greater for health-impaired, indigent senior citizens without means to secure alternate methods to provide care for

themselves. In Statement at 17, the DOJ cites *Mayer*, 404 U.S. at 197 (noting that penalty other than incarceration “may bear as heavily on an indigent accused as forced confinement[.]” and stressing that “[t]he collateral consequences of conviction may be even more serious”), and states “suspending a person’s driver’s license entirely deprives that person of the lawful ability to drive, as every state prohibits driving without a license or with a suspended license.” Further, driving with a suspended license is considered a Class 1 misdemeanor in Arizona per A.R.S. §§ 28-3473, 28-3511, 13-707 (App. 30a-31, 36a-38a) to carry a sentence of imprisonment for up to 6 months, and possible vehicle impoundment.

Applying these factors, Pima County’s misconduct in concert with the State of Arizona violates the Eighth and Fourteenth Amendments. Fressadi’s interest in maintaining possession of a driver’s license “is a substantial one,” *Mackey v. Montrym*, 443 U.S. 1, 11 (1979), cited by the DOJ in Statement at 17. The “Failure to Appear” Order with demand to pay Pima County’s Justice Court on July 30, 2018 (App. 23a), significantly impairs that interest.

There is no rational connection between the legislative purpose of punishing poverty and its means of allegedly keeping roads safe without considering alternatives. In this instance, Fressadi was driving within the speed limit while no one else on the road when the Deputy tagged the vehicle with radar to issue Fressadi a fraudulent citation in a different speed limit zone per A.R.S. § 28-701(A). Misconduct by Pima County’s Courts and Sheriff’s Department amount to extortion and blackmail. Public policy favors injunction against due process violations and punishment for poverty. Fressadi’s request for an immediate injunction complied with all criteria in *Shoen v. Shoen*, 804 P.2d 787, 792, 167 Ariz. 58, 63 (App. 1990) (A party seeking a preliminary injunction must establish: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury not remediable by

damages if the injunction is not granted; and (3) the balance of hardships favors the party seeking the injunction and (4) public policy favors the injunction.) With unlawful remand and denial of the TRO and no appeal, Fressadi's license was suspended until Justice Court said it was not 5.5 months later.

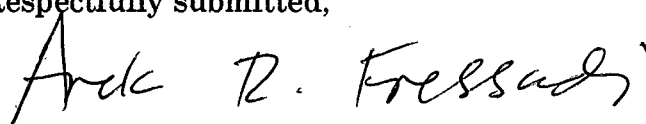
The Supreme Court recognizes "[a] driver's license is a constitutionally protected interest and due process must be provided before one can be deprived of his or her license." *Kernan v. Tanaka*, 856 P.2d 1207, 75 Haw. 1 (1993), *cert. denied*, 510 U.S. 1119 (1994). See also *In re Hillary C.*, 210 P.3d 1249, 221 Ariz. 78, ¶ 11 (App. 2009), quoting *Knapp v. Miller*, 799 P.2d 868, 873, 165 Ariz. 527, 532 (App. 1990): "'The continued possession of a validly issued driver's license is a constitutionally protected interest" implicating due process." The Eighth Amendment's prohibition on excessive fines is incorporated to the states by the Fourteenth Amendment's due process clause. *Timbs, supra*. A fine is excessive, and thus disproportionate, in violation of the Eighth Amendment: "(1) the defendant's culpability; (2) the relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4) the defendant's ability to pay." *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal.4th 707, 728, (2005), citing *U.S. v. Bajakajian* 524 U.S. 321 (1998). While ability to pay may be part of the proportionality analysis, it is not the only factor. *Bajakajian*, 524 U.S. at 337-338.

This Court must correct these inequities applicable to all states.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink that reads "Arek R. Fressadi". The signature is written in a cursive, flowing style.

Arek R. Fressadi, *Petitioner Pro Se Legist*
November 2, 2020.