No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2022, or the Next Term

WARREN HAVENS, Petitioner

v.

ARNOLD LEONG, Respondent

and

SUSAN UECKER,
Alleged Nominal-Entities Respondent, as Court Receiver

Before the United States Court of Appeal for the Ninth Circuit in Case No. 20-17481 and the United States District Court for Northern California in Case No. 20-08091-JST

MOTION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI PURSUANT TO RULE 13(5)

To Honorable Elena Kagan, Circuit Justice to the 9th Circuit.

1. MOTION

I, Petitioner Warren Havens, pro se, pursuant to Rule 13(5), Rules of the Supreme Court, respectfully seeks a sixty (60) day extension of time within which to file his petition for writ of certiorari in this Court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and is further discussed below. This application is submitted more than ten (10) days prior to the scheduled filing date for the Petition.

The pertinent dates are:

A. June 27, 2022: The date the 9th Circuit issued and filed a dispositive Order in Arnold Leong et al. v Warren Havens (the "9th Cir.

Order"). in the subject 9th Circuit Case No. 20-17481, District Court No. 20-08091-JST Northern District of California.[1]

- Exhibit A hereto is the 9th Cir. Order.
- Exhibit B hereto is the earlier 9th Circuit Order which the 9th Cir. Order sustained by denying my motion for reconsideration (see footnote 1 below).
- Exhibit C hereto is my Petition for Rehearing that the 9th Cir. Order deemed to be a motion for reconsideration (see footnote 1 below) because it shows substance of why I submit this Motion for An Extension of Time and seek to file a Petition for a Writ of Certiorari to this Court as outlined below.

B. September 25, 2022: The deadline date for me to file a petition for writ of certiorari in the United States Supreme Court, generally described herein, unless extended as requested herein. (Sept. 25 is a Sunday; thus, it would be due Sept. 26, but for purposes herein I use Sept. 25.)

C. November 25, 2022: The deadline date for me to file the petition for writ of certiorari if this 60-day extension request is granted. (The extension is to Nov. 24, 2022, but that is a holiday, thus Nov. 25).

2. BACKGROUND

Exhibits A, B and C show the background and nature of this 9th Circuit Case. It is an appeal of a decision by a Judge of the District Court for Northern California to remand to the subject California State Superior Court the action I removed.

The remand decision was appealable under *BP P.L.C. v. Mayor & City Council of Baltimore,* 141 S. Ct. 1532, 1537-38 (2021) ("*Baltimore*")

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[1] The 9th Cir. Order is DktEntry 43. It stated: "JUN 27 2022. We treat appellant's petition for panel rehearing (Docket Entry No. 40) as a motion for reconsideration of the March 16, 2022 order, and deny the motion. See 9th Cir. R. 27-10."

since one ground for removal was under 28 U.S. Code § 1442 (see below). The 9th Circuit allowed the appeal I filed to proceed to a small extent, then by its own s*ua sponte* action, disallowed me to file an opening brief to present the relevant facts and law in support of reversing the District Court's remand decision, under both the 28 U.S. Code § 1442 removal grounds, and the other grounds. It issued a summary affirmance and dismissed the appeal. The 9th Circuit's decisions do not state what decisional facts it found, or how the hidden facts are applied under particular statutory and case law, or the standard for its *sua sponte* review and decisions.

The following (and other fact averred herein) are under my Declaration below.

The case involves, as the material assets, nationwide FCC licenses for interstate telecommunications (which States cannot regulate or hinder), for "intelligent" 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.

I, petitioner here, spent decades in forming, investing in, and managing these FCC licenses largely via a nonprofit operating charitable foundation, Skybridge Spectrum Foundation, and supporting for-profit LLCs. I am *pro se* here due to the decisions of the federal courts and underlying state court actions at issued in the case described herein, that established that the State of California by its court's control these FCC licenses, with situs in all *other* States, and which has frozen and wasted most of these licenses, and their fair values. These harmful decisions cut off all of 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 sole charter and lawfully permitted purpose of this Foundation, under the IRS grant of tax exemption under Section 501(c)(3) of the Internal Revenue Code.

3. ISSUES POSED BY THE PLANNED PETITION FOR A WRIT OF CERTIORARI

This case involves (B) four component issues of nationwide importance, all established in this Supreme Court's clear case holdings, together under (A) the "Gorilla Rule" that is unresolved among the federal circuit courts of appeal and this Supreme Court.

