22-6685

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2022

WARREN HAVENS, Petitioner

v.

ARNOLD LEONG, Respondent

and

SUSAN UECKER,
Alleged Receiver Agent of the Nominal-Entity Respondent
SKYBRIDGE SPECTRUM FOUNDATION
a Charitable Nonprofit and Seven Joint Venture LLCs

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATED COURT OF APPEAL FOR THE NINTH CIRCUIT
(CASE NO. 20-17481)

PETITION FOR A WRIT OF CERTIORARI

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of Nominal Respondents
Skybridge Spectrum Foundation, and
Seven Joint Venture Limited Liability
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QUESTIONS PRESENTED

A defendant sued in a State Court can timely remove the action to the local federal District Court where the party alleges federal question jurisdiction. Such removals are essential to operation of federal law supremacy under Article VI of the Constitution. One ground for removal is 28 U.S. Code §1442(a), that the defendant is a federal officer, or acting under that officer, or a holder of property derived from such officer. Under § 1447 (d) a remand of a §1442(a) removal "shall be reviewable by appeal or otherwise" where all grounds for removal will be reviewed (*BP P.L.C. v. ... Baltimore*, 141 S. Ct. 1532, 1537-38 (2021). The State Court defendants here include: (i) an individual (this petitioner), (ii) for-profit legal entities, (iii) a nonprofit entity granted by tax exemption by the I.R.S. under 26 U.S.C. 501(c)(3) providing charitable benefits Congress intended, and (iv) FCC licenses for maritime communications on ships. The questions are:

1. Can a District Court remand a State Court action timely removed under 28 U.S. Code § 1442 without allowing, after the notice of removal was challenged by a motion to remand, the removing party rights to defend the removal with facts and law not in the notice under principles in *BP P.L.C. v. ... Baltimore*, 141 S. Ct. 1532, 1537-38 (2021) on § 1442(a) removal, and *Dart Cherokee.... v. Owens,* 574 U.S. 81, 89 (2014) and *Arias v. Residence Inn...* 936 F.3d 920 (9th Cir. 2019) that allow such a defense?

2. Are the Courts of Appeal obligated to allow a timely appeal of District Court remands of removals under 28 U.S. Code § 1442 where the appellant is permitted to brief the appeal - or can the Court of Appeal summarily affirm the remand by *sua sponte* review of the District Court record, not stating facts found in support -- where the record shows the District Court barred rights under *Dart* and *Arias* (above)?

3. This court in *Grable & Sons... v. Darue...*, 545 U.S. 308 (2005): "Held: The national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal-question jurisdiction over the disputed issue on removal. Pp. 312-320."

Can a State Court action be timely removed to federal District Court where the plaintiff's claims on their face, and as carried out, reject the federal tax laws that govern a defendant nonprofit corporation to which the IRS granted tax-exemption under 26 U.S. Code § 501(c)(3) and rights to provide tax deductions to donors, under 28 USC §1442(a)(1) as "(a) A civil action... commenced in a State court... against or directed to... (1) The United States or any agency thereof or any officer (or any person acting under that officer)... in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for ... the collection of the revenue." ?

4. Under Article III of the Constitution, 28 USC § 1333 states that "The district courts shall have original jurisdiction, exclusive of the courts of the States, of... Any civil case of admiralty or maritime jurisdiction...."

Does § 1333 encompass, for timely removal purposes, FCC licenses under plaintiff claims in a State Court action specifically established by the FCC to provide radio communications from and to ships along the US coastlines and inland navigable waterways, with physical radio stations (transceivers, antennas, power systems, data loggers, etc.) on the ships and on land along the waterways?

Reasonably included under question 1, 3 and 4 above is the breadth and meaning of removal under § 1442 (a) which provides (underlining added): "A civil action ... commenced in a State court and that is against or directed to .... (1) any officer (or any person acting under that officer) of the United States or of any agency thereof... for or relating to any act under color of such office..." (2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.[....].

Reasonably included in question 2 is the broader question, never resolved by this court - when can a Court of Appeals decide a case under the long-standing "Gorilla Rule"? and should this "law of the jungle" at last be defined and outlawed? The Gorilla Rule is described in Ronald J. Offenkrantz and Aaron S. Lichter, "Sua Sponte Actions in the Appellate Courts: The "Gorilla Rule"

Revisited," 17 J. APP. PRAC. & PROCESS 113 (2016), citing *Singleton v. Wulff,* 28 U.S. 106 (1976) and *Exxon Shipping Co. v. Baker,* 554 U.S. 471, 487 (2008). About 35 years ago, Professor Robert Martineau provided a metaphor for *sua sponte* appellate decision making that still rings true. He noted that there's a "general rule" that appellate courts should not decide issues not raised by the parties. And then there's the exception, known as the "gorilla rule," "that is, unless they do." R. Martineau, Considering New Issues on Appeal: The General Rule and the Gorilla Rule, 40 Vand. L. Rev. 1023 (1987). That is because the 800-pound gorilla may sit wherever it wants. Id. fn. a. - that questions how reviewing these courts are governed by more than the law of the jungle.

Also reasonably included in question 2 is the broader question of whether a Court of Appeals can dismiss an appeal not stating any facts found in support which deprives the appellant of understanding and trust in administration of justice, in a court of last resort, and of a basis to seek reconsideration except on grounds of violation of due process and administration of justice?

Also reasonably included in question 1, 2, and 3 *under this case*, is the broader question of whether the U.S. Constitution's commerce, contracts and / or compact clauses are involved and create federal question jurisdiction in the removed case, where the plaintiff's self-stated "gravamen" claims were manifest in the State Court records bought into the removed case, of (i) written contracts involved between the plaintiff and defendants, (ii) taking over for use and liquidation FCC licenses defined in the licenses and FCC rules to have situs-location *in other States nationwide* for use in *inter*-state telecommunications commerce serving government and regulated business in those other States (under the Commerce Clause of the US Constitution), (iii) which the FCC accepted for the other States forming compacts among the States.

These questions arise under unofficial "woke law" involved. See Statement of the Case Introduction below.

PARTIES TO THE PROCEEDING AND PRO SE REQUEST

The parties and their contact information are listed in the caption page of this petition above. Herein, "I" means Warren Havens the petitioner here and in the case below. As a pro se petitioner, I request the following apply to this Petition- "less stringent standards than formal pleadings ... by lawyers" liberally construed in pro se party's favor. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner,* 404 U.S. 519, 520 (1972); *Erickson v. Pardus*, 127 S. Ct. 2197 (2007).

