No. _____

21-6072

IN THE

SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA - PETITIONER PRO SE

vs.

ASSOCIATION OF APARTMENT OWNERS –RESPONDENTS
OF THE TROPICS AT WAIKELE ET. AL

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORIGINAL

PETITION FOR WRIT OF CERTIORARI

PATSY N. SAKUMA, Petitioner Pro Se

1232 Makaloa Street # 7

Honolulu, HI 96814

808-454-3171

QUESTIONS PRESENTED

1. Whether a putative claim under 42 U.S.C. §1985(2), clause 2 for obstruction of justice in a state proceeding, like state judicial foreclosure action, is jurisdictional, because of its special jurisdiction provision 28 U.S.C. §1343(a)(1), so that a federal court or judge must sua sponte raise it and/or if imperfectly raised by a plaintiff pro se who is also an attorney giving the federal court or judge actual notice before dismissing an action at the pleading stage?

2. Whether the Court will also accept a petition for writ of certiorari because the first question presented is very important and when it overlaps the federal and state claims that establish a new imperfectly raised putative §1985(2), clause 2 claim to resolve an intra-circuit split in the United States Court of Appeals for the Ninth Circuit between *School District 1J Mutlnomah Cty, OR v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) and *In re Glenfed Inc. Sec. Litig.*, 42 F.3d 1541, 1551 (9th Cir. 1994)(en banc) on the issue whether voluminous records is cause for a dismissal of an action at the pleading stage?

LIST OF PARTIES

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

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

1. Patsy N. Sakuma, Petitioner Pro Se

2. Association of Apartment Owners Of The Tropics At Waikele, by its board of directors (AOAO), Respondent

3. Association of Condominium Owners Of Tropics At Waikele, (AOCH), Respondent, **no attorney representation filed or claimed in this suit.**

4. Milton M. Motooka (Motooka), Respondent

5. Love Yamamoto & Revere, LLC, (LYM) Respondent

6. Motooka Yamamoto & Revere, LLC, (MYR) Respondent

7. Porter McGuire Kiakona & Chow, LLP, (PMKC) Respondent

8. James S. Kometani, Commissioner, (Commissioner), Respondent

9. First Hawaiian Bank (FHB), a Hawaii corporation, Respondent

10. Watanabe Ing, (WI) LLP, Respondent

11. Title Guaranty of Hawaii, Inc., (TGH) a Hawaii corporation, Respondent

12. Title Guaranty Escrow Services Inc. (TGE), a Hawaii corporation, Respondent

RELATED CASES

- **ASSOCIATION OF CONDOMINIUM HOME OWNERS OF TROPICS AT WAIKELE v. PATSY N. SAKUMA, ET. AL., state judicial foreclosure**

•Circuit Court of the First Circuit of the State of Hawaii, **Civ. No. 07-1487;**

CURRENT STATUS:

•**September 11, 2021, Petition for Writ of Certiorari to the United States Supreme Court** was filed and entered into the docket on September 15, 2021, as No. 21-5676, pursuant to August 10, 2021 extension letter from Scott S. Harris,

Clerk, U.S. Supreme Court by Michael Duggan to correct petition pursuant to motion for leave to file in informa pauperis, postmarked August 3, 2021.

• September **24, 2021 Waiver in No. 21-5676** filed by R. Laree McGuire, Esq. of Porter McGuire Kiakona & Chow, LLC on behalf of **Respondent Association of Condominium Homeowners of Tropics at Waikele.**

•**December 18, 2020 Summary Disposition Order** in CAAP No. 16-0000627, dismissal of appeal as moot.

•**January 22, 2021, Judgment on Appeal** in CAAP No. 16-0000627, pursuant to December 18, 2020 Summary Disposition Order, appeal was dismissed as moot.

•**May 5, 2021 Order Rejecting Application for Writ of Certiorari**, filed on March 23, 2016. Hawaii Supreme Court Clerk's Extension to file application granted pursuant to April 20, 2016 Order.

Procedural Background:

•August 13, 2007, AOCH complaint filed to foreclose on Petitioner's Tropics Home and collect Petitioner's withheld homeowner's monthly fees pursuant to a March 1, 2007, $4,999.99 money judgment awarded to Tropics (AOAO without "the" before Tropics) from the state of Hawaii, district court, Ewa division, in Civ. No. 1RC05-1-6232, 2005 recorded lien for assessment to Tropics, and 2007 recorded lis pendens.

• **June 10, 2008 Findings**, Conclusions, Order Granting AOCH's Summary Judgment, Default Judgment [against petitioner], Interlocutory Decree of Foreclosure, Rule 54(b) certified as a final judgment, and Judgment;

•**August 31, 2010, Order Confirming Second Sale entered.** Petitioner filed Rule 59(e) motion to vacate August 31, 2010 Order Confirming 2nd Sale. Appeal filed in CAAP 11-000054 pursuant to minute order.

August 31, 2010 Order later vacated by **November 28, 2011 Order re: Commissioner's Motion for Instructions**-re: Second Buyer's request to withdraw bid due to delay in closing.

Petitioner filed Am. Rule 60(b)(4)(void judgments) and 60(b)(fraud on the court) motion from the November 28, 2011 Order re: Commissioner's Motion for Instruction, granting Second Buyer's request to withdraw bid due to closing delay.

Petitioner filed 2012 Appeal within 120 days of filing date of Rule 60(b) motion in CAAP 12-0000145.

• **May 29, 2012 Order Confirming Third Sale** entered.

• **June 7, 2012 Petitioner's Rule 59(e) motion** filed to vacate May 29, 2012 for due process violations under 14th Amendment of the United States Constitution; remains pending until about 3-1/2 years later on November 30, 2015 when circuit court enters order of deemed denial of June 7, 2012 Rule 59(e) motion.

•**July 2, 2012 Commissioner's Distribution Statement entered; Commissioner's Quitclaim Apartment Deed** to Third Buyers while June 7, 2012 Rule 59(e) still pending.

Petitioner filed appeal on October 16, 2016 based on *Forgay* exception or Haw. Revised Statute, §602-57(3) to final judgment, in CAAP No. 12-0000870.

•November 30, 2015 Order entered on September 5, 2012 Automatic Deemed Denial of June 7, 2012 Petitioner's June 7, 2012 Rule 59(e) motion.

• March 22, 2016 Order denying Petitioner's December 8, 2015 Motion to Reconsider November 30, 2015 Order.

• August 15, 2016 Order denying Petitioner's Reconsideration of March 22, 2016 Order denying Petitioner's December 8, 2015 Rule 59(e)/Rule 60(b)(4), 60(b) Motion to vacate November 30, 2015 Order.

•Petitioner filed appeal from August 15, 2016 Order denying Petitioner's Reconsideration of March 22, 2016 Order in CAAP No. 16-0000627.

Prior Appeals:

• CAAP No. 11-0000054, Sept. 10, 2010 Rule 59(e) motion to vacate August 30, 2010 Order Confirming Second Sale dismissed as untimely based on HRAP 4(a)(3)'s calculation of time to appeal from deemed denial of rule 59(e) motion; 2011 Haw. App. LEXIS 830 (Aug. 3, 2011); reconsideration denied, Aug. 17, 2011, 2011 WL 3671965;

• CAAP No. 12-0000145 appeal dismissed as prematurely filed, no dispositional order to December 13, 2011 Am. Rule 60(b)(4), 60(b) motion to vacate; 2012 WL 2924102.

