No. _____

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SUPREME COURT OF THE UNITED STATES

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GREG ANDERSON

Petitioner,

vs.

GARY HERBERT et. al.

Respondents.

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

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## QUESTION PRESENTED

Is a judgment void on its face, when a State Court steals a paid-for home at the motion to dismiss stage of the proceedings, under the guise that the owner was a tenant, where plaintiff attorneys misrepresented the law and contractual terms of the purchase contract 30 times in a 6 page document, then wrote the "Statement of Facts and Conclusions of Law," with no reference to the purported record, and the judge rubber-stamped plaintiff's claims, and the court denied itself jurisdiction by not strictly adhering to the statute, thereby implicating conspiracy.

## PARTIES TO THE PROCEEDINGS BELOW

Petitioner is Greg Anderson.

Respondents Are Gary Herbert in His Official Capacity as Governor of the State of Utah, Sean Reyes in His Official Capacity as Attorney General for the State of Utah, Clark A McClellan, in His Individual Capacity, and in His Official Capacity for His Extra-judicial Acts, Third District Court, in its Official Capacity, Eighth District Court in its Official Capacity, Utah Court of Appeals in its Official Capacity, Daniel W. Kitchen, James L. Ahlstrom, Terry Welch, Lynn Kitchen, Gary Kitchen, Mathew J. Kitchen, Mark R. Kitchen, Sandbay LLC Sunlake LLC, Orchid Beach LLC Roosevelt Hills LLC, John or Jane Doe(s) 1 Through 10

Note: No John or Jane Doe's have been named, nor have any other parties.

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## CITATIONS TO THE OPINIONS BELOW

The Tenth Circuit Order and Judgment is No. 17-4200, and was filed on August 2, 2018. (App. p 3)

The federal District Court Order and Memorandum Decision is case No. 2:17-cv-00083, Dkt. 111,was dated November 29, 2017, and is listed in (App. p 41)

The Magistrate Report and Recommendation is No. 2:17-cv-00083, Dkt 97 in the (App. p. 55)

Utah's Eighth District Court Findings of Fact and Conclusions of Law December 3, 2008 (Case no. 080800143, App. p. 253)

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). The Tenth Circuit Court of Appeals entered judgment on August 2, 2018.

## OPINIONS BELOW

This case began in Utah's Eighth District Court where the court ruled Anderson was a tenant, in spite of the fact his home was paid for. Petitioner contends that judgment is void as a matter of law on its face. Petitioner then went to Utah's Third District Court, but the Third District refused to mention "void judgment" or "due process." the Federal District Court in Salt Lake City Utah dismissed evoking the *Rooker-Feldman* Doctrine and other non jurisdictional issues. The Tenth Circuit reversed on the *Rooker-Feldman* because the Federal case was filed prior to the State

cases becoming final, but allowed defendants to prevail on non-jurisdictional issues.

## RELEVANT PROVISIONS

The **Fourteenth Amendment** states in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

The **Fourth Amendment** states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The **First Amendment** in relevant part states,

Congress shall make no law . . . Abridging the freedom of speech, or the press.

42 U.S.C. 1983 states:

> Every person who, under color of

> any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other property proceedings for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Rule 12)(a)(1) of the Utah Rule of Civil Procedure mirrors the Federal Rule 12, and states:

> (a)(1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the trials action.

Rule 60(b) & (d) in relevant part states,

> **(b) Grounds for relief from a final judgment Order of proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons: (3) fraud (whether previously called intrinsic

or extrinsic, misrepresentation, or misconduct by an opposing party. (4) the judgment is void.

**(d) Other Powers to Grant Relief.** This rule does not limit a court's power to (1) entertain an independent to relieve a party from a judgment, order or proceeding. (3) set aside a judgment for fraud upon the Court.

## STATEMENT OF THE CASE

The question presented to this court is restated in order to apply the relevant law stated in the footnotes to the question.

