IN THE SUPREME COURT OF THE UNITED STATES

No. _____

BRIAN ERSKINE,

Petitioner *pro se*,

v.

FORREST FENN; ZOE FENN OLD,
in her capacity as Personal Representative
of the Estate of Forrest Burke Fenn,

Respondent(s).

APPLICATION TO JUSTICE ELENA KAGAN,

FOR A STAY OR RECALL OF THE MANDATE ISSUED BY THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT OR FOR A STAY OF JUDGMENT PURSUANT THERETO BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

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PARTIES

Applicant is appellant *pro se*, an Arizona citizen, alleging breach of contract on the merits. Respondent is appellee below, personal representative of original defendant's estate, represented by eminent counsel (senior partners at Sacks, Tierney in Ariz.) Both the estate personal representative and the original defendant are New Mexico citizens.

CASE REFERENCES

Regarding this application:

The Ninth Circuit case is No. 21-15373.
The District of Arizona case is (Ariz.) D. C. No. 3:20-cv-08123-JJT.

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By S. Ct. Rule 23 and the All Writs Act, 28 U.S.C. 1651, I respectfully address Justice Kagan to apply for a stay of, or order to recall, the mandate issued by the Ninth Circuit (attached with Unpublished Memorandum, Denial of Rehearing, Denial of Motion to Stay, Mandate, etc.), or for a stay of judgment pursuant to that mandate by the District of Arizona (with Final Order, etc. attached) (taken together, "stay"), pending the filing and disposition of a certiorari petition and any further proceedings in this Court. Relief plainly is unavailable from the Ninth Circuit, while D.Ariz. is subject to the appellate mandate.

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Case transfer laws 28 U.S.C. 1404, 1406, and 1631

Gold clause law 31 U.S.C. 5118(a)(1)(A), (d)(1), (d)(2)

Executive Summary

The Court never has properly reviewed 28 U.S.C. 1631 ("1631"), a 1982 general case transfer provision Congress passed in a Judiciary reform. The Court narrowly construed 1631 in passing as a sidebar in a 1988 ruling, then contradicted itself in a 2007 ruling correctly defining 1631's broad key principle while failing to review or even mention 1631. Persistent lack of clarity about what a court without personal jurisdiction can or must do as a prelude to transfer enables courts to ignore its plain text and documented intent unaccountably, requiring review now.

Lacking personal jurisdiction, D.Ariz. disdained my *pro se* contract claim in *dicta,* dismissing by final order without prejudice, notice, or leave to amend while suggesting refiling (showing claim not futile) rather than allowing amendment to cure claim before 1631 transfer to D.N.M. general jurisdiction. The Ninth Circuit upheld. The net results were: denial of amendment for jurisdictional futility, of amendment to cure claim, of transfer for deficient claim, and of the merits.

Proper review of 1631's orphan status to resolve contradictory Court rulings and clarify the law requires certiorari, which here requires the requested stay. As I sued a public figure in a whistleblower capacity, imminent irreparable reputational harm and manifest injustice are added to the uncertain harm of bankruptcy by fee award merely for denial to amend curable claim once for transfer.

Introduction: Petition Requirements and Projected Relief Summary

This petition meets all four specific requirements[1] and a fifth, S. Ct. Rule 10(a). Stay is extraordinary relief, requiring more. As detailed below, further favoring stay are (a) timing after *Ford,* a unanimous ruling Justice Kagan wrote[2] as the Court's seventh personal jurisdiction ruling since 2011,[3] (b) 1631's importance to proper Judiciary function shown by its text[4] and reformist intent,[5] (c) mere cursory or sidebar review by the Court in a 1988 case[6] before (d) unanimously contradicting that 1988 decision in 2007 without overruling;[7] (e) the difficulty of bringing 1631 under the Court's review,[8] and (f) the need, congruent with (b) and (e) above, to close a loophole and to end courts' abuse of discretion leveraging personal jurisdiction as a pretext to rubbish plaintiffs' rights by dismissing cases