•CAAP No. 12-0000870, Jan. 11, 2013, ICA order dismissing appeal as untimely under HRAP 4(a)(3) deemed denial appeal deadline of Petitioner's June 7, 2012 Rule 59(e) motion, within 30 days from the 90-day deemed denial of rule 59(e) tolling motion.

1st Remand, reversal of Jan. 11, 2013 ICA Order dismissing appeal and judgment on appeal as untimely under Hawaii Supreme Court published decision, 131 Haw. 254, 318 P.3d 94 (2017). **July 21, 2015 Summary Dispositional Order** dismissing appeal as moot, no exceptions to mootness applied, and Petitioner's objections lack merit. 2015 Haw. App. LEXIS 377; 136 Haw 25, 356 P.3d 1045 (Jul. 21, 2015).

Second Remand, Jan. 21, 2016, Summary Disposition Order: dismissing appeal as moot, no exceptions to mootness applied, petitioner's objections lack merit, i.e., same reason as July 21, 2015 Summary Disposition Order, under general rule that the rights of a good-faith purchaser in a judicial sale are unaffected even if the judgments are reversed if the foreclosed party failed to post a supersedeas bond to cover the costs of appeal of opposing party(ies).

•Prior Hawaii Supreme Court Applications for Writ of Certiorari:
SCWC No. 11-0000054 (09/10/10 Rule 59(e) motion, dismissal for untimely appeal from 90-day automatic denial, application for writ of cert. dismissed, Nov. 22, 2011; 2011 WL 5903865;

• **SCWC No. 12-0000145,** Dismissal, appeal prematurely filed, no dispositional order to Am. Dec. 13, 2011 Rule 60(b) motion to vacate for further fraud, fraud on the court; and

• **SCWC No. 12-0000870, First remand,**

• December 13, 2017, published opinion, vacating Jan. 13, 2011 Order dismissing appeal as untimely under HRAP 4(a)(3) deemed denial of June 7, 2012 Petitioner's Rule 59(e) motion to vacate based on unconstitutional Circuit Rule 7(b)'s 8-day deadline to file opposition motion or 3-day deadline for filing any papers for out-of-state litigant as violating due process under 14th Amendment of U.S. Constitution. *Ass'n of Condominium Homeowners of Tropics at Waikele v. Sakuma,* 131 Haw. 254, 318 P.3d 94 (2017); as clarified in *Deutsche Bank Nat. Trust Co. v. Amasol,* 135 Haw. 357, 351 P. 3d 584 (2015).

• **Second Remand, November 6, 2015, Order Accepting Application for Writ of Certiorari**, Vacating ICA's Judgment on Appeal, and Remanding the Case to the ICA, and Temporary Remand to the Circuit Court to enter dispositional order to September 5, 2012 Automatic "Deemed Denial" of Petitioner's June 7, 2012 Rule 59(e) Motion.

• **Prior Hawaii Supreme Court Petition for Writ of Mandamus: SCPW No. 12-0001057**: mandamus petition denied, Jan. 24, 2012; 2012 WL6929416.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 001 to 002 the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix 003 to 008 the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~January 26, 2021~~.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 25, 2021, and a copy of the order denying rehearing appears at Appendix 0010-0011

[x] An extension of time to file the petition for a writ of certiorari was granted to and including ~~Oct. 22, 2021~~ (date) on ~~July 19, 2021~~ (date) in Application No. ~~XXXXXXXXXXXXXXXXXXXXper Covid-19 Pandemic Automatic Extension~~.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

STATUTORY PROVISIONS AND RULES INVOLVED

1. 42 U.S.C. §1985(2), clause 2 provides, in pertinent part:

   "**(2) OBSTRUCTING JUSTICE**
   If two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;...."

2. 42 U.S.C. §1985(3) provides, in pertinent part:

   "[I]n any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the Recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

3. 28 U.S.C. §1343(a)(1) provides, in pertinent part:

   "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person, provides, in pertinent part:

   (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

   (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;...."

5. Federal Rules of Civil Procedure, Rule 60- Relief from Judgment or Order, provide, in pertinent part:

   "(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER , OR PROCEEDING, provides, in pertinent part: "On motion and just terms, the court may relief a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; ...
(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an opposing party;...
(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than one year after entry of the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

3. Federal Rule of Civil Procedure Rule 60(b) continued:

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relief a party from a judgment, order, or proceeding;...
(3) set aside a judgment for fraud on the court.

(e) BILLS AND WIRTS ABOLISHED. The following bills are abolished: bills of review, bills in the nature of bills of review, and writs of corram nobis, and audita querrla."

STATEMENT OF THE CASE

Petitioner Pro Se Pro Se Patsy N. Sakuma (Petitioner Pro Se) is also an attorney whose license in the state of California is suspended due to failure to file her fingerprinting due to lack of funds to travel to California to obtain such fingerprinting service. (State Bar of California, member status, Bar No. 113206).

A. First-Amended Verified Complaint

In 2016, Petitioner Pro Se filed an independent action in the U.S. District Court of the Hawaii District (Present Action), lieu of reopening the removed action in assumpsit that was originally filed by Defendant/Respondent the Association of

Apartment Owners of the Tropics at Waikele (AOAO)'s original attorneys Defendant/Respondent Milton M. Motooka (Motooka) and an associate attorney in his law firm Defendant/ Respondent Love Yamamoto & Motooka, LLC (LYM) in the state of Hawaii District Court, Ewa Division for money-owed (assumpsit) for withholding her association fees (HOA). The removed action was renumbered in the U.S. District Court of the Hawaii District as Civ. No. 1:02-cv-00147-HG-LEK. The Removed Action was informally joined and globally settled by enforced settlement with the related civil rights action, USDC-Haw. Civ. No. 1:01-00556-DAE-BMK (Main Federal Action) filed by Petitioner Pro Se against the AOAO, Motooka, LYM, AOAO's the property management company and the successor developer of the Tropics Condominium homes for unlawful associational handicap discrimination and violations of the handicap-accessibility design regulations under Title II of the Americans With Disabilities Act (ADA) for new housing under now 35 C.F.R.§1151 and other claims. App. 13-14, 28-69.

In the Present Action, Petitioner Pro Se sued ten Defendants/Respondents, the AOAO, the Association Of Condominium Homeowners of Tropics at Waikele (AOCH), Motooka, LYM, which became Motooka Yamamoto & Revere, LLC (MYR), Porter McGuire Kiakona & Chow, LLP (PMKC), First Hawaiian Bank (FHB) and its attorneys Watanabe Ing, LLP (WI), the state court appointed foreclosure commissioner James M. Kometani (Commissioner), Title Guaranty of Hawaii, Inc. (TGH), and Title Guarantee Escrow, Inc. (TGE), alleging civil Racketeer Influenced and Corrupt Organizations Act (RICO), and state claims, including Unfair and

Deceptive Acts and Practices (UDAP), wrongful foreclosure, unjust enrichment, and abuse of process in the state judicial foreclosure proceeding against Petitioner Pro Se, and for Respondents' harassment, unfair, deceptive, and fraudulent acts in the attempted wrongful foreclosure in the Removed Action and fraudulent inducement of settlement in the Main Federal Action and Removed Action, and dismissal of the 2008 Federal Action, Civ. No. 1:08-cv-00502.HG-LEK, injunctive action arising from present related state judicial foreclosure action, Civ. No. 07-14787 against Petitioner Pro Se by AOCH and filed in the First Circuit Court of the state of Hawaii (Foreclosure Action). App. 13-112. The Foreclosure Action is now before this Court as No. 21-5676.

