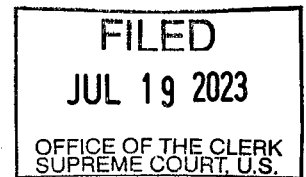


ORIGINAL

No. 23-58

In the



Supreme Court of the United States

Robert Chagolla, Jackie Chagolla,
Petitioners,

v.

Bryan Cluff, Todd Bates, Paul Penzone, Maricopa
County Sheriff's Office, County of Maricopa, Clarisse
McCormick,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The issues in this case should have been addressed and stopped in 2001 when the racism occurred. In a system with no checks/balances, victims in financial survival mode/shock and the government via the Equal Employment Opportunity Commission refusing to take on the government (Maricopa County Attorney's Office and the Maricopa County Sheriff's Office) in this case.

i. Whether absolute immunity shields government employees who report false information/omit exculpatory information in the investigation stage as well as those government employees who falsify criminal reports (both a civil tort and criminal offense that has no statute of limitations) and who collude with other branches of the government to violate Constitutional Rights and Due Process of Law?

As to this question, there is a circuit split between the United States Court of Appeals for the Ninth Circuit here, and *Demaree v. Laura Pederson and Amy Van Ness*, D.C. No. 2:11-cv-00046-ROS (9th Cir. 2018), the United States Court of Appeals for the Ninth Circuit, *Preslie Hardwick, Plaintiff-Appellee, v. County of Orange*, Defendant, and *Marcia Vreeken; Elaine Wilkins; The Estate of Helen Dwojak*, Defendants-Appellants. No. 15-55563 D.C. No. 8:13-cv-01390-JLS-AN (9th Cir. 2017) and United States Court of Appeals for the Ninth circuit, *Sarah Greene, personally and as next friend for S.G., a minor, and K.G., a minor*, Plaintiff-Appellant No. 06- 35333 v. D.C. No. CV-05-06047-AA *Bob Camreta; Deschutes County; James Alford, Deschutes County Opinion*

Deputy Sheriff; Bend Lapine School District; Terry Friesen, Defendants Appellees (9th Cir. 2009).

ii. Does the Federal Government's Authority include monitoring the application of state laws by government authorities when those agencies have a history of collusion between government agencies to violate those state laws to enable them to violate civil rights in the case of state laws regarding public information requests?

To Impose Conditions on Grant Funds per the Spending Clause, Article I, Section 8, Clause 1 of the U.S. Constitution [federal dollars funding both the Maricopa County Attorney's Office and the Maricopa County Sheriff's Office] create an obligation for Federal oversight. The Ninth Circuit backs up a 2017 ruling by U. S. District Court Judge Roslyn Silver that *B.K. v McKay* could proceed as a class-action lawsuit. Silver had identified the plaintiffs' allegations as a valid basis for challenging "statewide practices affecting the proposed General Class." *B.K., by her next friend Margaret Tinsley; B.T., by their next friend Jennifer Kupiszewski; A.C.-B., by their next friend Susan Brandt; M.C.- B., by their next friend Susan Brandt; D.C.-B., by their next friend Susan Brandt; J.M., by their next friend Susan Brandt, Plaintiffs-Appellees, v. Jami Snyder*, in her official capacity as Director of the Arizona Health Care Cost Containment System, Defendant-Appellant. No. 17-17501 D.C. No. 2:15-cv-00185-ROS (9th Cir. 2019).

iii. Does fraud upon the Court permit the Federal Court to remand the original civil rights violation back to the day of termination with no statute of

limitations, since the ramifications include internet reports as recent as Database: MCAO's more_secretive 'Brady' list by Dave Biscobing, posted June 9, 2023, that by links moves easily back to AZ POST rulings back to 2000. Per Dave Biscobing's article linked to the above article, "However, ironically, the lack of oversight and reliance on self-investigation means the system can break both ways. Police departments can use internal investigations and the Brady list to retaliate against officers who blow the whistle." Ironically Detective Robert Chagolla is not on the Brady List but is on AZPOST's list due to the falsified police report. All found via link to the June 9, 2023 article. Robert Chagolla is still a certified law enforcement officer in Arizona, but there appears to be no way to remove the Maricopa County Minute Entry that is based on a falsified police report (falsified by Clarisse McCormick, Todd Bates and Bryan Cluff) as determined by a deposition that presented new information not previously known to the petitioners. David Hendershott, and Gerard Sheridan who lied under oath at Detective Robert Chagolla's hearing are not sanctioned on the post list but are both on the Brady list.

