No. 23-7720

IN THE

SUPREME COURT OF THE UNITED STATES

PATSY N. SAKUMA, *PETITIONER PRO SE*

vs.

ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS AT WAIKELE, BY ITS BOARD OF DIRECTORS, ET AL.,

RESPONDENTS.

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

PETITION FOR WRIT OF CERTIORARI

PATSY N. SAKUMA, Petitioner Pro Se

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QUESTIONS PRESENTED

1. Whether 42 U.S.C. Sections1985(2),(3) and a new *Rooker-Feldman* exception that exists also under *Lance v. Dennis* are jurisdictional exceptions to the Cross-Appeal Rules and may be added as another theory of Rooker-*Feldman* exceptions to that portion of the Judgment, in favor of Petitioner Pro Se?

2. Whether the Third Panel of the Ninth Circuit court of appeals, may own their own initiative, excuse the respondents' failure to file a notice of cross appeal based on an alternative jurisdictional argument that the Ninth Circuit en banc court had already rejected, convert the summary judgment on the RICO merits for respondents to a dismissal for lack of jurisdiction, and not rule on Petitioner Pro Se' appeal including adding a new *Rooker-Feldman* jurisdictional exception to the parallel-action exception, her jurisdictional unlabeled civil rights 1985(2),(3) claimse by virtue of 28 U.S.C. 1343(c)(1), contention that these changes in law under *Kemp v. Unitied States* cannot be consistenly applied with circuit precedent and so is an exceptional circumstance to reverse the adverse judgments agaist under Rule 60(b) her to reopen her case.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in caption of the case on the cover page. A list of all parties in the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Petitioner Pro Se here and Plaintiff-Appellant below is Patsy N. Sakuma, an individual.

2. Respondent here and Defendant-Appellee below is Association of Apartment Owners of the Tropics at Waikele (AOAO), a Hawaii unincorporated association, by its Board of Directors,

3. Association of Condominium Homeowners of Tropics at Waikele (AOCH), Defendants-Appellees-Respondent

4. Milton M. Motooka, an individual, Defendant-Appellee-Respondent

5. Love Yamamoto & Motooka, LLC, a Hawaii law corporation, Defendant-Appellee-Respondent

6. Motooka Yamamoto & Revere, LLC, a Hawaii law corporation, Defendant-Appellee-Respondent

7. Porter McGuire Kiakona & Chow, LLP, a Hawaii limited-liability law partnership, Defendant-Appellee-Respondent

8. James S. Kometani, Hawaii State, Court-Appointed Foreclosure Commissioner, Defendant-Appellee-Respondent

9. Title Guaranty of Hawaii, Inc., a Hawaii corporation, Defendant-Appellee-Respondent

10. Title Guaranty Escrow Services, Inc., a Hawaii corporation, Defendant-Appellee-Respondent

11. First Hawaiian Bank, a Hawaii corporation, and

12. Watanabe Ing, LLP, a Hawaii limited-liability law partnership

RELATED CASES

2001

• ***Patsy N. Sakuma v. Association of Apartment Owners of the Tropics At Waikele;Milton M. Motooka; Hawaiiana Property Management Co.; D.R. Horton-Schuler Homes, LLC,*** **filed August 21, 2001, Civ. No. 1:01-cv-00556-DAE:BMK:** Complaint for unlawful handicap associational discrimination under the Fair Housing Act (FHA) and unlawful handicap design violations for new housing under the Americans With Disability Act (ADA), Title II (Covenant, Program or Services) .Enforced Settlement w/Clerk of the District Court signing for Plaintiff Pro Se Sakuma. **9th Cir. Appeal Nos. 03-00147; 05:16940; 06-16121; 07:16396; 07:17189; 07-17298.**

• ***Association of Apartment Owners of Tropics at Waiklele, by its board of directors v. Patsy N. Sakuma;*** First Circuit Court of the Circuit Court of the State of Hawaii, Civ. No. 1RC01-5514 **(state assumpsit action), removed** by Sakuma, below).

2002

• ***Association of Apartment Owners of Tropics at Waiklele, by its board of directors v. Patsy N. Sakuma;*** **Removed State Action** for assumpsit, by Sakuma; Hawaii State, Cir. Ct., First Cir. No. 1RC01-5514. Renumbered as The United States District Court of the Hawaii District, Civ. No. 1:02-cv-00147:HG:LEK. **9th Circuit Appeal No.** 03-15480. Enforced settlement with the clerk of the district court signing in lieu of Sakuma.

2007

• ***Association of Condominium Homeowners of Tropics at Waiklele, by its board of directors v. Patsy Naomi Sakuma; First Hawaiian Bank, a Hawaii corporation; Waikele Community Assocation, a Hawaii nonprofit corporation*** - Circuit Court of the First Circuit Court of the State of Hawaii, Civ. No. 07-1487 **(State foreclosure)** . Court of Appeals (ICA), **CAAP Nos.** 11:0000054, 12:0000145, **No.** 12:0000870, 16:0000627. **SCWC Nos.**11:0000054; 12:0000145;12:0000870; 16-000627. **SCPW No. 12-00001057,**2012 WL 6929416; **United States Supreme Court No. 21-5676.**

• **Hawaii Published Decision:** *Ass'n. of Condominium Homeowners v. Sakuma,* SCWC:12-0000670, 131 Haw.254, 318 P.3d 94 (2013).

• Unpublished dispositions: 2011 Haw. App. LEXIS 830 (Aug. 3 2011), 2011 WL 3671965; **CAAP No.**, 2012 WL 2924102; **CAAP No. 2013;** 2015 Haw. App. LEXIS 377; Hawaii Supreme Court, No. 21-5676 (petition denied).