Before any summons were served, Petitioner Pro Se filed her First Amended Verified Complaint (FAVC) in the present action also as an independent action, alleging the same causes of actions with corrections. (Dkt. No. 9 in 16-CV-00274).

In her FAVC, Petitioner Pro Se also expressly stated she was asserting her rights under other federal acts 1) the Fair Housing Act of 1960, as amended, 42 U.S.C. §3601 et seq., including . §3631 and Title 18. App. 33; 2) Title II of the Americans With Disabilities Act (ADA), 42 U.S.C. §12131 et seq. and the handicap accessibility regulations thereunder for new construction formerly at 24 C.F.R. 100.204(a), FHA now at 35 CFR §1151.51, (ADA) App. B &D (2009). App. 15, 87.

The FAVC asserted federal jurisdiction under: 1) the federal question jurisdictional statute, 28 U.S.C. §1231, 2) its inherent authority under Article III to vacate a settlement agreement for extrinsic fraud; 3) removal jurisdiction under 28

§1441, 1446; 5) supplemental jurisdiction over the state claims under 28 U.S.C. 1367; 5) jurisdiction in aid of its jurisdiction. App. 15-16.

B. Various Respondents' Motions to Dismiss Before Any Discovery

Eight of the Respondents, PMKC, the Commissioner, FH/WI, and Motooka/LYM/MYR filed motions to dismiss the action. (Dkts. 23, 27, 32, 51 in 16:00274). All, except AOAO and AOCH, filed joinders to various motions to dismiss. (Dkts. 29, 41, 42, 45, 79-81 in 16:00274).

The Commissioner filed a motion to dismiss the action against him under Federal Rule of Civil Procedure (FRCP) Rule 12(b)(1) for lack of subject-matter jurisdiction arguing that the FAVC claims are barred under the *Rooker-Feldman*[1] doctrine since the state court's 2008 Interlocutory Decree of Foreclosure is a final judgment under a HRCP Rule 54(b) certification and Plaintiff Pro Se did not appeal it. (Dkt. 27-1 at 2-6, in 16:00274). The Commissioner further contended that even interlocutory orders that are collateral orders are subject to *Rooker-Feldman.* (Dkt. 27-1 at 5, n.1, in 16:00274). Therefore, he contended that the district court lacks subject-matter jurisdiction over the FAVC. *Id.* Further, even if the district court has subject-matter jurisdiction, the Commissioner's acts are covered under his quasi-judicial immunity from suit. (Dkt. 27-1 at 7, in 16:00274).

Collectively, they argued the FAVC failed to state a claim upon which relief could be granted under FRCP 12(b)(6), both the general pleading standard of FRCP

[1] Rooker v. Fidelity Trust Co, 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) stating that a losing party in state court is barred from seeking in essence what would be appellate review of the state court judgment based upon a claim that the state court judgment itself violates the losing party's federal rights.

8(a)(2), heightened pleading of Rule 9(b) in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) on the RICO claim, for a RICO statement, or for a more definite statement, and claiming res judicata, the statute of limitations, litigation privilege, barred claims in the FAVC. *Id.*

In opposition, Petitioner Pro Se contended her 2016 Federal Action met all three exceptions to the Anti-Injunction Act, 28 U.S.C. under 28 U.S.C.§2283 apply here (Congress expressly allowed injunctions under the FHA, in aid of the federal court's jurisdiction, and to protect is judgments, that she would file a RICO statement if the district court orders it, that she be allowed to amend the FAVC for the deficiencies alleged, and that the 2008 Foreclosure Decree was not a final order even if certified under HRCP 54(b) as one because of outstanding Rule 60(b) and 59(e) motions challenging it and other fraud on the court so that the *Rooker-Feldman* bar did not apply to the FAVC.

B. Respondents AOAO's Answer and AOCH's No Appearance

After receiving Petitioner Pro Se's consent to multiple continuances, Respondent AOAO answered the FAVC on September 1, 2016, almost three months for being served the FAVC. (Dkt. 76, No. 16-cv-00274). AOAO asserted 16 affirmative defenses. (Dkt. 76, Pg. Id# 1703-1706). No attorney or representative of AOAO made an appearance on behalf of AOCH. However, in response to Petitioner Pro Se's allegations that AOCH does not exist, is a fraudulent name used by AOAO's attorneys to file the related state judicial foreclosure action, AOAO averred in ¶6 of its Answer with respect ¶26 of the FAVC that Respondent Defendant-

Appellee is known as the AOAO. (Dkt. 76, Pg. Id.#1700). However, AOAO averred that the alleged documents speak for themselves, and therefore, AOAO denies the allegations in the paragraph. (Dkt. 76, Pg.Id.# 1700). In the rest of its AOAO answer, AOAO basically avers that the FAVC claims are conclusions of law or the documents speak for themselves. (Dkt. 76, Pg. Id.#1700-1703).

C. Petitioner Pro Se's Application for Default Against AOCH.

On September 1, 2016, Petitioner Pro Se filed an application for default against AOCH. (Dkt. 77, No. 16-00274 DKW:KJM). However, the district court did not rule on it.

D. Hearing On Various Motions to Dismiss

At the 2016 Hearing on Respondents' Motion to Dismiss, the District Court ruled it was dismissing the action with prejudice. The Honorable Derrick K. Watson also stated, in response to Petitioner Pro Se's argument that AOCH is a false name, that "they can call themselves the Chair, they can call themselves the State, they can call themselves the Building. It does not matter. You put a parenthetical, you put your name in quotes, and you move one. What difference does it make? (10/28/16 Tr. 7:21-25; 8:1, No. 16-00274 DKW:KJM) you can call yourself anything, the wall, the chair, ..." (Tr. 8:2-3, No. 16-00274 DKW:KJM). (Dkt. 93 in 16:00274).

E. District Court's October 28, 2016 Order Granting Various Defendants-Respondents Motions to Dismiss

In its October 28, 2016 Order Granting Various Motions To Dismiss with prejudice, 2016 WL 0433842, holding on alternative grounds, one jurisdictional and the other on the merits. The District Court concluded that that Petitioner Pro Se's FAVC was an impermissible collateral attack on the 2008 Interlocutory Decree of Foreclosure and that she did not establish subject-matter jurisdiction because her federal suit was barred under the grounds identified by the Defendants/ Respondents: 1) under the *Rooker-Feldman* doctrine since the 2008 state Interlocutory Decree of Foreclosure is a final order under the Hawaii Supreme Court decision *Beneficial Hawaii, Inc. v. Casey,* 98 Hawaii 159, 165 (2003), if the party affected does not appeal it and 2) res judicata. *Id.**1-7. The district court, alternatively, dismissed the FAVC on the merits concluding her RICO claim was the only federal claim and was not plausibly pled, and that her single foreclosure action cannot constitute a "pattern" under RICO. *Id.**8-9.

F. Direct Appeal, Ninth Circuit Appeal No. 16-16791

Petitioner Pro Se timely appealed the October 28, 2016 Order and Judgment to the United States Court of Appeals for the Ninth Circuit in Appeal No. 16-16791. In response to Respondents PMKC and Commissioner's responsive briefs (Dkts. 31-32, 9C No. 16-16791) asserting that Petitioner still had not asserted a plausible claim for relief under civil RICO, Petitioner Pro Se unearthed Hawaii Revised Statute §667-51's legislative history that explicitly confirms that the legislature specifically excluded HRCP Rule 60(b) fraud on the court and (b)(4) void judgments from the *Casey bar,* 98 Haw. at 164 holding that a litigant who does not

appeal the Rule 54(b) certified final Interlocutory Decree of Foreclosure forfeits the circuit court's determination of liability. (Dkt. 40 at 4-11, 9C No. 16-16791).