Under Section 1001 of title 18 of the United States Code, it is a federal crime 'to knowingly and willfully make a materially false, fictitious or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States.

iv. Does the federal government have the power to intercede when there is collusion between two branches of the government to commit a civil tort

violation with no statute of limitations and a felony crime with no statute of limitations against an employee in a protected class if the government agencies involved refuse to hold their agencies or employees accountable?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners: Robert Chagolla, Jackie Chagolla

Respondents: Bryan Cluff, Todd Bates, Paul Penzone, Maricopa County Sheriff's Office, County of Maricopa, Clarisse McCormick

CORPORATE DISCLOSURE STATEMENT

Not applicable in this case.

RELATED PROCEEDINGS

2-19-cv-00234, Case filed on 1/14/2019 Dismissed 12/13/2019.

20-cv-00079-*MTL* Federal Arizona District Court, Affirmed, Case filed on January 13, 2020, and Terminated on November 10, 2021. Unable to access

2-20-cv-011162-PHX-SMB submitted 6/11/2020 (transferred to 2-20-cv-00079-MTL)

21-16352 Federal Court of Appeals Ninth Circuit, Judgment Filed on 8/18/2021, and terminated on April 20, 2023.

TABLE OF CONTENTS

Questions Presented	i
List of Parties to the Proceeding	v
Corporate Disclosure Statement	v
Related Proceedings	vi
Table of Contents	vii
Table of Authorities	viii
Statement for the Basis of Jurisdiction	1
Constitutional Provisions and Statutes	1
Statement of the Case	1
Reasons for Granting	6
Conclusion	23

TABLE OF AUTHORITIES

Cases

<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	21
<i>Buckley v. Fitzsimmons</i> , 509 U.S. 259 (1993)	10
<i>Butz v. Economou</i> , 438 U.S. 478 (1978)	10
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957)	16
<i>Cypress on Sunland Homeowners Assn v. Orlandini</i> , 227 Ariz, 288 (App. 2011)	9
<i>Demaree v. Laura Pederson and Amy Van Ness</i> , D.C. No. 2:11-cv00046-ROS (9th Cir. 2018)	6
<i>Fields v. Wharrie</i> , 740 F.3d 1107 (2014)	12
<i>Freeport-McMoRAN Oil & Gas Co. v. FERC</i> , 962 F.2d 45 (D.C. Cir. 1991)	20
<i>Giglia v. United States</i> , 405 U.S. 150 (1972)	21
<i>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</i> , 332 U.S. 238, 250 (1944), <i>overruled on other grounds by</i> <i>Standard Oil Co. of Cal. v. United States</i> , 429 U.S. 17 (1976)	18-19
<i>McGhee v. Pottawattamie</i> , 547 F.3d 922 (8th Cir. 2008)	11
<i>Melendres v. Arpaio</i> , 784 F.3d 1254 (9th Cir. 2015)	3
<i>Melendres v. Penzone</i> , No. CV-07-2513-PHX-GMS (D. Ariz. Sep. 29, 2022)	2
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009)	9
<i>Rieves v. Town of Smyrna</i> , 959 F.3d 678 (6 th Cir. 2020)	10, 13, 21

<i>Roberto F. v. Department of Child Safety, et al.</i> , No. 1 CA-JV 13-0209 (Ariz. Ct. App. Oct. 6, 2015).....	1 6
<i>Rogone v Correia</i> , 236 Ariz. 43 (App. 2014)	9
<i>Saucier v. Katz</i> , 533 U.S. 194 (2001).....	12
<i>Silverman v. Ehrlich Beer Corp.</i> , 687 F. Supp. 670 (S.D.N.Y. 1987).....	20
<i>United States v. Estate of Stonehill</i> , 660 F.3d 415 (9 th Cir. 2011)	19
<i>United States v. Young</i> , 470 U.S. 1 (1985).....	21
Constitutional Provisions, Statutes and Rules	
U.S. Constitution, 4th Amendment.....	1
U.S. Constitution, 5th Amendment.....	1
U.S. Constitution, 14th Amendment.....	1, 15
18 U.S.C. 1001.....	1
Federal Rules of Civil Procedure 60(d)(3)	8, 19
Other Authorities	
<i>ABA Model Code of Professional Responsibility</i>	20-21
Edward L. Rubin, <i>Due Process, and the Administrative State</i> , 72 Cal. L. Rev. 1044 (1984)	20-21

STATEMENT FOR THE BASIS OF JURISDICTION

The Judgement of the Court of Appeals was terminated on April 20, 2023. This court's jurisdiction rests on 14th Amendment Due Process, the 4th Amendment and the 5th Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitutional Provisions

