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21-7027



**IN THE SUPREME COURT OF THE UNITED STATES**

RAUL MENDEZ,

Petitioner,

Vs.

ADA COUNTY, et al.

Respondents.

Supreme Court No.
9th Circuit No. 20-35917
District Court No. 1:19-cv-00301-BLW

**PETITION FOR WRIT OF CERTIORARI**

Pro Se Petitioner Raul Mendez, respectfully asks the Unites States Supreme Court to grant Certiorari as this case involves questions of public importance affecting the population of the State of Idaho, and any other states where utilities provided by the government are made mandatory. In addition, Mendez presents the Supreme Court with the question of whether pro se complaints are appropriately being subjected to Motions to Dismiss under FRCP 12(b)(6) when this is a ruling on a question of law, and when pro se parties do not have the legal training to know the law. Mendez filed a Motion to Extend the time to file this petition and it has been granted with the deadline of December 30, 2021. The exhibits/documents in support of the "Motion for Extension of Time to File Petition for Writ of Certiorari" contain the August 2, 2021

Order denying Rehearing in Banc. Mendez is attaching the Supreme Court letter extending the time along with the Motion that includes the pertinent history at the 9th Circuit Court of Appeals.

## QUESTIONS PRESENTED

1) Is a Motion to Dismiss pursuant to FRCP 12(b) (6) a ruling on a question of law? If so, is this Motion inappropriate when applied to Pro se complaints?

2) Can local government entities take adverse actions against its citizens without Due Process for not using the provided utility services?

3) Should Pro se parties be allowed an opportunity to include evidence and to amend their complaints alleging violations under the 1983 Statute?

4) Is race or any other protected class status a requirement in order to prove a violation of the Equal Protection Clause of the US Constitution?

5) Is proof of a crime a requirement for a Civil Rico violation?

## STATEMENT OF CASE

The Idaho Legislature has passed laws authorizing local government entities to write Ordinances making the use of utilities mandatory. Currently, all cities/counties make trash, sewer, and water mandatory. Some local governments have separate billing for each utility and others have them all in one bill. The Legislature has ensured the local governments get their due by authorizing they certify the nonpayment to the residents property tax roll.....however, it is important to point out that the Idaho Legislature has not authorized local government entities to certify to the property tax roll for unused services. Neither the Idaho Laws nor the Ordinances have written in them an administrative procedure where residents can contest the billing prior to the certification to the property tax roll, or prior to any other collections attempts such as lawsuits by the government. The current situation in Idaho is such that local governments supposedly have waiver applications of mandatory service for things like vacancy, but it's clear that as long as customers fear the threat of government lawsuits or their home property taxes going into delinquency that the entities know that they can deny applications and customers will

pay for unused services in order to avoid the prospect of tax deeds and losing their homes. **Idaho Code 31-870 (1), Idaho Code 31-870 (2), Idaho Code 31-4404, Idaho Code 50-1008, Idaho Code 63-902 (10)** are the Statutes that have granted blanket authority to Counties, Municipalities and other local governments to make services mandatory such as trash, sewer, water, etc. Local governments in turn have drafted ordinances such as **Ada County Code 5-2-4-1** that enforce mandatory services regardless of the fact that the services are being used or not, or ability to pay. It's also important to point out that in Idaho trash services have been made mandatory as a direct result of monetary donations and other incentives given by private contractors to local politicians.

## REASONS FOR GRANTING CERTIORARI

**1) The history of this case.**

Mendez home in Boise is currently vacated since he takes care of his disabled mother at her home; so that she is not institutionalized. Because his home is vacated there is no trash being taken out. Mendez initially contacted the Ada County Billing Services on 4/30/2017 in order to waive the unused trash service and subsequently spend over two years trying to waive it. The County has waivers for Mendez particular situation, but staff did not provide a waiver form and they did not facilitate a way to waive the fee, because the evidence shows they did not want to waive the fee, and have maintained all along that the residence is occupied and service is mandatory. The County punishes residents that don't pay the mandatory trash fee by certifying the fee to residents property tax roll as a lien. The property taxes are placed on delinquent status as a result of the trash certification process regardless of the fact that residents are using the service or not. Furthermore, there is no opportunity to contest the certification process. Neither, the Idaho Laws nor do the Ordinances provide for an administrative proceeding prior to

the certification to the property tax roll.