2008

• ***Patsy N. Sakuma v. Association of Condominium Homeowners of Tropics at Waikele,*** *by its Board of Directors;* ***Karen N. Blondin,*** *The Honorable Circuit Judge Karen N. Blondin;* ***James S. Kometani;*** USDC- Haw. Civ. No. 1:08-cv-000502-HG-KSC; **9th Cir. Nos. 09-16229, 09-17488; 12-15496.**

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Hawaii Revised Statute (HRS)

Other

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix 1-2 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix 5-8 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at, Appendix ___ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 15, 2023

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: March 12, 2024, and a copy of the order denying rehearing appears at Appendix 01

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No._____

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____

A copy of that decision appears at Appendix_____

[ ] A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____,

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on

_____(date)

in Application No._____

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

STATUTORY PROVISIONS AND RULES INVOLVED

• 42 U.S.C. §1985(2), clause 2 provides in pertinent part: (2) OBSTRUCTION OF JUSTICE
If two or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State or Terriotry, with intent to to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing or attempt to enforce the right of any person, or class of persons, to the equal protection of the laws...."

• 42 U.S.C. §1985(3) provides in pertinent part:
"'[I]'n any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property or deprived of having and exercising any right or privilege of a citizen of a citizen of the United States, the party as as injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

• 28 U.S.C. §1257(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specifically set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

• 28 U.S.C. §1331 – Federal question- The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

• 28 U.S.C §1343(a)(1) provides, in pertinent part:
"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person, provides, in pertinent part:
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentions in section 1985 of Title 42;
(2). To recover damages from any person or property or to aid in the preventing of any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent...."

• Federal Rules of Appellate Procedure 4(a)(3) **Multiple appeals.** If only one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), which ever period ends later.

STATEMENT OF THE CASE

On June 27, 2016, Petitioner Pro Se Patsy N. Sakuma sued respondents in the District of Hawaii, Dist.Ct. Dkt. 9, seeking damages, declaratory, and injunctive relief as an "independent action," of her prior federal and removed actions for further unlawful associational handicap discrimination and retaliation in the foreclosure of her home, under the Fair Housing Amendment Act of 1988, 42 U.S.C. §3601 et seq., handicap accessibility and design violations for new housing, under the Americans With Disabilities Act of 1990, as amended, 42 U.S.C. §12131 et seq. and 24 C.F.R. §100.24(a), and labeled eight other causes of action, including unfair and deceptive acts and practices and fraudulent concealment, under the Hawaii Revised Statute §§657-20, Racketeering Influenced Organizations ("RICO") and conspiracy under Title 18 U.S.C. §§1964(c) and (d), and other state claims. The First Amended Complaint named the eleven respondents, including her homeowner association, its attorney and law firms, including Respondent Porter McGuire Kiakona & Chow, LLP, the state-court appointed foreclosure commissioner, Respondent James S. Kometani, the title company and its sister-escrow corporation, her mortgage lender and its law firm. *Id.* at 1-2.

On October 28, 2016, before any discovery, the District Court entered its written order dismissing the First-Amended Verified Complaint, granting the motions to dismiss by Respondents: (1) Porter McGuire Kiakona & Chow, LLP (PMKC), (2) James S. Kometani, (3) First-Hawaiian Bank and Watanabe Ing, LLP,

(4) Milton M. Motooka, and Motooka Yamamoto & Revere, LLC. In its October 28, 2016 Order, the District Court applied the device of alternative holdings, one based on the *Rooker-Feldman* jurisdictional bar and the other on the merits—failure to state a plausible RICO claim, and with the court declining to exercise supplemental jurisdiction over the remaining state claims. 2016 WL 6433842, App. 34-41. On that same day, the "judgment was entered in favor of the Respondents dismissing the action with prejudice." App. 32-33.

On September 30, 2016, Petitioner Pro Se filed her notice of appeal, No.16-16791, to appeal the October 28, 2016 Order and Judgment. Dist.Ct.No. 88.

On Direct Review: Ninth Circuit Appeal No. 16-16791

On January 17, 2017, Petitioner Pro Se timely filed her informal opening brief contending the district court erred because the parallel action exception to *Rooker-Feldman* applied and that she should be able to amend her complaint to add the missing two RICO predicate acts per respondent. No. 16-16791, Dkt.2. Only two respondents filed responsive briefs: PMKC and the Commissioner. No.16-16791, Dkts. 31, 32. Petitioner Pro Se filed her reply briefs to each of Respondents' responsive briefs adding the unearthed HRS §667-51's legislative history to refute *Rooker-Feldman* applied. No.16-16791, Dkts.39-1.6-8; 40 at 4-11. That same day, Petitioner Pro Se also filed a motion for leave to file Supplemental Records to add public records of the two predicate RICO acts per respondent to survive a dismissal at the pleading stage under *Sedima, SPRL v. Imrez Co., Inc.,*

473 U.S. 419, 498 n.12 (1985). No.16-16791, Dkt 40 at 6-8; 39-1 at 6-8a. Respondents did not oppose it. No.16-16791, Dkt.

On December 21, 2017, the Ninth Circuit (Panel One) entered the unpublished memorandum granting Petitioner Pro Se's motion to Supplement the Record, but applied waiver on appeal to affirm the district court's October 26, 2016 Judgment on other grounds. 707 Fed. Appx. 906 (9th Cir. 2017); App.30-31-o. The December 21, 2017 Memorandum, in pertinent part, cited *Noel v. Hall*, for review de novo a dismissal under the *Rooker-Feldman* doctrine, and (2) that plaintiff must present factual allegations to state a plausible claim for relief citing *Living Designs, Inc. v. E .I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (elements of a RICO claim). *Id.*

Multiple Petitions for Hearing and Hearing En Banc – App. No.16-16791

Petitioner Pro Se did not receive the December 21, 2017 Memorandum, nearly a week later, which was mailed just four days before the mail-crunch of the Christmas holiday. Petitioner Pro Se ended up with filing multiple petitions for hearing and hearing en banc, three timely and two untimely,with motions for leave leave to file explaining she had excusable neglect for her mistake in filing multiple petitions where she raised for the first time her unlabeled §§1985(2),(3) claims in the First Amended Complaint. No. 16-16791, Dkts. 46, 47, 49, 50 & 52. Petitioner Pro Se mistakenly asked the court to file the last one, which was beyond the Ninth Circuit's deadline, because it corrected many omissions caused by suspected hackers and of her mistaken belief that she could timely file it because of what the

Ninth Clerk had told her when she called about not receiving the memorandum. 9th Cir. App. No. 16-16791, Dkt. 52 at 10.