U.S. Constitution, 4th Amendment

U.S. Constitution, 5th Amendment

US Constitution. 14th Amendment Due Process

Statutes

Under Section 1001 of title 18 of the United States Code, it is a federal crime 'to knowingly and willfully make a materially false, fictitious or fraudulent statement in any matter within the jurisdiction of the executive, legislative, or judicial branch of the United States Rule of law

STATEMENT OF THE CASE

In July of 2015, twin children of Robert Chagolla and Jackie Chagolla were removed in part by the Arizona Department of Child Safety based on a Maricopa County Superior Court Minute Entry regarding the termination of Detective Robert Chagolla on June 21, 2001. Robert Chagolla's termination occurred in his home (he had moved into this home before it had closed escrow) in front of his stay-at-home wife and six of his seven minor children.

This enabled a deposition to be held regarding that minute entry on January 18, 2018, in which in part is the basis for this lawsuit due to the discovery at that time that the falsified criminal report in that matter was based on the inactions/actions of those both involved in that matter and the failure of the two branches of the government involved to hold anyone accountable for the numerous civil tort and criminal actions committed by their employees.

The Maricopa County Attorney's Office in collusion with the Maricopa County Sheriff's Office went on to target a Hispanic Judge, a Hispanic Maricopa County Supervisor, etc. Gerard Sheridan's actions in the federal Melendres case to include the attempt to withhold/destroy evidence in a federal case only reflect how his, the Maricopa County Attorney's Office and Maricopa County Sheriff's Office behaviors merely escalated With the lack of accountability. Under Sheriff Paul Penzone the racial profiling practices and traffic stop reports in recent months still show that racial disparities have persisted. Sheriff Paul Penzone failed to act when provided the deposition with the new information on the falsified police report, before the Petitioners filed the lawsuit in 2019. Sheriff Paul Penzone told the Republic in March that his agency continues to make a lot of progress, even if they remain out of compliance with certain sections of the *Melendres v. Penzone* lawsuit. "It's very easy to be a critic, when you've never had to manage an organization, you've never had to be responsible for law enforcement operations, where you've never had to balance court orders with organizational capacity, and you've never had to

change a culture that existed for a quarter of a century,” Penzone said. Sheriff Joseph Arpaio was found guilty in the *Melendres v. Arpaio* lawsuit of contempt (pardoned by President Donald Trump), placing the entire Maricopa County Sheriff’s Office above the law. Either this case is the perfect crime in the Wild, Wild, West or at last Robert and Jackie Chagolla (the invisible victims) will be seen and heard. Jackie Chagolla the mother of seven children should not have to investigate via depositions she held of the Sheriff’s Law Enforcement Officers (Bryan Cluff and Todd Bates) to reveal their involvement/destruction in a falsified criminal police report and the involvement of Clarisse McCormick (formerly a Maricopa County Attorney) to investigate that which no one else would. A complaint was filed originally on January 14, 2019, in 2-19-cv-00243 within the two-year time frame from the discovery of this new information in the deposition conducted on January 18, 2018.

Detective Robert Chagolla was an undercover narcotics detective for over eight years at the time of his termination, but since his termination his family has been undercover within the court system. Neither Robert Chagolla nor Jackie Chagolla could have envisioned the corruption which existed within Maricopa County, but upon further investigation the issue of a lack of accountability within the government that exists across this country. Per the Arizona Department of Public Safety, the Phoenix Police Department and the Maricopa County Sheriff’s Office no one except the Maricopa County Sheriff’s Office or the Maricopa County Attorney’s Office can

civilly investigate and or file criminal reports/prosecute criminal cases that involve Maricopa County Sheriff Officers who commit crimes while under color of state law and their government agencies' choice to fail to act has no accountability. The Arizona legal bar would not act unless criminal charges were brought against Clarisse McCormick. Judges and attorneys are immune from accountability when they are aware of criminal activity and have no obligation to report criminal activity or collusion. The federal government monitor is only forwarded complaints by the Maricopa County Sheriff's Office once a case is completed, so if cases are not completed the federal monitor will never see those cases. Neither agency is required to conduct/complete civil/criminal investigations or prosecute crimes if they choose not to enforce the civil/criminal laws.

