No. _____

IN THE

# Supreme Court of the United States

WILLIAM J. GOLZ,

*Applicant,*

v.

BENJAMIN S. CARSON,
in his official capacity as Secretary of the
United States Department of Housing
and Urban Development,

*Respondent.*

On Application to Recall and Stay the Mandate of the
United States Court of Appeals for the Tenth Circuit

## APPLICATION TO RECALL AND STAY THE MANDATE PENDING DISPOSITION OF A CERTIORARI PETITION AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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JANUARY 6, 2021

| RELATED PROCEEDINGS (with index of relevant court orders and pleadings). | | | |
|---|---|---|---|
| DOCKET | | (1) *CARSON V. GOLZ*, NO. 17-CV-01152-RBJ-MEH (D. COLO. 2019) | |
| DATE | NO. | | |
| 04/08/2019 | ECF 169 | Order (3 R. 354–68)[i] | |
| 04/08/2019 | ECF 170 | Judgment (for Plaintiff) (3 R. 369) | |
| 05/08/2019 | ECF 177 | Order (Denying Mot. to Alter J.) (3 R. 440–41) | |
| | | (2) *CARSON V. GOLZ*, NO. 19-1242 (10TH CIR. 2020) | |
| | | (a) Defendant-Appellant's Briefs, Petition for Re-hearing, and Motion to Stay Mandate | BOUND COPIES |
| 01/15/2020 | 10710059 | Opening Brief<br>Attachments With Prob. Cases: *In re Estate of Verna Mae Golz* (Ariz. Super. Ct. 2018) (PB 2014-051759); Ancillary Filing (Boulder County Dist. Ct. 2018) (Prob. No. 2014-PR-160) | 7 |
| 01/15/2020 | 10710060 | Addendum Conventionally Submitted Evid.: CD-audio, Typed Trs., 28 U.S.C. § 1746 Decls., and Stmt. of Evid. | 7 |
| 04/10/2020 | 10732238 | Reply Brief | 7 |
| 12/01/2020 | 10790585 | Petition for Rehearing En Banc | 6 |
| 12/21/2020 | 10794646 | Motion to Stay Mandate | |
| | | (b) Judgment, Orders and Mandate | App. |
| 09/21/2020 | 10771788 | Order and Judgment (Affirming D. Colo.) | A |
| 12/14/2020 | 10793124 | Order (Denying Pet. for Rehg; no vote requested) | |
| 12/22/2020 | 10795074 | Order (Denying Mot. to Stay Mandate) | B |
| 12/28/2020 | 10795574 | Mandate | |

i Convention for citing the ROA: 3 R. 354–68 cites to Vol. 3 of the ROA ("R."), pp. 354–68.

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ii Tables collect facts by issue and present them in a timeline.

iii William Golz pleaded the facts in this case with the thoroughness and accuracy required of a scientist with a Ph.D. (Louisiana Board of Regents' Dean's Fellow) and professional degrees in civil engineering: M.S. and B.S. (*cum laude*). Dr. Golz defined for the district court, and cited for the appeals court, a list of ECF numbers that formed a subset of his *pleadings* —"every legal document filed in a lawsuit," *West's Encyclopedia of American Law* (2nd ed. 2008)—that he had moved the district court to read as whole based upon the authority of Supreme Court precedent. Supp. 2 R. 352–54.

## TABLE OF AUTHORITIES

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iv Dr. Golz has electronic access to a current edition (which has eliminated case law as the basis for definitions) but uses the fifth edition (with accompanying, searchable case-law citations) because the definitions required for this case are of traditional terms grounded in established authority.

v Available at http://ssrn.com/abstract=2758862.

vi This edition is used because it is highly regarded for the precision and clarity of its definitions which are supported by extensive etymology.

vii *Available at* http://legal-dictionary.thefreedictionary.com/Pleading; and *see* Reply Br. at vii n.iv.

## TABLES OF KEY FACTS CITED TO THE ROA
(ALL FACTS WERE DISMISSED PRIOR TO DISCOVERY)

| **TABLE 1.** HUD's December 2, 2016 break-in, lock change, and search. | | |
|---|---|---|
| DATE | (a) 2014 TO 2016 LETTERS TO HUD AND USAO | REFERENCE |
| 05/23 TO 12/31/2014 | For seven months, Dr. Golz wrote to HUD, its OGC, its loan servicers, and the Denver Homeownership Center that he was waiting at the Property for HUD's appraisal. | 1 R. 257–60 ¶¶ 81–92 |
| 05/2016 TO 07/2016 | HUD defied cease-and-desist trespass letters, peered into the Golzes' windows, and left "Novad" door hangers. | 1 R. 270 ¶¶ 122–24 |
| 08/02/2016 | Dr. Golz's letter to Secretary, Novad, and USAO Civil Division Chief Kevin Traskos enclosing state criminal code for trespass. Colo. Rev. Stat. Ann. §§ 18-4-502–504. | 1 R. 270 ¶ 125 2 R. 113–25 |
| 10/09/2016 | Dr. Golz again wrote to the USAO that his "family was occupying the Property and that: 'HUD dispatched their agents to trespass on our property – on May 11th, June 6th, and July 6th, ignoring my repeated written instructions to cease and desist[.]'" | 1 R. 271 ¶ 126 & n.16 |
| | (b) DECEMBER 2, 2016: BCSO 16-7379 FORCIBLE ENTRY | |
| 12/02/2016 | Det. Darragh O'Nuallain apprehended two HUD-men in the Golz home, spoke by cell phone with Zach, identified Philip Cuizon, and copied the two HUD documents, below: | 1 R. 271–72 ¶¶ 128–29 |
| | Doc. 1: "New Work Order Assigned 0320115"; "Address: 130 Beaver Creek Drive"; "12/1/2016"; "Vendor: RAREO-Phillip Cuizon"; "Property Type: Acquisition"; "Management by: Terrah.Anderson@blmco.com". | 1 R. 279–80 |
| | Doc. 2: "Housing and Urban Development Property Access Record"; "Property Address: 130 Beaver Creek Dr."; "12-2-2016, BLM CO, HPIR". | 1 R. 278 |
| | "'Zach'"[viii] told Det. O'Nuallain "'the home had been foreclosed and HUD had taken possession.'" | 1 R. 272 ¶ 129 & n.17 |

viii Zach Mountin was HUD's agency counsel. 3 R. 54 & Supp. 2 R. 59 ¶ 3 to 60 ¶ 1.

| | | |
|---|---|---|
| 12/27/2016 | Sgt. Manes emailed BLM Manager Tracy Willingham: "130 Beaver Creek Dr. ... case number 16-7379 ... burglary/trespass, criminal mischief and other property damage associated with two persons employed by BLM CO ... Work order assignment 03201115." | 1 R. 272–73 ¶ 130 nn.18&19 & 282 |
| 12/29/2016 | Sgt. Manes' "12/29/16" report: unanswered emails and voice messages to "John P Denny Colorado HUD supervisor 918-292-8954" and "Field Service Manager of BLM Colorado Tracy Willingham 435-674-0057." | 1 R. 281 |
| 01/20/2017 | BCSO: "Records Request Recipient Tracy Willingham–BLM"; "Witness2: DAndrea, Deborah Lee" saw Messrs. Cuizon and Scott break in then lead responding officer on a search of the "Property ... 1JAB Photos of Doors." | 1 R. 371–73 |
| 05/08/2017 | Renewed criminal complaint to Acting USA Bob Troyer summarizing Dec. 25, 2016 to Apr. 27, 2017 letters that detailed facts of HUD's Dec. 2, 2016 forcible entry and transmitted evidence from BCSO 16-7379. | 2 R. 260–64 |
| | (c) HUD CLAIMS ITS DOTS AUTHORIZE FORCIBLE ENTRY | |
| 06/07/2017 | USAO wrote to Dr. Golz: "HUD staff did not commit a criminal trespass by virtue of their entry onto the property on December 2, 2016, because: ... HUD ... shall be entitled to enter upon, take possession of and manage the Property[,] Deeds of Trust ¶ 23." | Supp. 2 R. 241 |
| 12/06 & 12/07/2017 | On 12/06, Dr. Golz "emailed Mr. Mock and Mr. [Zach] Mountin and asked them to assure me that HUD would not again break in, because my wife wanted my son to come home for Christmas. [On 12/07,] Mr. Mock [copying Mr. Mountin] emailed me back, HUD has a contractual right to break into your property." | Attach. 21:9–13 *and see* Supp. 2 R. 364 |
| 12/13/2017 | "'HUD and their agents' [could not have] committed a criminal trespass, forcible entry, and criminal mischief, and had intent to commit burglary under Colorado law ... for the simple reason that the Deeds of Trust expressly authorize HUD to enter upon and manage the property." | 1 R. 300 ¶ 1<br><br>Answer Br. at 43 |