On May 1, 2018, the Ninth Circuit Panel entered the order denying her petition for hearing and hearing en banc stating Dkt. 52 superseded the four other docketed hearing and hearing en banc petitions are denied. App. 28-29n.

2018 RECALLING THE MANDATE

On October 29, 2018, Petitioner Pro Se filed a motion to recall the mandate objecting to waiver on appeal. But it was merely filed without any review. No. 16-16791, Dkt. 57.

2018 U.S Supreme Court Writ of Certiorari, No. 18-5424

On August 28, 2018, Petitioner Pro Se filed her Motion for In Forma Pauperis and Petition for Writ of Certiorari on two questions presented: 1) circuit conflict with no circuit applying waiver on appeal to bypass *Rooker-Feldman,* and 2) circuit conflict in error in panel not sua sponte raising her unlabeled §§1985(2),(3) claims, in S. Ct. No. 18-5424; D. Ct. No. 101. On October 9, 2018, the Supreme Court denied Petitioner Pro Se's petition, S. Ct. No. 18-5424. 139 S.Ct. 328 (2018); App.27m. On December 3, 2018, the Supreme Court denied her request for rehearing. 139 S.Ct. 624 (2018); App.26-l.

2019 Rule 60(b)(6) Motion for Relief

On April 30, 2019, Petitioner Pro Se filed a motion for relief under Federal Rule of Civil Procedure 60(b)(6) from the October 28, 2016 Judgment. D. Ct. Dkts.104 at 1-12. Petitioner Pro Se contended no preclusive effect, no waiver on

appeal citing new case law *Eberle v. City of Anaheim,* 901 F2d 914, 918 (9th Cir. 1990), the parallel state and federal action exception to the *Rooker-Feldman,* and adding under *Lance v. Dennis,* 546 U.S. 459, 464 (2006)(per curiam) nonparties to the 2007 state action are not subject to *Rooker-Feldman,* that she plausibly pled a §§1985(2),(3) civil rights claim even if unlabeled, and that extraordinary circumstances existed predicated on the intervening change in law under the Seventh Circuit decision *Simpson v. County of Brown . Id.* PMKC filed an opposition. D.Ct. Dkt. 109. Respondent First Hawaiian Bank filed an opposition, D.Ct. Dkt. 111. Commissioner filed an opposition, D.Ct. Dkt. 113.

On June 14, 2019, the District Court entered its order denying her Rule 60(b)(6) motion for relief from the October 26, 2016 Order and Judgment. App. 18-25k. The District Court concluded the legal errors asserted, even if true, would not cure her failure to state a plausible RICO claim and that the Ninth Circuit had affirmed its October 26, 2016 Order and Judgment. App. 20-21k. On her claim of the intervening new law, the District Court concluded *Simpson* was not new law and not on point on the RICO claim or *Rooker-Feldman* issue. App. 22-24k.

On July 12, 2019 Petitioner Pro Se filed a post-judgment FRCP 59(e) motion for relief from the June 14, 2019 Order based on the intervening new law on "takings" in *Knick v. Twsp. Of Scott,* 138 U.S.1202 (2018): whether *Knick* overturned *Rooker-Feldman,* so she could add a new takings claim against the Hawaii First Circuit Court of her $129,000.00 foreclosure sale-surplus. D.Ct. Dkt. 120. Petitioner Pro Se also requested leave to amend, if needed. *Id.*

On July 30, 2019, the District Court denied her July 12, 2019 post-judgment motion. App. 16-17j.

Second 9th Circuit Appeal No. 19-16615

On August 14, 2019, Petitioner Pro Se filed her notice of appeal of the June 14, July 30, 2019, and October 28, 2016 orders and judgment. D.Ct. Dkt. 121. On October 3, 2019, the Appellate Commissioner filed an order to show cause why her appeal included the October 28, 2016 Judgment, which she opposed in her October 16, 2019 Reconsideration. App.14-15i; No. 19-16615, Dkt. 3. On November 30, 2019, Petitioner Pro Se filed her informal opening brief and raised the same claims as in the district court. Appeal No. 19-16615, Dkt.6. On December 17, 2019, a two-judge panel entered an order denying Petitioner Pro Se's motion for reconsideration of the October 3, 2019 Order. No. 19-16615, Dkt. 13.

On February 21, 2020, PMKC filed its responsive brief. PMKC basically mirrored the points for denial in the District Court's 2019 Orders. No. 19-16615, Dkt.14. On February 25, 2019, the Commissioner filed his motion for leave to file late responsive brief and Answering Brief. No.19-16615, Dkts. 18-19.

On February 25, 2019, an Order was entered granting Respondent Commissioner's motion for leave to file a late answering brief. No.19-16615, Dkt. 22. That same day, Petitioner Pro Se filed her opposition to the Commissioner's Motion for Leave to file a late answering brief. No.19-16615, Dkt. 27.

On June 16, 2020, Petitioner Pro Se filed her informal reply brief. No. 19-16615, Dkt. 35. She countered PMKC's arguments that she did not plausibly plead

a RICO claim under the elements of pattern, predicate acts, and conspiracy to commit RICO claim, and that the FAVC established a putative but unlabeled 1985(2) claim under Rule 8, because it overlapped her UDPA and RICO claims, the UDPA claims occurred in three separate state proceedings, years 2001, 2005, and 2007 by the eleven Respondents. 9C-19-16615, Dkt. 35.

January 26, 2021 Second Panel Memorandum in Appeal No. 19-16615

On January 26, 2021, Panel Two entered its Memorandum affirming the District Court's post-judgment orders, but only entering summary judgment on the RICO merit question in favor of Respondent, denied her §1985 claims based on her deliberate litigation mistake, which was not excusable neglect or allowed any ground for relief, and was silent on the *Rooker-Feldman* issue. App, 12-13f.