> Is a judgment void on its face, when a State Court steals a paid-for home at the motion to dismiss stage of the proceedings,[1] under the guise that the owner was a tenant, where plaintiff attorneys misrepresented the law and contractual terms of the purchase contract 30 times in a 6 page document,[2]

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1. *Nelson v. Adams* 529 U. S 460, 462-63, a unanimous decision where Justice Ginsberg writing for the court made it clear that a defendant has a constitutional right to answer a complaint. Utah case law agrees *Hernandez v. Baker* 104 P.3d 665, 668, 669 (2004).

2. *Hazel-Atlas Co. v. Hartford Co.* 322 U. S. 238 (1943), The Supreme Court reversed a 12 year old judgment for fraud upon the court, because of a fraudulent article written to deceive the Patent Office and also the Third Circuit Court of Appeals. *See* App. Pp 109 -134 for in depth analysis. Complaint showing 30

then wrote the "Statement of Facts and Conclusions of Law," with no reference to the purported record, and the judge rubber-stamped plaintiffs' claims,[3] and the court denied itself jurisdiction by not strictly adhering to the statute,[4] thereby implicating conspiracy?

In *Dennis v. Sparks* 449 U. S. 24 (1985), the Fifth Circuit reversed itself in an en banc decision concerning a conspiracy with a judge and this Court affirmed, explaining coconspirators with immune judge are liable. Because of the issues in the question with this court together with the fact that judge Anderson knew that the Findings of Fact and Conclusions of law must refer to the record as a matter of law, inasmuch as he was overturned twice on that very issue, *See Keene v. Bonser* 107 P.3d 693 (Utah App. 2005), and *Batty v. Batty* 153 P.3d 827 Utah App. 2006).

Also, in addition to the footnote issues, when judge Anderson was an attorney he won a judgement in the Utah Supreme Court, stating that provisions in a Uniform Real Estate Contract are not self-executing.

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misrepresentations.

3. *Jefferson v. Upton* 560 U. S. 284 (2010), The Supreme Court reversed on grounds that courts must go by Rule 52 of the Rules of Civil Procedure.

4. Utah's Unlawful Detainer Statute mandates the Rules must be strictly complied with or it is failure to state a claim Utah Code 78B-6-802-810, *Zyverden v. Farrar* 393 P.2d468 (Utah 1964). Obviously if a court goes forward with a claim that does not exist, the court has no jurisdiction to proceed.

So, he knew before a person could be evicted, he had to be a tenant. An Owner of Real Property cannot be evicted, (App. 232) So something had to be done to place petitioner as a tenant prior to and eviction, *First Sec. Bank of Utah, N. A. v. Maxwell* 659 P.2d 1078, 1081 (Utah 1983). The judge's actions also tend to show conspiracy with the attorneys. Of course in a jury trial Petitioner could have proven his home was paid-for, and that an additional $500,000 to $1,000,000 was owed to him pursuant to the Kitchen-Anderson partnership, and that Petitioner was never a tenant, as a matter of law.

The issues in the question before this court are self evident by examining the Eighth District Court record, (App. 253, 258,) The six page document entitled "Objection to Motion to Dismiss," facially shows the hearing was held at the motion to dismiss stage of the proceedings, and has 30 misrepresentations of law and contractual terms, (App. 107-134). Even though the hearing was held at the Motion to Dismiss stage of the proceedings, there was no indication that the court was not going to allow Petitioner to answer and counterclaim. The issue only became evident after the hearing was over.

Petitioner separated each the various statements to show the 30 misrepresentations by defendants, many of which are issues of law, *See* (App. Pp. 107-134). Petitioner has included the Real Estate Purchase Contract so the contractual misrepresentations can be verified, (App. p. 281). The Statement of facts and conclusions of law are written by defendant attorneys and appear in the App. at p. 253. The judge had no jurisdiction to go forward with an eviction because Petitioner was never a tenant, as

a matter of law.