Petitioner Pro Se's motion to supplement the record was granted. She put into the record certified or uncontested filings by Respondents in the related state and federal actions to "categorize" and "separately" set out two mail or wire fraud acts for each respondent to survive a motion to dismiss under this Court's decision *Sedima, SPRL v. Imrex Co., Inc.*, 473 419, 498 n. 12 (1985). (Dkts. 40 at 6-8; 39-1, 6-8 in 9C-16-6791.

On December 21, 2017, the United States Court of Appeals for the Ninth Circuit, entered their Memorandum affirming the district court's order and judgment, but on different grounds in 707 Fed. Appx. 906 (9th Cir. 2017). The Ninth Circuit cited *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003) on the *Rooker-Feldman* issue and*Thompson v. Paul*, 547 F.3d 1055,58-59 (9th Cir. 2008) for affirming on any basis supported by the record. *Id.* at 907. The Ninth Circuit cited *Hebbe v. Pliler*, 627 F.ed 338, 341-42 (9th Cir. 2010) for failure to state a plausible RICO claim, *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005), for the elements of a civil RICO claim, *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009), for the fact that although pro se pleadings are construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim for relief. *Id.* The Ninth Circuit granted her motion to file supplemental excerpts of record (Docket Entry No. 40) and stated the docket

reflected that the supplemental excerpts of record have been filed. They denied all other pending requests and motions. *Id.*

G. Multiple Petitions For Hearing and Hearing En Banc

The December 21, 2017 Memorandum used a device of diversion as to whether it was two alternative holdings or a holding and dicta, as noted by the Ninth Circuit in its decision *Phelps v. Alameida*, 569 F.3d 1120, 1141 (9th Cir. 2009) stating it was a "fruitless diversion" The memorandum did baffle Petitioner Pro Se. Additionally, she was sick with flu like symptoms during the worst flu season in a decade. (Dkt. 104-1 at 24 in 16-00274).

Petitioner Pro Se also had to call the Ninth Circuit Clerk because she still had not received a copy of the December 21, 2017 Memorandum that was mailed the during the Christmas holiday mail rush, four days before Christmas. (Dkt. 42 at 1-3 in 9C-16791). The Ninth Circuit Clerk told her she could file the petition so long as the mandate had not been issued. (Dkt. 7, 9C:19-16615 at 10).

These factors help explain her multiple petitions for rehearing and rehearing en banc, one filed as timely, two others submitted timely, and two of which were late, and her mistake in choosing the late petition Docket 52 based on misinterpreting the Ninth Circuit Clerk's statement. (Dkts. 46, 47, 48, 50 & 52 in 9C-16791).

On May 1, 2018, the Ninth Circuit Panel entered their order rejecting her Docket 52 petition for rehearing and rehearing en banc, which they stated superseded her previously filed petitions. App. 131-132.

H. Recalling the Mandate

On or about October 29, 2018 and before the twenty-four (24) day window in which to file a rehearing petition in the Supreme Court, Sakuma filed her Motion to Recall the Mandate based on the alleged erroneous memorandum on using hypothetical jurisdiction to bypass the *Rooker-Feldman* question and that she could not have waived on appeal her three volumes of excerpts of record and HRS §667-51's 2003 legislative history because they were in response to PMKC's and the Commissioner's responsive briefs. (Dkt. 57 in 9C-16-1679).

I. 2018 Supreme Court of the United States Petition No. 18-5424

On August 28, 2018, Petitioner Pro Se timely filed and served her Motion for In Forma Pauperis and Petition for Writ of Certiorari with the Supreme Court of the United States from the May 1, 2018 Order Denying Rehearing and Rehearing En Banc. She presented two questions: (1) whether the Ninth Circuit properly applied hypothetical jurisdiction to bypass HRS §667-51's 2003 legislative history, App.118-119, under a new category of "waiver on appeal," and (2) to resolve the circuits' split between the Seventh Circuit versus the Ninth Circuit on whether that the federal court must sua sponte raise a civil rights claim under the 1857 Civil Rights Act, once it has notice of the claim before dismissing the case with prejudice even in a pro se attorney drafted complaint.

On October 9, 2018, the Supreme Court of the United States denied the petition, 139 S.Ct. 328 (2018). On November 5, 2018 Petitioner Pro Se filed a

reconsideration. On December 3, 2018, the Supreme Court of the United Sates denied her request for reconsideration. 139 S.Ct. 624 (2018).

J. 2019 Rule 60(b)(6) Motion for Relief

On April 30, 2019, Petitioner Pro Se filed a Rule 60(b)(6) motion for relief from the October 28, 2016 Order and Judgment dismissing her case based on the extraordinary circumstance on the district court's procedural errors, intervening new law of Simpson, and the non-preclusive effect of the merits decision, based on the alternative holding, one jurisdictional and the other on the merits.

On June 14, 2019, the District Court entered its order denying her Rule 60(b)(6) motion concluding that the legal errors asserted, even if true, would not cure the failure to state a plausible civil RICO claim. App. 5. On the claim of the intervening new law of *Simpson*, the District Court concluded Simpson was not new law and it was not on point on a RICO claim or *Rooker-Feldman* issue. App.5-6.

On July 12, 2019, Petitioner Pro Se filed a motion for leave to file a further reconsideration based on the intervening law of *Knick v. Tsp. of Scott,* 138 U.S. 1262 (2018) that just a week after the June 14, 2019 Order, for a possible new claim for the taking of her of her surplus and if it effectively overturned *Rooker-Feldman.* On July 30, 2019, the District Court denied her July 12, 2019 motion for leave. App. 7.

K. 2019 Appeal, 9th Cir. No. 19-16615

On August 14, 2019, Petitioner Pro Se filed a notice of appeal of the June 14 Order and July 30 Order, and the underlying October 28, 2016 Order and Judgment. On October 3, 2019 the Appellate Commissioner filed an Order limiting

the scope of the appeal to a review of only the June 14, 2019 and July 30, 2019 post-judgment order, and not the underlying October 28, 2016 Order and Judgment because the notice of appeal was untimely to review that order. App. 12.1.

On December 17, 2019, a two-judge panel, entered their order denying Petitioner Pro Se's motion for reconsideration of the October 3, 2019 Order.

On November 30, 2019, Petitioner Pro Se filed her Informal Opening Brief in Case No. 19-16615 raising three points of errors: 1) Whether the district court abused its discretion in denying her Rule 60(b)(6) motion based on the intervening new law of *Simpson,* 2) Whether the district court abused its discretion in denying her motion for leave to file further reconsideration based on the intervening new law of *Knick v. Tsp. of Scott,* 139 S.Ct. 1262, (2019) as creating a new cause of action for the taking of the $129, 746.00 surplus by the First Circuit Court of the State of Hawaii on or about July 2, 2012 without due process, denying her request that it be released to her, and no accounting for over seven years and counting, and 3) Whether the district court properly dismissed the action against the Commissioner under an implied grant of qualified immunity.