CORPORATE DISCLOSURE STATEMENT

This Petition is filed by Warren Havens, an individual, not by or on behalf of a nongovernmental corporation. Thus, there are no Rule 29(6) disclosures.

DIRECTLY RELATED PROCEEDINGS

Under Rule 14.1(b)(iii) as this Petitioner understands, there do not appear to be "directly related" proceedings that arise from the same trial court - here the District Court case under this petition. There are pending legal proceedings in courts and before the FCC that relate to said trial court case that do not appear "directly related" but involve the FCC licenses and some federal question issues in the District Court Case. Currently, these are pending or not final. (1) No. 22-1092. IN THE U.S. COURT OF APPEALS, D.C. Cir. *In re WARREN HAVENS v. THE FCC,* PETITION FOR A WRIT OF MANDAMUS. (2) No. 22-1137. IN THE U.S. COURT OF APPEALS, D.C. Cir. *WARREN HAVENS v. THE FCC,* NOTICE OF APPEAL AND REQUEST FOR REVIEW. (3)Before the FCC. *In the Matter of Verde Systems LLC, alleged Assignor, Arnold Leong Et Al Real Parties in Interest and De Facto Control, WEC Business Services LLC, alleged Assignee....*- Application For Assignments of Two Geographic AMTS [maritime] licenses outside California [and other matters]. App. No. 0010058157 filed June 15, 2022, and later

amended. [The issues pertain to all FCC licenses that the alleged valid receiver, Uecker alleges to control for the de facto controller and real party, Leong.]

TABLE OF CONTENTS*

(In the Statement of the Case, the Appendixes are listed in chronological order.)

* (The two Volumes are in one printed document, with sequential page numbers, and with prominently marked "divider sheets" between each Appendix. I can't use PDF bookmarks for these, and the Contents Sections above, since as a pro se party I am filing in hard copy as required.)

VOLUME ONE

OPINIONS AND ORDERS SOUGHT TO BE REVIEWED

VOLUME TWO

OTHER MATERIAL PETITIONER BELIEVES IS ESSENTIAL TO UNDERSTAND THE PETITION

PROOF OF SERVICE

(Separately Submitted)

TABLE OF AUTHORITIES and DEFINED TERMS

[The below Sections will be completed, and page number added for each authority, in a revised copy if permitted by the clerk.]

U.S. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

Exemption from tax on corporations...[....]

(c) List of exempt organizations. The following organizations are referred to in subsection (a): [....]

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

28 U.S. Code § 1331 (federal question) 6

28 U.S. Code § 1333 (Admiralty Maritime Cases) ..... i, ii, iv, 3, 6, 8, 20

And FCC "AMTS" maritime licenses and rules.

28 U.S. Code § 1442(a) (1) and (2)
(Federal officers or agencies sued or prosecuted) ..... i, ii, 5, 6, 13

Federal officers or agencies sued or prosecuted.

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue. (2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

47 Code of Federal Regulations, subpart 80 with FCC rules on "AMTS" maritime licenses and services ..... same pp as under § 1333 above

These rules include the following (underlining added):

47 CFR Part 80 - STATIONS IN THE MARITIME SERVICES

§ 80.5 Definitions.

[....]

Automated maritime telecommunications system (AMTS). An automatic maritime communications system.

§ 80.123 Service to stations on land.

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

(a) The public coast station licensee must provide each associated land station with a letter, which shall be presented to authorized FCC representatives upon request, acknowledging that the land station may operate under the authority of the associated public coast station's license:

(b) Each public coast station serving stations on land must afford priority to marine-originating communications through any appropriate electrical or mechanical means.

(c) [....]

(d) [....]

(e) [....]

(f) Land stations may only communicate with public coast stations and must remain within radio range of associated public coast stations; and,

(g) The land station must cease operation immediately upon written notice by the Commission to the associated public coast station that the land station is causing harmful interference to marine [maritime] communications.

§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).

(a) A separate Form 601 is not required for each coast station in a system. However, except as provided in § 80.385(b) and paragraph (b) of this section, the applicant must provide the technical characteristics for each proposed coast station, including transmitter type, operating frequencies, emissions, transmitter output power, antenna arrangement, and location.

[....]

§ 80.453 Scope of communications.

[AMTS - see above, and other] Public coast stations provide ship/shore radiotelephone and radiotelegraph services.

(a) Public coast stations are authorized to communicate:

(1) With any ship or aircraft station operating in the maritime mobile service, for the transmission or reception of safety communication;

(2) With any land station to exchange safety communications to or from a ship or aircraft station;

(3) With Government and non-Government ship and aircraft stations to exchange public correspondence;

(4) With units on land in accordance with § 80.123.

(b) Public coast stations are authorized to communicate with a designated station at a remote fixed location where other communication facilities are not available.

(c) Public coast stations are authorized to transmit meteorological and navigational information of benefit to mariners.

(d) Each public coast telegraphy station is authorized to communicate with other public coast telegraphy stations to exchange message traffic destined to or originated at mobile stations:

(1) To exchange operating signals, brief service messages or safety communication;

(2) To exchange message traffic destined for a mobile station when the coast station initially concerned is unable to communicate directly with the mobile station;

(3) In the Great Lakes region, to exchange message traffic originated at a mobile station when the use of available point-to-point communication facilities would delay the delivery of such message traffic;

(4) Utilization of radiotelegraphy must not incur additional charges or replace available point-to-point communication facilities;

(5) [....]

(6) Harmful interference must not be caused to communication between mobile stations and coast stations or between mobile stations.

47 U.S. Code ("Telecommunications") §13

§13. Violations; punishment; action for damages

Any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner herein directed [see preceding sections in 47 USC], or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by or perform and carry out within a reasonable time the order or orders of the Federal Communications Commission, shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum of not exceeding $1,000, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

Editorial Notes
Codification

Words "circuit or" which preceded "district court" were omitted in view of the abolition of the circuit courts and the transfer of their jurisdiction to the district courts by act Mar. 3, 1911.

Statutory Notes and Related Subsidiaries
Transfer of Functions

Duties, powers, and functions under this section relating to operation of telegraph lines by railroad and telegraph lines granted Government aid in

construction of their lines imposed on and vested in Federal Communications Commission by act June 19, 1934. See section 601 of this title.