2019 Hearing and Hearing En Banc Petition in Appeal No. 19-16615

On March 8, 2021, Petitioner Pro Se filed a petition for hearing and hearing en banc in Appeal No. 19-16615, Dkt. 42. On May 25, 2021, the Ninth Circuit entered its order denying her petition for hearing and hearing en banc in Appeal No. 19-16615. App. 10-11g.

2021 Supreme Court Writ of Certiorari – Sp. Ct.No. 21-6072

On October 21, 2021, Petitioner Pro Se filed her petition for writ of certiorari in S. Ct.. No. 21-6072. D.Ct. Dkt. 135. Here two questions presented were: (1) whether a federal judge or court must sua sponte raise an imperfectly raised §1985 jurisdictional claim by virtue of 28 U.S.C. 1343(a)(1) before dismissing an action at the pleading stage based on actual notice; (2) whether the Court will also

accept for the writ of certiorari to resolve an intra-circuit split in the Ninth Circuit between *Sch. Dist. 1 Multnomah v. ACand S, Inc.*, 5 F3d 1255, 1262-63 (9th Cir.1993) affidavit violation and *In re Glenfed Inc., Sec. Litig.*, 42 F3d 1541, 1551 (9th Cir. 1994)(en banc) even buried claims must be considered before dismissing a complaint for lack of subject-matter jurisdiction. On January 7, 2022, Petitioner Pro Se's Petition for Writ of Certiorari was distributed for the same conference as Petitioner Dexter Earl Kemp's petition for writ of certiorari in S. Ct. Nos. 21-6072; 21-5726. D.Ct. Dkt. 138-4. *Kemp v. United States*, 142 S.Ct. 1856 (2022).

On January 10, 2022, the Order Denying Petition for Writ of Certiorari was entered in this case. App. 09f. 142 S.Ct. 795. But *Kemp's* petition for writ of certiorari was granted on that same day. S.Ct. No.21-5726. On March 7, 2022, the Order Denying Petitioner Pro Se's Rehearing Petition was entered. App. 08e. 142 S.Ct. 1354.

November 23, 2022 Leave to File Renewed Rule 60(b) Motions

On November 10, 2022, Petitioner Pro Se manually filed her Renewed Rule 60(b)(1) or (b)(6) Motion. D.Ct. Dkt. 137. As it was not electronically filed the same day to effectuate same day service by the clerk of the court, she again manually filed it, on November 23, 2022, D.Ct. Dkt. 138, and served it that same day by U.S. mail. D.Ct. Dkt. 138. The grounds for the Renewed Motion were based on the intervening change in law of this Court's decision *Kemp v. United States* that presented exceptional circumstances under FRCP Rule 60(b)(6) and/or 60(b)(1) and

the new *Rooker-Feldman* exception to warrant relief from judgments.

November 28, 2022 District Court Order

On November 28, 2022, apparently without waiting for the Respondents to file any opposition to her November 10, 2023 Renewed Motion or because none was filed, the District Court entered its order granting leave to file but denying Petitioner Pro Se's Renewed Motion.App. 05-07d. The District Court concluded that it lacked authority to review and reverse the Ninth Circuit's conclusion that *Latshaw v. Trainor Wortham and Co.'s* deliberate litigation mistake precluded consideration of her putative unlabeled §1985(2),(3) civil rights claims where she first raised these civil rights claims and not with the district court, commented what does her proposed new *Rooker-Feldman* exception under *Lance v. Dennis* have to do with not plausibly pleading a RICO claim, and that her renewed motion was untimely. Ap. 05-07d.

On December 16, 2022, Petitioner Pro Se filed her Notice of Appeal of the November 28, 2022 District Court's Order. D.Ct. Dkt. 145.

Informal Opening Brief 9th Cir. App. No. 22-16929

On March 17, 2023, Petitioner Pro Se timely filed her Informal Opening Brief within the extension deadline. No. 22-16929, Dkt. 6. She contended the same points of error as in her Renewed Motion, and added new case authorities. *Id.*

Commissioner's 2023 Responsive Brief

On May 12, 2023, the Commissioner timely filed his Responsive Brief, but untimely served it on Petitioner Pro Se, one day late, which fell on a weekend. No.

22-16929, Dkt. 9. The Commissioner did not explain why he did not waive his arguments by not raising them below at the district court. *Id.* The Commissioner's one line arguments with case citation for the standards of review, was like the Ninth Circuit's unpublished memorandum format in this action. *Id.* Without citing to *FTC v. Consumer Defense Fund, Inc.*, 926 F3d 1208 (9th Cir. 2019), the Commissioner argued that the intervening Supreme Court decision of *Kemp* is not an exceptional circumstance to warrant relief from judgment because it may be consistently applied with Ninth Circuit precedents and that Petitioner Pro Se misstated the law because *Lance v. Dennis* does not hold that non-state parties are not subject to *Rooker-Feldman's* jurisdictional bar. *Id.*

PMKC'S 2023 Responsive Brief

Coincidently, on May 12, 2023, PMKC also timely filed its 2022 Responsive Brief, but also untimely served it on Petitioner Pro Se, one day late like the Commissioner. No. 22-16929, Dkt. 11.

PMKC argued that the District Court did not abuse its discretion denying Petitioner Pro Se's Renewed Motion because it was untimely filed, it argued for the first time that the FAVC's pleadings were frivolous, and like the Commissioner argued that that *Kemp's* does not present an exceptional circumstance because it may be consistently applied with Ninth Circuit precedents without citing *FTC v. Consumer Defense Inc.Id.*

Motion to Leave to File Replacement. Multiple Reply Briefs - App.No. 22-16929

On July 10. 2023, the Clerk of the Court notified Petitioner Pro Se that her two separately filed informal reply briefs were nonconforming under the new Ninth Circuit Rule 28-5, which now required a single reply brief to multiple responsive briefs from appellees. No. 22-16929, Dkts. 26-1&2.