Within our household we have had court documents destroyed, police reports falsified, court records tampered with, court records destroyed, confidential information released and within our family exist multiple minor victims of violent crimes with no statutes of limitations whose cases were never prosecuted. We have been told over and over to move forward with our lives, but the victimization keeps occurring due to the lack of accountability within the system. In the least we have requested that the original termination is remanded back to the hearing officer so the information we have to date can be included in the record. It should be noted Detective Robert Chagolla's case was sided in his favor by the hearing officer, but what the Petitioners did not know at that time is that the record included numerous

falsified documents, a falsified police report, nor did they know who was involved.

The Petitioners are fighting for the truth but have been repeatedly told the justice system does not care about the truth and therefore this is what permits the civil/criminal collusion between multiple branches of the government and corruption by the holder/disseminator (the government employees/agencies) of the evidence. The government employees/agencies that are sworn to uphold the truth and protect. In each matter where government employees are not held accountable for their criminal behaviors and/or civil rights violations it reinforces the same behavior that this petition for writ of certiorari is requesting to be addressed.

If there is no equality, protection of human rights, accountability to the people, control of the abuse of power, rule of law and due process, then lawlessness will rule. No one should ever be above the law and the law must be enforced equally, fairly, consistently, and with respect for human life and dignity.

The constitution is a living body. Although many of the interpretations of this court are based on previous opinions of works of the United States Supreme Court, conflicting opinions between circuit courts and matters of significance to the nation, this matter should never have occurred due to the collusion between separate branches of the government. The series of violent crimes that occurred against minors in the Chagolla household

with no accountability after the falsified police report and the Maricopa County Superior Court Minute entry that resulted from the initial falsified police report confirms why there is no statute of limitation on the falsification of criminal reports and fraud upon the court. Due to the original crimes committed against Detective Robert Chagolla, the violent crimes subsequently committed against minors in his household would not be held accountable, but again that is why the falsification of any public record/fraud upon the court carry no statute of limitations. Robert and Jackie Chagolla are respectively requesting this court either remand this matter back to the hearing officer in the matter of the termination of Detective Robert Chagolla or notify the Federal Monitor assigned to the Maricopa County Sheriff's Office to investigate this matter and hold all parties who were involved in the fraud upon the court and falsification/destruction of information in the termination case of Detective Robert Chagolla accountable in the hopes that this will put an end to collusion between any two or more branches of government in the future.

See Roberto F., 232 Ariz. at 53, ¶ 38 n.11. *Demaree v. Laura Pederson and Amy Van Ness*, D.C. No. 2:11-cv00046-ROS (9th Cir. 2018), were cited in the original complaint.

REASONS FOR GRANTING THE WRIT

21-16352 Federal Court of Appeals Ninth Circuit: the appeal was submitted to the Ninth Circuit to address the fraud on the court and the

collusion between two government branches. It is believed the Federal Court of Appeals Ninth Circuit was unaware of 2:20-cv-00079-MTL, 2:20-cv-011162-PHX-SMB and 2:19-cv-00243 in this matter, therefore erred on ruling on timelines and the severity of the fraud on the court. The Petitioners are not attorneys but have tried their best to not waste the Courts' time. Bryan Cluff, Todd Bates, and Clarisse McCormick disrupted the impartiality of the Court so the court could not perform its tasks without bias of prejudice; and failed to produce evidence that they had in their possession committing discovery abuse and falsified a police report a public record which resulted in a false Maricopa County Superior Court Minute Entry (another public record). The violation of the right to due process is enshrined in the Fourteenth Amendment to the U.S. Constitution. Clarisse McCormick as a sworn officer of the court violated those due process rights, both when she altered information and withheld information in the investigative stage then throughout the court proceedings to include destruction of evidence. Prosecutorial immunity does not limit financial liability for actions. Prosecutorial immunity does not protect against Constitutional violations of rights. The Petitioners argue that an entity or person who is sworn to uphold the laws then violates multiple laws, commits crimes, destroys evidence, and colludes in a coverup of the same to include fraud upon the court forfeit their rights to any time barred accountability due to the heinous nature of the acts, and the violated position of public trust that then compromises the ***Rule of Law***. [emphasis added]

Since the Federal Government distributes Federal Funds to both the Maricopa County Attorney's Office and the Maricopa County Sheriff's Office based on the truthfulness of Maricopa County Sheriff's Office and the Maricopa County Attorney's Office employees, the Federal Government has due diligence to enforce the ***Rule of Law***. [emphasis added]

Bryan Cluff, Todd Bates, and Clarisse McCormick intentionally deceived the court and were paid by the taxpayers of Maricopa County and the Federal government while committing their crimes.

The federal courts have the power under the Federal Rules of Civil Procedure to set aside judgments entered years earlier that were obtained by "fraud on the court."

