

APPENDIX A

NOT FOR PUBLICATION UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

R. ALEXANDER ACOSTA, Secretary of
Labor, United States Department of Labor,*
Plaintiff-Appellee,

v.

SYDNEY M. OSKOU, individually and as
President of Sandpoint Gas N Go & Lube
Center, Inc.: et al.,
Defendants-Appellants

No. 15-35778
D.C. No. 2:14-cv-00357-BLW
MEMORANDUM**

Appeal from the United States District Court
For the District of Idaho
B. Lynn Winmill, Chief Judge, Presiding
Submitted June 26, 2017***
Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

* R. Alexander Acosta has been substituted for his predecessor, Thomas E. Perez, as Secretary of Labor under Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Sydney M. Oskoui and Sandpoint Gas N Go & Lube Center, Inc. ("Sandpoint") appeal pro se from the district court's entry of default judgement against them in this action alleging violations of the whistleblower provisions of the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. §§ 651-678. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's entry of default. *Speiser, Krause & Madole P.c. v. Ortiz*, 271 F.3d 884, 886 (9th Cir.2001). We affirm.

The District court did not abuse its discretion by ordering the Clerk to default against Oskoui because Oskoui failed to serve a timely responsive pleading or motion under Federal Rule of Civil Procedure 12(b). See Fed. R. Civ. P. 12(a)(1)(A)(i) (defendant must serve answer within 21 days after being served with summons and complaint); Fed. R. Civ. P. 12(a)(4) (describing effect of Rule 12(b) motion on time to serve a responsive pleading); Fed. R. Civ. P. 55(a) (authorizing entry of default when defendant "has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise").

The district court properly denied Oskoui's motions to dismiss for lack of jurisdiction because counsel for the Secretary of Labor ("Secretary") was authorized to file and litigate this action. See 29 U.S.C. § 660(c)(2) (authorizing Secretary to bring an action in district court for violations of OSHA's retaliation provisions); see also 5 U.S.C. § 302(b) (head of agency may delegate authority to subordinate officials); 5 U.S.C. § 3106 (head of agency may employ counsel to conduct litigation "as authorized by law"); 29 U.S.C. § 663 (authorizing Solicitor of Labor to "appear for and represent the Secretary in any civil litigation brought under this chapter"); *Chen v. Allstate*

Ins. Co., 819 F.3d 1136, 1141 (9th Cir. 2016) (setting forth standard of review).

The district court did not abuse its discretion by denying Oskoui's motion for sanctions because the motion was based on the same meritless jurisdictional arguments. *See Avery Dennison Corp. v. Allendale Mut. Ins. Co.*, 310 F.3d 1114, 1117 (9th Cir. 2002) (setting forth standard of review).

The district court did not abuse its discretion or violate Oskoui's right to due process by deciding the motions to dismiss and for sanctions without holding a hearing or setting forth its conclusions in its order. *See Carpinteria Valley Farms, Ltd. V. County of Santa Barbara*, 344 F. 3d 822,832 n.6 (9th Cir. 2003) (rejecting contention that district court violated due process by dismissing claims under Federal Rule of Civil Procedure 12(b)(6) without argument); *Spradlin v. Lear Siegler Mgmt. Servs. Co.*, 926 F.2d865,867 (9th Cir. 1991) (setting forth standard of (review); *see also Bright v. Bechtel Petrol., Inc.*, 780 F. 2d 766, 772 (9th Cir. 1986) ("Rule 52 (a) provides that findings of act and conclusions of law are unnecessary in decisions on motions.").

The district court did not clearly abuse its discretion by denying with leave to re-file Oskoui's request to for a continuance of the hearing on punitive damages because the district court determined reasonably that Oskoui had not provided specific information about why the medical condition precluded his attendance at the hearing. *See Danjaq LLC v. Sony Corp.*, 263 F3d 942, 961 (9th Cir. 2001) (setting forth standard of review).

The district court did not err in failing to recuse itself sua sponte because Oskoui failed to establish extrajudicial bias or prejudice. *See* 28 U.S.C. § 455;

Noli v. Comm'r 860 F.2d 1521, 1527 (9th Cir. 1988) (“[I]f no motion is made to the judge ...a party will bear a greater burden on appeal in demonstrating that the judge [erred] in failing to grant recusal under section 455.” (alteration in original, citation and internal quotation marks omitted)).