The Gorilla Rule needs resolution for the nationwide importance, and this case's components provide an extreme example of the need. Each component also needs resolution for nationwide importance.

In this case, the 9th Circuit, the largest and busiest Circuit, is the Gorilla Circuit to start with, and implements the Gorilla Rule as it likes, and by that it avoids and blocks the law this Supreme Court has established in the four components.

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

This Supreme Court should set limits of appellate gorilla jungle law. This case I present is an outstanding vehicle, and the 9th Circuit is the best circuit for this purpose. This issue is central to due process of law under the Fifth and Fourteenth Amendments.[2]

The Bill of Rights defend against 'Gorilla' rules in all courts. [3]

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[2] 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.

[3] 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 <u>most of the provisions of the Bill of Rights are procedural</u>. It is procedure that <u>spells much of the difference</u> <u>between rule by law</u> <u>and [the Gorilla] rule by whim or caprice</u>. Steadfast adherence to strict procedural safeguards is our main assurance that there will be <u>equal justice under law</u>. The case of Dorothy Bailey is an <u>excellent illustration</u> of <u>how dangerous a departure from our constitutional standards can be</u>. 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 <u>refused</u>. Counsel for Dorothy Bailey asked if these informants had been active in a certain union. The chairman replied, "I <u>haven't the slightest knowledge</u>...." Counsel for Dorothy Bailey asked if those statements of the informants were under oath. The chairman answered, "<u>I don't think so.</u>"

The "Gorilla just sits where it likes...and just says what it wants."

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, and a few non-substantive edits not shown):[4]

> In *Singleton v. Wulff,* 28 U.S. 106 (1976) the Supreme Court addressed the question of 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
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> 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 Circuit, which in my view calls for this Supreme Court to reconsider and revise

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[4] At:
https://lawrepository.ualr.edu/appellatepracticeprocess/vol17/iss1/5

the Gorilla Rule with practical definitions and limits. This case I present is an excellent vehicle for that, but in addition, the Gorilla Rule itself allows the Supreme Court to go beyond issues in this case, to any extent that is useful, for this purpose. The above quoted article, "The 'Gorilla Rule' Revisited," gives the 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 (addressed in this motion), and other Justices have 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 Circuit decisions in my case, is an affront to due process and undermines belief in the rule of law that is already seriously shaken in the nation.

B. The Gorilla Rule Components in this Case.

(1) For individual and corporate-entity defendants that remove state court cases to federal courts under grounds stated briefly in the notice of removal that a plaintiff challenges in a motion to remand, which have rights to develop and present facts in defense of the grounds, under *Dart Cherokee Basin Operating Co., LLC v. Owens,* 574 U.S. 81, 89, 135 S.Ct. 547, 190 L.Ed.2d 495 (2014) ("*Dart*"), and the 9th Circuit decision *Arias v. Residence Inn*...936 F.3d 920 (9th Cir. 2019) which was based on *Dart*, before a decision on the motion to remand. The 9th Circuit in my case, upholds the District Court's refusal of *Dart* rights.

(2) For individual and corporate-entity defendants that remove state court cases to federal courts under grounds that include 28 U.S.

Code § 1442[5] 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) ("*Baltimore*"). The 9th Circuit in my case, first avoided then refused appeal rights under *Baltimore*.

(3) For civil cases generally regarding appeal court's replacing the "party presentation principle" by prohibiting and replacing an appeal brief (and any opposition or response thereto) with judges personal sua sponte review of the record of the case below, finding issues not explained and ruling on them in conclusory language, and dismissing the appeal before briefing. This creates an extreme blocking of the party presentation principle and function this Court decided in *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020) ("*Sineneng-Smith*) unanimously reversing the same 9th Circuit two years ago.[6]

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[5] 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 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.

[6] The 9th Circuit explains its views on this Sineneng-Smith 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.

(4) For civil cases generally- when can this Supreme Court's rulings can be interpreted to mean the contrary of what they clearly state contrary to *stare decisis* and expectations that this Court's clear rulings will be followed where no credible reason is shown to distinguish the case at hand from that under stare decisis. 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[7] 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 Circuit's avoidance, blocking and violations of this Supreme Court's clear holdings, which are *stare decisis* mandates, in (1) *Dart*, (2) *Baltimore*, (3) *Sineneng-Smith* and (4) *General Atomic,* each noted above. Considered together, a writ of certiorari the 9th Circuit is especially warranted, under the petition for the writ I plan to file, in the extended time requested herein.