Rule 60(d)3 of the Federal Rules of Civil Procedure, which provides grounds for relief from a final judgment, order, or proceeding, states that the rule does not limit the Court's power to seek justice. Bryan Cluff, Todd Bates, and Clarisse McCormick due to their positions in this process were permitted to use their actions and inactions. Their credibility is granted due to their positions.

These issues are not isolated to the Maricopa County Attorney's Office's collusion with the Maricopa County Sheriff's Office but are a national issue whenever two government branches are permitted to collude in criminal activity and the ruling in this matter would set a precedent that no one is permitted to lie to the Courts or withhold

information because of government employee prosecutorial immunity. The Respondents argue that there is a valid claim upon which relief can be granted and that claim is fraud upon the court.

Fraud upon the court harms the integrity of the judicial process and is a wrong against the institutions set up to protect and safeguard the public. “*Rogone v Correia*, 236 Ariz. 43, 48 paragraphs 11 (App.2014) (quoting *Orlandini*, 227 Ariz. At 300 paragraph 43). *McNeil*, 236 Ariz. At 176-77 paragraph 14 (noting fraud upon the court includes ‘*when a party obtains a judgment by concealing material facts and suppressing the truth with the intent to mislead the court*’”) (Quoting *Orlandini*, 227 Ariz. At 299 Paragraph 42).

A party’s diligence, or lack of it, is not a defense against fraud on the court.

Pearson v. Callahan, qualified immunity protects a government official from lawsuits alleging that the official violated a plaintiff’s rights, only allowing suits where officials violated a “clearly established,” courts consider whether a hypothetical reasonable official would have known that the defendant’s conduct violated the plaintiff’s rights. Under qualified immunity Robert Chagolla has the right to sue since Bryan Cluff, Todd Bates, and Clarisse McCormick’s actions and inactions in this matter were willful intentional acts of misconduct to include criminal acts generated by their lack of accountability and willingness to collude to falsify a

police report and destroy the audio and video with audio committed while under color of law.

Butz v. Economou, 438 U.S. 478, 507 (1978) (holding that in a suit for damages arising from unconstitutional behavior are only entitled to qualified immunity).

Fraud on the court via abusive discovery should never go unchecked. *Rieves v. Town of Smyrna*, 959 F.3d 678 (6th Cir. 2020), Defendants (the District Attorney and Assistant District Attorney) claimed absolute prosecutorial immunity or qualified immunity for their misconduct. The Sixth Circuit affirmed denial of the motions to dismiss by the defendants.

In *Buckley v. Fitzsimmons*, 509 U.S. 259, 274 (1993), the Supreme court held that prosecutors were not absolutely immune for fabricating boot print evidence at a time that they lacked probable cause to either arrest or prosecute. Before there is probable cause the prosecutor acts in an investigatory capacity rather than an advocate. *Buckley*, 509 U.S. at 224 (before probable cause to arrest a “prosecutor’s mission is entirely investigative in character”).

This does not mean that everything a prosecutor does post-probable cause is necessarily advocacy. Accountability is not just what we do but what we fail to do.

This case is not just about what was done to Detective Robert Chagolla, but how crimes create secondary victims.

The U.S. Supreme Court's recent ruling point toward qualified immunity which requires in the least that the facts in this matter be reviewed by U.S. Supreme Court for a definitive ruling.

In 2009, *Pottawattamie v. McGhee*, the prosecutors were accused of manufacturing evidence it rose to oral arguments at the U.S. Supreme Court and was settled by the prosecutors before a ruling in that matter.

In the United States Court of Appeals for the *Fifth Circuit Court Case 19-30197*, affirmed that individual Defendants (the prosecutors) are not entitled to absolute immunity for their alleged creation and use of fraudulent subpoenas. April 21, 2020.

Prosecutorial egregious actions are not protected by qualified immunity.

The 7th Circuit ruled that when the prosecutor's actions are egregious enough that qualified immunity cannot protect them.

Absolute prosecutorial immunity does not bar criminal prosecutions against prosecutors.

Prosecutors who knowingly manufacture evidence that results in the conviction of an innocent person shouldn't be shielded from lawsuits.

Fields v. Wharrie, the 7th Circuit. In this case the prosecutors had knowingly coerced witnesses into giving false testimony. The court cited that the act that causes an injury need not be simultaneous with the injury (indeed it will never be exactly simultaneous) for the actor to be liable. Think of products liability. The defect that caused a pipe to burst and flood your home may have been present when the pipe was manufactured years earlier. The manufacturer would be liable despite the lapse of time. He who creates the defect is responsible for the injury that the defect foreseeably causes later.