We dismiss Sandpoint’s appeal because no attorney has entered an appearance in this court on behalf of Sandpoint, and Oskoui, an non-attorney may not represent Sandpoint. See *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (“A corporation may appear in federal court only through licensed counsel.”) *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (“Although a non-attorney may appear in properia persona in his own behalf, that privilege is personal to him. he has no authority to appear as an attorney for others than himself.” (citations omitted)).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F. 3d 983, 985 n.2 (9th Cir. 2009).

Oskoui’s “motion for extension of time or for leave to re-file excerpts of record” (Docket Entry No. 12) is granted.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

**THOMAS E. PEREZ, SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff,**

v.

**SANDPOINT GAS N GO & LUBE CENTER, INC.
An Idaho Corporation, and SYDNEY M. OSKOU
Defendants**

Case No. 2:14-cv-00357-BLW

MEMORANDUM DECISION AND ORDER

INTRODUCTION

The Court has before it Defendants' Motion for Extension of Time to File Answer Dkt 73), Defendants' Motion to Set Aside Default (Dkt. 74), and Defendants' Request for District Court to Consider or Grant Defendants' Motion to Set Aside Default (Dkt.80). For the reasons explained below, the Court will deny the motions.

ANALYSIS

The Secretary of Labor filed its Complaint on August 27, 2014. Responsive pleadings were due

September 24, 2014. Defendants failed to timely respond. Instead Defendants filed several frivolous pleadings, tried to unilaterally set a hearing on the Courts's calendar, attempted to be represented by a non-lawyer, and essentially disobeyed the Court's rulings and attempts to give Defendants their day in court. Eventually, after determining that either Defendant had timely responded to the Complaint, the Court order the Clerk of the Court to enter default against both Defendants. The Clerk entered default on December 8, 2014. Defendant Oskoui tried to appeal the default but the Ninth Circuit dismissed the appeal *sua sponte* on January 14, 2015. The Ninth Circuit mandate returning the case to this Court was issued on March 16, 2015.

On July 13, 2015, the Secretary of Labor filed a motion for default judgment and requested a hearing on punitive damages. The Court set a hearing for September 24, 2015. Defendants did not appear at the hearing, and the Court entered a final judgment that included \$100,000 in punitive damages, \$979.25 in lost wages and prejudgment interest, and injunctive relief. Defendants filed a notice of appeal on October 6, 2015. On April 25, 2016 the Ninth Circuit filed an Order on this case indicating that briefing on the appeal was complete, but the Ninth Circuit has not yet ruled on the appeal.

Defendants' Notice of Appeal of this Court's final judgement deprives this Court of jurisdiction to hear the pending motions. A default judgement is a final appealable order. *Symantec Corp. v. Global Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009). "The effective filing of a notice of appeal transfers

jurisdiction from the district court to the court of appeals with respect to all matters involved in the appeal.” *Masalosalo by Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 956 (9th Cir. 1983) (Internal citations omitted). And this court cannot consider a motion to vacate judgement. *Davis v. Yageo Corp.*, 481 F.3d 661, 685 (9th Cir. 2007). Accordingly, Defendants initial motion to set aside default and request for extension of time to answer the Complaint shall be denied.

A second motion to set aside default will also be denied. After the Secretary of Labor opposed the first two motions, Defendants filed another motion to set aside the default. This time, Defendants cited Rule 62.1, which states that if a timely motif is made for relief that the court lacks authority to grant because an appeal is pending, the court may (1) defer considering the motion, (2) deny the motion, or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue. Fed R. Civ. P. 62.1.

Here, the Court will deny the motion. A district court has discretion to deny a rule 60(b) motion to vacate a default judgment if (1) the plaintiff would be prejudiced by granting it, (2) the defendant has no meritorious defense, or (3) the defendant’s culpable conduct led to the default. *Brandt v. American Bankers ins. Co of Florida*, 653 F 3d 1108, 1111 (9th Cir. 2011). Only finding a defendant’s culpable conduct is necessary to deny the motion. *Pena v. Seguros La Comercial, S.A.*, 770F. 2d 811, 814 (9th Cir. 1985)

Defendants engaged in culpable conduct to avoid litigation of the merits of this matter for more than a year. As noted above, Defendants filed several frivolous pleadings, tried to unilaterally set a hearing on the Court's calendar, attempted to be represented by a non-lawyer, and disobeyed the Court's rulings. Then, when the Court scheduled a hearing, Defendants failed to show. Accordingly, the Court will deny the motion.