| TABLE 2. Notice to HUD of material defects, HUD's authorized written payoff-agreement, and misrepresentation of FHA regulations to cancel the agreement. | | |
|---|---|---|
| DATE | (a) HUD'S UNLAWFUL LOT 2 LIEN CAUSED USDA TO DENY A LOAN TO REPLACE DRY WELL AND CRUSHED SEPTIC | PAGES |
| 12/06/2001 TO 12/05/2005 | Boulder County notified HUD that its unlawful lien on a separate, vacant lot caused USDA to deny Verna Mae's loan to replace a dry well and a crushed septic tank. | Supp. 2 R. 173–219 & 285–91 |
| | (b) OSFAM'S DIRECTOR AGREED IN SIGNED WRITING TO DR. GOLZ'S LOAN PAYOFF OF 95% OF APPRAISED VALUE | |
| 05/23/2014 | HUD received Dr. Golz's certified letter requesting verification that the payoff was "the lesser of the current loan balance [ ] or 95% of the property's appraised value." | 1 R. 257 ¶ 81 |
| 09/17 & 10/10/2014 | Estate's counsel requested that HUD "grant Dr. Golz the right to pursue a family sale;" the OSFAM director responded, "[o]n behalf of Secretary Castro," that "Dr. Golz may pursue the family sale option" for "the lesser of the loan balance or 95 percent of the appraised value[.]" | 2 R. 231–33 & 237 ¶¶ 1–2 |
| | (c) HUD WAS REMINDED THAT DEFECTS WOULD BE BURIED BY SNOW, DELAYED SEVERAL MORE MONTHS, THEN TRIED A RUSH APPRAISAL IN A BLIZZARD | |
| 11/08/2014 | Dr. Golz advised: "Property has material latent defects that are below ground-level, scheduling the appraisal inspection will be, 'hampered by the winter snows.' " | 1 R. 259–60 ¶ 89 |
| 01/08/2015 | HUD delayed for two additional months then canceled its appraisal immediately after being advised that their appraiser would be met at the Property by a lawyer or broker with disclosures for the snow-covered defects. | 1 R. 261 ¶¶ 93–95 & n.11 |
| 01/18/2015 | Letter to Secretary describing below-grade defects and how they came to exist after HUD's lender unlawfully liened Verna Mae's vacant lot at loan origination. *Supra.* | Supp. 2 R. 217–19 |
| 01/20/2015 | Snow was deep and a blizzard advisory had been issued when HUD ordered its appraiser to contact Dr. Golz to do a rush appraisal. | 1 R. 261 ¶ 96 |
| | (d) HUD DENIED AN APPRAISAL CONFORMING TO HUD AND DORA STANDARDS THEN CANCELED THE PAYOFF AGREEMENT CITING TO 24 C.F.R. § 206.125 | |

| | | |
|---|---|---|
| 01/21 TO 04/08/2015 | OSFAM deputy director rebuffed Dr. Golz's letters requesting a valid appraisal that met specified, minimum appraisal-standards. (Nine feet of snow fell in the period January–April 2015. 2 R. 10, second bullet point.) | 1 R. 261–64 ¶¶ 97–103 |
| 05/14/2015 | After the Mother's Day Snowstorm, Mark Cohen, Esq., advised HUD, when "conditions are right for a full and complete inspection, I will contact the Office of the Secretary[.]" | 1 R. 264 ¶ 106 |
| 05/18/2015 | OSFAM deputy director notified Dr. Golz "your Mother's reverse mortgage will be referred for foreclosure on or about May 18." | 1 R. 265 ¶ 108 |
| 06/03/2015 | Dr. Golz sent HUD the Estate's FHA-Roster appraiser's report and checks for 95% thereof. *See infra* 06/16/2015. | 1 R. 265 ¶ 109 |
| 06/16/2015 | The OSFAM deputy director returned Dr. Golz's checks marked "VOID" stating the payoff must "fully comply with HUD regulations and requirements at 24 C.F.R. § 206.125(b) and (c)[.]" | 1 R. 265 ¶ 110 & Supp. 2 R. 297–98 |
| 08/04/2015 | AGC Millicent Potts' letter stated, "HUD's longstanding interpretation of ... 24 C.F.R. 206.125(b) is that ... HUD will only accept appraisals that are performed by FHA Roster Appraisers and are ordered by and delivered directly to HUD[.]" | 1 R. 266 ¶ 112 & 2 R. 253 |
| 08/17 & 08/24/2015 | On these dates, Mr. Cohen requested that AGC Potts provide "dates HUD proposes to be able to schedule their appraisal inspection so that I can arrange to have Dr. Golz, or an agent of the estate of Verna M. Golz, meet HUD's appraiser at the subject property." | 1 R. 267 ¶¶ 115–16 |
| 09/08/2015 | AGC Potts replied, "HUD received your most recent letters dated August 17, 2015 and August 24, 2015 ... HUD has begun its process for foreclosing on the property and will continue the process." | 1 R. 267–68 ¶ 117 & 2 R. 258 |
| | (e) HUD MADE IT CLEAR THAT "24 C.F.R. § 206.125 DID NOT APPLY TO MS. GOLZ LOAN IN 2014." | |
| 02/12/2020 | HUD states that "24 C.F.R. § 206.125 did not apply to Ms. Golz loan in 2014." | Answer Br., at 27 |

| TABLE 3.[ix] Probate court documents closing the Estate; federal district-court orders refusing closure and directing Dr. Golz's responsibilities for the closed Estate. | | |
|---|---|---|
| DATE | (a) PR LETTERS FILED IN FEDERAL DISTRICT COURT | PAGES |
| 02/02/2018 | PR Letters issued Sep. 16, 2014 by Maricopa County Super. Ct., Prob. No. PB2014-051759, provided to HUD by certified letter of Sept. 17, 2014. (2 R. 231–33). | Attach. 1–2 |
| | (b) APRIL 16, 2018: COURT WARNED DR. GOLZ OF A DEFAULT JUDGMENT AND REQUIRED HIM TO ANSWER ALLEGATIONS OF PRE-DEATH DEFAULT BY VERNA MAE | |
| 04/16/2018 | J. Hegarty warned of a "default judgment, because ... non-natural persons [cannot] be represented pro se." (33:15–17); Dr. Golz responded, if I "issued a PR deed to the [P]roperty from the Estate to myself ... it would eliminate the Estate, and ... simplify matters." (34:3–5). | Attach. 32:2–33:17 |
| | HUD's counsel stated, "I think Mrs. Golz had moved to Arizona by perhaps as early as 2009, which is a breach of the notes," (38:2–3); J. Hegarty then asked, "Doctor Golz, where was your mother living in 2010?" (39:4–5). | Attach. 38:2–42:5 |
| | J. Hegarty directed Dr. Golz that "if a breach occurred as early as 2009 ... thereafter whatever happened is not relevant ... because ... the debt was owed as early as seven or eight years ago[.]" | Attach. 42:7–18 |
| | (c) APRIL 25 TO MAY 8, 2018: ESTATE WAS CLOSED WHEN FEDERAL COURT ASSERTED JURISDICTION TO REOPEN PROBATE ADMINISTRATION AND ALLOW HUD'S CLAIM TO NULLIFY THE WILL | |
| 04/25/2018 | Mot. to dismiss estate stated "Plaintiffs foreclosure claim attaches to the Property," filed with a copy of PR's Deed: grantee and grantor was Dr. Golz whose admittance as PR, Boulder County Dist. Ct., Ancillary Filing, Prob. No. 2014-PR-160, is attested to on PR's Deed. | 2 R. 305 ¶ 2 & 321 |
| 04/27/2018 | J. Hegarty ordered Mot. to dismiss converted to Summ. J. citing "documents outside the pleadings" that Dr. Golz submitted in response to court's Apr. 16 directive, *supra*, to answer "where was your mother living in 2010?" | Attach. 54 |

ix This table corresponds with but is not identical to the Attachment Index. Opening Br. at ix.