United States Code Title 47 - Telecommunications
Chapter 1- Telegraphs

1-8 Repealed or Omitted.

9. Subsidized companies required to construct and operate lines.

10. Equal facilities to connecting lines; discrimination in rates.

11. Powers of Federal Communications Commission.

12. Interference with liens of United States.

13. Violations; punishment; action for damages.

(Secs. 9-12 are grounds for 47 USC Sec. 13, quoted above.)

FEDERAL CASES

SECTION ON "PRO SE REQUEST"

OTHER AUTHORITIES

DEFINED TERMS

"APP" means an Appendix hereto, in the Index of Appendixes. Sometimes the spelled out word Appendix(es) is used.

"APPes" means Appendixes.

"APP p. [ ]" means the page number in the consolidated Appendixes at the bottom of each page, ending with page 354.

"California State Court" or "State Court" means the California Superior Court, Alameda County (part of the "Bay Area") with jurisdiction under California sovereign authority, not extending to other State's sovereign authority (and subject to other authority limitations in legal actions).

"FCC" means the Federal Communication Commission.

"Leong" means the named plaintiff in the subject California State Court (defined above) actions described, in case no. 2002-070640, *Leong v Havens et al. (Skybridge Spectrum Foundation, and related LLCs)*.

"Uecker" means the State Court receiver Leong proposed, obtained, and maintained in the Leong v Havens case (see above) in a first pendente lite receiverships, and a second alleged-judgement receivership. Uecker alleges

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[*] At: https://scholarship.law.upenn.edu/penn_law_review/vol123/iss6/2/

to be an officer of the State Court asserting, somehow, nationwide jurisdiction over the FCC licenses for interstate commerce with situs-location defined by the FCC in all States but for California (except a nominal percentage).

"PTC220 LLC" is a limited liability company composed of the nation's major freight railroad, operated for profit, and subject to 47 USC that precedes and is related to the Federal Communications Act codified in 47 USC Sec. 151 et seq. Leong, Uecker and the California State Court (defined above), in their filings and actions, assert that the FCC favors sales of the subject FCC licenses to these railroads.

"TOA" means the Table of Authorities above.

Other terms and abbreviated are defined in the Petition text.

PETITION FOR A WRIT OF CERTIORARI

1. OPINIONS AND DECISIONS BELOW

This Appendixes (APPs) list *below* is in chorological order. The two-volume list in the *table of contents (*and at the *end* below) are in an order commonly presented (not all chronological) as I understand. *Volume One* includes the 9th Cir. Orders for review, and the District Court appealed Order. Volume Two has other documents petitioner believes is essential to understand the Petition. The list below are *all* documents in Volumes One and Two. Below, "9th" means in the subject Ninth Circuit appeal and "DC" means in the underlying District Court removal case. The Orders listed are not published. Some have reasons (some kind of "opinion") and some do not.

Appendix	Date filed	Court and Document informal name.
F	2020. 11 17	DC 08091. ecf 1. Notice of Removal (1st) (1442 fed officer agent, property...), FCA-FCC preemption, admiralty...)
B	2020. 12 21	DC 08091. ecf 38. Order granting Motion to Remand
G	2020. 12 21	DC 08091. ecf 44. Motion to Stay remand on appeal (cites 1442, Baltimore etc)
H	2020. 12 25	9th. ecf 3.Copy of NOA with initial issues on appeal
I	2020. 12 28	DC 08091. ecf 47. ORDER Denying Motions to Stay
C	2021. 09 03	9th. ecf 21. (1st) Order to Show Cause (OSC)
J	2021. 10 11	9th ecf 25. Response to (1st) OSC
D	2022. 01 18	9th. ecf 34. Discharge of (1st) OSC with 2nd OSC
K	2022. 02 08	9th. ecf 35-1 (and 2) Response to 2nd OSC and request for clarification
E	2022. 03 16	9th. ecf 37. Summary Affirmance of DC remand order
L	2022. 03 30	9th ecf 40. petition for rehearing
M	2022. 04 14	9th ecf 42, req abeyance etc. re FCC 2022 taking jurisdiction, dec ruling, etc.
A	2022. 06 27	9th ecf 43. Deny (no reason given) petition rehearing deemed motion recon

2. BASIS OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S. Code § 1254(1). This is timely filed under the extension of time granted by Justice Kagan and thereafter time for corrections provided by the clerk.

3. U.S. CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS IN THE CASE

These are in the Table of Authorities ("TOA") above.

4. INTRODUCTION AND STATEMENT OF THE CASE

The record in this 9th Cir. Case (the Appendixes hereto and other filings) explain the following. This Statement, section 4, includes some reasons to grant the Petition since that is more efficient than giving those reasons after repeating some Statement components in the Reasons section 5.

(i) INTRODUCTION. In this removal remand case, the 9th Cir. and its underlying District Court and its underlying California State Court (Alameda County) (with the removed action that was remanded) are all in the famous "Bay Area" of the "peoples' republic" of California, that asserts dominance worldwide (on culture, technology and "apps," etc.) that each apply artificial "woke" law and likes to evade real rights under the federal constitution and statutes. This woke law is whatever judges and favored parties and attorneys want it to be. The "Gorilla Rule" that applies to the 9th Cir. actions here is a ramification of this woke law.

The questions posed are based on these matters: The subject removed-case remand order was based on my initially filed Notice of Removal (APP F, APP p. 30 etc.) and not my Amended Notice of Removal (in APP K, APP p 205 etc.) in which, in a timely amendment, I provided additional facts and law on why the removal posed federal questions and jurisdiction and was also timely. The added amended text was also allowed under *Dart* (above, by this Supreme Court) and *Arias* (above, by the 9th Cir.), as I specifically asserted and explained therein. I also asserted

Dart-Arias rights in the initially filed Notice of Removal also (APP pp. 33-34). The district court simply chose to avoid *Dart* and *Arias* rights, which are threshold due process rights, which is invalid, as both *Dart* and *Arias* are *stare decisis*. The 9th Cir. *also* simply chose to avoid the *Dart-Arias* rights and issues I posed repeatedly (see APPes J, K, L) to uphold the remand. While the 9th Cir. also avoided directedly addressing my arguments on appealability based on *Baltimore* (above, by this Court), the fact that the 9th Cir. allowed the appeal to proceed through two orders to show cause and my responses thereto, not finding lack of appealability, concedes that the remand order was appealable under *Baltimore*,1 and that, as *Baltimore* makes clear, all grounds for removal I asserted would be reviewed in the appeal. Whether or not any of said grounds supported federal question jurisdiction and made the remand invalid (on that basis, as opposed to procedural invalidity for violation of *Dart- Arias* rights), cannot be answered unless and until said *Dart-Arias* rights are allowed and exercised, in which I would present facts and related law demonstrating each ground was valid and timely.