ORDER

1. Defendants' Motion for Extension of Time to File Answer Dkt. 73) is **DENIED**.
2. Defendants' Motion to Set Aside Default (Dkt. 74) is **DENIED**.
3. Defendants' Request for District Court to Consider or Grant Defendants' Motion to Set Aside Default (Dkt. 80) is **DENIED**.

DATED: December 8, 2016

SEAL
of the
COURT

/s/ B. Lynn Winmill

B. Lynn Winmill
Chief Judge
United States District Court

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

**THOMAS E. PEREZ, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
Plaintiff,**

v.

**SANDPOINT GAS N GO & LUBE CENTER, INC
An Idaho corporation; and SYDNEY M. OSKOU, I,
an individual,
Defendants.**

Case No. 2:14-CV-00357-BLW

JUDGMENT

**JUDGEMENT IS HEREBY ENTERED in favor
of Plaintiff Thomas E. Perez, Secretary of Labor,
United States Department of Labor, and against
Defendants Sandpoint Gas N Go & Lube Center, Inc.,
an Idaho corporation; and Sydney M. Oskoui, an
individual, as follows:**

- 1. Plaintiff's Motion for Default Judgement
against Defendants Sandpoint Gas N Go &
Lube Center, Inc., an Idaho corporation; and
Sydney M. Oskoui, an individual is
GRANTED;**

2. As compensatory damages for violations of Section 11(c) of the Occupational Safety and Health Act ("OSH Act" or "the Act"), 29 U.S.C. § 660(c), Defendants shall pay \$979.25 for lost wages and prejudgment interest thereon through June 30, 2015, plus postjudgment interest at the rate established by 28 U.S.C. 1961 from June 30, 2015 through the date of payment in full; Defendants shall make this payment to Daniel Kramer by cashier's check; with a copy of the check sent the same date to Plaintiff as proffer of payment, within 15 days of this judgement;
3. As punitive damages for violations of Section 11(c) of the Act, Defendants shall pay \$100,000.00, plus postjudgment interest at the rate established by 28 U.S.C. § 1961 from the date of this judgement through the date of payment in full; Defendants shall make this payment to Daniel Kramer by cashiers check; with a copy of the check sent the same date to Plaintiff as proof of payment, within 15 days of the date of this judgement;
4. Defendants, their officers, agents, servants, employees and all persons acting or claiming to act in their behalf and interest are permanently enjoined from violating the provisions of Section 11(c)(1) of the Act, 29 U.S.C. §660(c)(1);
5. Defendants shall post a complete copy of this Judgment at the Sandpoint Gas n'Go and Lube Center as a notice stating to all concerned the following:

Defendants Sydney M. Oskoui and Sandpoint Gas n' Go & Lube Center will not discharge or in any manner discriminate against employees because of filing a complaint with OSHA, giving a statement to an OSHA investigator, giving testimony in a proceeding before the OCCUPATIONAL Safety and Health Review Commission, making a complaint within the company about workplace safety or health, or otherwise engaging – whether real, perceived, or suspected – in any other activities protected by Section 11(c) of the Occupational Safety and Health Act.

Any employee who believes that he or she has been discharged or otherwise discriminated against by Defendants in violation of Section 11(c) of the Occupational Safety and Health Act may make a complaint to the Boise Area Office of the Occupational Safety and Health Administration, at (208) 321-2960, alleging such retaliation.

The Judgement shall be posted on each employee bulletin board where other labor and employment law notice posters are posted; or if no such bulletin board exists, behind the front counter. Defendants shall post this Judgement and submit proof of such posting by filing a declaration within 15 days of the date of this judgement stating that this Judgment has been posted and attaching a photograph of the posted Judgement to the declaration. This Judgment shall remain posted for 90 days from the date of the posting.

7. Upon application by the Plaintiff, costs shall be taxed by the Clerk against Defendants in favor of the Plaintiff.

8. Defendants shall be jointly and severally liable for the amounts due under this Judgment.

DATED: September 29, 2015

SEAL
of the
COURT

/s/ B. Lynn Winmill
B. Lynn Winmill
Chief Judge
United States District Court

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

THOMAS E. PEREZ, SECRETARY OF LABOR
UNITED STATES DEPARTMENT OF LABOR
Plaintiff,

v.