4. REASONS THE PLANNED PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

The Issues Posed above are important to resolve for reasons stated in each. The four components are each or together important to resolve even if the umbrella "Gorilla Rule" is not resolved, and vice versa.

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).

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

These reasons together call for a writ to the 9th Circuit due to the nationwide importance, in which the 9th Circuit has the most cases that based on *Baltimore*, *Sineneng-Smith*, *Dart*, and *General Atomic* as shown in this chart.

	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

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.

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 circuit is the largest in geography, population, and number of cases generally. If the 9th Circuit 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 will create case law that affects decisions of district courts in other circuits, and other circuits.

The above demonstrates the national importance of the issues poised by this case, along with the underlying "Gorilla Rule" being diversely used in the Circuits and by this Court.

5. REASONS I REQUEST THE EXTENSION

A. The issues posed above are important for this Court to resolve, as described above. I have sufficient ability to present them in a petition for a writ of certiorari (and if that is granted, in merits briefing).[8] These are special and complex areas of law, and I am a pro se party that, while an educated layman in some areas of law, need the requested additional time to properly complete research and drafting of the planned cert petition in these special and complex areas of law.

B. In addition, I have substantial ongoing health and financial hardships,[9] and certain regular work to attempt to resolve the

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[8] If the Petition is granted, there is a reasonable chance that I can obtain legal counsel for merits briefing on pro bono basis, and in that case, I would support counsel

[9] In brief. (1) I earlier had melanoma cancer, survived it, and since then I have been on certain doctors- prescribed health protection practices. The condition and the practice take up a lot of my time and adds costs. I have substantial dental problems causing flareups, and medication, and currently are not able to pay the high fees for multiple surgeries and restorative work needed and spend time each day on topical dental treatments to reduce these problems. (2) In recent weeks, I had two accidents, an injury by a fall down stairs, and an injury by poisoning by inadvertent ingestion of a hydrogen peroxide preparation (that appeared to be regular water), each of which largely disabled me

hardships and am unable to file the planned petition for a writ of certiorari with this court withing the 90-day period, and thus seek the 60-day extension which will provide sufficient time. It also takes me as a pro se party, more time than it takes legal counsel, to research, draft and submit a major legal pleading, and that applies to this planned petition for certiorari. I have been diligently working on the petition but need this additional time.

6. RE NON-OBJECTION FROM OPPOSING COUNSEL

Legal counsel to the potential opposing parties, Arnold Leong and Susan Uecker and their affiliates, have regularly refused to meet and confer with me on procedural and substantive issues in the above-described California court actions. It is futile to seek their non-objection here, but I do so by copying them on this Motion.

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and from which I am gradually recovering. (3) For reasons of the California receivership noted above, my life savings were used up in legal defense costs, while I could afford legal counsel, and fund due to me are tied up in the receivership and will not be released to me. This imposed and continues to impose financial hardships that cause me to act pro se in legal actions, and to do work I otherwise would pay persons to do or assist with. (4) I also need to spend time on steps to remedy these hardships. Courts have granted to me fee waivers and time extensions based on my declarations with details (some confidentially submitted) of these hardships.

CONCLUSION

For the above reasons, I request that this Court grant an extension of sixty (60) days to and including November 25, 2022, within which I may file the planned petition for writ of certiorari described above.

Respectfully submitted,

Warren Havens
Petitioner, Pro Se
2649 Benvenue Ave., Berkeley CA 94704
Ph 510 914 0910 | WRRNVNS@GMAIL.COM
9-11-2022

The Exhibits follow.

Service Statement. Concurrently with filing of this motion, I will serve a copy of it by email using emails of record in the subject Ninth Circuit case to legal counsel of record to Arnold Leong (including attorney Richard Osman) and Susan Uecker (attorney David DeGroot), as potential respondents to the contemplated petition for a writ of certiorari,

Declaration of Warren Havens

I and the Petitioner herein identified above. I declare under penalty of perjury that facts herein know to me are true and correct and the exhibits hereto are true and correct copies. Executed on the date below in Berkeley California.

Warren Havens
9-11-2022