Saucier v. Katz, 533 U.S. 194 (2001) When there is a summary judgment motion for qualified immunity the Court elaborated a 2-part test for whether a government official is entitled to qualified immunity:

First, a court must look at whether the facts indicate that a constitutional right has been violated.

If so, a court must then look at whether that right was clearly established at the time of the alleged conduct.

Respondent, Clarisse McCormick, or any attorney should not be given a free pass due to being an attorney for accountability for their criminal acts, violation of due process, and fraud on the court

actions, destruction/withholding evidence when driven by Constitutional Violations.

Clarisse McCormick has a far greater knowledge of the law than the Petitioners in this matter.

Fogel, Singleton and *Rieves* are important decisions because they illustrate that when an attorney steps outside their role as an advocate and engages in investigative conduct, absolute immunity will not immunize their unconstitutional conduct.

During the investigation stage Clarisse McCormick (Previous attorney for the Maricopa County Attorney's Office) engaged in tampering with evidence and in collusion with Todd Bates and Bryan Cluff of the Maricopa County Sheriff's Office when they falsified a police report before Detective Robert Chagolla's termination and then destroyed evidence via the taped audio cassette and video cassette with audio. During the hearing rather than using this information Clarisse McCormick took a same day picture of Bryan Cluff. Bryan Cluff changed the criminal report to match the photograph of himself taken by the Maricopa County Attorney's Office the same day of the hearing (per the transcribed record). U.S. Court of Appeals for the Ninth Circuit erred to state this lawsuit was not filed timely due to the ongoing articles that link to the internet create a web of information based on the falsified police report that resulted in a public termination via the internet, the ability for the Maricopa County Sheriff's Office to then submit a complaint to Arizona POST, and every

instance where the Maricopa County Minute Entry was used to either punish the Chagolla family or not charge violent crimes committed against the Chagolla family minor members and the timely filing of CV-19-00243-PHX-SPL. It was only after the deposition determined the involvement of multiple Maricopa County employees to include Clarisse McCormick, Bryan Cluff, Todd Bates and their direct involvement. All of the information was provided to the Maricopa County Sheriff's Office in formal interviews (taped via cassette and video with audio) to report these crimes for investigation (criminal and civil) on multiple occasions with the last interview with the Maricopa County Sheriff's Office after the timely notice of claim in this matter, but before the timely lawsuit (filed in 2019) was filed due to their failure to act. The lawsuit was filed timely based on the civil tort and or criminal information discovered in those depositions that could not be determined until that time. **After-discovered evidence**, or newly discovered evidence, is evidence which existed at the time of the original trial but was only discovered after the conclusion of the trial. After-discovered evidence is an issue predominantly in criminal proceedings and may be used as the basis for a motion for a new trial. This case is unique because the criminal report is the basis, and the falsification was based on racism. The wrongful termination of a sole provider with seven minor children and a stay-at-home housewife impacted the Chagolla household. It took approximately nine years for Robert Chagolla to obtain full-time stable underemployment due to the actions/inactions of the parties listed in this lawsuit. The children in the Chagolla household have suffered the greatest casualties regarding this matter.

Government perjury and the knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth Amendment's guarantee of Due Process in our courts. Unfortunately, non-government employees have no recourse, but in the state of Arizona government employees have an additional law that ensures every law enforcement officer is guaranteed due process, but just as the other class 2 violent felonies with no statute of limitations that the minors in the Chagolla household endured we learned that laws have no weight when collusion exists between multiple branches of the government. Furthermore, Clarisse McCormick's, Todd Bates', Bryan Cluff 's alleged transgressions were not made under pressing circumstances requiring prompt action, since Detective Robert Chagolla's matter was addressed in an IA in December of 2000 that was subsequently destroyed. The subsequent months were used during the investigative stage to falsify the police report. Robert Chagolla was placed on administrative leave at the end of May 2001 and terminated on June 21, 2001, for an incident that occurred at our home over the phone in December of 2000, that he self-reported the next day. Unaware of who falsified the report until the deposition of Bryan Cluff and Todd Bates held by Jackie Chagolla, which are in the possession of Paul Penzone who has failed to act in this matter as well as to act in over 2,057 Internal Affairs cases as of January 2023, since it is unknown if our matter was ever even addressed since the Federal Monitor over the Maricopa County Sheriff's Office can only view completed Internal Affairs/Criminal Reports. In

addition; Clarisse McCormick tampered with and produced a falsified medical record regarding Detective Robert Chagolla violating HIPPA laws. There should be no circumstances in any Court proceeding that would permit government officials to bear false witness against anyone. The Chagolla family has endured more than most citizens of Maricopa County, but less than others.