| | | |
|---|---|---|
| 05/03/2018 | J. Jackson denied Dr. Golz's May-1 Obj. and request to strike the court's sua sponte Mot. for Summ. J. | Attach. 55: ECF 107 |
| 05/07/2018 | Dr. Golz's response regarding pro se representation reiterated "the Court must dismiss the Estate[,]" (104 ¶ 2), attaching the Estate Closing Statement filed in the probate court with Dr. Golz's oath that "[t]he Estate has been fully administered[.]" (109 ¶ 3). | Supp. 2 R. 104–10 |
| 05/08/2018 | J. Hegarty ordered, "whether [Dr. Golz] may properly seek any relief on behalf of the Estate[ ] will be resolved with the Court's consideration." | Attach. 59 ¶ 2 |
| 05/17/2018 | J. Hegarty's order "seeks Plaintiff's position ... therefore, the Plaintiff shall file a reply brief on or before May 24, 2018." | Attach. 60 ¶ 1 |
| 05/22/2018 | Dr. Golz's May-22 supporting reply stated his "motion to dismiss the Estate should have been evaluated pursuant to ... Fed. R. Civ. P. 12(b)(l)," (168). | Supp. 2 R. 165–71 |
| | (d) COURT ORDERED DR. GOLZ TO OBTAIN LICENSED COUNSEL OR FACE A DEFAULT JUDGMENT | |
| 01/08/2019 | Dr. Golz received a voice message from Meredith Callan, Esq.:[x] "I was contacted by Judge Hegarty .... You do need representation on the Estate matter." | Attach. 98–99 & *see* Add. i for CD |
| 01/23/2019 | Hr'g where J. Hegarty stated, "it looks like the Government is simply going to win this case because an estate can't represent itself. It has to be represented by a lawyer[.]" (107:5–7). | Attach. 104–09 & *see* Add. ii for CD audio |
| | (e) JANUARY 28 TO APRIL 8, 2019: DR. GOLZ REQUESTED THAT COURT ADDRESS ITS ORDERS DIRECTING HIS ACTIONS REGARDING THE CLOSED ESTATE INCLUDING PREJUDICING HIS RIGHT OF SELF REPRESENTATION | |
| 01/28/2019 | Opp'n to Summ. J. stated, "on May 2, the Estate ceased to exist as an entity." (81); requested a stay. (89); provided Ms. Callan's communications. (92–104). | 3 R. 64–65 & 81–104 |

x Ms. Callan, at J. Hegarty's behest, transmitted five messages to Dr. Golz between Dec. 19, 2018 and Jan. 29, 2019. *See* 3 R. 93–97; Add. i, 2–5 & 12–13.

| | | |
|---|---|---|
| 02/07/2019 | Resp. to show cause-order: "Defendant has explicitly excluded the Estate from all of his court filings. ... Estate is a nullity which can neither be noticed nor appear at any conference nor can it retain legal counsel." (390). Notes and Decl. of Jan. 23, 2019 hearing. (402–409). | Supp. 2 R. 389–409 |
| 02/20/2019 | Mot. for orders necessary to a reconstruction Hr'g for unrecorded January 23, 2019 Hr'g. | 3 R. 146–47 & 154–60 |
| 02/28/2019 | Mot. to vacate Hr'g: Dr. Golz read Mot. into record of the Hr'g. (116:18–121:23). | Attach. 115–124 |
| 03/01/2019 | Court denied Mot. for orders for reconstruction Hr'g. | 3 R. 166 |
| 03/08/2019 | Obj. to order shortening deadline for objections to dismissing the Estate. | Supp. 2 R. 419–21 |
| 03/22/2019 | Obj. that R&R dismissing Estate was void for lack of jurisdiction (provides a summary of the timeline and of facts and arguments previously offered to the court). | 3 R. 185–201 |
| 03/27/2019 | Dr. Golz moved to extend the time to Obj. to the R&R on HUD's Mot. for Summ. J., advising the court that HUD would not oppose a 30-day extension to May 1, 2019 for [his] objection." (425 ¶ 1). | Supp. 2 R. 423–27 |
| 03/29/2019 | Court arbitrarily denied Dr. Golz's unopposed extension in a text entry. | 1 R. 20: ECF 165 |
| 04/01/2019 | Mot. for leave to amend, attaching proposed second amended answer, pleaded new facts that Dr. Golz's defense was hampered "from inception in May 2108 ... [of] the judicial officers' acting without subject-matter or personal jurisdiction against the Estate." (259 ¶ 142; *see* 251–60 ¶¶ 131–42). | 3 R. 205–70 |
| 04/08/2019 | J. Jackson's final order claimed jurisdiction for "Judge Hegarty's efforts to assist the Estate in obtaining counsel" (366) on Jan. 23, 2019 and for bench orders including that if Dr. "Golz is interested in not defaulting and the Estate being able to litigate this case I would highly recommend" calling Ms. Callan. (Attach. 108:9–11). | 3 R. 354–68 |
| 05/07/2019 | Mot. for leave to amend attaching second amended answer, *supra* 04/01/2019, declared moot. | 1 R. 20: ECF 175 |

## GLOSSARY

AGC ..... Associate General Counsel (of HUD, and FHA program counsel[xi])

AUSA ..... Assistant United States Attorney

BCSO ..... Boulder County Sheriff's Office

BLM[xii] ..... (Colorado field service manager for HUD)

DORA ..... Dept. of Regulatory Agencies (Colo. Div. of Real Est.)

FTCA ..... Federal Tort Claims Act

FHA ..... Federal Housing Administration

HUD ..... Housing and Urban Development (U.S. Department of)

J&O ..... Judgment and Order (in 10th Cir. Case 19-1242)

note ..... (Second Note, assigned to Secretary as "Lender")

Novad ..... (HUD's mortgage servicer)

OGC ..... Office of General Counsel (of HUD)

OSFAM ..... Office of Single Family Asset Management (of HUD)

PR ..... Personal Representative (of Verna Mae Golz's Estate)

R&R ..... Report and Recommendation (in D. Colo. 17-cv-1152)

ROA ..... Record on Appeal (in D. Colo. 17-cv-1152)

Rules ..... (Federal Rules of Civil Procedure)

SF-95 ..... Standard Form 95 (for FTCA claim per 28 C.F.R. § 14.2)

USAO ..... United States Attorney's Office (for the District of Colorado)

USDA ..... United States Department of Agriculture (Rural Development)

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xi Parentheses enclose explanatory notes, parts of defined names whose initials do not appear in the initialism, and names that are not initialisms.

xii BLM is not an initialism but the registered name of the corporate entity.

To the HONORABLE SONIA SOTOMAYOR, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Tenth Circuit:

Applicant William Golz, Defendant-Appellant below, respectfully requests an immediate administrative stay pending consideration of this application to recall and stay the mandate pending disposition of a petition for writ of certiorari (this "Application"). As a consequence of a dire December 23, 2020 family emergency, Dr. Golz could not have completed this Application any sooner.[1]

The district court issued its final order and judgment on April 8, 2019 and denied Applicant's motion to alter the judgment on May 8, 2019. *See supra,* p. i, Related Proceedings (1). A panel of the Tenth Circuit issued its J&O on September 21, 2020.[2] App. A, Supreme Court Rule 23.3. The panel denied Dr. Golz's petition for rehearing en banc on December 14, 2020, denied his motion to stay the mandate on December 22, 2020, App. B, Supreme Court Rule 23.3, and issued the mandate on December 28, 2020. *See* Related Proceedings (2)(b).

A single Justice of the Court can stay a mandate pending review on petition for writ of certiorari, Supreme Court Rule 23.1 & 28 U.S.C. § 1254(1), which

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1 Dr. Golz advised HUD of the facts of the emergency (involving the Golzes' son who was in Colorado caretaking the subject property) that required Dr. Golz's full and immediate attention. HUD agreed not to initiate any action in the district court prior to January 15, 2021.