SANDPOINT GAS N GO & LUBE CENTER, INC.
An Idaho Corporation, and SYDNEY M. OSKOU
Defendants

Case No. 2:14-cv-00357-BLW

MEMORANDUM DECISION AND ORDER

INTRODUCTION

The Court has before it Plaintiff's Verified Request for Clerk's Entry of Default (Dkt. 5), Defendant Sydney Oskoui's Motion to Dismiss (Dkt. 6), Defendant Sydney Oskoui's Second Motion to Dismiss (Dkt. 12), and Defendant Sydney Oskoui's Motion for Sanctions (Dkt. 22).

BACKGROUND

The Complaint in this matter was served upon both defendants on September 3, 2014. Dkts. 3 and 4. The deadline for responding to the Complaint was September 24, 2014. Fed. R. Civ. P. 12(a)(1)(A)(1). Neither defendant filed a response on or before September 24, 2014, and Plaintiff filed its request for Clerk's entry of default on September 25, 2014. Several other motions – namely those mentioned above – were subsequently filed by at least one of the defendants.

ANALYSIS

Federal Rule of Civil Procedure 6 requires that when an act must be done within a specified time, the court may extend the time for good cause shown with or without motion or notice if a request for extension is made before the original time expires. Fed. R. Civ. P. 6(b)(1)(A) (emphasis added). Otherwise, the court may, for good cause, extend the time only “on motion made after the time expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). Here, no request for extension was made before the original time expired – in fact, no motion or request for extension has ever been made by either defendant.

Accordingly, the Court turns to the request for default. “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a) (emphasis added). Here, as explained above, neither defendant responded to the

Complaint. Moreover, a proof of service for each defendant was filed with the Court, Dkts. 3 and 4, and Plaintiff filed an affidavit explaining that the request for entry of default was sent by certified mail to the defendants. Dkt. 5. Therefore, the Court has no choice but to order the Clerk of the Court to enter default against both defendants. The Court may entertain a motion to set aside default under Rule 55(c), but at this point the Court must order the Clerk to enter default.

ORDER

IT IS ORDERED:

1. Plaintiff's Verified Request for Clerk's Entry of Default (Dkt. 5) is GRANTED.
2. Defendant Sydney Oskoui's Motion to Dismiss (Dkt. 6) is DENIED.
3. Defendant Sydney Oskoui's Second Motion to Dismiss (Dkt. 12) is DENIED.
4. Defendant Sydney Oskoui's Motion for Sanctions (Dkt. 22) is DENIED.
5. The Clerk of the Court shall enter default in favor of Plaintiff and against each defendant.

DATED: December 3, 2014

SEAL
of the
COURT

/s/ B. Lynn Winmill
B. Lynn Winmill
Chief Judge
United States District Court

APPENDIX E

**UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT**

R. ALEXANDER ACOSTA, Secretary of
Labor, United States Department of Labor,
Plaintiff-Appellee,

v.

SYDNEY M. OSKOU, individually and as
President of Sandpoint Gas N Go & Lube
Center, Inc.: et al.,
Defendants-Appellants

FILED
JAN 12 2018
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

District of Idaho, Pocatello

No. 15-35778
D.C. No. 2:14-cv-00357-BLW

ORDER

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

Oskoui's petition for panel rehearing (Docket Entry No.21) is **denied**. **No further filings will be entertained in this closed case.**

APPENDIX F

Bank of America v. City of Miami, Florida, 137 S. Ct. 1296 at 1302-1303 (2017) Justice Breyer and the rest of the Justices concurring held:

"To satisfy the Constitution's restriction of this Court's jurisdiction to "Cases" and "Controversies," Art. III, § 2, a plaintiff must demonstrate constitutional standing. To do so, the plaintiff must show an "injury in fact" that is "fairly traceable" to the defendant's conduct and "that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. ___, ___, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). This Court has also referred to a plaintiff's need to satisfy "prudential" or "statutory" standing requirements. See *Lexmark*, 572 U.S., at ___, ___, and n. 4, 134 S.Ct., at 1387, and n. 4. In *Lexmark*, we said that the label "prudential standing" was misleading, for the requirement at issue is in reality tied to a particular statute. *Ibid.* The question is whether the statute grants the plaintiff the cause of action that he asserts. In answering that question, we presume that a statute ordinarily provides a cause of action "only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." *Id.*, at ___, 134 S.Ct., at 1388 (internal quotation marks omitted). We have added that "[w]hether a plaintiff comes within