Hands decision in *Gregoire*, the Supreme Court in *Conley v. Gison* confirmed the sufficiency standard for claims filed in federal court – the rule for what must be included in a complaint in order for it to survive a 12(b)(6) motion to dismiss for failure to state a claim in response the defendant's contention that the plaintiffs' complaint "failed to set fourth specific facts to support its general allegations," Justice Black held that "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a 'short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."

This is a complex case since it involves a certified law enforcement officer who was targeted by two separate branches of the government who colluded to terminate an undercover narcotics detective based on a criminal conspiracy due to his Hispanic heritage. To be clear: the truth is important, and the truth does not change. The problem is that when the government does not self-regulate, and the employees know the same, absolute power corrupts

absolutely. If Bernie Maddoff used this principle to commit his crimes as chairman of the board of directors of the **NASDAQ stock market** and served on the board of directors of the **National Association of Securities Dealers (NASD) National Financial Industry Regulatory** then Gerard A. Sheridan (AKA: Jerry Sheridan) of the Maricopa County Sheriff's Office did the same, since he was in charge of **Arizona POST (The Arizona Peace Officer and Training Board)** at the time of Detective Robert Chagolla's termination and lied under oath in that matter in the termination hearing and influenced the outcome at AZPOST. Quis custodiet ipsos custodes? The Chagolla family put each foot in front of the other and managed the best they could, but this matter is not just about what happened to both Robert and Jackie Chagolla, but to prevent this from ever happening to anyone else ever again.

The harm caused to Robert Chagolla and Jackie Chagolla in sleep deprivation, mental anguish, loss of trust and loss of time with their family, all are a foreseeable result of Respondents' actions in this matter. Bryan Cluff, Todd Bates, Paul Penzone, Clarisse McCormick held positions of public trust and as sworn officers of the court knew one day their actions/inactions could have consequences, but Robert Chagolla and Jackie Chagolla were nobody in the eyes of any of these individuals. If anything, the actions/inactions and the repercussions of those actions/inactions by the government read more like one would imagine on an immigrant's papers requesting asylum in any country but the one these crimes/discriminations occurred in.

This case is not just about what Bryan Cluff, Todd Bates, Paul Penzone, Clarisse McCormick, did but also what they failed to do. It was the fact that they were paid both by Maricopa County and the Federal Government to commit their acts of discrimination/criminality, and others like them who through their actions or inactions cause irreparable harm to not just their primary victims but also the secondary minor victims due to a lack of accountability.

Absolute power corrupts absolutely. If the United States Supreme Court fails to act in this matter, they are making a choice to condone the actions of the Respondents, their agencies and the collusion between branches of the government and enabling these behaviors to continue.

The Freedom of Information Act does not apply if it is information from a government agency. The Freedom of Information Act is ineffective to anyone looking for the truth. To protect the appearance of propriety of the legal system, to correct the result of Bryan Cluff, Todd Bates, Paul Penzone, Clarisse McCormick fraud on the court by affirming that fraud on the court may include actions that became known both before and after judgment or settlement in government cases. The pursuit of the truth due to the totality of this circumstance analysis.

Hazel-Atlas Glass Co. v. Hartford-Empire Co., conducted the fraud on the court inquiry by considering the "trail of fraud" under a totality of the

circumstance's analysis. 332 U.S. 238, 250 (1944), *overruled on other grounds by Standard Oil Co. Of Cal. v. United States*, 429 U.S. 17 (1976) Petitioners allege that Bryan Cluff, Todd Bates, Paul Penzone, Clarisse McCormick actions and inactions warrant granting certiorari to protect the integrity and public reputation of the judicial system by affirming the appropriate standard that is to be applied to Rule 60(d)(3) fraud on the court claims. Rule 60(d)(3) codifies the general principle that federal courts always have the "inherent equity power to vacate judgments obtained by fraud." *United States v. Estate of Stonehill*, 660 Fed 415, 443 (9th Cir. 2011), Plaintiffs have alleged that Clarisse McCormick while acting as sworn officer of the court submitted falsified and fraudulent public records that she (Bryan Cluff and Todd Bates) altered while in the investigative stage in collusion with the sanction of both the Maricopa County Attorney's Office and the Maricopa County Sheriff's Office acting under qualified immunity due to their acts being committed **Section 1983** provides an individual the right to sue state government employees and others acting "under color of state law" for civil rights violations. Section 1983 does not provide civil rights; it is a means to enforce civil rights that already exist. Clarisse McCormick interfered with due process by failing to knowingly disclose exculpatory evidence, and knowingly misrepresented key facts. Clarisse McCormick colluded with Deputy Cluff and Deputy Bates to alter a criminal police report, used said report to terminate Detective Robert Chagolla, then with the aid of Deputy Cluff obtained both the criminal interview audio and video with cassette from

Deputy Cluff and subsequently destroyed the master and all copies since in the deposition Deputy Cluff stated Clarisse McCormick required him to provide both the master and copies of the evidence to her.