2 The appeals court's case-captions list Dr. Golz's brothers, Marcus Golz and Matthew Golz, for whom the district court-clerk entered a default on August 15, 2017. 1 R. 7: ECF 30. Marcus and Matthew were explicitly excluded by their late mother Verna Mae Golz's testamentary document whose only res was the real property which is the subject of HUD's foreclosure action. Dr. Golz, as PR and sole devisee of the Estate, distributed the property to himself by PR's Deed on April 23, 2018, Table 3(c), 04/25/2018, then closed the Estate in the probate court on May 2, 2018. Table 3(c), 05/07/2018.

"may be conditioned on the giving of security[.]" 28 U.S.C. § 2101(f). As noted in dicta in *Deutsche Bank Nat'l Tr. Co. v. Cornish*, No. 18-2429, at *6 (7th Cir. Feb. 6, 2019), "the lender already has its security interest in the mortgaged property. That security interest should ordinarily suffice to protect the lender's rights pending appeal ... on the conditions that the interest remains protected by, for example, payment of insurance and property taxes, and that the property is being cared for." Dr. Golz's mother, Verna Mae Golz, died on May 16, 2014, whereafter he continued maintaining and protecting the 1,200 square-foot home his family has owned for fifty years. *See supra* Part II(A)&(B). The property, in Unincorporated Boulder County, has the address 130 Beaver Creek Drive, Nederland, Colorado, (the "Property" or, for the dwelling alone, the "home").

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). The requirements for staying the mandate are satisfied in this case, as set forth below:

## STATEMENT AND REASONS FOR GRANTING THE STAY

As the extensive body of facts pleaded in this case show: in spring and summer 2015, HUD administrator's deliberately misrepresented FHA regulations

in letters rejecting Dr. Golz's checks for full payment of the loan based upon an authorized, written payoff-agreement with the Secretary. Table 2. From May to August 2016, Dr. Golz and his wife Annette Golz ("Ms. Golz") (collectively, the "Golzes") repeatedly wrote to instruct the Secretary, HUD's servicer Novad, and USAO Civil Division Chief Kevin Traskos to stop sending agents to enter onto the Property without permission and peer into the Golzes' windows when their son was home. On December 2, 2016, HUD contractors broke through the Golzes' front door, installed a HUD-lock and, claiming HUD had foreclosed and taken possession, led the responding police detective on a search of the home and garage. Table 1.

From Christmas Day 2016 through April 27, 2017, the Golzes wrote to Acting United States Attorney Robert Troyer. Table 1(b), 05/08/2017. Those letters documented the BCSO's unanswered telephone messages and emails to HUD and requested an investigation by the USAO. On May 9, 2017, HUD filed its foreclosure complaint. The district court, a panel of the Tenth Circuit, and a silent en banc court, dismissed Dr. Golz's extensive body of facts prior to any discovery. HUD's claim that Verna Mae's signature on the deed grants HUD a continuing possessory right to return and forcibly enter the Golz home is an oppressive and ongoing harm for the Golzes and their son (the "Golz family"). Supp. 2 R. 363 ¶ 2 to 365 ¶ 1.

The Tenth Circuit dismissed an extensive body of facts that satisfied the plain requirements of the federal pleading standards spelled out in the precedents of the Tenth Circuit and this Court. If this application were denied, pursuant

to the mandate HUD will sell the Property. Sale of the Property would extinguish the case-or-controversy, conclude the abridgment of Dr. Golz's rights, and preclude the Court's ability to review questions that are important to public policy, including whether HUD is exempt from affirmative defenses based upon the claim it is acting in the public interest, and whether HUD's deed of trust preempts a state's forcible entry and detainer statute and, in this case, the Fourth Amendment, which are intended to protect a home's occupants.

## I. THERE IS A REASONABLE PROBABILITY THAT THIS COURT WILL GRANT CERTIORARI AND REVERSE THE TENTH CIRCUIT

### (A) The Tenth Circuit's dismissal prior to discovery of facts pleaded for HUD's December 2, 2016 break-in, lock change, and search conflicts with the precedents of this Court, the Tenth Circuit, and the Colorado Supreme Court

As documented[3] in an extensive police report, on December 2, 2016, two HUD contractors, Phillip Cuizon and Wesley Scott: destroyed the home's storm door; broke through an entry door; installed a HUD lock to exclude Dr. Golz; and, based on HUD documents and false statements by Zach claiming HUD had foreclosed and taken possession of the Property, led the responding police officer on a search, opening every door in the Golz home (the "forcible entry"). Table 1(b).

The district court's opinion affirmed by the Tenth Circuit that the " 'forcible entry' " was "consistent with the deed of trust," 2 R. 416, adopts HUD's position that:

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3 *Document* means "physical embodiment of information or ideas; *e.g.* a letter, a contract, a receipt[.]" *Black's Law Dictionary* 432 (5th ed. 1979).

> HUD staff did not commit a criminal trespass by virtue of their entry onto the property on December 2, 2016, because: ... HUD ... shall be entitled to enter upon, take possession of and manage the Property. Deeds of Trust ¶ 23.

Table 1(c). In the appeals court HUD reiterated its position that, under "common law, the holder of a deed has a right to take possession upon default[,]"[4] citing for authority to *Martinez v. Continental*, 730 P.2d 308, 314 (Colo. 1986) (en banc), which states just the opposite: "Colorado, however, has by statute adopted a lien theory of mortgages, which theory generally prohibits a mortgagee from acquiring possession of mortgaged property until a foreclosure and sale have occurred. Section 38-35-117, 16A C.R.S. (1982), states as follows:"

> 'Mortgages, not a conveyance — lien theory. Mortgages, trust deeds, or other instruments intended to secure the payment of an obligation affecting title to or an interest in real property shall not be deemed a conveyance, regardless of its terms, so as to enable the owner of the obligation secured to recover possession of real property without foreclosure and sale, but the same shall be deemed a lien.'

*See* Reply Br. at 25–27, Part (iv); Opening Br. at 42–44, Parts D(i)–(iii) (for additional citation to *Martinez, supra*, and Colorado Supreme Court authority on the exclusivity of possessory interest).

It is well-documented that, by December 2, 2016, HUD and the USAO had been noticed to keep off of the Property and that the Golz family was occupying

4 The court's opinion supporting HUD's claim that its deed gives it a right to return at will and reprise its acts of December 2, 2016, *e.g.*, Table 1(c), 12/06 & 12/07/2017, has taken a large toll on the Golz family. *See* FTCA claim and SF-95 supplement, *infra*, Part I(A)(iv).

and maintaining the home. Table 1(a). The police report and other facts allege direct involvement by HUD Trial Attorney Zach Mountin on the day of the forcible entry. Table 1(b), 12/02/2016. Facts allege that HUD violated the forcible entry and detainer statute, Colo. Rev. Stat. §§ 13-40-101, *et seq,* Opening Br., at 44–45, Part (D)(iv), and that the forcible entry was under color of law.[5] Opening Br. at 48–49, Parts (E)(ii)–(iv); Reply Br. at 22–23, Part III(A)(i); *and see* note in Table 1(b), 12/02/2016.

In *Soldal v. Cook County*, 506 U.S. 56, 61 (1992), the Court reviewed the violation of a state forcible entry and detainer statute under color of law, the Court held that a " 'seizure' of property, we have explained, occurs when 'there is some meaningful interference with an individual's possessory interests in that property.' *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). In addition, we have emphasized that 'at the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home.' " Opening Br. at 45–46, Part (D)(v).

The facts of the forcible entry were pleaded in recoupment or setoff, discussed below, and as an unclean hands defense. *See McQuagge v. United States*, 197 F. Supp. 460, 469 (W.D. La. 1961) (when government seeks "to enforce a contractual right (*i.e.*, one which arises from express consent rather than sovereignty), it submits to the same rules which govern legal relations among its subjects."); *United States v. Georgia-Pacific Company,* 421 F.2d 92, 104 n.35 (9th Cir. 1970)

5 Additionally, facts allege that HUD knowingly broke into an occupied home — *see* Table 1(a) & Table 1(b), 05/08/2017 — which is a criminal trespass. Colo. Rev. Stat. §§ Ann. 18-4-502–504, provided at 2 R. 124–25.