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[1] *Conkright v. Frommert,* 556 U.S. 1401 (2009).
[2] *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).
[3] P. Borchers, R. Freer, & T. Arthur, *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*: Lots of Questions, Some Answers, 71 Emory L. J. Online 1 (2021).
[4] See below. Interpreting law must begin "with the language of the statute." *CSX Transp., Inc. v. Ala. Dep't of Revenue,* 562 U.S. 277, 283 (2011).
[5] Requested of Congress in a ruling by a Federal judge, 1631 was part of the 1982 Federal Courts Improvement Act, P.L. 97-164, 96 Stat. 25 at 55. See *Inv. Co. Inst. v. Bd. of Govs. of Fed. Reserve Sys.*, 551 F.2d 1270, 1283 (D.C. Cir. 1977) (Leventhal, J., concurring – he was that Federal judge) and J. W. Tayon, *The Federal Transfer Statute: 28 U.S.C. 1631*, 29 S. Tex. L. Rev. 189.
[6] *Christianson v. Colt Indus.,* 486 U.S. 800 (1988).
[7] *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.,* 549 U.S. 422 (2007). But, *Sinochem* did not mention 1631, only 28 U.S.C. 1404 ("1404") and 28 U.S.C. 1406 ("1406"). The three laws 1404, 1406, and 1631 together are "transfer laws."
[8] A transfer law, by nature, is unlikely to drive a certiorari petition. Here, it does.

bearing curable claim without notice or leave to amend once particularly when plaintiff is *pro se* and transfer clearly would be in the interest of justice.

In summary, this timely case is the Court's rare chance to review 1631, fix that contradiction, expand *Ford* by applying *Sinochem* and other precedent to 1631, and by overruling *Christianson* in part, to close the gap into which cases like mine can fall or be chucked. **For reasons beyond the requirements, this is "that rare case" requiring extraordinary relief – this kind of case, is exactly what stay is for.** As a bonus, this case is a juicy consensus softball substituting for an eighth personal jurisdiction case, without precedential baggage because this case just reviews a general law. Simply put, this case is a golden opportunity for the Court to develop *Ford*'s main and concurrent personal jurisdiction positions within the safe harbor of statutory review. Supported by *Sinochem, Ford,* Rules 1, 8, 15, *Conley, Foman, Goldlawr, Federal Home Loan Bank,*[9] and more, in a future certiorari petition I would ask the Court as a result of thoroughly reviewing 1631 to reverse dismissal for jurisdiction without notice or leave to amend once when claim is not futile and indeed refiling is suggested, as 1631 means that my case must transfer to obvious general jurisdiction after cure of claim by amendment.

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[9] F.R.C.P.; *Conley v. Gibson,* 355 U.S. 41 (1957); *Foman v. Davis,* 371 U.S. 178 (1962), *Goldlawr v. Heiman*, 369 U.S. 463 (1962), *Federal Home Loan Bank v. Moody's Corp.,* 821 F.3d 102 (2016) (cert. denied). Herein this set of cases often is shortened to "*Sinochem* and other precedent."

Text of 28 U.S.C. 1631

Chapter 99 – General Provisions – 1631: Transfer to cure want of jurisdiction

> Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

This general statute cures jurisdiction by transfer. Mandatory "whenever" its conditions are met, it requires (a) lack of jurisdiction in the Federal court of filing, (b) jurisdiction in another Federal court, and (c) the interest of justice.[10]

Lack of Review: This Court Contradicted Itself Without Overruling

In *Christianson,* the Court's cursory brush with 1631, Justice Brennan ruled in the summary at 803 (quoted below) and at 818 (not quoted):

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[10] For example, when no colorable claim to jurisdiction exists, transfer is not in the interest of justice. *Stanifer v. Brannan,* 564 F.3d 455 (6th Cir. 2009). Similarly, when claim is futile **and/or** when no transfer would cure jurisdiction, transfer is not in the interest of justice. *Clark v. Busey*, 959 F.2d 808 (9th Cir. 1992).

> Upon concluding that it lacked jurisdiction, the Federal Circuit had authority, under 28 U.S.C. 1631, **to make a single decision** -- whether to dismiss the case or, "in the interest of justice," to transfer it to a court of appeals that has jurisdiction. The rule that a court may not in any case, even in the interest of justice, extend its jurisdiction where none exists has always worked injustice in particular cases – especially [when] litigants are bandied back and forth between two courts [...] the courts of appeals should achieve [...] quick settlement of questions of transfer by adhering strictly to principles of law of the case.