It is of particular importance to point out that Idaho Law does not provide for the certification of unpaid services to the property tax roll for unused utilities. Therefore, the county has maintained that the home is occupied and has refused to investigate whether service is being used or not. The county has clearly indicated that they will not waive the fee for unused service, they will continue to certify the fee to the property tax roll, and Mendez only option is to take legal action against the county.

Because the county has clearly indicated that they won't waive the fee for unused service and they will continue to certify the fee to the property tax roll, then Mendez had no other alternative then to file suit on 8/2/2019 for case 1:19-CV-00301-BLW. Mendez amended the complaint on 1/10/2020. The County moved to strike the Amended complaint on 2/6/2020. The District Court denied the Motion to Strike on 3/19/2020 but encouraged defendants to file a Motion to Dismiss. Apparently, the District court would have allowed the amended complaint to stand after adjudicating the merits on a Motion to Strike, but he would dismiss the complaint after adjudicating the merits on a Motion to Dismiss. The County and Republic Services duly complied with the district Court's instruction to file a Motion to Dismiss under FRCP 12 b(1)(6) on 4/2/2020. This triggered a number of subsequent filings showing the case was dismissed a year and 66 documents later. District Judge Winmill is the same court that dismissed the other case involving unused sewer service. A separate petition for writ of certiorari is submitted for it. Mendez included exhibits as part of his response to the defendants Motion to Dismiss which the District Court excluded after a Motion to Exclude by the defendants; while at the same time the County/respondents did not comply with Mendez discovery requests within 30 days. Not only was Mendez denied the opportunity to provide evidence that he is not using trash service

during any administrative hearing, but the County/respondents also ensure that Mendez could not be able to prove in court that he is not using the service.

Mendez understood that people have a right to appeal, but he also found out that the 9th Circuit is closing the doors of the courts to unrepresented parties like Mendez as illustrated by the list of "Unpublished opinions" made up by a significant portion of pro se parties. Furthermore, it appears that many affirmed unpublished opinions of pro se parties are made up of cases dismissed in District Court for failure to state a claim.....and then many people in need are being denied access to justice even when the Supreme Court history shows that people should be protected in their enjoyment of their personal and civil rights and access to the courts is necessary for protection of such rights, for the prevention and redress of wrongs. **Yick Wo v. Hopkins, 118 U.S. 350, 30 L. Ed. 220, 6 S. Ct. 1064.** Mendez appealed to the 9th Circuit after Judge Winmill dismissed both pro se complaints where the central issue is that Mendez is being subjected to adverse actions for not using utilities provided by local government entities. Case No. 20-35474 was dismissed in district court back in May 4, 2020 and Case No. 20-35917 was dismissed in district court back in September 21, 2020. Was the same panel assigned to both cases separated by a five month gap? It is Mendez belief that there are irregularities and improprieties in the handling of both appeals by the 9th Circuit and as such only the Supreme Court can reverse or vacate the decisions. Mendez understands that under Rules, he can file a Motion for New Trial when irregularities are present during those proceedings, but Mendez only avenue to remedy the panel's decision on appeal is to file a Petition for Rehearing En Banc which he did.

Mendez understanding of the 9th Circuit "court structure and procedures" attached to the Federal Appellate Rules is that two separate panels would have been assigned to both of Mendez cases.

**Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 3, 6 pages.** However, on the exact same date of April 23, 2021; it appears that the same panel issued a near identical unpublished opinion for both cases. The unpublished opinions are near identical to the other ones involving pro se parties consisting of 2-3 pages without any reference to specific facts or the record. **Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 4, 7 pages.** It is worth noting that the panel for example points out that Judge Winmill erred in granting the respondents Motion to Strike exhibits in support of Mendez complaint because in any case Mendez had failed to state a claim.....Judge Winmill and the same panel are saying that Mendez a pro se party failed to state a claim on two cases raising similar issues of civil and constitutional violations, how is Mendez supposed to prove that he is not using the services? And when at the initial stage of a complaint he is not required to go in great detail to prove facts? Furthermore, how is it possible that the same panel issued an unpublished opinion on the same date? Mendez is not aware that both cases were 'consolidated.' Mendez petitioned for Rehearing En Banc. **Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 5, 18 pages.**

Again, the same panel indicated on the same date of August 2, 2021 that the 9th circuit denied rehearing En banc for both cases and that no further filings would be accepted even though the rules do allow for a Motion to Stay the Mandate. **Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 6, 2 pages.** Mendez filed to stay the Mandate on August 9, 2021. **Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 7, 6 pages.** The 9th Circuit issued the Mandate on one case the next day on August 10, 2021 and on the same day also denied the Motion to Stay Mandate in the other case....and on August 13, 2021, the panel denied the Motion after the Mandate had already being issued.

**Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 8, 3 pages.**

**2) The unpublished opinions are not preclusive.**

Mendez is a pro se party without the legal training or resources to prosecute his cases. His main source of legal research is the internet. It appears that unpublished opinions don't mean that they are unimportant and in fact it appears that they are still used for purposes of res judicata and claim preclusion. However, the 9th circuit list of unpublished opinions are made up of a significant portion of pro se parties for 'failure to state a claim' and more importantly those opinions just like Mendez unpublished opinions make no specific mention to facts or the record. **Motion for Extension of Time to File Petition for Writ of Certiorari. Exhibit 4, 7 pages.** In other words, the unpublished opinions don't reflect decisions being made on the merits of the case, as no specific facts or mention to the records are being made. Mendez understanding is that decisions not on the merits are not barred by res judicata. Furthermore, having the same panel on Case No. 20-35474 and Case No. 20-35917 is inconsistent with 9th circuit operations. The subsequent issuing of identical unpublished opinions, denial or Rehearing En Banc, and denial of Stay Mandate on the same dates raises serious questions as to the handling of Mendez cases on appeal. Mendez should be protected in the enjoyment of his personal and civil rights. Mendez should have access to the courts for the protection of his person and property, and for the prevention and redress of wrongs. The Supreme Court has held that "constitutional right to access to the courts" is a pledge to the equal protection under the law. **Yick Wo v. Hopkins, 118 U.S. 350, 30 L. Ed. 220, 6 S. Ct. 1064.**

**3) The Continuing Wrong Doctrine.**

The county has already certified the unused trash service fee to the property tax roll on August 30, 2021 without the opportunity to waive the fee and without Due Process. The Supreme Court

has held that res judicata does not bar a suit, even if it involves the same course of wrongful conduct as alleged earlier, so long as the suit alleges new facts or a worsening of the earlier conditions. **Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955).** Mendez will be pursuing another claim against the county for the continuing violations of the conduct alleged on his previous case. Mendez believes that the District court and Circuit will probably deny him again and therefore it's still worth petitioning a Writ of Certiorari for this case as it still involves matters of public interest well beyond Mendez private causes of action.

**4) A Motion to Dismiss under FRCP 12(b) (6) is improper when applied to Pro Se complaints.**

The respondents, the District court, and the 9th Circuit applied the working principles outlined by the Supreme Court on **Ashcroft v. Iqdal, 556 U.S. 662, 678 (2009)** in order to dismiss Mendez pro se complaint for 'failure to state a claim'. Indeed, both the respondents and the District court make it clear that the more stringent standard imposed by the Supreme Court on Iqdal was intended to save on the expense of litigation. However, around the same timeframe the Supreme Court heard a pro se complaint for the last time in which it indicated the standard of review for pro se parties pleadings is **Erickson v. Pardus, 551 U.S. 89, 127 S.Ct. 2197 (2007).** The US Supreme Court reaffirmed that Pro Se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the Court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. **Boag v. Macdougall, 454 U.S. 364, 365, 102 S. Ct. 700, 701, 70 L. Ed. 2d 551 (1982); Conley v. Gibson, 355 U.S. 41, 45-46 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), Haines v. Kerner, 404 U.S 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972).**

The Supreme Court should give consideration to granting certiorari to provide further guidance

and clarification regarding what is the appropriate standard that should be applied to pro se complaints. At present, most courts are applying to pro se complaints the principles on Iqdal to avoid the expense of litigation, while at the same time closing the doors of the courts to pro se parties for failing to meet the more stringent standards due to the obvious fact they lack the legal training. A Dismissal for failure to state a claim pursuant to FRCP 12(b) (6) is a ruling on a question of law and as such is reviewed de novo. **Sanders v. Kennedy, 794 F.2d 478, 481 (9th Cir.1986).** A Motion to Dismiss under this rule asks the Court to dismiss the complaint on a "question of law" when pro se parties are not Attorneys and do not have the legal training to know questions of law. The Motion challenges the legal sufficiency of the claims in the complaint. **Conservation Force v. Salazar, 646 F.3d 1240, 1242 (9th Cir. 2011).** Simply put, pro se parties will rarely be able to apply the law to a particular set of facts and write pleadings in a manner that is clear to the Court because they lack legal training.