1. **PMKC's Answering Briefs:**

On February 21, 2020, Respondent PMKC filed its Responsive Brief. PMKC argues that Petitioner failed to establish any basis for the extraordinary circumstances, amendment would not cure the FAVC's civil RIOC claims, and failed to establish grounds warranting the reconsideration of the District Court's denial of her Motion for Relief. (Dkt. 14, 9C-19-16615).

2. Commissioner's Responsive Brief

On February 25, 2019, an Order was entered granting the Defendant-Respondent Commissioner's motion for leave to file the answering brief late. In his responsive brief, the Commissioner repeated his arguments filed below that he was not subject to suit based on his qualified immunity. (Dkt. 7, 9C-16615).

3. Petitioner Pro Se's Reply Brief

On June 16, 2020, Petitioner Pro Se filed her informal reply to PMKC's responsive brief. Petitioner Pro Se countered their arguments that she did not plausibly plead her civil RICO, conspiracy element of civil RICO and that the FAVC could not be read as plausibly establishing a putative 1985(2) claim under Rule 8 even if it was unlabeled because it overlapped her UDPA and civil RICO claims, that the UDPA claims occurred in three separate state proceedings, in years 2001, 2005, and 2007 by eleven (11) defendants-Respondents, and conspired for profits to obstruct justice in the three state proceedings. (Dkt. 19, 9c-19-16615).

L. Petition for Hearing and Hearing En Banc

On March 8, 2021, Petitioner Pro Se filed a petition for hearing and hearing en banc in Case No. 19-16615. Petitioner Pro Se sought a hearing to challenge the Ninth Circuit decisions in conflict with each other—*School District 1.J. Multnomah Cty., OR v. ACandS, Inc.*, 5 F.3d 1255, 1262-65 (9th Cir. 1993) vs. *In re Glenfed Inc. Sec. Litig.*, 42 F.3d 1541, 1551 (9th Cir. 1994) warrant dismissal at the pleading stage, whether the law of the case bars revisiting waiver on appeal and if it applied to whether deliberate litigation action taken that a party later regrets in the prior

petition for hearing and hearing en banc in the prior appeal barred review in the later Rule 60(b)(6) motion of her putative 1985(2) civil rights claim that is jurisdictional and non-waivable, when the underlying order had alternative holdings, one jurisdictional and the other on the merits, for resolving the prior Ninth Circuit Memorandum finding that the predicate acts of mail and wire fraud were the only defective pleading in the FAVC on the RICO claim and the attempt to cure it on appeal in response to appellees/respondents' raising it in their answer brief still is barred by waiver on appeal. (Dkt. 42, 9C:19-16615). On May 25, 2021, the Ninth Circuit entered its order rejecting the petition for hearing and hearing en banc. App. 10.

REASONS FOR GRANTING THE PETITION

I. The Ninth Circuit's Memorandum Implicates A Reserved Question In *Steel Co.'s* On Sequencing The Antecedent Question.

A. *Steel Co.*'s Holding On Its Narrowest Ground Is That Only Article III Subject- Matter Jurisdiction Must Be Decided First.

When a fragmented court decides a case like in *Steel Co. v. Citizens For A Better Environment*, 533 U.S. 83, 93-97 (1998), where no single rational explaining the result enjoys the assent of five judges, the holding of the court may be viewed as that position taken by those members who concurred in the judgment, on the narrowest ground. *Mark v. United States*, 430 U.S. 188, 194 (1997) quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n. 15 (1976).

In *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 86 (1998), a citizens group sued Steel Company under the citizen-suit provision of the

Emergency Community Right-To-Know-Act of 1986 (EPCRA), 42 U.S.C. §11046(a)(1), based on the court's jurisdiction under §11046(c) to fine an owner or operator of a facility to enforce a requirement concerned in §11046(a)(1) and for violation of that requirement, and requesting that *Steel Co.* pay civil sanctions to the government for past reporting failures since the violations were cured by the time the complaint was filed. The case involved two questions: 1) whether the statute authorized suits for purely past violations (the merit according to the majority versus statutory standing under Justice Stewart's concurrence in the judgment joined by Justice Souter and Justice Ginsburg), and 2) whether the citizens group had Article III standing to challenge the past violations at issue. *Id.* at 88-89.

Steel Co. moved to dismiss under Fed. R. Civ. Proc. 12(b)(1) that the citizens-group lacked jurisdiction to entertain the suit for a present violation because Steel Co.'s filings were now up to date when the complaint was filed, and that, under Rule 12(b)(6) because EPCRA did not allow suit for past untimely compliance filings, respondent's allegation of untimeliness in filing was not a claim upon which relief could be granted. The district court agreed with *Steel Co.* on both points. The Seventh Circuit disagreed and reversed. The Seventh Circuit reversed and concluded "citizens may seek penalties against EPCRA violations for past violations of late compliance filings and after receiving a notice. The Court plurality's decision held for *Steel Co.* on both questions and reversed the Seventh Circuit's finding that

the Respondent had statutory standing under 11046(a)(1) because past violations were actionable under the §11046(c).

In *Steel Co.*, the parties did not raise below the issue of hypothetical jurisdiction in the courts below—i.e., assuming and therefore bypassing the jurisdictional question to reach the merits. The Petitioner raised the issue of whether Respondent still had standing in its petition for writ of certiorari and merit brief—because it had cured its reporting violations under the PRCRA by the time the complaint was filed. *Id.* at 92.

In Part III of *Steel Co.*, only three justices agreed with Justice Scalia's limited view on the use of hypothetical jurisdiction to reach an easier merit question in the cited cases where the Court decided the merits before jurisdiction were due to the unique procedural postures of the cases. *Id. at 95 & n.2.*

Two of the five-majority of justices separately concurred. *Steel Co.* 523 U.S. at 110-111. Justice O'Connor and Justice Kennedy concurred to note that the Court's reference to other, limited cases where it may be proper to rule on the merits before jurisdiction, which has been described as "re-sequencing," were not an exhaustive lists under which federal courts may bypass difficult questions of jurisdiction when the case alternatively could be resolved on the easier merit question in favor of the same party not asserting jurisdiction, citing *Norton v. Matthews*, 427 U.S. 524, 533 (1976) where the Court expressly applied hypothetical jurisdiction. *Id.*

Justice Breyer, concurred to Part I and Part IV, the judgment. Justice Breyer would not make the ordinary sequencing an absolute requirement. *Id.* at

111-112. He reserved judgment about the matter. Justice Breyer, therefore, did not join Part III of the Court's opinion and commented separately that the courts often and typically decide jurisdictional issues first, but need not."always do so," citing also *Norton v. Matthews*, 427 U.S. at 533. *Id.* at 111. (J. Breyer concurring in part).

Justice Stewart, with whom Justice Souter joined in Parts I, III, and IV, and Justice Ginsburg joined in the judgment, disagreed with the absolute rejection of hypothetical jurisdiction, particularly with statutory issues. *Id.* at 121-131.

Steel Co. did not create an absolute rule sequencing jurisdiction to be decided first before the merits in statutory cases, nor overruled decades of precedent carving out exceptions to the general rule that subject-matter jurisdiction should generally be decided first before the merits. *Steel Co.*, however, reaffirmed a basic principle that a court should not exercise its power to declare the law until it is satisfied that it has the authority to do so. *Id.* at 94. Thus, *Steel Co.'s* narrowest ground is, except for a few exceptions, a federal court must always decide the Article III jurisdiction question before the merits. *Id.* at 94.