The public trust that amici bear requires that amici and the lawyers in their officer scrupulously adhere to their ethical duties whether engaged in a civil or criminal enforcement action. See, e.g. *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d at 47 (duty to do justice applies “with equal force to the government’s civil lawyers”); *Reid v. INS*, 949 F.2d 287, 288 (9th Cir. 1991) (counsel for the government has an interest only in the law being observed, not in victory or defeat in any particular litigation”).

As recognized in *Freeport-McMoRan*, the American Bar Association's former Model Code of Professional Responsibility expressly held a “government lawyer in a civil action or administrative proceeding” to “the responsibility to seek justice,” and said they “should refrain from instituting or continuing litigation that is obviously unfair.” *ABA Model Code of Professional Responsibility* EC 7-14 (1981); *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d at 47; see also *Silverman v. Ehrlich Beer Corp.*, 687 F. Supp. 670 (S.D.N.Y. 1987 (“the attorney representing the government must be held to a higher standard than that of the ordinary lawyer”). The potential for fraud does not disappear simply because the government requests civil, not criminal relief. Edward L. Rubin, *Due Process, and the Administrative State*, 72 Cal. L. Rev. 1044, 10470-48 (1984) (“it has always been clear that the [Due Process Clause]

applied to the conduct of criminal and civil trials”). The duty to seek justice fairly applies in the civil enforcement context as well. Civil enforcement actions often seek remedies that are penal in nature. The government lawyer in such circumstances is accountable “to a higher standard of behavior.” *United States v. Young*, 470 U.S. 1, 25-26 (1985) (Brennan, J., concurring in part) (emphasis original). For example, the ABA Code of Professional Responsibility states that a “government lawyer in a civil action... should not use his/position to harass parties or to bring about unjust settlements or results.” EC 7-14 (1980); *see also id.* (Government lawyers have “an obligation to refrain from instituting or continuing litigation that is obviously unfair.”

Nor should government attorneys be given the perverse incentive to seek harsh civil penalties rather than criminal penalties to be held to lower standards of conduct. Just as convictions are overturned when courts are misled (sometimes in even minor ways), so too should civil enforcement settlements be subject to vacatur, especially when procured through massive fraud. See *Giglia v. United States*, 405 U.S. 150 (1972); *Brady v. Maryland*, 373 U.S. 83 (1963).

Fogel, Singleton and Rieves are important decisions because they illustrate that when a prosecutor steps outside their role as an advocate and engages in investigative conduct, absolute immunity will not immunize her unconstitutional conduct.

Every day is day one: Robert Chagolla and Jackie Chagolla wait for a letter in the mail, an entry on the internet, or a knock on their door stating how in some new way their lives will be impacted by the governments' actions/inactions from the past. These events could never have occurred if there was just one righteous person involved. This event impacted not just Robert Chagolla and Jackie Chagolla. It has impacted their family. Bryan Cluff, Todd Bates, Clarisse McCormick and Paul Penzone know what they did and did not do in this matter, but all thought prosecutorial immunity gave them protection from their actions/inactions, especially those that were criminal and unconstitutional and in the investigative stage. Robert Chagolla and Jackie Chagolla have not lied to a Judge or the Courts, but the parties in this lawsuit by interpretation of prosecutorial immunity are permitted to lie to both the judges and the court. If the very laws (civil, criminal, and constitutional) put in place to prevent abuses are never enforced there is no incentive for any attorney or government employee to play by the rules let alone adhere to the laws, they are sworn to follow while addressing the Court. It is respectfully requested this case not be dismissed and the Federal Government conduct their own investigation into the actions and inactions involving the Maricopa County Sheriff's Office and the Maricopa County Attorney's Office in all cases where collusion or discrimination is alleged. This lawsuit originates in Arizona, but this is a national issue regarding absolute immunity and financial accountability of federal dollars, since the federal government submits funds to almost every law enforcement agency, prosecution agency and

county/state court system across the United States of America.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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