Mendez is not an Attorney who has the legal training to be familiar with the Law/rules/procedures/drafting of pleadings, etc. that would allow him a fair shot at the initial stage of filing a complaint. Most pro se parties don't even know where to start when they file a complaint in Court and they most certainly aren't familiar with any Rules at that initial stage. This is precisely the reason that the US Supreme Court has instructed Federal Courts to liberally construe the inartful pleadings of pro se parties and they are held to a less stringent standard than Lawyers. Yet. The history of Mendez complaint clearly illustrate why a Motion to Dismiss under FRCP 12(b) (6) is inappropriate when applied to non-attorneys because clearly the respondents and the district court expect Mendez to know the Law as follow:

Pro Se parties must be familiar with rule requirements and applicable Laws so that they know how to "state a claim to relief that is plausible on its face" on their initial complaints.

(Supplemental excerpts of record) **SER 21-22.**

Pro Se parties should know that in order to provide evidence on complaints that they must be familiar with the rule requirement that they must seek leave to convert the motion to dismiss into a motion for summary judgment. They must know what leave of the court, motion to dismiss, and motion for summary judgment mean. **SER 24.**

Pro se parties must know the elements of each claim and the specific facts to support them. In other words, they must know the Law and how to apply it to facts. **SER 26.**

Pro se parties must know the Idaho Tort Claim Act in great detail so that they can plead facts that are not barred by the Law. **SER 33.**

Pro se parties must be aware of the legal sufficiency of the claims in the complaint. In other words, they must know the Law. **SER 151.**

Pro se parties must know that whether a defendant's conduct is as extreme and outrageous as to permit recovery is a matter of law. In other words, they must be familiar with the Law. **SER 157.**

Pro Se parties must know the Law and how to apply it to specific facts when seeking an injunction... **Pg. 2, DKT 48/pg. 2, DKT 49.**

Pro se parties must know the essential elements of a claim on their pleadings and the adequate basis in law or fact. The kind of thing Lawyers learn in Law school. **Pg. 4, Republic Answering Brief.**

Pro se parties must know what constitute legal sufficiency of their claims on their complaints in order to avoid dismissal. In other words, they must know the Law. **Pg. 9, County Answering Brief.**

The Supreme Court while discussing the fundamental right of access to the courts by prisoners

held that "meaningful" access to the courts meant that a lawyer must know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action. **Bounds v. Smith, 430 U.S. 817 (1977),** and while this case refer primarily to providing prisoners with adequate law libraries or adequate assistance from persons trained in the law in order to file "meaningful" legal papers; thus it becomes clear that in order for pro se complaints to be "meaningful" and to determine whether a colorable claim exist and what facts are necessary to state a claim, that they must know the law.....as perfectly illustrated above on the cited portions of the record/briefs at the 9th Circuit. The Supreme Court has held that "constitutional right to access to the courts" is a pledge to the equal protection under the law. **Yick Wo v. Hopkins, 118 U.S. 350, 30 L. Ed. 220, 6 S. Ct. 1064.** Mendez has been denied access to the courts for cases involving civil/constitutional rights and when the violations continue, because he does not know the law in order to present a colorable claim to pass the more stringent standard used by the district/circuit under Iqdal.

**5) Pro se complaints alleging municipal liability under 42 USC 1983 cannot be subjected to a heightened pleading standard and pro se parties should be allowed an opportunity to present evidence and amend their complaints alleging violations under 1983.**

This point closely relates to the above #4 point in that pro se parties are expected to know the law at the initial stage of drafting/filing a complaint and when Mendez is only required to provide a "short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. **Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993).** The Supreme Court has specifically declared that "a federal court may not apply a heightened pleading standard to a complaint alleging municipal liability under § 1983." **Johnson v. City of Shelby 574 U.S 10 (2014),** and Section 1983 was enacted to aid in 'the preservation of human liberty and human rights,' and is to be construed generously to further

its primary purpose. **Owen v. City of Independence, 445 U.S 622, 636, 100 S.Ct 1398, 1408 63 L.Ed.2d 673 (1980).** The US District Court of Idaho main contention for dismissing the 1983 claims is because Ada County officials were merely being negligent and such was not actionable.