But in *Sinochem*, covering specific, older transfer laws 1404 and 1406 but omitting newer general provision 1631, Justice Ginsburg for the unanimous Court affirmed a key principle "well stated by the Seventh Circuit: **'[J]urisdiction is vital only if the court proposes to issue a judgment on the merits.'"**[11]

Which is it? Worse than a circuit split, this Court in *Sinochem* contradicted but did not overrule *Christianson*.[12] Under 1631, a general provision, is a court without jurisdiction constrained only to dismiss or transfer (*Christianson*) **or** may it do anything but decide the merits, such as allow amended pleading to cure claim before transfer (*Sinochem*)? **Of course** it may and indeed **must**; Rules 1, 8, 15, *Conley, Foman,* and more **must** apply – but *Sinochem* omitted 1631. **"Whoops!"**

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[11] *Sinochem* at 431; *Intec USA v. Engle,* 467 F. 3d 1038 at 1041 (7th Cir. 2006).
[12] The Court likely didn't notice. The Court hardly has reviewed 1631 and seldom reviews transfer law, most notably sixty years ago in *Goldlawr*. My failure in lower courts roots in this contradiction and misperception of law or consequent manipulation opportunities – both are bad – such lack of review fosters.

Applying *Sinochem* and other precedent to 1631 **requires a fresh ruling** (this case: *Erskine*), which requires certiorari, **which requires stay.** As 1631 is a general mandate from Congress to the Judiciary, **all transfer laws broadly apply in *Sinochem*'s unified jurisdictional context.** Correct that transfer requires strict adherence to principles of law of the case, *Christianson* wrongly narrowcast 1631 in passing, vitiating general reform. *Sinochem* later defined the key principle for applying 1631 but failed to overrule *Christianson* by omitting 1631, addressing only elderly aunties 1404 and 1406, particular provisions dating to 1948 and curing other defects by transfer, **leaving 1631, a general provision curing jurisdiction, orphaned.** Lack of review of 1631 has denied my case – and like the underwater bulk of an iceberg, **surely other cases** – Congress' plainly intended general jurisdictional protection for cases and claims.

Lacking guidance, in my case lower courts ignored these principles and others including in *Conley* regarding the purpose of pleading, and Rules 1, 8, 15, and *Foman* forbidding denial of amendment (or dismissal without notice or leave) when deficient claim is not futile and was not so ruled. *Foman* **defines** such denial as **abuse of discretion** which **must** violate the interest of justice. Disdainful *dicta* and lack of jurisdiction do not sustain dismissal. Applying *Sinochem* and other precedent to 1631, if claim is not futile and a case transferable, notice and leave to amend are mandatory and dismissal without them is abuse.

Summary of D.Ariz. Ruling as Upheld, with Certiorari Question

By final order without prejudice, D.Ariz. dismissed without notice or leave to amend **once**, did **not** rule claim futile, suggested refiling,[13] ruled personal jurisdiction futile, and denied 28 U.S.C. 1631 ("1631") transfer to obvious general jurisdiction – for deficient **claim**. Withheld judgment for over a year enabled appeal without bond. I sought to amend to cure claim so as to transfer. The Ninth Circuit **denied**, pretending I had to appeal jurisdiction whose lack 1631 requires (!) If granted stay, I would present for certiorari the question: **"If 28 U.S.C. 1631 transfer would cure jurisdiction, is dismissal without notice or leave to amend (once) to cure claim, when claim is not ruled futile, abuse of discretion?"**

Because "[J]urisdiction is vital only if the court proposes to issue a judgment on the merits,"[14] of course it is abuse. The broad, mandatory text of 1631 and the logic of *Sinochem* and *Ford* apply Rules 1, 8, 15, *Foman, Conley, Goldlawr,* and *Federal Home Loan Bank* to claim in an otherwise transferable case just as in any

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[13] *Goldlawr* at 467: "Congress, by the enactment of 1406(a), recognized that 'the interest of justice' may require that the complaint not be dismissed, but rather that it be transferred in order that the plaintiff not be penalized [*Ford*] by [...] 'time-consuming and justice-defeating technicalities.' (*Internatio-Rotterdam, Inc. v. Thomsen*, 218 F.2d 514, 517 (4th Cir. 1955)). It would [...] frustrate this enlightened Congressional objective to import ambiguities into 1406(a) **which do not exist in the language Congress used to achieve the procedural reform it desired."** See 1631's text; it works the same way.