(noting that "the Supreme Court said: 'When the United States comes into court to assert a claim it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter.' ") (internal citation omitted); Opening Br. at 36–37, Part (D). The Tenth Circuit has explicitly acknowledged that unclean hands is a defense to a HUD foreclosure. *Deseret Apartments, Inc. v. United States*, 250 F.2d 457 (10th Cir. 1957); Opening Br. at 40 ¶ 1 & 41, Part (B)(iii).

The Tenth Circuit's opinion concludes: "Having reviewed the arguments and record, however we are not persuaded that Dr. Golz satisfies the high standard for proceeding with the [unclean hands] defense[.]" J&O at 6 ¶ 1, App. A.

**(i) Facts pleaded cease-and-desist-trespass letters to HUD and the USAO, a BCSO report documenting false claims of foreclosure and possession, and injury to Dr. Golz**

Facts pleaded included the Golzes' May–October 2016 letters instructing HUD and the USAO to cease trespassing and peering into the windows, *supra*, and BCSO Case 16-7379 investigating HUD's December 2, 2016 forcible entry with evidence that included: Detective O'Nuallain's written statement that Zach told him "the home had been foreclosed and HUD had taken possession"; the December-2 HUD Property Access Record falsely stating HUD had acquired the Property; the December-1 work-order identifying Phillip Cuizon; photographs of property damage; and a list of witnesses to the forcible entry and search that included Mr. Cuizon, Wesley Scott, and the Golzes' neighbor Deb D'Andrea. Table 1(b), 12/02/2016–

01/20/2017 ; *and see* Opening Br. at 10–11, Part (iii). Dr. Golz's body of pleadings[6] provided additional details and exhibits of property damage and particularized harm resulting from HUD's forcible entry. *Infra* Part I(v).

**(ii) Fraud and willful misconduct were pleaded with a particularity sufficient to the heightened Rule 9(b) standard set forth by the Tenth Circuit in *Schwartz* and *George***

Dr. Golz pleaded facts of HUD's willful misconduct and fraud with a specificity sufficient even to Rule 9(b)'s heightened standard, which requires: "(1) the time, place and contents of the fraudulent misrepresentations or omissions; (2) the identity of the party alleged to have made the misrepresentations or omissions; and (3) the consequences of those misrepresentations or omissions." *Schwartz v. Celestial Seasonings, Inc.*, 124 F.3d 1246, 1250 (10th Cir. 1997). "True to the rule's straightforward language, this court has held that Rule 9(b) requires only the identification of the circumstances constituting fraud ... [and] must be read in conjunction with the principles of Rule 8, which calls for pleadings to be 'simple, concise, and direct, ... and to be construed as to do substantial justice.' " *Id.* at 1252.

In *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1255 (10th Cir. 2016), the court held that "[a]llegations of fraud may be based on information and belief when the facts in question are peculiarly within the opposing party's knowledge and the complaint sets forth the factual basis for the [defendant]'s belief." (internal citation omitted). *See* 1 R. 273 ¶ 131.

6 *See supra* p. ii, note ii.

### (iii) In *Kreisler*, the Tenth Circuit held that "liberal pleading rules ... apply to the pleading of affirmative defenses"

When interpreting Rule 8(c)(1), the Tenth Circuit routinely cites *Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070 (10th Cir. 2009), which cautions that, to be "mindful that the liberal pleading rules established by the Federal Rules of Civil Procedure apply to the pleading of affirmative defenses, we must avoid hypertechnicality in pleading requirements and focus, instead, on enforcing the actual purpose of the rule ... to guarantee that the opposing party has notice of the defense ... so that he or she is prepared to properly litigate it." *Stapp v. Curry Cnty. Bd. of Cnty. Comm'rs*, No. 16-2067, *6 (10th Cir. Dec. 6, 2016) (internal quotation marks and brackets omitted).

HUD's admission that "[a]n alarm went off when [HUD's] contractors entered the house[, t]he Boulder County Sheriff responded," HUD's Answer Br. at 8 ¶ 3, and HUD's defense, that "HUD staff did not commit a criminal trespass by virtue of their entry onto the property on December 2, 2016, because: ... HUD ... shall be entitled to enter upon, take possession of and manage the Property[,]" Table 1(c), 06/07/2017, make it clear that HUD had notice of the defense and was prepared to litigate it.

### (iv) Dr. Golz listed ECF numbers defining his body of pleadings which he moved the district court to read as a whole

At the April 16, 2018 hearing, when Dr. Golz reiterated the facts he had pleaded for HUD's forcible entry, Attach. 19:14–21:13,[7] Judge Hegarty directed

7 Attachments were filed with the Opening Brief. *See supra* p. i, Related Proceedings (2)(a).

Dr. Golz to file an FTCA claim. Attach. 30:14–25. On April 25, 2018, Dr. Golz filed a list of ECFs which he defined as "Defendant's Operative Pleadings." 2 R. 296–98. On January 8, 2019, he updated that list of ECFs in a motion requesting that his pleadings be read as a whole, Supp. 2 R. 352–55, and attached the FTCA claim required by the court's order. Supp. 2 R. 359–60. The FTCA claim — which included an SF-95 supplement itemizing pecuniary damages and adding facts to the particularized, personal injury the Golz family suffered consequent to the forcible entry, Supp. 2 R. 361–69 — also bolstered Dr. Golz's defense. *See* infra Part II(A)(vi).

**(v) The Supreme Court's opinion in *Reiter* on the Rule 8(c) misdesignation provision applies to Dr. Golz's body of pleadings**

In *Reiter v. Cooper*, 507 U.S. 258, 263 (1993), the Court held that "it makes no difference that petitioners may have mistakenly designated their counterclaims as defenses, since ... it is not clear whether setoffs and recoupments should be viewed as defenses or counterclaims, the court, by invoking the misdesignation provision in Rule 8(c), should treat matter of this type as if it had been properly designated by defendant, and should not penalize improper labelling[,]" (internal quotation marks, parentheses, and citation omitted).

Consequent to *Reiter*, whether Dr. Golz "mistakenly designate[d] a defense as a counterclaim, or a counterclaim as a defense," or whether Judge Hegarty's April 16, 2018 order to Dr. Golz — "look up the Federal Tort Claims Act. You'll have to ... let the Agency try and settle it first before you file a lawsuit[,]" At-

tach. 30:23–31:1 — unduly delayed Dr. Golz's filing for recoupment or setoff by six months, the district court was "require[d to] treat the pleading as though it were correctly designated[.]" Rule 8(c)(2). The rules do not provide for the district court to disregard that responsibility or to shift it onto a litigant.

#### (vi) The Supreme Court vacated the Tenth Circuit in *Erickson* for disregarding liberal pleading standards and failing to consider more specific allegations in exhibits and later filings

In *Erikson v. Pardus*, 551 U.S. 89, 90 (2007) (per curiam), the Court held that the Tenth Circuit "departs in so stark a manner from the pleading standard mandated by the Federal Rules of Civil Procedure that we grant review." William Erickson, "bolstered his claim by making more specific allegations in documents attached to the complaint and in later filings" and that the "Court of Appeals' departure from the liberal pleading standards set forth by Rule 8(a)(2) is even more pronounced in this particular case because ... [a] document filed pro se is 'to be liberally construed[.]' " *Id.* at 94; cited at 2 R. 298 ¶ 2; Supp. 2 R. 353 ¶ 3.

### (B) Dr. Golz's authorized payoff-agreement with HUD, its attempts to fraudulently inflate the appraisal, and its affirmative misrepresentations of FHA regulations to repudiate the agreement established equitable estoppel

#### (i) Director Himes' authorized, written payoff-agreement with Dr. Golz was a contract

OSFAM Director Ivery Himes — acting "[o]n behalf of Secretary Castro" and with the authority of her office, "to assist homeowners to avoid foreclo-

sure[,]" Reply Br. at 10 ¶ 2 & n.6 — agreed in writing to Dr. Golz's loan payoff of "95% of the appraised value" (hereinafter, the "payoff-agreement"). Table 2(b), 9/17 & 10/10/2014.