On July 13, 2023, Petitioner Pro Se mailed for filing her motion for leave to file multiple replacement informal-reply briefs in reply to PMKC's and the Commissioner's responsive brief and to the apparently missing, lost, or undocketed originally filed and separate reply brief to the Commissioner's responsive brief she had mailed and served on June 28, 2023. No. 22-16929, Dkts. 25, 26, and 27, 28. Petitioner Pro Se contended that the new circuit rule was ambiguous and she could not predict if PMKC's and the Commissioner's Responsive Briefs would be considered or rejected based on untimely service. No. 22-16929, Dkts. 25, 26, and 27, 28. In reply to the Commissioner's responsive brief, Petitioner Pro Se distinguished each case cited to show this Court's decision *Ackermann v. United States's* deliberate litigation mistake bar was inconsistently applied in the Ninth Circuit so that *Kemp* was extraordinary circumstance to warrant relief from judgment, its application in *Latshaw v. Trainor Wortham & Co. here* was unsettled in the Ninth Circuit and added the case *Karcher v. May* cited in *Lance v. Dennis* to substantiate the new alternative holding under *Lance v. Dennis. Id.*

In reply to PMKC's responsive brief, she countered every claim with other case citation and refuted the FRCP Rule 56(e)'s affidavit violation with the public records exception to hearsay Fed. R. Evid. 201(b) cited in *Manufactured Homes*

Communities, Inc. v. City of San Jose, 420 F3d 1022, 1030 (9th Cir. 2005), which case the district court cited in its October 28, 2016 Dismissal Order for inextricably intertwined fraud allegations with the state case. App.34q. The Ninth Circuit Clerk entered her two reply briefs. No. 22-16929, Dkts. 25 & 26.

December 17, 2023 Panel 3's Unpublished Memorandum

On December 15, 2023 the Ninth Circuit entered its Memorandum denying Petitioner Pro Se's appeal and affirmed the district court's November 28, 2023 Order. App. 03-04c.

On December 15, 2023, the Ninth Circuit (Panel 3) filed its Memorandum affirming the district court's November 28, 2023 Order Denying Petitioner Pro Se's 2023 Renewed Motion and apparently on their own initiative modifying Panel 2's summary judgment on the merits in favor of Respondents to dismissal for lack of jurisdiction pursuant to waiver on appeal. No. 22-16929, Dkt. 29-1.

March 12, 2024 Order Denying Hearing /Hearing En Banc Petition

On January 29, 2024, Petitioner Pro Se filed her Hearing and Hearing En Banc Petition in Appeal No. 22-16929 before the extension deadline. No. 22-16929, Dkt. 32. Her grounds for hearing or hearing en banc were the Panel Memorandum conflicts with: (1) The recent 9th Circuit en banc decision *Brown v. Arizona* that already applied the intervening change of law of *Kemp v United States* so Respondents' argument that is not an extraordinary circumstance could not be used to excuse Respondents' failure to file a cross appeal, so a more generous version of excusing an party's or party's attorney's deliberate litigation mistake

applied as excusable neglect, that an improperly presented jurisdiction issue still has to be sua sponted considered , her new proposed *Rooker-Feldman* jurisdictional exception was directly derivative under *Lance v. Dennis'* holding citing *Karcher v. May and* presents a bright-line test for another *Rooker-Feldman* exception, and that Panel Three's reliance on *Engleson v. Burlington No. Railroad* Co., conflicts with its own cited authority *Engleson,* and with the Second Circuit, 5th Circuit, 6th Circuit and 7th Circuit Courts. *Id.*

On March 12, 2024, the Ninth Circuit Panel 3 denied her petition for hearing and hearing en banc. No. 22-16929, Dkt. 33. On March 20, 2024, the Mandate was entered. No, 22-16929, Dkt. 34.

REASONS FOR GRANTING THE PETITION

I. Whether another *Rooker-Feldman* exception exists under *Lance v. Dennis'* holding.

In Lance v. Dennis, 546 U.S.459, 466 (2006), this Court held that the *Rooker-Feldman* jurisdictional doctrine does not bar actions by nonparties to the earlier state-court judgment simply because for purposes of preclusion law, they could be considered in privity with a party to the judgment.

This Court cited *Karcher v. May*, 484 U.S. 72, 77 (1987) as authority for its holding above in *Lance v. Dennis,* 546 U.S. at 465. In *Karcher,* 484 U.S. at 77, this Court stated the general rule "[is] that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom." The defendants in *Karcher* were sued in their official *legislative* capacity and later attempted to appeal the judgment in their *individual* capacity. This Court dismissed their appeal for lack of *standing*. The rational was that the *Karcher* defendants were not appealing or intending to appeal in their *official legislative capacity* since they were not voted back into office. In *Lance,* this Court derivatively applied the logic of *Karcher's* general rule to the *Lance* plainitffs to hold *Rooker-Feldman's* jurisdictional bar did not apply to them because they could not have appealed the prior state-court judgment because they were nonparties in that state-court judgment.

In this action, Petitioner Pro Se contends the logical transfer of *Karcher* is direct. She contends that the Respondents/Appellees-Defendants who were not state-court parties or treated like one are also not subject to *Rooker-Feldman's*

jurisdictional bar. Under the parallel-action exception to *Rooker-Feldman,* which court reaches final judgment first may trigger but does not per se stop the federal action under preclusion. *See, Exxon-Mobil v. Saudi Basis Indust., Corp.* 544 U.S.280, 283 (2005). However, under this new exception, the *Rooker-Feldman* jurisdictional bar does not reach the federal Respondents-defendants-appellees in this action under *Karcher,* 484 U.S. at 77. Like the plaintiffs in *Lance,* they were not a state party so they could not have appealed any judgment in the state action.

II. The new *Rooker-Feldman* exception is an important question.

A prevailing party may assert another ground for affirmance and it may be granted if it involves issues that are of significant general importance. *United States v. Nobles,* 422 U.S. 435, 241-242 n.16 (1975).