1. THE FCC LICENSES AND LICENSING ACTIONS, AND THE PLAINTIFF'S STATE COURT CLAIMS AND ACTIONS

The Case involves, as the material assets, nationwide FCC licenses for interstate telecommunications for maritime and land transportation, energy, environment protection, and other critical purposes valued, by both sides' experts in the 9-fiture to 10-figure range even prior to substantial deployment. The licenses were obtained over several decades, over 5,000 in total.

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1 *Baltimore*, decided May 17, 2021, is retroactively applied including to my amended notice of removal filed 10-10-2020 and the initial notice of removal. See *Harper v. Virginia Dep't of Taxation,* 509 U.S. 86 (1993) ("When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.")

I, petitioner here, spent decades in forming, investing in, and managing these FCC licenses largely via a Delaware nonprofit operating charitable foundation, Skybridge Spectrum Foundation, a nonprofit IRS tax exempt corporation under 26 USC § 501 (c)(3) and seven supporting for-profit Delaware LLCs. Virtually all these FCC licenses were maintained in the past decade to this day due to actions of Skybridge under certain FCC rules. The plaintiff in the State Court action at issue, had and has no ownership in Skybridge, nor does any party under § 501 (c)(3). My initial and amended notice of removal (See Statement, Introduction section above) extensively asserted Skybridge and the illegal takeover of Skybridge and its nationwide charitable-trust asserts leally delimited to interstate commerce, to assist government entities and purposes, by the plaintiff Leong, his chosen court receiver, Uecker, and the California receivership state court.

However, the plaintiff alleged to have an "oral partnership agreement" with me, the person who obtained the licenses and under the written contracts had control, made in year 1998, that gives him ownership and control in all FCC licenses I had obtained or may obtain including by Skybridge, commenced by me for charitable purposes in 2006. He alleged that the licenses were not being used as he believed the FCC favored and he wanted- not as the FCC rule and rulemaking orders established, but to sell off to certain large companies that would use the licenses for other things, resulting in payouts to him.

In year 2015, the plaintiff asserted the licenses were put in danger by me, Skybridge and the related limited liability companies ("LLC's) in a hearing at the FCC against third party competitors against whom the FCC had found evidence to be in violation of its rules. The FCC (the full Commission) invited me and these companies to co-prosecute the accursed wrongdoers at the formal hearing along with the FCC hearing trial staff. We won over 90% of the case at the hearing, shown in decisions stating the relevant numbers issued by the administrative law judge

and FCC licensing staff. However, the FCC administrative law judge ("ALJ") and some of the FCC trial staff wanted to settle the case and attempted that several times over years. I objected and opposed those attempts as against the evidence and relevant FCC rules and case law, and against the interests of Skybridge, the supporting LLCs and lawful owners of the LLCs.

After the trial in the hearing case, where only I and Skybridge and the LCCs put on the case for the Commission, with legal counsel (the FCC trial staff had switched sides, which was unheard of, in accord with its preference to "settle" and under alleged confidential arrangements), the ALJ issued an interlocutory order, referring issues to the Commission to decide, if actions by me, Skybridge and the LLCs and their attorney interfered with the hearing, caused delay, or submitted an improper motion for summary decision the ALJ believed he had orally barred.

The plaintiff in the California State Court used the ALJ's interlocutory order to allege an emergency need for the receivership pendente lite on the theory that that the State Court and its receiver would take the role of the Commission, resolve the ALJ interlocutory order issues, and implement the plaintiff's alleged oral partnership agreement- to sell off the interstate-commerce FCC licenses at distress sale prices, primarily to nationwide freight rail companies (under a LLC called PTC220 LLC) running huge profits, which the receiver and plaintiff asserted the FCC staff should like and favor, for its indicated political purposes, and suspend, dissolve and terminate Skybridge and the supporting LLCs. Nothing in FCC rules or the Communication Act supports any such FCC staff liking. Rather, it is anti-competitive, against the 1996 Telecom Reform Act, and against 47 USC (Telecommunications) commences with sections, statutes, that impose on these railroads that operate telegraphy (in the current day, this includes most wireless) legal obligations to serve federal government purposes and the public, due to the government providing to the railroads nationwide access to federal lands to build

the railroads nationwide. See 47 USC Sec. 13 and its preceding sections (in the Table of Authorizes above).2 These railroad operate at huge profits, founded on these government land use grants. See next footnote.3

The California Court judge, Frank Roesch, issued the *nationwide*-scope receivership pendente lite order controlling *interstate* commerce as plaintiff Arnold Leong sought (using his draft order), appointing Susan Uecker as receiver, not stating any reasons, and in a later order *sua sponte* instructed that no one knew his reasons. The plaintiff and receivership real party, Leong, vehemently asserted that most all of the FCC licenses, and all that were marketable, *were automatically terminated* years prior based on two FCC rules; however, under Leong and Uecker control, they could launder and selloff to PTC220 LLC (freight railroads- see Defined Terms above and preceding two footnotes), and other large commercial companies that FCC staff liked, these terminated licenses, if the judge approved which he did, again with no reasons given.

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2 See, e.g., *U.S. v. Union Pacific Railway,* 160 U.S. 1, 2 (1895) (underlining added):

> The provision in the act of August 7, 1888, c. 772, 25 Stat. 382, requiring all railroad and telegraph companies to which the United States have granted subsidies, to "forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate, for railroad, governmental, commercial and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants," is a valid exercise of the power reserved by Congress.

3 From New York Times at https://www.nytimes.com/2022/09/16/opinion/railroad-strike-labor-unions.html (underlining added) (these are the PTC220 LCC members):

> What makes these conditions worse is that they come...when rail carriers are posting record profits as a result of demand during the pandemic... NBC News reports, BNSF had a net income of nearly $6 billion in 2021, up 16 percent from the previous year. Union Pacific... had a net income of $6.5 billion, which was also up 16 percent from the previous year. Other freight companies, like CSX Transportation and Norfolk Southern Railway, have posted large gains as well. But this windfall has not stopped the carriers from trying to wring as much labor as possible out of a steadily shrinking work force.