When the Secretary accepted assignment of the note, 1 R. 154 ¶ 1, as named "Lender," HUD's "legal rights ... were the same as if a commercial financial organization had foreclosed the mortgage[] after they had been assigned to it." *Lawndale Restoration Ltd. P'ship ex re Boulevard v. United States*, 95 Fed.Cl. 498, 513 (Ct. Cl. Nov. 23, 2010); Opening Br. at 40 ¶ 2 to 41 ¶ 1. *Lawndale* originated with a HUD foreclosure and addressed a claim for HUD's "breach of an implied-in-fact contract or equitable estoppel." *Id.* at 507. *Lawndale* cited to *Hanlin v. U.S.*, 316 F.3d 1325, 1328 (Fed. Cir. 2003) that "the requirements for an implied-in-fact contract are the same as for an express contract" requiring: "(1) mutuality of intent, (2) consideration, (3) an unambiguous offer and acceptance, and (4) 'actual authority' on the part of the government's representative to bind the government in contract." HUD's payoff-agreement with Dr. Golz, as pleaded and without discovery, satisfies each of the four requirements.

Judge Baldock, author of the J&O in *Carson v. Golz*, was on the panel when *Penny v. Giuffrida*, 897 F.2d 1543, 1546 (10th Cir. 1990) acknowledged that "the government is ordinarily bound by the *authorized* acts of its agents under traditional concepts of agency or contract law." A parenthetical supporting that statement, *id.* at 1546, citing to "*Hollerbach v. United States*, 233 U.S. 165, 172 ...

(1914)" stated that the "Court refused to permit the government to assert a position contrary to an affirmative representation that it had made in a contract[.]"

In *Tosco Corp. v. Hodel,* 611 F. Supp. 1130, 1207 (D. Colo. 1985), the court "note[d] that even when public lands are involved, the doctrine of equitable estoppel against the government is well recognized. This principle is articulated in an annotation dealing with the acquisition or disposal of interests in real property: 'despite any public interest involved ... the government might be estopped, on equitable principles, to assert a claim or defense, where a private party relied to his detriment upon statements or conduct of government officers or agents made in connection with negotiations or agreements to which their authority extended.' Annotation, *Modern Status of Applicability of Doctrine of Estoppel Against Federal Government and Its Agencies*, 27 A.L.R. Fed. 702, 736 (1976)." *Appeal vacated as moot upon settlement,* 826 F.2d 948 (10th Cir. 1987).

**(ii) HUD's attempts to obtain a fraudulently inflated appraisal and affirmative misrepresentations of FHA regulations to cancel the payoff-agreement established an equitable estoppel defense**

In 2005, Boulder County notified HUD that it had an unlawful lien on Verna Mae's separate, vacant lot that was the cause of the USDA's denial of her loan to replace her dry well and crushed septic tank. Table 2(a). Dr. Golz's November 8, 2014 letter reminded the Secretary that any further postponement of the appraisal could mean that the known material-defects would be covered by several

feet of snow.[8] Table 2(c). Two more months passed before HUD scheduled an appraisal which it abruptly canceled on January 8, 2015 immediately after being told that a lawyer or broker would meet the appraiser at the Property with disclosures of known defects. HUD then contacted Dr. Golz on January 20, 2015 pushing to do a rush appraisal—in two days, in already deep snow, and during a blizzard advisory. Table 2(c).[9]

The above facts met the Rule 8(c) standard thus entitling Dr. Golz to discovery. Moreover, the facts were pleaded with sufficient particularity to satisfy even the heightened standard for fraud, where, "in determining whether a [defendant] has satisfied Rule 9(b), courts may consider whether any pleading deficiencies resulted from the [defendant]'s inability to obtain information in the [plaintiff]'s exclusive control." *George*, 833 F.3d at 1255.

Dr. Golz's January 18, 2015 letter directing the Secretary to the Boulder County-correspondence HUD had received in 2005 also provided a detailed summary of the major defects and why they existed. Table 2(c). Dr. Golz, updating HUD frequently during the period January to April when nine feet of snow fell, explained that an appraiser could not meet HUD or DORA minimum-appraisal-standards. OSFAM Deputy Director Mark Malec replied that HUD did not require its

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8 HUD explicitly exempts FHA-Roster appraisers from snow removal. Opening Br. at 5 n.6. This is significant given that the Property is in the Rocky Mountains at 8,600 feet. Opening Br. at 6 ¶ 1.

9 When a single date corresponds to a table entry—here January 20, 2015, and it is given in the text, it is not repeated in the citation—thus Table 2(c) in lieu of Table 2(c), 01/20/2015.

appraisal to meet those minimum standards. Table 2(d), 01/21/2015 to 04/08/2015; Opening Br. at 5–6.

Dr. Golz provided his January 18, 2015 letter to AUSA Traskos and enclosed HUD's 2001-appraisal and 2002-loan origination documents. Supp. 2 R. 173–219. Thus, long before HUD and the USAO filed their foreclosure complaint, they knew that a January 2015-appraisal would have inflated the Property value and, ergo, that it was bad faith[10] for HUD to obdurately refuse Dr. Golz's many requests for a valid appraisal, for which AGC Millicent Potts offered the following specious justification: "HUD attempted two [January] appraisals of Ms. Golz's property with its selected-FHA Roster Appraisers, but Dr. Golz was uncooperative .... Therefore, HUD must confirm the propriety of the continuation of the foreclosure process in conformity with its regulations." 2 R. 253 ¶ 3.

When Deputy Director Malec advised that HUD was foreclosing, Dr. Golz sent the Estate's FHA Roster-appraiser's report[11] to HUD with checks for 95% of the Property's market-value. Reply Br. at 16 ¶ 3 & n.10. Deputy Director Malec wrote "VOID" on the checks, Supp. 2 R. 298, and returned them in a June 16, 2015 letter where he represented to Dr. Golz that the payoff "must fully comply with HUD regulations and requirements at 24 C.F.R. § 206.125(b) and (c) ... [requiring]

10 *Fraud.* " 'Bad faith' and 'fraud' are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc." *Black's Law Dictionary* 594 (5th ed. 1979).

11 Ariz. Rev. Stat. Ann. § 14-3707: "The personal representative may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset[,]" (Eleven days after Verna Mae's death, on May 27, 2014, HUD received Dr. Golz's first certified letter requesting that HUD conduct its own appraisal. 1 R. 257 ¶ 81.)

an appraised value obtained by the lender, in this case, HUD." Table 2(d), 05/18/2015–06/16/2015.

AGC Potts would later affirm that "we agree with [Deputy Director Malec]'s ... final agency response[] provided on ... June 16, 2015. ... HUD's long-standing interpretation of the appraisal requirement ... at 24 C.F.R. 206.125(b) is that ... HUD will only accept appraisals that are performed by FHA Roster Appraisers and are ordered by and delivered directly to HUD[.]" Table 2(d), 08/04/2015. However, after making that demand, AGC Potts repeatedly refused Dr. Golz's requests to HUD to order its own appraisal, Table 2(d), 08/17 & 08/24/2015, replying that "no further action will be taken by the Department to facilitate a sale of the subject property to the estate. As you were advised, HUD has begun its process for foreclosing on the property and will continue this process." Table 2(d), 09/08/2015.

HUD states in its Answer Brief that "24 C.F.R. § 206.125 did not apply to Ms. Golz loan in 2014." Table 2(e). Ergo, Deputy Director Malec and AGC Potts, FHA's program counsel, affirmatively misrepresented (or, equivalently, fraudulently represented) that FHA's regulation at § 206.125: applied to Verna Mae's loan; provided the authority to refuse Dr. Golz's appraisal and checks (which otherwise "met all legal requirements" of the payoff-agreement. *See* Opening Br. at 7 ¶ 2); and provided the authority both for the demand and for the refusal to order a HUD appraisal. HUD's deliberate acts of bad faith made it impossible for Dr. Golz to satisfy the payoff-agreement with the Secretary.