Justice Stewart's dissent in *Lance v. Dennis,* lamented that ever since the *Feldman* decision [i.e., the inextricably intertwining" test"] from the doctrine's straight-forward application in *Rooker,* the *Rooker-Feldman* doctrine has produced nothing but mischief for 23 years. This was illustrated in the district court's "resuscitation of the doctrine" in *Lance v. Dennis,* 546 U.S. at 467, even after *Exxon-Mobil v. Saudi Basis Industries'* attempt in clearing up the confusion. Therefore, Petitioner Pro Se, as the prevailing party on the *Rooker-Feldman* issue on Second Appeal, proposes a new *Rooker-Feldman* exception that presents a bright-line test for federal parties and the courts to better navigate resolving the often confusing and complex *Rooker-Feldman* jurisdictional question with two basic components: "1) federal defendants and 2) who were not state parties in the

related state action." to *Rooker-Feldmans'* jurisdictional bar of federal subject-matter jurisdiction. And this issue is also presented in the second conflict below.

III. There are two circuit conflicts

A. Circuits are starting to disregard the cross-appeal rules and modifying a judgment to a non-appealing party on a forfeited argument and to the detriment of the prevailing appellant.

The well-established cross-appeal rule under *Greenlaw v. United States:*, 554 U.S. 237, 244 (2008) is that "an appellate court may not alter a judgment to benefit a nonappealing party."

Eleven of the thirteen circuits have addressed the question whether the forfeiture and waiver rules of FRAP 4(a)(3) cross-appeals as a non-jurisdictional claim processing rule apply not only to the notice of appeal, but to all the cross-appeal rules.

1. Three circuits have modified a judgment to benefit a non-appealing partiy based on waiver and forfeiture.

Eighth Circuit: In *Arkansas State Conference NAACP v. Arkansas Bd. of Apportionment,* 91 F4th 967 (8th Cir. 2024): The Eighth Circuit held they may modify a judgment in favor of a non-appealing appellee by forfeiture when no party objects. Circuit Judge Colloton's dissent in *Arkansas Conference NAACP v. Arkansas Board of Apportionment,* 91 F4th at 969-974, however, hits the mark as to why the Court should hear that pending and this petition for writ of certiorari on extension for filing until June 28, 2024, S.Ct. No. 23A929: "No case supports disregarding the cross-appeal rule to grant extended relief to a non-appealing party, on a forfeited argument, when the prevailing appellants have a fruitful

avenue to pursueon remand." This is what the majority in *Arkansas State Conference* did. But they are not the only ones.

Sixth Circuit: The Sixth Circuit also recently held that because FRAP 4(a)(3) is a non-jurisdictional claims processing procedure, the rules of forfeiture and waiver apply. Therefore, the court may may modify a judgment in favor of a non-appealing appellee, who has waived an argument by not cross appealing to benefit from a favorable ruling to another party because the co-appellee forfeited its objection by not raising it until the rehearing en banc stage, and not in its briefs or at oral argment. *See, Georgia Pacific Consumer Products LP v. NCR Corp.*, 40 F4th 481,483-484 (6th Cir. 2022)(contribution complaint filed in the toxic clean up paper-mills byyproducts into the abutting rivers and environs);

And yet, the Sixth Circuit later in *Autumn Wind, LLC v. Estate of Siegel,* No, 23-54656 entered on February 8, 2024, showed the court understands the cross-appeal rules in the new nonjurisdictional world. In *Autumn Wind,* the 6th circuit applied the accepted rule that defendant's subject-matter jurisdictional argument that the bankruptcy plan confirmation precluded *Autumn Wind's* claims were merely an alternative argument affirming the bankruptcy court's judgment with prejudice, citing *Jennings v. Stephens,* 574 U.S. at 276, quoting Am. Ry. Express Co., 265 U.S. R 425, 436 (1924).

Ninth Circuit in this case: In an unpublished memorandum, a Third Panel of the Ninth Circuit in this case, on its own initiative applied waiver on appeal to alter the Second Panel's summary judgment on the merits to a dismissal

for lack of jurisdiction in favor of respondents, who had failed to cross-appeal the *Rooker-Feldman* judgment not in their favor on Second Appeal based on the parallel-action exception to *Rooker-Feldman,* which was in Petitioner Pro Se's favor in that portion of the judgment, and when Petitioner Pro Se had appealed the entire case. Furthermore, the Third Panel had excused respondents' waiver in failing to cross-appeal based on their alternative jurisdictional arguments, when the Third Panel knew or should have known the Ninth Circuit en banc court had just rejected those arguments recently in *Brown v. Arizona,* 82 F4th 863, 873 (9th Cir. 2023) (en banc).

The modified judgment, therefore, has the effect of lessening the rights of the parties in those cases and Petitioner Pro Se who had a fruitful avenue to reverse the summary judgment to be in her favor on Third Appeal based on the new alternative *Rooker-Feldman* argument, the jurisdictional exception argument to cross-appeals, the waiver exception of intervening changes in the law on the merits, and further case citations to *Ball v. Rodgers,* 492 F3d 1094, 1102 (9th Cir. 2000), *Brown v. Arizona,* 82 F4th 863, 873 (9th Cir. 2023)(en banc), and *Willingham v. Jordan,* 395 U.S. 402, 406 n.3 (1969).

***Cf.* Ninth Cir. applying Alaska Indust. Bd. Test:** *Engleson v. Burlington Northern R.R. Co.*, 972 F2d 1038, 1042 (9th Cir. 1992). In *Engleson,* Plaintiff-appellant's reliance on *Alaska Industrial Bd. v. Chugach Electric Ass'n, Inc.*, 356 U. S. 320, 323-325 (1958) that defendants-appellees had to file a cross claim to raise the argument of plaintiff's failure to exhaust administrative remedies failed

because defendants-appellees" jurisdictional argument was in support of the judgment of dismissal with prejudice.