B. Steel Co.'s Reserved Question.

Only three justices, also agreed in Part II. *Id.* at 89-93. In Part II of *Steel Co.*, Justice Scalia responded to Justice Stewart's concurrence that the issue of whether past violations was an element of a cause of action under a citizen's suit under the EPCRA, 100 Stat. 1755, 42 U.S.C. §11046 (a)(1) and became jurisdictional because the language of §11046(c) stated the "district court shall have jurisdiction in all actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil

penalty provided for violation of that requirement," went to the issue of statutory standing. Justice Scalia disagreed because he concluded the issue of whether past violations were actionable under the citizen's suit under the EPCRA, was a merit question under §11046(a)(1)'s cause of action. The majority stated that the language of §11046(c) even if the term "jurisdiction," was used, was a term of many meanings and it was unreasonable to read §11046(c) as jurisdictional so as to render all questions on the merits under §11041(a)(1) as jurisdictional.

Justice Scalia argued that statutory arguments concerning compliance with historical reporting required under the statute's citizen-suit cause of action if jurisdictional, "would have to be considered by this Court even though not raised earlier in the litigation—indeed, this Court would have to raised them sua sponte," citing [s]ee, *Mt. Healthy City Bd. of Ed.[v. Doyle],* 429 U.S.[274] at 278-279 [(1977)].

Mt. Healthy was a denial of tenure case where the respondent school-teacher alleged that petitioner school board had violated his rights under the First and Fourteenth Amendments to the U.S. Constitution and asserted jurisdiction under both 28 U.S.C. §1331 and §1343 (the special jurisdictional section for the civil rights enforcement under 42 U.S.C. §1983 and 1985, and 28 U.S.C. §1331 (federal question jurisdiction). The petitioner, for the first time raised after its reply brief, in its Supplemental Authorities, the question that the Court lacked jurisdiction. Petitioner argued because "Congress in §1983 has expressly created a remedy relating to violations of constitutional rights under color of state law, one who seeks to recover for such violations is bound by the limitations contained in §1983 (at that

time did not include a municipality as a person but which was not subject to the $10,000.00 amount in controversy limit like in §1331) and, therefore, the board was not a person suable under §1983.

The district court rested its jurisdiction only on §1331. The Sixth Circuit affirmed the judgment of the district court. This Court concluded that respondent's complaint sufficiently pled jurisdiction under 28 U.S. C. §1331 based on a good-faith belief his claim amounted to the $10,000, jurisdictional minimum even if he was unable to recover an amount adequate to give the court jurisdiction, that the Board had failed to preserve the issue whether the complaint stated a claim upon which relief could be granted against the Board because the §1331 cause of action was not jurisdictional like §1983, and that the Board was not immune from suit under the Eleventh Amendment. This Court found that Eleventh Amendment bar of state and state officials from suit in a federal court did not apply to the board because it did not function like an arm of the state. Instead the Court found because the board functioned more like a county or city, which was not immune from suit in federal court under the Eleventh Amendment.

To reach this jurisdiction question, the Court highlighted the difference between the district court's lack of jurisdiction under§ 1331 versus §1343. In a §1331 federal question case, the Court would be obliged to consider whether the district court lacked jurisdiction when raised by a party or to inquire sua sponte whenever it doubts the existence of federal jurisdiction under: **(1)** *Liberty Mutual Co. v. Wetzel*, 424 U.S. 737, 740 (1976)(even if not raised by the parties, the Court

doubted if federal jurisdiction existed so it sua sponte raised whether a Federal Rule of Civil Procedure 54(b) certification that a judgment is final when the plaintiff failed to obtain the relief requested in her complaint, even if she prevailed on the judgment); **(2)** *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908)(a suit arises under federal law "only when plaintiff's statement of his own cause of action shows that it is based upon federal law").

In contrast, **"if *Mt. Healthy* was a §1983 action,** brought for alleged violations under color of law **and under the special jurisdictional provision 28 U.S.C. §1343,** which required no amount in controversy, **it would be appropriate for the Court to inquire, for jurisdictional purposes, whether a statutory action had in fact been alleged,"** citing the Court's decision *City of Kenosha v. Bruno,* 412 U.S. 507 (1973)(emphasis added); 429 U.S.at 278-279. In further contrast, in a federal question suit under **§1331** (as limited by the $10,000.00 amount in controversy requirement at this time), **jurisdiction is sufficiently established by allegation of a claim** under the Constitution or federal statutes," unless it "clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction." (citations omitted). *Mt. Healthy*, 429 U.S. at 278-279.

Because of the common legislative history and similar language of 1985(2) and 1985(3), the courts have looked to this Court's interpretation of 1985(3) for guidance when interpreting 1985(2) because of the relatively few 1985(2) cases, even though enacted in 1871. No claim was rought under this section until 1974.

See, Brian J. Gaj, *Section 1985(2), Clause One and its Scope,* Vol. 70, Cornell L. Rev. 756 (April 1, 1985); http://scholarship.law.cornell.edu/cir/vol70/iss4/12.

In the context of *Steel Co., Mt. Healthy's dicta* above should become law that there are or should be two more exceptions to the antecedent question for the other two civil rights claims §§ 1985, and 1986 under the Civil Rights Act of 1871. *Id.* The new exceptions to the antecedent question are or should be that the merits of a §1985(2) claim, and by extension under clause 2 of §§1985(2), and 1986 civil rights claim would have to be determined first to determine if jurisdiction existed before a district court dismisses a federal suit for lack of federal jurisdiction and failure to state a claim for relief, even to a complaint filed by an attorney pro se federal suit. This is supported by analogy to such treatment to a §1983 civil rights claim under the same 1871 Civil Rights Act, under this Court's decisions *Lynch v. Household Finance Corp.*, 405 U.S. 538, 543 & n. 7 (1972), which cited the Court's decision *Douglas v. City of Jeanette,* 319 U.S.157, 161 (1943): i.e., that "**despite the different wording of the substantive and jurisdictional provisions, when the §1983 claim alleges constitutional violations, 28 U.S.C. §1343(a)(3), provide jurisdiction, and the merits statute and jurisdictional statute, are both construed identically**." *Accord, Parratt v. Taylor,* 451 U.S. 527, 532 (1981), overruled in part on other grounds by *Daniels v. Williams*, 474 U.S. 327 (1986)(the statute conferring [federal] jurisdiction is in turn closely related to 42 U.S.C. §1983," the statute under which the cause of action was brought); *accord, Simpson v. Brown County,* 860 F.3d 1001, 1005-1006 (7th Cir. 2017)(the Seventh Circuit sua

sponte raised the *Monell* liability claim[2] not explicitly labeled in a §1983 civil rights complaint amended by three times where plaintiff was represented by counsel).

Furthermore, re-sequencing jurisdiction for the merits of a civil rights claim under 42 U.S.C. §1985(2), clause 2 (for conspiracies to obstruct justice in a state proceeding) and 1986 (action for neglect to prevent) **would not violate *Steel Co.*'s proscription that the antecedent question– that jurisdiction always is decided first before the merits. A court would not have to apply hypothetical jurisdiction to reach the merits to exercise its law declaring powers—because the merits under §§1983 1985 and 1986 are also jurisdictional, and are construed identically.**

II. The Ninth Circuit's 2019 Memorandum Is Incorrect.

The Memorandum of the Court of Appeals for the Ninth Circuit contravenes *Kontrick v. Ryan,* 540 U.S. 433, 456 (2004), which held that the federal rules of civil procedure "shall not be construed to ...limit jurisdiction of the United States district courts."