Dr. Golz pleaded the above facts with a particularity sufficient to satisfy even the heightened Rule 9(b) standard for fraud set forth in *Schwartz* and *George*. *Supra*. However, as noted in *Hodel*, 611 F. Supp. at 1205, "actual fraud has never been a requirement for the assertion of estoppel. In its historical sense, fraud, when referring to the conduct of the party to be estopped, was actually only 'unconscientious or inequitable' behavior. *See United States v. Georgia-Pacific Company*, 421 F.2d 92, 97 n. 5 (9th Cir. 1970)[.]" In *Georgia-Pacific*, 421 F.2d at 103, the circuit court noted that "[t]he claim of the government to an immunity from estoppel is in fact a claim to exemption from the requirements of morals and justice." Opening Br. at 36 ¶ 3; *and see* Reply Br. at 8–9, Part I.

The injury to Dr. Golz caused by HUD's repudiation of the payoff-agreement includes: six years of economic losses when the Property has been uninhabitable due to the impossibility of financing the $90,880 in repairs, in 2015 dollars, needed to meet statutory minimum habitability requirements, plus insurance, taxes, and routine maintenance amounting to $30,331 through 2019. Opening Br. at 37, Part (E). In addition, HUD would neither have had the opportunity to commit their December 2, 2016 forcible entry nor would the Golz family now be living under HUD's threat to return at will, break-in, illegally eject the Golzes, and seize and search their home. *See* Table 1(c), 12/06 & 12/07/2017. HUD's acts have caused a grievous and ongoing injury to the Golz family. *See* FTCA claim, Part I(A)(iv), *supra*.

### (iii) Even if a HUD foreclosure were given the deference of an EEOC employment discrimination action, HUD would have no exemption from discovery

HUD's argument is that it is exempt from discovery for Dr. Golz's facts, because "estoppel and unclean hands are insufficient affirmative defenses. Neither defense is available, because HUD is acting in the public interest[.]" Answer Br. at 12 ¶ 2.

An identical claim to a special dispensation "in the public interest" was made in *Equal Employment Opportunity Commission v. Genesco, Inc.*, Civ. No. 09-952 WJ/RHS (D.N.M. May 20, 2010), by the EEOC and was met with the following response from the court:

> Plaintiff also claims that as a governmental agency that serves a public interest, it is somehow exempt from an assertion of equitable estoppel. [ ]. In support of this proposition, Plaintiff cites to a Tenth Circuit case which held that in order to assert equitable estoppel against the government, the party seeking relief must show that the government exhibited affirmative misconduct. *See, Bd. of County Comm'rs of County of Adams v. Isaac*, 18 F.3d 1492, 1499 (10th Cir. 1994). However, *Adams* involved a review of an administrative order ... including all the evidence contained in the record. Thus, that case does not provide a legal basis for striking Defendant's affirmative defenses for failure to show such affirmative misconduct in an Answer and at the inception of the lawsuit, prior to formal discovery.

*Id.* at *6. The Tenth Circuit denied Dr. Golz discovery notwithstanding that he pleaded facts of fraud and affirmative misrepresentation with great particularity:

The panel, quoting from the same page in *Adams*, 18 F.3d at 1499, makes the same assertion as the EEOC, that Dr. Golz's facts can be dismissed without discovery, since " '[M]ere negligence, delay, inaction, or failure to follow agency guidelines does not constitute affirmative misconduct[,]' [ a]ccordingly, the court did not err in striking the estoppel defense." J&O at 5 ¶ 1, *see* App. A. There is more than just the obvious peremptory denial of discovery wrong with the Tenth Circuit's opinion:

First, as the court in *Adams,* 18 F.3d 1499, noted: "Affirmative misconduct means an affirmative act of misrepresentation or concealment of a material fact." (internal citation omitted). Deputy Director Malec and AGC Potts, FHA's program counsel, clearly knew that they were misrepresenting FHA regulations which HUD now states never applied to Verna Mae's loan. *See* Part I(B)(ii); Table 2(d)–(e). Those facts met the Rule 9(b) standard, as set forth in *Schwartz. Supra.*

Second, the subset of facts pleaded for HUD's attempts to obtain a fraudulently inflated appraisal in January 2015 met the Rule 9(b) standard articulated by the Tenth Circuit in *George. Supra.*

Finally, Dr. Golz's affirmative defenses are not governed by the heightened Rule 9(b) standard at all, but by Rule 8(c), which—like the facts of the Defendant in *Genesco, supra*, does not require Dr. Golz to have shown affirmative misconduct prior to discovery. *And see Kreisler, supra.*

### (C) The Tenth Circuit's opinion that Dr. Golz lacks standing to seek a remedy for orders directing his actions regarding the closed Estate contravenes Supreme Court precedent

The issue on appeal is not what the Tenth Circuit misconstrues as a harmless "delay in dismissing the Estate as a defendant." J&O at 3, *see* App. A. At issue is the period after the Estate Closing Statement was filed on May 7, 2018 when Judge Jackson's Court asserted subject-matter jurisdiction to reopen (or, equivalently, to refuse to acknowledge the probate court's jurisdiction to close the Estate) on May 8, 2018. The court then issued orders to effectuate HUD's claim for a cause against Verna Mae for a retrospective foreclosure during her lifetime, which constituted nullification of her will. In December 2018 and January 2019, Dr. Golz received an unsolicited email, a letter, and a series of voice messages from a lawyer, at the explicit behest of Judge Hegarty, advising that Dr. Golz must retain representation for the closed Estate. On January 23, 2019, Judge Hegarty invited the lawyer to a hearing and issued a bench order to Dr. Golz to retain counsel for the closed Estate or face the loss of his Property to a default judgment. *See* Table 3.

#### (i) April and May 2018: Judge Jackson's Court rejected the Estate Closing Statement and issued orders on HUD's cause for retrospective foreclosure against Verna Mae

Dr. Golz, acting with the authority of his appointment as PR by county courts in Arizona and Colorado,[12] distributed the Property with a PR's Deed, filing a copy in the federal district court with a motion "for the immediate dismissal of the Estate as a party to this action." Table 3(c), 04/25/2018.

12 *In re Estate of Verna Mae Golz*, (Ariz. Super. Ct. 2018) (PB2014-051759); Ancillary Filing (Boulder County Dist. Ct. 2018) (Prob. No. 2014-PR-160).

Judge Jackson referred the motion to dismiss to Judge Hegarty who converted it to a motion for summary judgment citing to "documents outside the pleadings[.]" Table 3(c), 04/27/2018; Attach. 58 ¶ (i); *see, e.g.*, 2 R. 312 ("Nederland Post Office, 07/29/2010, Sales Receipt, Golz, Verna, Box/Call Number 328, Paid by: Personal Check $44.00"); 2 R. 319 ("Colorado Driver License, Issued: 04-26-2013, Verna Mae Golz, 130 N Beaver Road [*sic*], Nederland, CO 80466").

Dr. Golz provided the documents to comply with Judge Hegarty's directive "that where your mother lived is relevant[,] ... if a breach occurred as early as 2009 or 2010, ... thereafter whatever happened is not relevant to the issues in the case, because ... the debt was owed as early as seven or eight years ago." Attach. 42:6–18. Judge Hegarty's directive sprang from the averment by HUD's counsel, AUSA Jasand Mock, that: "I think Mrs. Golz had moved to Arizona by perhaps as early as 2009, which ... would be an event of default ... then we shouldn't be talking about any of [Dr. Golz's] affirmative defense[s.]" Attach. 38:2–11.

To be clear, the Property was the Estate's only asset, and, as HUD acknowledges, it "is able to 'enforce the debt only through sale of the Property.' " Supp. 2 R. 134 ¶ 2. Judge Hegarty required AUSA Mock to clarify that HUD's sole remedy was "foreclosing under the terms of the note[,]" Attach. 44:23–24, where the cause alleged—a pre-death default by Verna Mae, was a "breach of contract[,]" Attach. 44:25–45:2. HUD's only remedy was, therefore, a retrospective foreclosure against Verna Mae (or, equivalently, a judgment that she lacked the legal capacity

to devise the Property) which would nullify her will and her devise of the Property to Dr. Golz whereupon HUD would achieve its stated goal of circumventing the affirmative defenses.