The Ninth Circuit in *Engleson*, 972 F2d at 1042-1043 stated that in *Alaska Indus. Bd.*, the arguments raised by the respondents did not support the judgment as entered. Accepting the Appellees' contentions would have required that a portion of the court of appeal's decision be vacated. 356 U.S. at 323. The court of appeals had substantially affirmed the district court's order reversing the *Alaska Industrial Board*'s award of continuing temporary benefits to an employee who also received a lump-sum award for total permanent disability. *Id.* The circuit court, however, held that the lump-sum award for total permanent disability should not have been reduced by the amounts received as temporary disability prior to the lump-sum award. *Id.*

Thus, the timeliness and jurisdictional arguments the respondents raised in *Alaska Industrial Board* would not have supported that portion of the circuit court's judgment holding that the employer should have paid the employee the full lump-sum award without any reduction for amounts received as temporary disability before that time. *Id.* Where as in *Alaska Industrial Board*, an appellee seeks to modify a judgment, he or she must file a cross-appeal.

2. Eight circuits hold that the cross-appeal rules prevent conversion of a dismissal without prejudice to with prejudice.

In contrast, the First, Third, Fifth, Seventh, Eight, Tenth, Eleventh Circuits hold *contra*: Pursuant to the dissent in *Arkansas State Conference NAACP*, the First, Third, Fifth, Seventh, Tenth and Eleventh Circuits all hold that

the cross-appeal rule prevents a court of appeals from converting a dismissal without prejudice to a dismissal with prejudice. Eg., *In re Breland,* 989 F3d 919, 922-923 (11th Cir. 2021); *Delgado-Caraballo v. Hosp. Pavia Hato Rey, Inc.* 889 F3d 30, 39 n. 15 (1st Cir. 2018); *Tutein v. Insite Towers, LLC,* 572 F.Appx. 107, 113-114 (3rd Cir. 2014); *June v. Union Carbide Corp.,* 577 F3d 1234, 1248 n.8 (10th Cir. 2009); *Conover v. Lein,* 87 F3d 905, 908 (7th Cir. 1996); *Arvie v. Broussard,* 42 F3d 249, 250 (5th Cir. 1994)(per curiam).

First Circuit: *Delgado-Caraballo v. Hosp. Pavia Hato-Rev., Inc.,* 889 F3d 30, 39 n.15 (1st Cir. 2018). The First Circuit concluded that dismissal of local law claims on the statute of limitations ground would be a dismissal not without prejudice, but with prejudice. The appellee's argument was not properly before the court so the court did not hear the statute of limitations claims.

Third Circuit: *Tutein v. Tinsite Towers,* LLC, 572 F.App'x 107, 113-114 (3rd Cir. 2014). Homeowner sued for personal injiury and property damage from the construction of two cellphone towers. The Third Circuit dismissed for failure to exhaust administrative remedies, ie. w/prejudice; but not converted into a dismissal on the merits.

Fifth Circuit: *Arvie v. Broussard,* 42 F3d 249, 250 (5th Cir. 1994)(per curiam). Statute of limitations expired but case dismissed without prejudice. The Fifth Circuit stated that even if the case should have been dismissed with prejudice, the appellee did not cross appeal so error would not be corrected.

Seventh Circuit: *Remijas v. Neiman Marcus Group, LLC,* 794 F3d 688, 697 (7th Cir. 2015) Applying *Jennings v. Stephens,* alternative holding argument but rejecting it and holding that if *Neiman Marcus* wanted a Rule 12(b)(6) relief (dismissal with prejudice), it needed to file a cross-appeal. The district court reached only dismissing for lack of jurisdiction (without prejudice) under Rule 12(b)(1). On appeal, the Seventh Circuit reversed the Rule 12(b)(1) dismissal finding the plaintiffs satisfied standing under Article III and so case was remanded because the district court did not reach ruling on the Rule 12(b)(6) merits. habeas corpus claim with prejudice where the court denied relief without prejudice.

Tenth Circuit in *June v. Union Carbide Corp.,* 557 F3d 1234, 1248 n. 8 (10th Cir. 2009) de novo review of dismissal for lack of subject-matter jurisdiction in class-action of uranium-exposed residents of mining and milling town.

Eleventh Circuit: *In re Breland,* 989 F3d 919, 922-9223 (11th Cir. 2021). The Eleventh Circuit held the debtor suffered Article III injury when the trustee stripped debtor of his debtor-in-possession rights which he claimed violated the 13th Amendment and amounted to involuntary servitude, and remanded the case because it was dismissed without prejudice and not on the merits.

***Pre-Jennings v. Stephens*:**

D.C. Cir. : In *Spann v. Colonial Village Inc.,* 899 F2d 24, 33 (D.C.Cir. 1990), commenting that dismissal for lack of personal jurisdiction is without prejudice so-a party may bring action in another forum; vs. District Court held that FHA claim time-barred. D.C. Cir. disagreed and reversed. Personal jurisdiction and venue

may be waived at any stage of the proceeding, FRCP 7 and generally waived by not cross-appealing. But because a cross-appeal in the D.C. Circuit is not jurisdictional, the court may excuse the failure to cross appeal for exceptional circumstance which existed in that case.

Seventh Circuit: *Bullard v. Sercon Corp.*, 846 F2d 463, 467 (7th Cir.1988)(appellees may properly advance jurisdictional argument for failure to exhaust administrative remedy as an additional ground to support judgment in their responsive brief, even thought argument was not raised below).

Eight Circuit: *Benson v. Armontrout*, 767 F2d 454, 455 (8th Cir. 1985)(appellee must cross-appeal to argue that the court should have ruled on the merits and dismissal habeas corpus claim with prejudice where the court denied relief without prejudice

Ninth Circuit: *Engleson v. Burlington No. RR Co.*, 972 F2d 1038, 1041-1042 (9th Cir. 1992) (appellee may properly advance jurisdictional argument, even if rejected below, without cross-appeal because it was not seeking any relief greater than a dismissal).