In this case, the United States Court of Appeals for the Ninth Circuit on second appeal, failed to consider the antecedent question to putative §1985(2) claim's impact on the Rule 60(b)(6) or (1) motion and to the law of the case of the unpublished May 1, 2018 Order rejecting Petitioner Pro Se's fifth-amended petition for hearing and hearing en banc where she raised for the first time in all five petitions her putative §1985(2) civil rights claim under the 1871 Civil Rights Act for

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From the case that bears its name *Monell v. N.Y. City Dept. of Social Svcs.,* 436 U.S. 658 (1978).

conspiracy to obstruct justice in the related state foreclosure action before the Ninth Circuit as Case No.16-16791. App. 131-132.

The antecedent question for §1985(2) substantive civil rights claim is that it is jurisdictional under *Lynch, Douglas, and dicta in Parratt and Steel Co. citing dicta in Mt. Healthy, supra,* §1985(2), just like its sister §1983 claim for redress from violations based on color of law, because of its wording is closely related to its special jurisdictional provision §1343(a)(1) and both its jurisdictional provision and its substantive provision are construed identically under *Lynch* citing *Dennis, supra.*

Because §1985(2) is jurisdictional it cannot be waived nor forfeited under the Court's decision *Arbaugh v. Y& H Corp.*, 500 U.S. 506, 514 (2005) citing *U.S. v. Cotton,* 535 U.S. 625, 630 (2002). In *Town Of Newton v. Rumery,* 480 U.S. 336 (1987), however, this Court held that the right to bring a civil rights claim under 42 U.S.C. 1983 could be "voluntarily" waived in an agreement (release and dismissal agreement) between a prosecutor and a criminal defendant who knowingly and voluntarily forgoes his 1983 civil rights claim.

In this Court's decision *Alexander v. Gardner- Denver Co.,* 415 U.S. 36, 51-52 (1974) this Court held that the waiver of Title VII cause of action in an arbitration agreement over decisions is against public policy because Congress intended private actions to enforce Title VII sex discrimination, race rights in employment is explicit in the statute itself."

Under the Court's decision *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 815-816 (1988) the law of the case "...posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent states in the same case," citing the Court's decision *Arizona v. California,* 460 U.S. 605, 618 (1983)(dictum). The law-of-the-case doctrine "merely expresses the practice of courts generally refuse to reopen what has been decided, not a limit to their power." *Messenger v. Anderson*, 225 U.S. 436, 444 (1912) (Holmes, J.)(citation omitted). A court has the power to revisit prior decisions of its own...in any circumstance, although as a rule courts should be loath to do so in the absence of extraordinary circumstances such as where the initial decision was "clearly erroneous and would work an manifest injustice." *Arizona v. California,* 460 U.S. at 618, n. 8 (citation omitted). More importantly, the law of the case cannot bind this Court in reviewing decisions below... a court of appeals adherence to the law of the case cannot insulate an issue from this Court's review. *Chrisitianson,* 486 U.S. at 817-818, citing also, *Messenger*, 225 U.S. at 444.

The law of the case under the prior Ninth Circuit panel's May 1, 2018 Order is that the putative §1985(2) claim, would not be considered by a hearing or by hearing en banc proceeding on direct appeal in Case No. 16-16791. App. 131-132.

The law of the case under the December 21, 2017 unpublished Memorandum, 707 Fed. Appx. 906 (9th Cir. 2017), is that the District Court lacked federal subject-matter jurisdiction under the *Rooker-Feldman* doctrine.

Under *Ruhrgas A.G. v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999), once a federal court determines it lacks subject-matter jurisdiction it must dismiss the action. A federal court once it determines it lacks jurisdiction, may not, even after reading the arguments of the parties, extend its jurisdiction to reach the merits. *See, Christianson,* 486 U.S. at 818. Accordingly, in the December 21, 2017 unpublished Memorandum, the Prior Ninth Circuit Panel's consideration of the merits and affirming, on other grounds, the District Court's consideration of the merits that Petitioner Pro Se failed to state a claim for relief under civil RICO after finding it lacked federal subject-matter jurisdiction based on the *Rooker-Feldman* doctrine, is not or should not be part of the law of the case of that order, which considered only one federal claim—federal civil RICO.

Applying all of these principles, the Second Ninth Circuit Panel erred in relying on *Latshaw v. Trainer Wortham & Co.*, 452 F. 3d 1097, 1102-04 (9th Cir. 2006)(explaining that Rule 60(b)(6) relief may be granted only where extraordinary circumstances are present) in their Memorandum, App. 2, as authority to support their denial of Petitioner's Rule 60(b)(6) motion for relief from the October 28, 2016 Order and Judgment dismissing her suit.

By relying on *Latshaw*, the second Ninth Circuit panel construed Petitioner Pro Se's mistake in choosing the fifth untimely petition for hearing and hearing en banc over her three timely petitions based on misinterpreting the Ninth Circuit's Clerk's statement that she could file it anytime before the mandate issued was a deliberate litigation decision that a party later regrets because of her mistaken

belief on a material issue like in *Latshaw*. The second appellate panel construed Petitioner Pro Se's mistake was not the kind of mistake that qualified for relief from Rule 60(b)(1), or amounted to an exceptional circumstances for relief under Rule 60(b)(6) because the mistake was under her control.

The Second Ninth Circuit Panel, however, erred in applying *Latshaw* to support their denial of relief under Rule 60(b)(6) or (b)(1), because an attorney's deliberate litigation action that later turns out to have been a mistake in a contractual dispute is not equivalent to a mistake in filing a petition for hearing and hearing en banc that one believed was timely but turns out to be untimely to have an appellate court consider a putative §1985(2) civil rights statute for conspiracy to obstruct justice in a state foreclosure proceeding that is also jurisdictional by virtue of its special jurisdiction provision §1343(a)(1) so it cannot be waived, even by such litigation mistake that only affects the putative claim from not being considered on direct appeal in a hearing or hearing en banc proceeding. Therefore, *Latshaw* is not on point. *Latshaw* did not involve any civil right claim under the 1871 Civil Rights Act and should not apply to bar Petitioner Pro Se from having her putative 1985(2) claim from being considered in a post-appeal motion like Rule 60(b)(6) before the same district court that dismissed her suit.

But in relying *Latshaw* and not considering the antecedent question to the putative §1985(2) claim's impact on the Rule 60(b)(6) or (1) motion, the second Ninth Circuit panel effectively extended the law of the case in the prior Ninth Circuit Panel's May 1, 2018 Order, 707 Fed. Appx. 906, 907 (Mem) that the putative

§1985(2) claim would not be reconsidered by a hearing or a hearing en banc. Pursuant to the Memorandum, the putative §1985(2) claim now would also not be considered by reopening the action in the same district court that had dismissed the suit on alternative grounds, one jurisdictional and the other on the merits, to consider whether federal subject-matter could be had under the putative §1985(2) civil rights claim. Therefore, the Memorandum contravenes the Court's decision *Kontrick v. Ryan*, 540 U.S. at 456. The second Ninth Circuit panel's disregard of the antecedent question to §1985(2) to conclude the statute was jurisdictional effectively limited the jurisdiction of the United States District Court for the Hawaii District in denying relief from the October 28, 2016 Order and Judgment to reopen the action to consider whether the putative §1985(2) claim was actually pled in the FAVC.