'the zone of interests' is an issue that requires us to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Id.*, at ___, 134 S.Ct., at 1387 (some internal quotation marks omitted)." c.f. *Bank of America v. City of Miami, Florida*, 137 S. Ct. 1296 at 1302-1303 (2017).

Bender v. Williamsport Area School Dist., 475 US 534 at 541 (1986) in which Justice Stevens held:

"Before considering each of the standing theories, it is appropriate to restate certain basic principles that limit the power of every federal court. Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto. See, e. g., *Marbury v. Madison*, 1 Cranch 137, 173-180 (1803). For that reason, every federal appellate court has a special obligation to "satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review," even though the parties are prepared to concede it. *Mitchell v. Maurer*, 293 U. S. 237, 244 (1934). See *Juidice v. Vail*, 430 U. S. 327, 331-332 (1977)(standing). "And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it. [When the lower federal court] lack[s] jurisdiction, we have jurisdiction on appeal, not

of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *United States v. Corrick*, 298 U. S. 435, 440 (1936)(footnotes omitted).^[1] c.f. *Bender v. Williamsport Area School Dist.*, 475 US 534 at 541 (1986); see also *Grupo Dataflux v. Atlas Global Group, LP*, 541 US 567 (2004); *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694 (1982)

Capron v. Van Noorden, 6 US (2 Cranch) 126 (1804)
Justices of the U.S. Supreme Court held:

"Here it was the duty of the Court to see that they had jurisdiction, for the consent of parties could not give it." c.f. *Capron v. Van Noorden*, 6 US (2 Cranch) 126 (1804)

Chambers v. Nasco, Inc., 501 US 32 (1991) Justice White held:

"Third, and most relevant here, a court may assess attorney's fees when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska*, supra, at 258-259 (quoting *F. D. Rich Co. v. United States ex rel. Industrial Lumber Co.*, 417 U. S.

¹ See also, e. g., *Sumner v. Mata*, 449 U. S. 539, 547-548, n. 2 (1981); *City of Kenosha v. Bruno*, 412 U. S. 507, 511 (1973); *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 588 (1939); *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U. S. 283, 287-288, n. 10 (1938); *Stratton v. St. Louis Southwestern R. Co.*, 282 U. S. 10, 13 (1930); *Louisville & Nashville R. Co. v. Mottley*, 211 U. S. 149, 152 (1908) (citing cases); *Cameron v. Hodges*, 127 U. S. 322, 325 (1888). Cf. *Capron v. Van Noorden*, 2 Cranch 126, 127 (1804).

116, 129 (1974). See also *Hall v. Cole*, 412 U. S. 1, 5 (1973); *Newman v. Piggie Park Enterprises, Inc.*, 390 U. S. 400, 402, n. 4 (1968) (*per curiam*). In this regard, if a court finds "that fraud has been practiced upon it, or that the very temple of justice has been defiled," it may assess attorney's fees against the responsible party, *Universal Oil*, *supra*, at 580, as it may when a party "shows bad faith by delaying or disrupting the litigation or by hampering enforcement of a court order,"^[10] *Hutto*, 437 U. S., at 689, n. 14. The imposition of sanctions in this instance transcends a court's equitable power concerning relations between the parties and reaches a court's inherent power to police itself, thus serving the dual purpose of "vindicat[ing] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[ing] the prevailing party whole for expenses caused by his opponent's obstinacy." *Ibid.*" c.f. *Chambers v. Nasco, Inc.*, 501 US 32 at 45-46 (1991)

ex parte McCardle, 74 US 506 (1868) Justices of the U. S. Supreme Court held:

"Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle." c.f. *ex parte McCardle*, 74 US 506 (1868)

FW/PBS, Inc. v. Dallas, 493 U. S. 215 at 231 (1990)
in Part III Justice O'Connor held:

"The federal courts are under an independent obligation to examine their own jurisdiction, and standing "is perhaps the most important of [the jurisdictional] doctrines.' *Allen v. Wright*, 468 U. S. 737, 750 (1984).