The US Supreme Court has instructed district courts to consider the following factors when deciding whether to grant leave to amend: undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment and futility of amendment. **Foman v. Davis, 371 U.S. 178, 182 (1962).** Leave to Amend "must be guided by the underlying purpose of Rule 15 to facilitate decisions on the merits, rather than on the pleadings or technicalities." **United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981).** The Supreme Court has instructed the federal courts to heed carefully the command of Rule 15(a) by freely granting leave to amend when justice so requires and should be applied with extreme liberality. **Eldridge v. Block, 832 F2d 1132, 1135 (9th Cir. 1987).** This liberal amendment policy is even more important with respect to pro se plaintiffs, who generally lack legal training. Courts must liberally construe civil rights actions filed by pro se litigants so as not to close the courthouse doors to those truly in need of relief. **Eldridge, 832 F.2d at 1135, 1137.**

Pro se parties are unfamiliar with the Law and Rules in order to properly plead a complaint and they would have to be given an opportunity to provide evidence to support their inartful complaints. The district court excluded Mendez exhibits on his response to the Motion to Dismiss because Mendez did not seek to 'convert' the Motion to Dismiss into a Motion for Summary Judgment....clearly something a lawyer with legal training would know (decision on the technicality). Notably, the 9th Circuit held that the district court err in not allowing the

exhibits as part of the complaint, but held it didn't matter because the complaint failed to 'state a claim.' The Supreme Court in **Haines v. Kerner, 404 U.S 519, 520-21, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972)** held that respondents filed to dismiss under Rule 12 (b)(6) for failure to state a claim upon which relief could be granted in a case brought pursuant to USC 1983 among other claims. The petitioner's contention was that the district court erred in dismissing his pro se complaint without allowing him to present evidence on his claims. The US Supreme Court held that allegations such as those asserted by pro se petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence and that we cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Mendez would note that his Amended complaint clearly makes reference to the content of the exhibits on his Response to the Motion to Dismiss. Furthermore, the facts of the complaint are supported by the exhibits and are of such public concern that the District Court should have considered them. For example, one of the exhibits is the findings of the criminal complaint filed by the former Treasurer with the Attorney General's office, another one is the public record's request in which the County admits that the trash ordinance is not based on any evidence supporting that it was passed for a public interest, etc. The Supreme court has "constantly emphasized" habeas corpus and civil rights actions are of "fundamental importance...in our constitutional scheme" because they directly protect our most valued rights, **Johnson v. Avery, 393 U.S., at 485, 89 S.Ct., at 748; Wolff v. McDonnell, 418 U.S., aty 579, 94 S.Ct, at 2986.** In order, for pro se parties to file "meaningful" complaints without knowledge of rules/law to present colorable claims that state a claim, they must be afforded an opportunity to present evidence in support of

their complaints.

**6) People in the United States cannot be deprived of substantive rights of life, liberty and property without constitutionality adequate procedures.**

The Due Process Clause of the Fourteenth Amendment provides:

*"[N]or shall any State deprive any person of life, liberty, or property, without due process of law...."*

The US District Court of Idaho dismissed Mendez 1983 claims because procedural Due process does not apply to legislative acts. Neither, the Idaho Laws nor the Ada County Ordinances provide for a Notice to be given to customers, and neither the State Laws or ordinances give customers an opportunity to challenge the local government debt collection effort---collection notices, lawsuits, or certification to the property taxes at any kind of prior hearing. The question is whether these statutory procedures violate the 14th Amendment guarantee that no State shall deprive any person of property without due process of law. **Fuentes v. Shevin, 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972).** The district court and respondents state that Mendez was provided with the ordinance explaining that the Commissioners are the ones waiving the fee. However, the ordinance itself provides no explanation on how to request a waiver, where to find it, how to contact the commissioner's, or if there is a hearing at all. Furthermore, both the district court and respondents acknowledge that Mendez spent over two years trying to waive the fee for unused trash service to which he was told that it could not be waived on an occupied residence. In short, there appears to be a waiver provided to those that request it but there is no explanation of how the process works and why is not being provided prior to the certification to the property tax roll; it does not comply with Due Process. If it's provided to others and denied to Mendez then it clearly also violates the Equal Protection Clause. The respondents insist that Mendez home is occupied and the trash is being used because Idaho law does not authorize them to certify to the property tax roll for unused service; so it's not