Judge Jackson denied Dr. Golz's objection to the summary judgment motion the court had initiated, Table 3(c), 05/03/2018, which required Dr. Golz to respond to HUD's position paper on pro-se Estate representation. Therein, Dr. Golz reiterated that "the Court must dismiss the Estate" and attached a copy of the Estate Closing Statement bearing the seal of the probate court with Dr. Golz's sworn oath: "The Estate has been fully administered[.]" Table 3(c), 05/07/2018. Judge Hegarty responded by ordering, "whether [Dr. Golz] may properly seek any relief on behalf of the Estate[ ] will be resolved with the Court's consideration[.]" Table 3(c), 05/08/2018.

Judge Hegarty's May 17, 2018 order stated "the Court seeks Plaintiff's position" and requested that "Plaintiff to respond to [the Court's] motion for summary judgment[.]" *See* Table 3(c). HUD's counsel, whose duty for representations to the court is no different from that of Dr. Golz, Rule 11(b), was required to inform the court that Estate administration had been closed. Opening Br. at 15–16. AUSA Mock did the opposite, representing that "Dr. Golz's motion to dismiss the Estate should be denied[,]" Supp. 2 R. 125 ¶ 1, and that there was standing for "Plaintiff's claim that an event of default occurred when the Property ceased to be [Verna Mae]'s 'principal residence,' a genuine issue of material fact[.]" Supp. 2 R. 126 ¶ 1.

HUD's counsel went on to represent that "[u]nder federal law in the Tenth Circuit, an estate is a legal entity. *See United States v. Stubbs*, 776 F.2d 1472, 1475 (10th Cir. 1985)." Supp. 2 R. 135. *Stubbs'* complete statement is that "a probate estate is a legal entity ... during its period of administration." *Id.* 1475; *see* Opening Br. at 15 ¶ 2. HUD and AUSA Mock were served with the Estate Closing Statement, with Dr. Golz's sworn oath that "[t]he Estate has been fully administered[.]" *Supra.* Thus, HUD's misrepresentation that it had standing for a cause against Verna Mae through her closed Estate was made in bad faith based upon a frivolous claim that perpetuated a purely scandalous allegation to prejudice Dr. Golz's defense.[13]

Dr. Golz's May 22, 2018 reply in support of his "motion to dismiss the Estate should have been evaluated pursuant to ... Fed. R. Civ. P. 12(b)(1)," Table 3(c), because Verna Mae's alleged default "would require Plaintiff to petition the courts to invalidate the Personal Representative's Deed thus reversing the probate court's distribution of the Estate's only asset, the Property ... nullifying her testamentary document ... rights that cannot be enforced by this Court which lacks subject matter jurisdiction. *See, e.g., Byers v. McAuley*, 149 U.S. 608 (1893); ... *Sutton v. English*, 246 U.S. 199 (1918)." Supp. 2 R. 168 ¶ 3 to 169 ¶ 2.

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13 HUD acknowledged Dr. Golz's Arizona PR Letters in 2014. Table 3(a). In its 2017 complaint, HUD claimed Verna Mae "ceased principally residing on the Property[.]" 1 R. 135 ¶ 50, *but see* 1 R. 251 ¶ 50 & Attach. 49:5–8. HUD belied that reputed belief by delaying until 2018 then making its claim in a federal court that lacked any jurisdiction. HUD employed this claim to introduce immaterial, prejudicial documents and promote a scandalous theory which it furthered in the appeals court. *See, e.g.,* Answer Br. at 5 n.4.

### (ii) January 8 and January 23, 2019: Dr. Golz was ordered to retain licensed counsel for the closed Estate or face the loss of his Property to a default judgment

On January 8, 2019 — eight months after the court's May 8, 2018 order asserting jurisdiction to decide whether to permit the closure of the Estate — the court delivered its decision through Denver lawyer Meredith Callan, who stated, "I was contacted by Judge Hegarty .... You do need representation on the Estate matter." Table 3(d).

When Dr. Golz did not reply to Ms. Callan's contacts and misrepresentations of federal law at the behest of Judge Hegarty,[14] Judge Hegarty invited Ms. Callan to a January 23, 2019 hearing where he issued several bench orders, including that "it looks like the Government is simply going to win this case because an estate can't represent itself. It has to be represented by a lawyer. ... I'll be issuing an order to show cause why a default should not be entered for ... the Estate of Verna Mae Golz failure to appear at a scheduled court hearing." Table 3(d); Opening Br. at 19–21, Part (B)(iii).

### (iii) January 28 to April 8, 2019: Dr. Golz reiterated his request to Judge Jackson's Court to admit to and stop issuing orders without jurisdiction and to provide a remedy for Dr. Golz's injury

On January 28, Dr. Golz reminded the court that, "on May 2, the Estate ceased to exist as an entity[,]" attaching Ms. Callan's communications and re-

14 Dr. Golz received a December 19, 2018 email and letter from Ms. Callan which began, "Judge Hegarty recommended that I contact you ... you would be best served having a lawyer." *See* note, Table 3(d), 01/08/19.

questing a stay of proceedings pending a reconstruction hearing for the unrecorded January-23 hearing. Table 3(e).

Dr. Golz, in his February-7 response to Judge Hegarty's show-cause order, stated: "The Estate is a nullity which can neither be noticed nor appear at any conference nor can it retain legal counsel." Table 3(e), 02/07/2019. Dr. Golz moved the court for reconstruction-hearing orders and to vacate a February-28 conference pending the reconstruction hearing. Table 3(e), 02/20/2019. Judge Jackson addressed the motion for a reconstruction-hearing in a concluding sentence referring to it only as "further orders ... DENIED." Table 3(e), 03/01/2019.

Dr. Golz objected to an order shortening the deadline for his objection to dismissing the Estate, which he stated was "void for lack of jurisdiction[.]" Table 3(e), 03/08/2019. As Dr. Golz's objection to dismissing the Estate, Table 3(e), 03/22/2019, stated, when the court was noticed on May 7, 2018 that the Estate had "cease[d] to exist, the only function remaining to the court [wa]s that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 94 (1998) (internal quotation marks and citation omitted). 3 R. 185 ¶ 1.

Dr. Golz's unopposed motion to extend time to object to the R&R on HUD's summary judgment motion, Table 3(e), 03/27/2019, included as good cause that orders issued in the "Court's absence of any jurisdiction over a legal nullity ... demanded that D[r. Golz] draft needless responses and spend hundreds of hours in legal research." Judge Jackson knew that Dr. Golz had preplanned, international

business-travel for the weeks of April 1, April 8, and April 15, but denied the unopposed extension in a text entry, without comment, on Friday, March 29. *See* Opening Br. at 23 ¶ 2 to 24 ¶ 1; Table 3(e).

Dr. Golz canceled his prepaid conference-registration including nonrefundable travel and ground costs, Opening Br. at 24 ¶ 2, wrote without sleeping that weekend, and on Monday, moved for leave to amend, attaching a proposed second-amended answer that pleaded facts of his new defense that his case had been hampered "from inception in May 2018 ... [of] the judicial officers' acting without subject-matter or personal jurisdiction against the Estate." *See* citations to ROA in Table 3(e), 04/01/2019. The court postponed action on that motion until after the court's final order had made the answer moot. Table 3(e), 05/07/2019.

Eleven months after rejecting the Estate Closing Statement, Judge Jackson's final order, Table 3(e), 04/08/2019, named the Estate as a defendant and claimed jurisdiction for "Judge Hegarty's efforts to assist the Estate in obtaining [Ms. Callan's] counsel from this district's civil pro bono panel."[15] 3 R. 366. Pro-bono was referred to once only, by Judge Hegarty in his minute order, 3 R. 109, following the January 23, 2019 hearing where he threatened: "*If Mr. Golz is interested in not defaulting* and the Estate being able to litigate this case I would highly recommend that he give [Ms. Callan] a call." Attach. 108:9–11 (emphasis added).

15 *Trujillo v. City of Denver*, No. 14-cv-02798-RBJ-MEH, at *2 (D. Colo. Nov. 6, 2015), was before Magistrate Judge Hegarty ("MEH") and District Judge Jackson ("RBJ"), who stated, "[i]n cases deemed appropriate the court through the Clerk's Office contacts the volunteer panel[.]" In *Carson v. Golz*, before RBJ-MEH, *see* p. i, Related Proceedings (1), pro bono procedure was never initiated. *See* D.C.COLO.LAttyR 15(e)&(f), at 3 R. 111–13.