'[E]very federal appellate court has a special obligation to `satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review,' even though the parties are prepared to concede it. *Mitchell v. Maurer*, 293 U. S. 237, 244 (1934). See *Juidice v. Vail*, 430 U. S. 327, 331-332 (1977)(standing). `And if the record discloses that the lower court was without jurisdiction this court will notice the defect, although the parties make no contention concerning it.' " *Bender v. Williamsport Area School Dist.*, 475 U. S. 534, 541 (1986).

It is a long-settled principle that standing cannot be "inferred argumentatively from averments in the pleadings," *Grace v. American Central Ins. Co.*, 109 US 278, 284 (1883), but rather "must affirmatively appear in the record." *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884). See *King Bridge Co. v. Otoe County*, 120 U. S. 225, 226 (1887) (facts supporting Article III jurisdiction must "appea[r] affirmatively from the record"). And it

is the burden of the "party who seeks the exercise of jurisdiction in his favor," *McNutt v. General Motors Acceptance Corp.*, 298 U. S. 178, 189 (1936), "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Warth v. Seldin*, 442 U. S. 490, 518 (1975). Thus, petitioners in this case must "allege . . . facts essential to show jurisdiction. If [they] fai[l] to make the necessary allegations, [they have] no s.tanding." *McNutt*, supra, at 189." c.f. *FW/PBS, Inc. v. Dallas*, 493 U. S. 215 at 231 (1990). See also *United States v. Hays*, 515 U. S. 737 at 742-744 (1995)

Grace v. American Central Ins. Co., 109 US 278 at 283-284 (1883) Justice Harlan Held:

"As the jurisdiction of the circuit court is limited, in the sense that it has no other jurisdiction than that conferred by the Constitution and laws of the United States, the presumption is that a cause is without its jurisdiction unless the contrary affirmatively appears. *Turner v. Bank of North America*, 4 Dall. 8; *Ex parte Smith*, 94 U.S. 455; *Robertson v. Cease*, 97 U.S. 646." c.f. *Grace v. American Central Ins. Co.*, 109 US 278 at 283-284 (1883)

Hazel-Atlas Co. v. Hartford Co., 322 US 238 (1944) in which the Court held:

"Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than

an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." c.f. *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 (1944)

Hilton v. South Carolina Public Railways Commission, 502 U.S. 197, 202 (1991) Justice Kennedy delivering the opinion of the Court on the importance of *stare decisis* and held:

"Because of the strong considerations favoring adherence to *stare decisis* in these circumstances, the answer to that question must be no. Time and time again, this Court has recognized that "the doctrine of *stare decisis* is of fundamental importance to the rule of law." *Welch*, supra, at 494; see also *Patterson v. McLean Credit Union*, 491 U. S. 164, 172 (1989); *Bumet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting). Adherence to precedent promotes stability, predictability, and respect for judicial authority. *Vasquez v. Hillery*, 474 U. S. 254, 265-266 (1986). For all of these reasons, we will not depart from the doctrine of *stare decisis* without some compelling justification. *Arizona v. Rumsey*, 467 U. S. 203, 212 (1984)." c.f. *Hilton*

v. South Carolina Public Railways Commission,
502 U.S. 197, 202 (1991)

Hurst v. Florida, 136 S. Ct. 616 (2016) Justice
Sotomayer held:

"Although 'the doctrine of *stare decisis* is of fundamental importance to the rule of law[.]' ... '[o]ur precedents are not sacrosanct.' ... '[W]e have overruled prior decisions where the necessity and propriety of doing so has been established.'" *Ring*, 536 U.S., at 608, 122 S.Ct. 2428 _ (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989)). And in the *Apprendi* context, we have found that "*stare decisis* does not compel adherence to a decision whose 'underpinnings' have been 'eroded' by subsequent developments of constitutional law." [Cases Omitted] c.f. *Hurst v. Florida*, 136 S. Ct. 616 -at 623-624 (2016)

Kokkonen v. Guardian Life Ins. Co. of America, 511
US 375 at (1994) Justice Scalia held:

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, see *Willy v. Coastal Corp.*, 503 U.S. 131, 136-137 (1992); *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986), which is not to be expanded by judicial decree, *American Fire & Casualty Co. v. Finn*, 341 U.S. 6 (1951). It is to be presumed that a cause lies outside this limited jurisdiction, *Turner v. Bank of North-*

America, 4 Dall. 8, 11 (1799), and the burden of establishing the contrary rests upon the party asserting jurisdiction, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-183 (1936).” c.f. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 US 375 at (1994)

Kontrick v. Ryan, 540 US 443 (2004) Justice Ginsberg held:

“A litigant generally may raise a court's lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance. *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884) (challenge to a federal court's subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*); *Capron v. Van Noorden*, 2 Cranch 126, 127 (1804)(judgment loser successfully raised lack of diversity jurisdiction for the first time before the Supreme Court); Fed. Rule Civ. Proc. 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”).[9] c.f. *Kontrick v. Ryan*, 540 US 443 (2004) opinion by J. Ginsberg; Cited in *Hamer v. Neighborhood Housing Services of Chicago* (2017)

Mansfield, C. & LMR Co. v. Swan, 111 US 379 (1884) Justices of the U. S. Supreme Court held:

“It is true that the plaintiffs below, against whose objection the error was committed, do

not complain of being prejudiced by it; and it seems to be an anomaly and a hardship that the party at whose instance it was committed should be permitted to derive an advantage from it; but the rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it. This rule was adopted in *Capron v. Van Noorden*, 2 Cranch, 126, decided in 1804, where a judgment was reversed, on the application of the party against whom it had been rendered in the Circuit Court, for want of the allegation of his own citizenship, which he ought to have made to establish the jurisdiction which he had invoked. This case was cited with approval by Chief Justice Marshall in *Brown v. Keene*, 8 Pet. 112." c.f. *Mansfield, C. & LMR Co. v. Swan*, 111 US 379 (1884)

Marbury v. Madison, 5 US 137 at 179 (1803) Chief Justice Marshall in his opinion for this Court held:

“Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.” *Marbury v. Madison*, 5 US 137 at 179 (1803)

National Railroad Passenger Corporation v. National Assn. of Railroad Passengers, 414 US 453 (1974)
Justice Stewart held:

“A frequently stated principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies. “When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.” *Botany Mills v. United States*, 278 U.S. 282, 289 (1929). This principle of statutory construction reflects an ancient maxim—*expressio unius est exclusio alterius*.” c.f. *National Railroad Passenger Corporation v. National Assn. of Railroad Passengers*, 414 US 453 (1974)

Perez v. Mortgage Bankers Ass’n, 135 S. Ct. 1199 at 1220-1221 (2015) Justice Thomas held:

“The Framers expected Article III judges to engage in similar efforts, by applying the law as a “check” on the excesses of both the Legislative and Executive Branches. See, e.g., 3 J. Elliot,

Debates in the Several Conventions on the Adoption of the Federal Constitution 553 (1863) (J. Marshall) ("If [the Government of the United States] make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard.... They would declare it void"); see also Vile 174. The Framers "contemplated [the Constitution], as a rule for the government of courts, as well as of the legislature." *Marbury v. Madison*, 1 Cranch 137, 179-180, 2 L.Ed. 60 (1803). Thus, if a case involved a conflict between a law and the Constitution, judges would have a duty "to adhere to the latter and disregard the former." The Federalist No. 78, at 468 (A. Hamilton); see also *Marbury*, 1 Cranch, at 178. Similarly, if a case involved an executive effort to extend a law beyond its meaning, judges would have a duty to adhere to the law that had been properly promulgated under the Constitution. Cf. *id.*, at 157-158 (considering the scope of the President's constitutional power of appointment). As this Court said long ago, "[T]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument." *Id.*, at 180." c.f. *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199 at 1220-1221 (2015).