[14] *Sinochem* at 431.

other, barring dismissal for jurisdiction without notice or leave to amend when cure of claim would enable transfer, or rendering dismissal for jurisdiction unjustified given that *Sinochem* empowers a court to take one amended pleading.[15] Such unjustified dismissal cannot be in the interest of justice and is exactly the merits "decision" by short circuit without jurisdiction that *Christianson* bans.[16]

Like *Ford*, this case is about access to justice. The title "Federal Courts Improvement Act" suggests Congressional action partly against justice denial by technicality. Courts dislike criticism and like to dismiss for jurisdiction for convenience, but 1631 forces change and restricts that practice. The very fact that Federal courts might dislike what 1631 mandates is the more reason for this Court to review and apply it exactly as written according to *Sinochem, Ford,* Rules 1, 8, 15, *Foman, Conley, Goldlawr,* and *Federal Home Loan Bank*. Having shown that my case satisfies S. Ct. Rule 10(a), below I address *Conkright* requirements.

1. (At Least) Four (Named) Justices Likely Would Grant Certiorari

Citing lack of review, in 2016 Moody's Investor's Service ("Moody's") petitioned for certiorari under 1631 challenging a First Circuit transfer order in

[15] *Foman* at 181-182, *Conley* at 48.
[16] *Christianson* at 803.

Federal Home Loan Bank. My case is stronger. Its posture is final[17] and I aim not at dismissal as Moody's did, but to reverse dismissal without notice or leave to amend to cure claim to enable transfer as 1631, *Sinochem*, *Ford,* Rules 1, 8, 15, *Conley, Foman, Goldlawr,* and *Federal Home Loan Bank* require.

Lack of 1631 review drives my case to alternative, fertile grounds. In *Ford,* eight Justices expressed concerns that jurisdictional uncertainties (or worse) **might deny plaintiffs access to justice.** Justice Kagan wrote *Ford*, emulating Justice Brennan in dissent[18] to distinguish "arising out of" from "relating to" forum contacts. Justices Gorsuch and Thomas concurred that jurisdictional practice is unmoored from primary legal principles.[19] Justice Alito concurred that personal jurisdiction must modernize.[20] Justice Sotomayor's dissents[21] show her views. That's five Justices, but in ***Ford*** **eight teamed**[22] to express clear concerns that jurisdictional obstacles can block plaintiffs wrongly from justice on the merits.

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[17] The transfer order Moody's challenged is interlocutory; *SongByrd, Inc. v. Estate of Grossman*, 206 F.3d 172, 176 (2nd Cir. 2000). Certiorari would be disfavored.
[18] *Helicopteros Nac. de Colombia v. Hall*, 466 U.S. 408 (1984). See Note 3 (Borchers, Freer, & Arthur in 71 Emory L. J. Online 1 (2021)), p. 6.
[19] *Id.*, p. 17-18, from *Ford* at 1038.
[20] *Id.*, p. 13, from *Ford* at 1032-34.
[21] *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773 (2017); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017).
[22] Multiple concurrence in *Ford* is a watershed or inflection point of legal insight, showing the Court's red fish and blue fish all in the same boat (see Justice Kagan in dissent, *Yates v. United States* (motions from the ocean?), 574 U.S. 528 (2015)).

Justice Brennan, whom Justice Kagan emulated in *Ford*, ruled in the majority for *Conley*, *Foman*, and *Goldlawr*. Like *Ford*, *Goldlawr* showed concern for the effects of jurisdictional barriers **on the plaintiff.** My aim for 1631 aligns **perfectly** with *Sinochem*, *Ford,* Rules 1, 8, 15, *Foman, Conley, Goldlawr,* and *Federal Home Loan Bank.* It contradicts only *Christianson's* "single decision" test – but the problem is cursory misreading of 1631 in *Christianson* followed by omission in *Sinochem*, vitiating a general statutory provision. Returning to the question of amendment to cure claim, in *Conley* at 48 the Court held pleading not to be "game of skill in which one misstep by counsel" (or *pro se* party) "may be decisive to the outcome" as "the purpose of pleading is to facilitate a proper decision on the merits." In *Foman* at 181-82 the Court held "outright refusal to grant the leave [to amend]"[23] without any apparent justifying reason to be an **abuse of discretion** and held it "entirely contrary to the spirit of the [Rules], for decisions on the merits to be avoided on the basis of such mere technicalities." My certiorari question (and its obvious answer) fits Justice Kagan's and other Justices' logic in *Ford* like the next jigsaw piece or next colorful fish in the school – fortunately not by revisiting whether such fish are "tangible objects" but by invoking Justice Kagan's Spider-Sense[24] for another chance to emulate Justice Brennan's wisdom.