surprising that no administrative hearing is being provided prior to the certification process. We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." **Boddie v. Connecticut, 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971).** Where 'important interests' of the citizen are implicated they are not to be denied or taken away without due process. **Bell v. Burson, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90.** An essential principle of due process is that a deprivation of life, liberty, or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." **Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.ed. 865 (1950).** This Clause "raises no impenetrable barrier to the taking of a person's possessions" or liberty, or life. Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. **Fuentes v. Shevin, 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972).** The improper certification of unused trash to the property tax roll places the customer's property taxes on delinquent status and falsely portrays Mendez on public record as someone who doesn't pay his taxes. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." **Wisconsin v. Constantineau, 400 U.S 433, 437, 91 S. Ct. 507, 510, 27 L.Ed.2d 515.** The Supreme Court has defined liberty under the 14th amendment as those privileges long recognized as essential to the orderly pursuit of happiness by free men.....one of them being able to establish a home. **Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed 1042.** The Idaho Legislature and the local government ordinances allowing for the certification to the property tax roll for unpaid utilities regardless of being used or not, it's a direct attack of the fundamental rights and privileges of

Idaho residents. The certification of utilities billing to the property tax roll is an unlawful taking because the Takings Clause protects private expectations to ensure private investment. **Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992).** Property rights in a physical thing have been describe as the rights "to possess, use, and dispose of it." **United States v. General Motors Corp., 323 U.S. 373, 378, 65 S.Ct 357, 89 L.Ed 311 (1945).** Respondent certified the latest unused trash fee to the property tax roll on 8/30/2021 without any kind of prior hearing, and in fact they have altogether stop sending monthly bills. Respondents have decided that since the district court sided with them that they will just ignore Mendez and continue to certify to the property taxes. No reasonable person would find such conduct as anything other than acting with ill will and malice; in particular when it continues.

**7) Racial motive is not an essential element to prove a violation of the Equal Protection Clause.**

Respondents, the district court and the 9th Circuit held that Mendez failed to allege sufficient facts showing he was discriminated because of his race. However, this is what the 14th Amendment of the Constitution says:

*"Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to <u>any person</u> within its jurisdiction the equal protection of the laws."*

Mendez was able to find several cases in which the Supreme Court held a violation of the Equal Protection Clause that had nothing to do with race or any other protected classes. The Supreme Court on **Bush v. Gore (2000)** which was a case about the controversial recount in Florida in the aftermath of the 2000 election, held that the different standards of counting ballots across state violated the Equal Protection Clause. Favoring established residents over new residents is constitutionally unacceptable and in our view Alaska has shown no valid state interests which are rationally served by the distinction it makes between citizens who established residence before

1959 and those who have become residents since then. **Zobel v. Williams, 457 U.S. 55 (1982).** Homeowner could assert Equal Protection Claim as class of one. **Village of Willowbrook v. Olech, 528 U.S. 562 (2000).** Our cases have recognized successful equal protection claims brought by a "class of one," where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. In so doing, we have explained that "the purpose of the equal protection clause of the 14th Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." **Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 43 S.Ct 190, 67 L.Ed 340 (1923).** Both, the Respondents and district court acknowledge that the ordinance states the Commissioner's waive the trash fee for vacancy. However, the ordinance itself provides no explanation on how to request a waiver, where to find it, how to contact the commissioner's, or if there is a hearing at all. Furthermore, both the district court and respondents acknowledge that Mendez spent over two years trying to waive the fee for unused trash service to which he was told that it could not be waived on an occupied residence. In short, there appears to be a waiver provided to those that request it but there is no explanation of how the process works and why it has not being provided to Mendez prior to the certification to the property tax roll. Respondents continue to certify to the property taxes and no reasonable person would find such conduct as anything other than acting with ill will and an intentional/arbitrary discrimination being executed by duly constituted agents. That Mendez is a member of a protected class by virtue of being Latino adds a further layer that without any legitimate reason he is being subject to intentional discrimination by the County in violation of the Equal Protection clause of the 14th Amendment.

**8) Proving a crime is not required to establish a Civil RICO violation.**

Respondents and the District Court allege that Mendez must show that at least two of the 35 RICO crimes were committed to have a valid RICO claim.