Reynoldsville Casket Co. v. Hyde, 514 US 749 at 760-761 (1995) Justices Thomas and Scalia in their opinion held:

"A court does not—in the nature of things it can not—give a "remedy" for an unconstitutional statute, since an unconstitutional statute is not in itself a cognizable "wrong." (If it were, every citizen would have standing to challenge every law.) In fact, what a court does with regard to an unconstitutional law is simply to ignore it. It decides the case "disregarding the [unconstitutional] law," *Marbury v. Madison*, 1 Cranch 137, 178 (1803) (emphasis added), because a law repugnant to the Constitution "is void, and is as no law," *Ex Parte Siebold*, 100 U. S. 371, 376 (1880)." c.f. *Reynoldsville Casket Co. v. Hyde*, 514 US 749 at 760-761 (1995)

Roadway Express, Inc. v. Piper, 447 US 752 at 764-765 (1980) Justices of the U.S. Supreme Court held:

"The inherent powers of federal courts are those which "are necessary to the exercise of all others." *United States v. Hudson*, 7 Cranch, 32, 34 (1812). The most prominent of these is the contempt sanction, "which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court. . . ." *Cooke v. United States*, 267 U. S. 517, 539 (1925); see 4 W. Blackstone, Commentaries [*]282-[*]285. Because inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion. See *Gompers v.*

Bucks Stove & Range Co., 221 U. S. 418, 450-451 (1911); *Green v. United States*, 356 U. S. 165, 193-194 (1958) (Black, J., dissenting). There are ample grounds for recognizing, however, that in narrowly defined circumstances federal courts have inherent power to assess attorney's fees against counsel.

In *Link v. Wabash R. Co.*, 370 U. S. 626, 632 (1962), this Court recognized the "well-acknowledged" inherent power of a court to levy sanctions in response to abusive litigation practices." c.f. *Roadway Express, Inc. v. Piper*, 447 US 752 at 764-765 (1980)

Schweiker v. Wilson, 450 U.S. 221 (1981) held:

"At the minimum level, this Court consistently has required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives. See, e. g., *Dandridge v. Williams*, 397 U.S. 471 (1970); *Mathews v. De Castro*, 429 U.S. 181 (1976)." c.f. *Schweiker v. Wilson*, 450 U.S. 221 (1981).

Sheldon v. Sill, 49 US 441 (1850) Justices of the U. S. Supreme Court held:

"Courts created by statute can have no jurisdiction but such as the statute confers." c.f. *Sheldon v. Sill*, 49 US 441 (1850)

Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338, 70 L.Ed. 682 (1926) held:

“The established rule is that a plaintiff suing in a federal court must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction; and, if he does not do so, the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect be corrected by amendment. *Norton v. Larney*, 266 U.S. 511.” c.f. *Smith v. McCullough*, 270 U.S. 456, 459, 46 S.Ct. 338, 70 L.Ed. 682 (1926)

Steel Co. v. Citizens for Better Environment, 523 US 83 (1998) Justice Sotomayer held:

“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.’ *Ex parte McCardle*, 7 Wall. 506, 514 (1869). ‘On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it.’ *Great Southern Fire Proof Hotel Co. v. Jones*, supra, at 453. The requirement that jurisdiction be established as a threshold matter ‘spring[s] from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’ *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 382 (1884).” c.f. *Steel Co. v. Citizens for Better*

Environment, 523 US 83 at 94-95 (1998); See also *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553 (2017) opinion by J. Sotomayer.

Stenberg v. Carhart, 530 U. S. 914, 942 (2000) Justice Breyer delivering the opinion of the Court on the subject of definitions within a statute and held:

“When a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning. *Meese v. Keene*, 481 U. S. 465, 484-485 (1987) (“It is axiomatic that the statutory definition of the term excludes unstated meanings of that term”); *Colautti v. Franklin*, 439 U. S., AT 392-393, N. 10 (“As a rule, ‘a definition which declares what a term “means” . . . excludes any meaning that is not stated’ ”); *Western Union Telegraph Co. v. Lenroot*, 323 U. S. 490, 502 (1945); *Fox v. Standard Oil Co. of N. J.*, 294 U. S. 87, 95-96 (1935) (Cardozo, J.); see also 2A N. Singer, Sutherland on Statutes and Statutory Construction § 47.07, p. 152, and n. 10 (5th ed. 1992) (collecting cases).

Vanhorne v. Dorrance, 2 US 304 at 308 (1795) Justice Patterson delivered the opinion of this Court that held:

“The Constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move. In short, gentlemen, the Constitution is the sun of the political system, around which all Legislative, Executive and Judicial bodies must revolve. Whatever may be the case in other countries, yet in this

there can be no doubt, that every act of the Legislature, repugnant to the Constitution, is absolutely void.” *Vanhorne v. Dorrance*, 2 US 304 at 308 (1795)