B. The second conflict is the inconsistent application of subject-matter jurisdiction exception to cross appeals

On the other hand, when it comes to subject-matter jurisdiction, "it establishes —or fails to establish—our authority to decide a case, triggering an unflagging duty to make sure we [the court] has it. *Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S.Ct. 13, 17 (2017).

Nor can the parties look the other way. They cannot forfeit or waive subject-matter jurisdiction. *Henderson ex rel. Henderson v. Shinseki,* 562 U.S. 428, 434-435 (2011). *See also, Gunter v. Beavis,* 906 F3d 484, 493 (6th Cir. 2016).

In *Kontrick v. Ryan,* 540 U.S. 443, 456 (2004), the Court further stated that FRCP 82 states that the federal rules may not limit or expand the lower federal court's jurisdiction [only Congress can]. 540 U.S. at 455-56. Distinguishing *Engleson* plaintiffs' reliance on *Raus v. Brotherhood of Ry Carmen,* 663 F2d 791 (8th Cir. 1981)—that *Engleson* does not involve a challenge to the dismissal of the complaint. The Ninth Circuit stated that the issue in *Engleson* is whether an attorney's mistake in pleading the incorrect jurisdictional stattue justifies relief provided by Rule 60(b). However, the Ninth Circuit court in this case did not consider Rule 82—that the rules—Rule 60(b) cannot limit or expand the jurisdiction of the United States district courts. Therefore, even if Petitioner Pro Se cannot get relief from judgment to get §1985(2),(3) claims heard under Rule 60(b)(1)—if her mistake in untimely raising her claim it in a late hearing petition or hearing en banc petition is not cogzniable under Rule 60(b)(1), then it may come in as Rule 60(b)(6) ground for relief under the will of Congress because unlike the union's claim in *Engleson,* Petitioner Pro se's civil rights claim is jurisdictional under 28 U.S.C. §§1343(c)(1) and (3). *See, Steel Co. v. Citizens for a Better Envir,,* 523 U.S. 83, 94-95 (1988); *Lynch v. Household Finance Corp.,* 405 U.S. 538. 549 n. 16 (1972); *Douglas v. City of Jeanette,* 319 U.S. 157, 161 (1943); see also, *Hamer,* 138 S.Ct. at 17.

B. **The *Rooker-Feldman* Doctrine Is Jurisdictional**

The *Rooker-Feldman* doctrine arises out of a pair of negative inferences from two statutes 28 U.S.C. §§1257 and 1331. The statute 28 U.S.C. §1257 states that only the Supreme Court of the United States has original jurisdiction over final state court orders and judgments. The statute 28 U.S.C. 1331 provides that the lower federal courts have jurisdiction over federal questions. *Exxon-Mobil, Inc. v. Basic Saudi Industries, Inc.*, 544 U.S; 280, 283 & n.8 (2005). The doctrine takes its name from the only two cases this Court has ever applied the doctrine: (1) *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 414, 417-418 (1923)(dismissing a suit for lack of subject-matter jurisdiction where *Rooker* was seeking review of an adverse state judgment alleging it violated the U.S. Constitution; (2) *Feldman v. District of Columbia Court of Appeals*, 460 U.S. 462, 479-482 (1983), applying 28 U.S.C. §1257 to bar review of state judgment of bar applicant's application to be admitted to the D.C. legal bar association, but allowing review of the state statutory provisions barring non-accredited law school applicant's to the D.C. legal bar association. *Id.*

The Civil Rights statutes 42 U.S.C. §1985(2),(3) are jurisdictional.

Lynch v. Household Finance Corp., 405 U.S. 538, 543 & n.7 (1972) cited *Douglas v. City of Jeanette*, 319 U.S. 157, 161 (1943) as authority to hold that a §1983 claim is jurisdictional by virtue of its special jurisdictional section 28 U.S.C. §1343(a)(3): "despite the different wording of the substantive and jurisdictional provisions, when the 1983 claim alleges constitutional violations, 28 U.S.C.

Sixth Circuit: *Ogden v. Dept. of Transp.*, 430 F2d 417, 419 (6th Cir. 1970), exhaustion doctrine applied to dismiss the four wrongful discharge complaints of air-traffic controllers who participated in a two-day strike because of little likelihood of success on the merits.

Seventh Circuit: *Champagne v. Schlesinger*, 506 F2d 979, 982 (7th Cir. 1974) stating "we do not accept plaintiff's contention that defendants' failure to take a cross-appeal precludes them from arguing exhaustion on appeal. The parties have briefed the exhaustion issue both here and below, so we have the benefit of their arguments."

Ninth Circuit: *Correa v. Taylor*, 563 F2d 396, 399 (9th Cir. 1977) finding it appropriate to sua sponte raise the threshold jurisdictional or quasi-jurisdiction question of exhaustion must be considered first.

C. This case is an ideal vehicle to resolve the conflicts

This case is a good vehicle for resolving these circuit conflicts. On the cross-appeal conflict, Petitioner Pro Se's case where the the district court applied the device of alternative holdings, one jurisdictional based on *Rooker-Feldman* and the other on the RICO merits. On the jurisdictional conflict, adding a new Rooker-Feldman exception as another bright-line test, and reconsideration of the Ninth Circuit's policy to apply waiver on appeal automatically if new arguments and case citations are presented in appellant's reply brief in response to appellee's responsive briefs.

This case also contrasts *Arkansas State Conference NAACP v. Arkansas Bd. of Apportionment,* 91 F4th 967 (8th Cir. 2024), which recently was granted an extension to file its petition for writ of certiorari until June 28, 2024. *See,* S.Ct.No. 23A929, *infra.* In *Arkansas Bd. Of Apportionment,* the appellee-respondent was seeking a judgment on the merits (with prejudice), but the district court only entered judgment for lack of jurisdiction—without prejudice—i.e., the district court did not apply the device of alternative holdings. Apparently, to achieve the effect of an alternative holding, the Eight Circuit applied the forfeiture /waiver rules of the mandatory claims processing time limit because no one objected, *see infra.* The Court should accept that petition for review—it looks like a nail-biting ending.

V. Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: June 10, 2024