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[23] The same as dismissal without notice or leave to amend.
[24] *Kimble v. Marvel*, 576 U.S. ___ (2015).

2. A Majority Likely Would Find Lower Court Decisions Erroneous

Sinochem, Ford, Rules 1, 8, 15, *Foman, Conley, Goldlawr,* and *Federal Home Loan Bank* plus plain text ("Whenever...shall...shall" and "in the interest of justice") and intent[25] are lodestars to interpreting 1631. Attached lower court rulings also ignore the First Circuit in *Federal Home Loan Bank* as defining a main aim of 1631: ensuring that litigants **do not lose claims** (in the interest of justice) because jurisdiction[26] is uncertain or a lawyer has erred.[27] Yet I, a *pro se* plaintiff, suffered just that.[28] With only *Christianson* in the way, forecasting by concurrent unanimity in *Ford,* my case reviewing 1631 has overwhelming merit and the Court likely would rule unanimously or *per curiam* in my favor. Alarmingly underneath the opportunity to review 1631, **false gloss of futility** by judicial insinuation[29] and dismissal without notice or leave to amend curable claim is **manifest injustice** particularly in a whistleblower case whose premature result **harms my reputation.**

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[25] See Notes 5 and 13.

[26] Not only "jurisdictional statute," as 1631's text refers only to "jurisdiction."

[27] *Federal Home Loan Bank* at 112, citing 1631's legislative history. This might be made into a circuit split, had the Court itself not more crucially self-contradicted in *Christianson* and *Sinochem.*

[28] Transfer me: I appealed to amend to cure claim. Biased D.Ariz. *dicta* and the ruling's correction shows that appealing jurisdiction under *Ford* would have failed because the lower courts clearly sought ways to dismiss me no matter what.

[29] This was how lower courts in my case abused *Clark v. Busey*, 959 F.2d 808 (9th Cir. 1992) – by intentionally conflating jurisdictional futility with claim futility. *Clark* features both, rightly denying transfer on an "and/or" basis. My claim is not futile and would cure by amendment; 1631 transfer then would cure jurisdiction.

3. Imminent Irreparable Harms Likely Would Result from Denial of Stay

With no other remedy at law, three imminent irreparable harms I would suffer by denial of stay are (a) reputational harm (in part by (b) manifest injustice) and (c) bankruptcy by judgment for fees in a contracts case. Bankruptcy is inherently uncertain financial harm. It also could cost my new job as the finance chief of a small company, compounding harm.

To show reputational harm I must summarize underlying contractual claim, though I know that this petition or possible certiorari **does not concern its merits.** My claim concerns defendant Forrest Fenn's notorious public or mass participation treasure quest.[30] I (would amend to) claim that the **poem**[31] Forrest Fenn published in January 2010 as central to that quest is an expressly intentional open unilateral adhesion **contract**[32] (like car insurance) that I evidence as having performed in August 2018. That contract's payment term is an enforceable gold clause ("I give you title to the gold") conditioning on unresolvable contractual ambiguities (to be detailed in the amendment) thus excluding genuine issue for trial and requiring reading *contra proferentem*. A gold clause triggers liability to pay fungible United

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[30] Just as the Court never has reviewed 1631, the Court maybe also never has seen a treasure quest, but it seems no stranger than considering whether fish are tangible objects, The Amazing Spider-Man, the video game Mortal Kombat, or *Star Trek*.
[31] See Exhibit, *NPR*.
[32] The definitive recent unilateral contract case in N.M. is *Ormrod v. Hubbard Broadcasting, Inc.*, 328 F. Supp. 3d 1215 (D.N.M. 2018).