The mandatory trash service was a point of contention among the county officials and in January 2015 the former Treasurer filed a criminal complaint with the Idaho Attorney General's office. She alleged among other things that money given to county officials influenced them into awarding contracts to Republic Services, the creation of the new office to exclusively handle the contract, continued rate increases to residents, and the rewriting of the trash ordinance. On 5/4/2019 Erin Bamer with the Idaho Press Tribune wrote that Republic Services has donated money to unincorporated Ada County, along with several other cities it contracts with. Rachel Klein with Republic Services did not specify how much money the company donated to Ada County or what it was used for. The Trash Ordinance was rewritten, the trash contract was awarded to Republic services, and the Ada Billing Services Office was created exclusively to serve the trash contract, and the entire trash service functions as an enterprise fund supported only by money from Republic Services and for the benefit of the company. In short, the trash service has been made mandatory so that the primary beneficiaries are the private contractors and in order to ensure they profit and get their due; the local government entities certify to people's property tax roll for billed services whether they are used or not. The US Supreme Court has articulated four tests for determining whether a private party's actions amount to state action: 1) the public function tests; 2) the joint action test; 3) the state compulsion test; and 4) the governmental nexus test. **Franklin v. Fox, 312 F.3d 423, 444-45 (9th Cir. 2002).** The joint participation in the service/collection of trash along with certification to the property tax roll makes Republic Services a "state actor" for purposes of the Fourteenth Amendment. **Lugar v.**

**Edmonson Oil Co., Inc., 457 U.S. 922 (1982).**

The occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime. **H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 248, 109 S.Ct 2893, 2905, 106 L.Ed.2d 195 (1989).** The term violation does not imply a criminal conviction. That the offending conduct is described by reference to criminal statutes does not mean that its occurrence must be established by criminal standards or that the consequences of a finding of liability in a private civil action are identical to the consequences of a criminal conviction. **Cf. United States v. Ward, supra, 448 U.S., at 248-251, 100 S.Ct., at 2641-2642.** Private Attorney General provisions such as 1964 (c) are in part designed to fill prosecutorial gaps. **Cf. Reiter v. Sonotone Corp., 442 U.S. 330, 344, 99 S.Ct. 2326, 2333, 60 L.Ed.2d 931 (1979).** RICO is to liberally construed to effectuate its remedial purposes. Congress wanted to reach both 'legitimate' and 'illegitimate' enterprises **United States v. Turkette, 452 U.S. 576, 586-587, 101 S.Ct. 2524, 2530-2531, 69 L.Ed.2d 246 (1981).** The language of RICO gives no obvious indication that a civil action can proceed only after a criminal conviction. Although the RICO statute was originally enacted to combat organized crime, "it has become a tool for everyday fraud cases brought against respected and legitimate enterprises." **Sedima, S.P.R.L. v Imrex Co., 473 U.S. 479, 499, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985).**

## CONCLUSION

Mendez has persevered in the face of insurmountable challenges in the form of the respondents continued deb collection efforts, certification to the property tax roll for unused services, and the denial of access to the courts by both the District and Circuit courts. Mendez history of the case

and pro se pleadings show that he has worked hard on his cases that involve matters far beyond the adverse actions taking against him by respondents. The Unites States Supreme Court should consider granting Certiorari as this case involves questions of public importance affecting the population of the State of Idaho, and any other states where utilities provided by the government are made mandatory. Specifically, the government not providing administrative procedures prior to taking adverse actions against its citizens for not using their services. The Supreme Court should give consideration to granting certiorari to provide further guidance and clarification regarding what is the appropriate standard that should be applied to pro se complaints. At present, most courts are applying to pro se complaints the principles on Iqdal to avoid the expense of litigation, while at the same time closing the doors of the courts to pro se parties for failing to meet the more stringent standards due to the obvious fact they lack the legal training. Mendez respectfully, requests the Supreme Court hold that respondents have violated the Due Process Clause of the 14th Amendment and declare Idaho Laws mandating services to be unconstitutional. Mendez respectfully, requests the Supreme Court hold that the current contractual situation following donations between local government entities and private trash contractors is consistent with civil RICO violations.

DATED: December 14, 2021

Raul Mendez

CERTIFICATE OF SERVICE

I certify that on December 14, 2021 I served a copy to:

Jason Risch
407 W Jefferson
Boise, ID 83702

Erica White
200 W. Front Street
Boise, ID 83702

- By United States mail
- By personal delivery
- By fax 208-345-9928
  fax 208-287-7719

Raul Mendez
Typed/printed name

Signature