The plaintiff's claims on their face were claims that only the FCC had authority and competence to decide: the ownership and control of FCC licenses and applications for licenses, permitted uses of the licenses, the FCC political and other "likes" for holders and users of the licenses, how to decide upon the ALJ interlocutory order, and whether the plaintiff violated FCC rules and required candor in not submitted to the FCC for its decision, the plaintiff's claims founded on the Communications Act, 47 USC §151 et seq. and FCC rules.

The receivership caused, under FCC rules and orders, loss of most of these FCC licenses, and devalued the remaining to a minor fraction of fair market value. This is independent of the Leong-Uecker asserted and California Court accepted vehement assertion that these FCC licenses were terminated. The FCC assiduously turns a blind eye to this assertion, to allow sales to highly influential freight railroads and others with strong lobbying in Congress and influence at the FCC.

In later 2020, new actions were commenced in the State Court receivership case, not earlier served on or reveled to me or in the docket of the case, that provided grounds for removal of the new State Court action to the local District Court. See initial and amended Noticed of Removal (see Introduction above).

2. THE REASONS I AM PRO SE

While these reasons are not directly among questions posed, indirectly they are involved, especially the IRS violations regarding Skybridge which, by itself, is a federal question supporting removal (see above and below). I was pro se in this 9th Cir. Case and am pro se here due to decisions of the California State Court receiver and receivership judge that kept and used up solely for his personal inurement and profit of the receivership plaintiff, cash due to me, a multi-million dollar sum, for (i) services I provided to the FCC licensee companies placed into the receivership, as President and in other roles, (ii) contract indemnity sums due to me, (iii) distributions due to me, and (iv) other sums. The receivership companies put into

the receivership, whose assets were converted for the private profit of the plaintiff, included (and still include) Skybridge Spectrum Foundation, a nonprofit charitable foundation serving federal and state governments and critical infrastructure and environment-protection nationwide, with unique FCC licenses: this was (and still is) flagrantly in violation of Section 501(c)(3) of the Internal Revenue Code. These decisions cut off my economic rights and results, disabling me from the financial means to pay for legal counsel in the complex compounded litigation involved. I act pro se to defend the public interest that is (i) the sole ultimate purpose of these special FCC licenses (stated in the Federal Communications Act and implementing FCC rules), and (ii) the charter and sole lawfully permitted purpose of this Skybridge Spectrum Foundation (see above and below), under the IRS grant of tax exemption under Sec. 501(c)(3).

3. THE STATE COURT ACTION REMOVAL, GROUNDS FOR REMOVAL INCLUDING 28 USC § 1442(A) AND REMAND

REMOVAL. APP F (at APP p.31) is the Notice of Removal. As grounds for removal under federal question jurisdiction it alleges as noted in the caption:

> [i] 28 U.S. Code§ 1331- federal question. [ii] 28 U.S.C. § 1442. Federal officer-agent; with 28 U.S. Code § 1333 Admiralty Maritime Cases; District Courts Exclusive Jurisdiction.; [iii] and with 47 U.S.C. §§ 301-313 and other sections of the Federal Communications Act, and pursuant thereto, FCC rules for AMTS maritime licenses, 47 C.F.R. subpart 80.

REMAND. APP B (at APP p. 11) is the District Court order granting the motion for remand. The District Court does not mention and did not allow the rights I asserted in the Notice of removal, and in subsequent filings, under *Dart Cherokee.... v. Owens*, 574 U.S. 81, 89 (2014) and *Arias v. Residence...* 936 F.3d 920 (9th Cir. 2019) to defend with factual evidence and legal arguments the removal, where the Notice of Removal is sufficient but is not itself the case for removal.

APP G (at APP p. 110) is my motion for a stay on appeal of the remand

order, in which I again asserted *Dart* and *Arias* rights, and that withholding these makes the remand order invalid, and I had a meritorious appeal (I had just filed the Notice of Appeal).

APP I (at APP p. 155) is the District Court denial of my stay motion. No reason is given (including not addressing my asserted *Dart* and *Arias* rights).

4. APPEAL TO THE NINTH CIRCUIT

APP A (at APP at p. 6) is the final decision of the 9th Cir., filed on 06.27.2022 denying my petition for rehearing the court deemed to be a motion or reconsideration. After this, I filed a motion for an extension of time with Justice Kagan to file this Petition which was granted. (This Petition it timely: see the Jurisdiction section above.) APP H (at APP at p. 148) is a copy of my timely Notice of Appeal with initial statement of some issues on appeal, filed in the 9th Cir. appeal, for a reason I gave shown in the docket. APP C (at APP p. 18) is the 9th Cir. first order to show cause ("OSC") why the appeal should not be dismissed. APP J (at APP p. 158) is my timely response to this first OSC. APP D (at APP p. 22) is the 9th Cir. order that I discharged the first OSC with a second OSC. APP K (at APP p. 171) is my timely response to the second OSC and request to clarify (why a second OSC is needed, etc.) APP E (at APP p. 26) is the 9th Cir. summary affirmance of the District Court remand order. It does not deal with the issues and law I raised in my filings leading to this decision, including rights under *Dart* and *Arias* (above). APP L (at APP p. 250) is my petition for rehearing of the summary affirmance. This was denied for no reason given in APP A (see above). APP M (at APP p. 280) is my request to hold the appeal case in abeyance and for alternative relief, filed before the 9th Cir.'s final decision in APP A. It is based on the FCC taking jurisdiction over the State Court plaintiff's principal claims and my participation in the ongoing FCC proceedings. This apparently did not affect the 9th Cir. final decision, APP A.

5. REASONS TO GRANT THE WRIT

The main reason is in section 3, Statement of the Case, Introduction. I refer to that here. In addition, many of these reasons especially on Questions Posed 1 and 2, are more fully explained in my filings in the APPes summarized in the Statement above and have their own summaries. I refer principally to APPes J, K, and L. Since I do not use up page limit in this petition, I ask that these APPes be reviewed for these Reasons to Grant by this reference and incorporation. That review will also more effectively show what was before the 9th Cir. when it ruled, (i) initially on summary affirmance, not addressing the decisional issues and authorities I raised (and no other party raised any), thus making a *sua sponte* decision, (ii) and thereafter in denial, with no reason given, of my request for rehearing or reconsideration. That prevented me from submitting an opening brief on appeal, and denied the appeal as a matter of right in this case, violating the federal statues and cases, including case holdings by this Court, that apply which I presented in these 9th Cir. briefs, and present herein.