The *Rooker-Feldman* jurisdictional bar would not apply to bar federal subject matter jurisdiction like the civil RICO claim under the Court's decision *Monroe v. Pape*, 365 U.S. 167, 183 (1961) because the federal remedy is supplementary to the state remedy, so a federal plaintiff need not exhaust her state remedies before bring suit in federal court on a Rule §1985(2) civil rights claim. *Id.*

III. The Ninth Circuit And Seventh Circuit Are Divided On Sua Sponte Raising Civil Rights Claims In An Attorney Drafted Complaint

Alternatively, under the Court's decision *Conley v. Gibson*, 355 U.S. 41, 48 (1957), "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." Accordingly, Petitioner Pro Se's misstep in filing multiple petitions for

hearing and hearing en banc, three timely and two untimely, and choosing the last untimely petition for the Ninth Circuit on direct appeal to consider, gave the prior Ninth Circuit panel actual notice of her putative §1985(2), clause 2 claim should have been excused. The Ninth Circuit panel on direct appeal could have sua sponte raised Petitioner's Pro Se's putative §1985(2), clause 2 claim because they had actual notice of it, even if Petitioner Pro Se raised it imperfectly, under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2009).

In *Simpson v. Brown County*, 860 F.3d 1001 (7th Cir. 2017), the plaintiff Simpson, who was represented by counsel, filed an action for the revocation of his license to install septic tanks in the county without due process rights under the Fourteenth Amendment. The Seventh Circuit, in viewing the complaint on a motion to dismiss, sua sponte raised the *Monell* rule for municipality liability under §1983 based on the factual allegations of appellant's complaint and stating what the *Monell* argument was as implied by the facts, even if the complaint also did not cite the case 42 U.S.C. §1983's *Monell v. Dept. of Social Services,* 436 U.S. 658, 690-91 (1978) or the municipal liability claim. In the Court's decision *Johnson v. City of Shelby,* 135 S. Ct, 346, 347 (2014)(per curiam)(the Court reversed the Fifth Circuit's affirmation of the district court's dismissal of the suit for three police officers' wrongful termination under §1983 and municipal liability under *Monell* simply because Petitioners failed to cite the statute §1983 in their complaint) .

The Ninth Circuit already sua sponte raises §1985(2) claim even if not raised on appeal for a pro se prisoner, who is later represented by a court-appointed

counsel. *Bretz v. Kelman*, 773 F.3d 1026, 1031 (9th Cir. 1985)(en banc). The Ninth Circuit also sua sponte raises §1983 in a non-prisoner pro se civil action in *Jones v. Community Redevelopment Agency,* 733 F.2d 646 649 (9th Cir. 1984), cited in *Bretz,* 773 F.2d 1026, 1027 & n. 1 (9th Cir. 1985).

This Writ if accepted requests that the Court create a bright-line ruling by adding that a court sua sponte must raise a civil rights claim under the 1871 Civil Rights Act, §§1983, 1985, and 1986 in an attorney-drafted civil complaint before dismissing for failure to state a claim upon relief may be granted.

IV. The Memorandum Conflicts With Another Ninth Circuit Decision *In re Glenfed Inc. Sec. Litig.*, And The Question Presented Is Important

In the Memorandum, the Second Ninth Circuit Panel's statement "[w]e do not consider [petitioner pro se]'s contentions concerning her prior appeal (Case No. 16-16791) evidences that it was applying the general rule under this Court's decision *Browder v. Dir. Dept. of Corr. Of Ill.,* 434 U.S. 257, 267 n. 7 (1978) that an appeal from a denial of a Rule 60(b) motion does not bring up the underlying order or judgment, but only the order disposing of the motion for relief for review.

The second Ninth Circuit panel's Memorandum presents an intra-circuit conflict on the important question of overlapping causes of action in the FAVC's federal civil RICO claim and state claim for Unfair and Deceptive Acts and Practices (UDAP) that collectively construe the putative §1985 civil rights claim.

The second Ninth Circuit panel erred in not calling for an en banc panel to resolve the intra-circuit split on the Ninth Circuit Court's position on voluminous

record filings as a basis for dismissing a suit. On the one hand, the Ninth Circuit relies on *School District 1.J. Multnomah Cty., OR v. ACandS, Inc.*, 5 F.3d 1255, 1262-65 (9th Cir. 1993) vs. *In re Glenfed Inc. Sec. Litig.*, 42 F.3d 1541, 1551 (9th Cir. 1994) (en banc) where the voluminous records did not warrant dismissal of the suit at the pleading stage.

The Ninth Circuit's unresolved intra-circuit split on the important issue of conflicts with the Court's decision *Joseph v. U.S.*,135 S.Ct. 705, 707 (2014) that the Court usually allows the courts of appeals to clean-up intra-circuit divisiveness on their own. The Court, however, should accept the Writ because of the intra-circuit conflict and the importance of the question presented under the Court's decision *John Hancock Mut. Ins. Co. v. Bartels,* 308 U.S. 100, 181 (1939).

V. The Question Presented Is Important.

Federal district courts handle thousands of foreclosures cases every year, and roughly 10% per district judge per year. *Judicial Business of the United States Courts, 2020 Annual Report of the Director, Table C-1.* 2020 fiscal Year, Administrative Office of the United States Courts, 2020 Report, II-31. Harvard University 2021 housing report warns. The moratorium on foreclosures and evictions due to the Covid-19 Pandemic also recently ended. More than 8 million households face foreclosure or eviction back in the summer. Kristopher J. Brooks, June 19, 2021, 7:18 AM, Moneywatch, CBS News; http://cbsnews.com/amp/news/evictin-foreclosure-moratorium-ending-8-million-households#app 7/25/21, 11:50 a.m., page 1 of 6.

In the fiscal year 2019-2020, federal district courts handled nearly 12,000 Americans With Disabilities Act ("ADA") federal questions, 14500 non-prisoner civil rights cases, and nearly 3,000 mortgage foreclosure actions. *Judicial Business of the United States Courts, 2020 Annual Report of the Director, Table C-1.*

Because there are ADA cases, foreclosure cases, by a homeowner association who will join the mortgagee as a defendant like in this case, and civil rights cases in federal court, and because many ADA cases and/or foreclosure cases involving the mortgagee as a party, may overlap with each other, present an ancillary state claim and assert a putative civil rights claim under 42 U.S.C. §§1983, 1985 or 1986 of the 1871 Civil Rights Act, without expressly citing these statutes or labeling it as such a civil rights claim like here.

IV. The Case Is An Ideal Vehicle To Implement A Bright-Line Rule.

The Court's post-*Steel Co.* decisions support granting the Writ: *Sinochem Int'l Co. v. Malaysian Int'l Shipping Corp.*, 549 U.S. 422, 430-431 (2007)(holding that the sequencing of subject-matter jurisdiction with the threshold question of forum non conveniens was proper) and *Ruhrgas AG v. Marathon Oil Corp.* 526 U.S. 574 (1999)(courts are "allowed to choose among threshold grounds to deny an audience on the merits" because did not invoke the court's "law-declaring power" in a way that violates fundamental separation of powers principles; therefore, it was proper for a court to decide the easier personal jurisdiction question before the more complicated subject-matter jurisdictional question).

As stated above, a court does not need to apply hypothetical jurisdiction to rule on the merits so a court in this special area of the law could invoke the court's law-declaring power. A definitive bright-line ruling in this special civil rights area, would reduce the workload of this Court to review pro se attorney petitions because pro se petitioners and pro se attorney petitioners would not have to resort to this court to have their putative civil rights claims under the 1871 Civil Rights Act, like Petitioner's putative 1985(2) clause 2 claim heard on the merits.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

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