States money (like a more typical contract)[33] which means both the location of the treasure and its sensational "find" immediately **after** I served suit on June 4, 2020[34] are irrelevant. My claim stems from my finance career; at the time of performance I managed assets and investments for the largest general insurer (issuer of unilateral adhesion contracts) in Cambodia and Laos and while visiting family in Arizona traveled to Colorado to perform the quest I learned of in May 2016 by chance. My summary claim has unique features, but clearly is not futile. It might win or lose, but I may test it in court (*Foman* at 182) as I am prepared to do, and simply put, I have been run out of court. No court ruled my claim futile and I am entitled to notice of deficiency and leave to amend "unless it appears **beyond doubt** that the plaintiff **can prove no set of facts** in support of his claim which would entitle him to relief" (*Conley* at 45-46). Such categorical terms set a high bar for dismissal without notice or leave that in my case the courts did not meet, aiming instead to **create** "time-consuming and justice-defeating technicalities" ("go away, *pro se*"). What matters is not my claim's untested merits pending

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[33] A gold clause in a contract issued in 2010 is enforceable. 31 U.S.C. 5118(a)(1)(A), (d)(1), and (d)(2); see *Rudolph v. Steinhardt*, 721 F.2d 1324 (11th Cir. 1984) and *216 Jamaica Avenue, LLC v. S & R Playhouse Realty Co.,* 540 F.3d 433 (6th Cir. 2008). Multiple other cases affirm, typically commercial leases dating to before 1933 and novated after October 28, 1977. For a list of such cases, see *Nebel, Inc. v. Mid-City National Bank,* 769 N.E.2d 45 (Ill. App. Ct. 2002).

[34] Others filed suits after the "spectacular find." I performed long ago. Forrest Fenn obligated to pay money by gold clause. The treasure is irrelevant to performance and only serves to inform such money payment.

amendment, **but that D.Ariz. did not rule my claim futile, dismissed without prejudice, suggested I refile in D.N.M., and withheld judgment.** I **must** be allowed to amend because when *Sinochem* and other precedent apply to 1631 maybe no transferable case exists for which dismissal and refiling is proper.

As a legal scholar, Justice Kagan knows litigation experience, including in claim presentation such as I **lacked**, not to be the sole standard of legal excellence. Justice Kagan's confirmation to the Court once was doubted on the same basis. The reputational harm of **false** public perception that I filed a futile whistleblower suit against a public figure far exceeds that of losing a suit heard on the merits.

Returning to irreparable harm, in suing and serving just before treasure "got found" (which in tort might be a badge of fraud, as I do not allege) I staked my reputation against a rich, notorious public figure with a decade's prominent media coverage and a vast following, influential enough to accept a prestigious arts award in Tucson from an Ariz. media executive (who forwarded to Forrest Fenn my performance communication, sustaining jurisdictional claim) and bold enough to rebuke the public safety judgment of the N.M. state police chief citing a fatality (more would ensue), whose direct report I visited and briefed for about an hour in Santa Fe. **Likely, both the police chief's and Forrest Fenn's reputations were harmed – as mine is by my case's unjust result.** Media exposed against wealth and power, *pro se* against senior law partners, and run out of court by pretext when

I sided with police, I face permanent public misperception of futility when no court has so ruled. Irreparable harm here isn't about life being unfair, a risk not panning, or imperfect trial, but about **due process refusal** and reputational harm of losing a prominent whistleblower suit by manifestly unjust short circuit: dismissal without notice or leave to amend curable claim denying **access** to justice.

4. The Balance of Harms and Public Interest Tests Favor Stay

Moody's 2016 certiorari petition ended with this correct argument:

> For all practical purposes, the only opportunity for this Court to review [28 U.S.C.] 1631 will arise in a case such as this, where the district court has dismissed rather than transfer, and that decision has then been reviewed on appeal. This petition thus presents a relatively rare chance for this Court to [review 1631].

My case's posture is final and is better timed after *Ford*. It would benefit the public and Judiciary by clarifying transfer law and what courts without jurisdiction can or must do before transfer against thresholds for hearing the merits. Stay would not impact opposing counsel's ultimate ability to collect fees (and might improve it) nor incur undue delay but would align with the lengthy time, of well over a year, that D.Ariz. withheld judgment, which with jurisdiction futile would not have been withheld had claim also been futile. Finally, of course I assert that my claim in contract, if heard, truthfully would expose and resolve a matter of keen public interest.

CONCLUSION

The text and intent of 1631, *Sinochem*, the Court's personal jurisdiction focus culminating in *Ford*, Rules 1, 8, 15, *Conley, Foman, Goldlawr,* and *Federal Home Loan Bank* all align with this case. Yet because 1631 is all but unreviewed and *Sinochem* and other precedent never have been applied to 1631, **a new ruling is needed** for courts to consistently, correctly apply a general reform provision. This case also enables timely development after *Ford* of personal jurisdiction reasoning from a fresh standpoint bounded by statutory review without precedential baggage from an eighth such case. Moody's was right that the Court will wait long for another chance to resolve so much, so easily, at once.