The Questions Posed above are important for this court to address for the national importance indicated, to begin with, by the content of each.

There is confusion and lack of consistency among the Circuit Courts on Questions 1 and 2 that only this court can resolve. In addition, there is a compelling need for guidance to the lower courts on Questions 3 and 4 of nationwide importance for nationwide federal tax and maritime communications.

This case provides an excellent vehicle to address these Questions due to the clarity and strength each is posed in this case (e.g. see the Case Statement Introduction above), and the nationwide scope of this case as to the assets involved, the nationwide FCC interstate-commerce licenses, and since under Questions 1 and 2, the 9th Cir. has more cases with the overarching principle involved, the "Gorilla Rule," verses all other Circuit Courts combined. See the Table below.

The fact that these nationwide federal government, FCC, licenses were in large part held by Skybridge Spectrum Foundation, a nonprofit under federal law, Section 501(c)(3) of the Internal Revenue Service, to serve federal agencies and purposes, adds to the salient nature of this case being an excellent vehicle.

The "Gorilla Rule" is first described in the Questions Posed section above.

A table on Gorilla Rule cases, and related-law cases, is presented below.

Regarding Questions 1 and 2. Justice Kagan at the oral argument on *Dart Cherokee v Owens* stated the essence of what I asserted multiple times in the District Court removal (see Case Statement above and the refenced APPes), and thereafter multiple times with more force and detail in the 9th Cir. (see Case Statement above and the referenced APPes), as to the threshold rights under *Dart* and *Arias*, above, which (i) made the remand clearly invalid, (ii) made the appeal of the remand order clearly valid and (iii) made the 9th Cir. *sua sponte* summary affirmance of the remand order clearly invalid -- which each decision by these courts avoided, and clearly meant to evade. From the transcript of the Oral Argument on Oct. 07, 2014 in *Dart Cherokee Basin Operating Company LLC v. Brandon W. Owens*... https://apps.oyez.org/player/#/roberts6/oral_argument_audio/23265. The below is from p. 36 of my transcript copy, approximately at 75% into the hearing.

> **Elena Kagan**
>
> I'm sorry.
>
> I just --you said if it doesn't come in at the time of removal, it comes in at the time of remand.
>
> But there's an alternate position, which is the notice of removal is just the allegation, if the plaintiff wants to contest that the plaintiff can contest that and then the defendant has to come forward with something because the defendant has the burden of proof.
>
> Likewise, if the court thinks that the allegation is not appropriate, the court can *sua sponte* say, you know, you have to show me more because I'm not sure I have jurisdiction over this.

> But either way, it all happens in the Federal court after the notice of removal, which is merely an allegation, is filed.
>
> And that makes perfect sense.
>
> It means that most allegations will just be accepted as is and the only ones that everybody will have to come forward with evidence are when there's some reason to contest it, when either the plaintiff or the court as some serious doubt about it.
>
> **Rex A. Sharp**
>
> [....] [Underlining added.]

The holdings in *Dart* and *Arias* follow Justice Kagan's comments above, and while *Dart* and *Arias* "makes perfect sense" this case shows that the 9th Cir. and its overseen District Courts do not follow *Dart* and *Arias* and will not even respond to a party's clear and repeated augments under these *stare-decisis* precedents to be permitted threshold due process in a removal case and in an appeal of an appealable remand decision in a removal case.

The 9th Cir. in this case (i) has thus invoked the Gorilla Rule, (ii) added to that its *sua sponte* interposing of issues not raised by any party and then decided the appeal based on its own issues (it acted as a party and the judge) in violation of the party presentation principle in *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020) unanimously reversing the same 9th Cir. two years ago, and (iii) failed to state what facts it found in the District Court removal case that supported the summary affirmance of the remand order, and did not state any reason (which commenced with facts found) and thus also violates the due proceeds rights to a "some kind of a hearing" as Judge Friendly described, discussed below.

The Umbrella Gorilla Rule

About 35 years ago, Professor Robert Martineau provided a metaphor for *sua sponte* appellate decision making that still rings true. He noted that there's a "general rule" that appellate courts should not decide issues not raised by the parties. And then there's the exception, known as the "gorilla rule," "that is, unless

they do." R. Martineau, Considering New Issues on Appeal: *The General Rule and the Gorilla Rule,* 40 Vand. L. Rev. 1023 (1987). That is because the 800-pound gorilla may sit wherever it wants. Id. fn. a. The image of the gorilla sitting wherever its wants makes a point: it calls for a discussion of how reviewing courts are governed by more than the law of the jungle.

In this case, despite the four lines of authority set by this Supreme Court, cited in the four components below, the 9th Cir. "sit[s] wherever it wants" as the jungle law gorilla. Its jungle law and the facts found need not be explained. No person has a right of appeal to the Supreme Court which protects the gorilla law.

This Supreme Court should set limits of appellate gorilla jungle law. This case is an outstanding vehicle, and the 9th Cir. is the best circuit for this purpose. This issue is central to due process under the 5th and 14th Amendments.4

The Bill of Rights defend against 'Gorilla' rules in all courts. 5

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4 Over 90 years ago, in *Brinkerhoff-Faris Trust & Saving Co. v. Hill,* 281 U.S. 673 (1930), this Supreme Court ruled that the Missouri Supreme Court had violated due process by *sua sponte* overruling its own precedent without permitting the affected party an opportunity to be heard. Justice Brandeis stated: "Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense—whether it has had an opportunity to present its case and be heard in its support." Id. at 681.

5 The following also stands against the 9th Circuit's 'Gorilla' ruling in my case. From *Joint Anti-Fascist Committee v. McGrath,* 341 U.S. 123, 179-80 (1951), in the concurrence by Mr. Justice Douglas (underlining and text in brackets added):

> It is not without significance that most of the provisions of the Bill of Rights are procedural. It is procedure that spells much of the difference between rule by law and [the Gorilla] rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law. The case of Dorothy Bailey is an excellent illustration of how dangerous a departure from our constitutional standards can be. She was charged with being a Communist and with being active in a Communist "front organization."...
>
> Counsel for Dorothy Bailey asked that their names be disclosed. That was refused. Counsel for Dorothy Bailey asked if these informants had been active in a certain union. The chairman replied, "I haven't the slightest

The following is derived from the *pre-Sineneng Smith* analysis and case authorities in Ronald J. Offenkrantz and Aaron S. Lichter, Sua Sponte Actions in the Appellate Courts: The "Gorilla Rule" Revisited, 17 J. APP. PRAC. & PROCESS 113 (2016) (underlining added, footnotes deleted, non-substantive edits not shown):6

> In *Singleton v. Wulff,* 28 U.S. 106 (1976) the Supreme Court addressed ... when new issues could be raised and decided in an appellate court, first noting that "[i]t is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below."
>
> However, the Court then acknowledged that "[t]he matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases," and that a court may be "justified in resolving an issue not passed on below, as where the proper resolution is beyond any doubt or where 'injustice might otherwise result.'"29
>
> Within the space of two paragraphs, the Supreme Court therefore announced its general rule and abrogated it in favor of the Gorilla Rule: An issue can be raised and decided for the first time on appeal if the answer is beyond doubt, or—reflecting the influence of equity—an "injustice might otherwise result."30
>
> And the Court recently upheld the Gorilla Rule in *Exxon Shipping Co. v. Baker,* 31 stating that "[w]e have previously stopped short of stating a general principle to contain appellate courts' discretion . . ., and we exercise the same restraint today."32

The just stated analysis of the Supreme Court's implementation of the Gorilla Rule, over a general rule that could constrain it, is from the quoted *2016* article, before the *2020 Sineneng Smith* unanimous emphatic decision of the Supreme Court reversing the 9th Cir., which in my view calls for this Supreme Court to reconsider and revise the Gorilla Rule with practical definitions and limits. This case I present is an excellent vehicle for that, but in addition, the Gorilla Rule

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knowledge...." Counsel for Dorothy Bailey asked if those statements of the informants were under oath. The chairman answered, "I don't think so." The "Gorilla just sits where it likes...and just says what it wants."

6 At: https://lawrepository.ualr.edu/appellatepracticeprocess/vol17/iss1/5

itself allows the Supreme Court to go beyond issues in this case, to any extent that is useful, for this purpose. The above article, "The 'Gorilla Rule' Revisited," gives examples of use by this Supreme Court of the Gorilla Rule in its own decisions.

Currently, citizens and groups on both the "right" and the "left" in the nation have expressed serious and increasing concerns regarding the matters of federal and state court's impartiality and perceived partiality in implementation of the rule of law, which as noted above is founded on due process. Chief Justice Roberts, Justice Kagan, and other Justices also expressed their concerns on these matters.

The undefined and almost unlimited "Gorilla Rule" -- as it stands in this Court's rulings -- which appears to be the unstated basis of the 9th Cir. decisions in my case, is an affront to due process of law and undermines belief in the rule of law that is already shaken in the nation.

The Gorilla Rule Components in this case. These are the following.

(1) Individual and corporate-entity defendants that remove state court cases or actions to federal courts under grounds alleged briefly in the notice of removal, that a plaintiff challenges in a motion to remand, have due process rights to develop and present facts and related law in defense of the removal, under *Dart Cherokee Basin Operating Co., LLC v. Owens,* 574 U.S. 81, 89 (2014) ("*Dart*"), and the 9th Cir. decision *Arias v. Residence Inn*...936 F.3d 920 (9th Cir. 2019) ("*Arias*") which was based on *Dart*, before a decision on the motion to remand.

The 9th Cir. in my case upholds the District Court's refusal of *Dart* and *Arias* due process rights. *First* see the Statement Introduction section above.

(2) Individual and corporate-entity defendants that remove state court cases or actions to federal courts under grounds that include 28 U.S. Code § 1442 [7]

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7 28 U.S. Code § 1442 states in relevant part:

> Federal officers or agencies sued or prosecuted. (a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed

which have rights to appeal a remand decision under *BP P.L.C. v. Mayor & City Council of Baltimore,* 141 S. Ct. 1532, 1537-38 (2021) and cases confirmed therein ("*Baltimore*"). Rights to an appeal mean rights to submit an appellant opening brief, at least. The 9th Cir. here avoided and refused appeal rights under *Baltimore.*

(3) In civil cases generally, the federal appeal courts cannot violate the "party presentation principle" by prohibiting and replacing an appellant opening brief (and an opposition or response thereto, and a reply to the opposition) with judges personal *sua sponte* review of the record of the case below, finding facts and issues not explained, ruling on those in conclusory language, and dismissing the appeal before briefing. This creates an extreme blocking of the party presentation principle and function this Court emphatically decided in *United States v. Sineneng-Smit*h, 140 S. Ct. 1575 (2020) ("*Sineneng-Smith*) unanimously reversing the same 9th Cir. only two years ago.8

(4) The above *Sineneng-Smith* violations are also violations of threshold

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> to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending: (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

8 The 9th Circuit explains its views on this decision in *Does v. Wasden*, 982 F.3d 784, 793 (9th Cir. 2020):

> As laid out above, the circumstances here are substantially different from those in *Sineneng-Smith*. Rather than "takeover" the appeal, *id.* at 1581, we have merely "identif[ied] and appl[ied] the proper construction of governing law," *Kamen* , 500 U.S. at 99, 111 S.Ct. 1711.... but the Supreme Court has reminded us that "[t]he party presentation principle is supple, not ironclad." *Sineneng-Smith*, 140 S. Ct. at 1579.

In my case here, however, the 9th Circuit *did* "takeover the appeal" and it was not "supple" but by a sledgehammer, and that was hidden (not explained as to facts found and relevant law).

due process of law under the Fifth and Fourteenth Amendments because due process requires "some kind of a hearing" not possible where the court acts sua sponte, effectively as a party (with *bias*), to set up issues it choses, and then dispose of the case on those, evading the actual *party presentations*. See Henry J. Friendly, "*Some Kind of Hearing,*" in University of Pennsylvania Law Review Vol. 123: at 1267. (In sum, a due process hearing requires, among other things (1) An *unbiased* tribunal. (2) Notice of the proposed action *and the grounds* asserted for it. (3) *Opportunity to present reasons* why the proposed action should not be taken. (4) The party's right to present evidence... (5) The right to know opposing party's evidence... (6) Decision based exclusively on evidence presented *by parties.* (7) Opportunity to be represented by counsel. (8) Requirement that the tribunal prepare a record of the parties' evidence presented.(9) Requirement that the tribunal prepare *written findings of fact and reasons* for its decision after the above *party presentations* to the unbiased authority are completed.