Christianson's cursory misinterpretation followed by *Sinochem*'s omission **orphaned** 1631 as the Court self-contradicted on the powers of a court without jurisdiction and addressed only particular older statutes 1404 and 1406. As 1631 is a modern general reform provision, that dysfunctional result demands review and my case shows why.[35] **Simply put: respectfully, fix the contradiction and close the gap.** After decades, please apply *Sinochem* to the general provision and decisively say what transfer law is (*Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

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[35] J. J. Butler, *Venue Transfer When a Court Lacks Personal Jurisdiction: Where are Courts Going with 28 U.S.C. 1631?*, 40 Val. U. L. Rev. 789 (2006). Indeed, **where are courts going?** I cordially invite the Court to answer the question now.

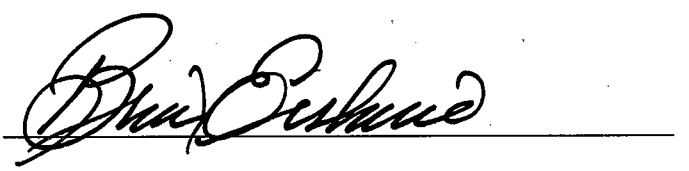
I'm a humble *pro se* plaintiff, but given *Ford*'s concurrences, maybe my case is a treasure trove with value for every Justice. Just as I briefed a N.M. state police major after the chief expressed germane safety concerns, I research and care about the Court's priorities, teamwork, and rule of law. Justice Stevens held that he always had something new to learn about the law. So too have I. Cambodians have a proverb that might apply to opposing counsel: loosely translated, "by fighting someone you teach him how to beat you." Maybe I can drive change: stays and certiorari are granted because **something major is wrong.**

Stay is extraordinary relief, but this case exceeds requirements and offers the Court an opportunity. After four decades without adequate review of a general reform provision, the confusion and injustice are plain. Just as the Court maybe didn't notice *Sinochem*'s contradiction of *Christianson* while omitting mention of 1631, the Court surely doesn't notice all the damaging effects of protracted lack of review – imagine the lost and rubbished claims; my case is only one example. As I petition Justice Kagan ultimately to amend once to cure claim (!) as should not have been necessary but for 1631's orphan status, I note that a horse named Rich Strike facing 80 to 1 odds charged and won the Kentucky Derby. I humbly **thank** Justice Kagan and the Court for the chance to petition. I am **fortunate** to have a case fit for the Court because of 1631 and I hope my petition worthy. I **know** neither Congress nor the Court wants general reforms

ignored or cases denied the merits on lame pretexts. As not a treasure hunter but a Harvard and Wharton educated finance professional who has lived and worked in Cambodia, Laos, Vietnam, Philippines, Haiti, etc., and who though an inexperienced litigator grasps contracts and has a case to present, I know that mayhem ensues without rule of law whether in the developing world or in Forrest Fenn's lawless, lethal quest. I would have petitioned sooner had I not changed jobs in early May 2022, but this petition for stay, including its tables of contents and authorities, which are not yet required, shows that **my later, separate certiorari petition will be ready to file fast and timely upon stay.**

For reasons shown herein, the appellate mandate should be stayed or recalled, or the pursuant district court judgment should be stayed, pending filing and disposition of a certiorari petition and any further proceedings in this Court.

Respectfully submitted this date of May 23, 2022



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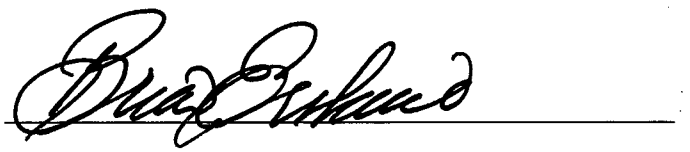
COMPLIANCE CERTIFICATE

This petition complies with S. Ct. Rules 10, 22, 23, 29, 33, other applicable Rules, 28 U.S.C. 1746 and 2101, and other applicable laws. A $300 cash filing fee pending certiorari is enclosed.

Respectfully submitted this date of May 23, 2022



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