I submit that an appeal as a matter of right, as in the subject 9th Cir. case (and the 9th Cir. did not deny that in this case), is subject to these well-established and generally accepted Judge Friendly due process requirements-- especially where the main issue on appeal is, as I alleged and showed, the deprivation of evidentiary hearing rights in the subject removal cases in the District Court under *Arias*, following *Dart Cherokee* which rights I specifically asked for in the District Court but was denied.

(5) In civil cases, this Supreme Court's rulings cannot be interpreted and applied to mean the contrary of what they clearly state under *stare decisis*. This Court's clear rulings should be followed where no credible reason is shown to distinguish the case at hand. The principle is shown in *General Atomic Co. v. Felter,* 436 U.S. 493, 496-97 (1978) (*General Atomic*) (underlining added):

> In its order of December 16, 1977, the Santa Fe [state] court has again done precisely what we held that it lacked the power to do[9] interfere with attempts by GAC to assert in federal forums what it views as its entitlement to arbitration. [....¶] As was recently reaffirmed in *Vendo Co. v. Lektro-Vend Corp.*, 434 U.S. 425 (1978), if a lower court "mistakes or misconstrues the decree of this Court, and does not give full effect to the mandate, its action may be controlled . . . by a writ of mandamus to execute the mandate of this Court." *In re Sanford Fork Tool Co., 1*60 U.S. 247, 255 (1895).

Thus, this case shows the 9th Cir.'s avoidance, blocking and violations of this Supreme Court's clear holdings, which are *stare decisis* mandates, in (1) *Dart*, (followed in *Arias* by the 9th Cir.), (2) *Baltimore*, (3) *Sineneng-Smith* and (4) *General Atomic*,. Considered together, a writ of certiorari under this petition to the 9th Cir. is called for. The following table and notes illustrates the above.

	Baltimore (2021)	S Smith (2020)	Dart (2014)	G Atomic (1978)
9th Cir	10	74	2,660	3
1st Cir	2	5	21	0
2nd Cir	4	7	31	3
3rd Cir	9	10	92	4
4th Cir	10	9	122	0
5th Cir	8	29	115	1
6th Cir	2	25	72	0
7th Cir	5	35	67	0
8th Cir	5	8	72	0
10th Cir	5	15	201	1
11th Cir	6	14	155	0
DC Cir	2	3	25	0
Fed. Cir	1	0	0	3

Chart Notes. The chart data are from CaseText@, a legal research service I use. These numbers are the numbers of cases that cite to the US Supreme Court decisions listed in the column headers. The *Dart* case is the most critical for my case here, as it controls what I could, and this case was not allowed, to present in the subject District Court removal case, after my notice of removal was filed and challenged in a motion to dismiss, as described in the Issues above.

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9 *General Atomic Co. v. Felter,* 434 U.S. 12 (1977) ("*General Atomic I*").

As seen in the Chart, the 9th Cir. has--

- The most cases citing *Dart, by a factor of 10* vs. any other circuit.
- The most cases citing *S-Smith, by a factor of 2* vs. any other circuit.
- As many cases citing *Baltimore*, as any other circuit.
- As many, less one, citing *G Atomic*, as any other circuit.
- In total, far more cases citing *Dart*, *S-Smith*, *Baltimore* and *G Atomic than all other circuits combined.*

The 9th Cir. is the largest in geography, population, and number of cases generally. If the 9th Cir. seriously deviates from these clear decisions of this Supreme Court, as it does in my case in extreme fashion, it affects a large percentage of all federal civil cases in the nation, and also creates case law that affects decisions of district courts in other circuits, and other circuits.

Under question 3, as stated therein: This court in *Grable & Sons... v. Darue...*, 545 U.S. 308 (2005): "Held: The national interest in providing a federal forum for federal tax litigation is sufficiently substantial to support the exercise of federal-question jurisdiction over the disputed issue on removal. Pp. 312-320." (Underlining added.) Thus, the State Court action I removed, under the initial and amended notices of removal (see Case Statement Introduction above) could be removed to federal District Court where the plaintiff's new-action claims on their face, and as carried out and looked through, reject the federal tax laws that govern the defendant nonprofit corporation, Skybridge Spectrum Foundation, for which I was the sole member (a director role as a non-paid volunteer), to which the IRS granted tax-exemption under 26 U.S. Code § 501(c)(3) and rights to provide tax deductions to donors, under 28 USC §1442(a)(1) as "(a) A civil action... commenced in a State court... against or directed to... (1) The United States or any agency thereof or any officer (or any person acting under that officer)... in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for ... the collection of the revenue." (Underling added.)

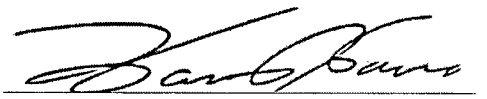
Under question 4, as stated therein: 28 USC § 1333 states that "The district courts shall have original jurisdiction, exclusive of the courts of the States, of... Any civil case of admiralty or maritime jurisdiction...." I included this § 1333 removal ground in the initial and amended notices of removal-- that the main FCC licenses under plaintiff claims the State Court action, AMTS maritime licenses under FCC Part 80 rules (under the Communications Act) (solely for *maritime* licenses and services for safety of life and property) (see TOA above) were FCC-rule-limited to providing radio communications from and to ships along US coastlines and inland navigable waterways with physical radio stations (transceivers, antennas, power systems, data loggers, etc.) on the ships and on land along the waterways. In addition, under 28 U.S. Code § 1442(a)(2), Skybridge Spectrum Foundation and the related LLCs, the defendants in the State Court Case (each described above) are each, as an FCC licensee, "A property holder whose title is derived from any such [federal] officer, where such action or prosecution affects the validity of any law of the United States." FCC licenses provide title to use the radio spectrum involved, deemed to be property by the FCC and federal courts.

On questions 3 and 4 as just stated: (i) I clearly presented each of these removal grounds in the initial and amended notices of removal. (ii) Each was a valid removal ground by itself. (iii) But as with the other grounds for removal, the district court avoided and refused rights under *Dart* and *Aries* to prove these up as did the 9th Cir. (see APPes J, K and L) and under *Baltimore*, all grounds for removal are examined on appeal where, as here, one is under § 1442(a)(1) which the 9th Cir. also denied. On this paragraph, see first the Case Statement Introduction above.

6. CONCLUSION

The Petition should be granted.

Respectfully submitted,



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11-28-2022 (thereafter, corrected as permitted)

THE PROOF OF SERVICE is separately submitted.