No Statute of limitations applies to void judgments, *See Hazel-Atlas Co. Id.*, showing no statute of limitations applies to void judgments, because the case was voided 12 years after the original judgment. *See also V. T. A., Inv., v. Airco, Inc.* 597 F. 2d 220 (10th Cir. 1979). If a judgment is void, the slate must be wiped clean, *Armstrong v. Manzo,* 380 U. S. 545, 552 (1962).

On or about July 13, 2005, Anderson signed a purchase contract to acquire a 3500 square foot house from Daniel Kitchen through Sand Bay LLC for $105,000, which included in the purchase price, a $55,000 loan to help with materials and labor to remodel the home, (App. p. 281) Petitioner, Anderson forwarded the Real Estate Purchase Contract (REPC) to United Title Services to close the transaction. The Title Company found a cloud on the title and would not issue title insurance with the cloud on the title. The REPC required sellers to remove the cloud on the title, which they did not do. However, because of past dealings, Anderson trusted the Kitchen Family and remodeled the home making the home worth more than $300,000. No money was required from Anderson to close on the home, other than closing costs, because Kitchen agreed to carry the mortgage until the home was remodeled. The remodeling included rewiring the house, new plumbing pipes, a new furnace and duct-work, four new bathrooms, two new kitchens, seven bedrooms redone, a new roof, a new front porch and numerous other items. The house was completely gutted and then completely remodeled. (App. p. 94-96)

On or about September 2005 Anderson entered

into a separate 50/50 partnership agreement with the Kitchen family to purchase and develop various real properties. Anderson worked for the partnership for nearly three years receiving no compensation, which in turn paid the $105,000 owed on his home many times over, (App. Pp. 238-241).

On or about September, 2008 Anderson was served with an eviction law suit on the subject home. Under Utah law, before a person can be evicted, his status must be reduced to that of a tenant, which Respondents did not do. *Van Zyverden v. Farrar*, 393 P. 2d 486, (Ut. 1964), Further, the Occupying Claimant Statute, U. C. 57-6-(1-7), provides that a person who has made substantial improvements on a property has the right to live on the property until all the issues are settled. (*See* Appendix 98, 112-113, 125, 129-131)

On or about September 9, 2008 Anderson filed a Motion to Dismiss the eviction complaint pursuant to Rule 12(b)(6), of the Utah Rules of Civil Procedure (URCP), with an accompanying, Notarized Verified Memorandum, (Appendix), which constitutes an affidavit in the State of Utah. (App. p. 68 Rec. doc 16-2) Anderson also filed a copy of a Verified Complaint that had been filed in Eighth District Court, in Vernal Utah, to explain the facts of the case, that the home was paid for. The Occupying Claimant Statute, and the need to put Anderson in position of a tenant prior to any eviction were never addressed by the Eighth District Court in its Findings of Fact and Conclusions of Law. (Compare Anderson's Verified Complaint, (App. 232 with Findings of Fact and Conclusions of Law, App. Pp 253)

On or about October 31, 2008, a purported

hearing was held on Petitioners Motion to dismiss. At the hearing the judge denied Petitioner Anderson's Motion to Dismiss, his right to testify, and ruled from the bench evicting Petitioner from his paid-for home, and to add insult to injury, stated in open court that he did not know the law concerning evictions.

In the case at bar, there is no government interest at stake. The State Court judge in his official capacity, at the request of Respondents created and imposed the procedures that denied Petitioner his constitutional right to due process. The case at bar mirrors the unconstitutional procedure used by the District Court in *Nelson v. Adams Id.,* where the District Court amended the judgment without allowing Nelson to defend against personal liability prior to judgment.

Under Utah law if a person's Motion to Dismiss is denied, then he has ten days to answer the complaint, and request a trial or jury trial, Utah Rules of Civil Procedure, Rule 12(a)(1). Utah and Federal case law mandate a trial. See *Lincoln Financial Corp. v. Ferrier*, 567 P.2d 1102 (Utah 1977), District Court is directed to reinstate Counterclaim, *White v. District Court* 232 P.2d 785, under Real Estate Contract, vender was entitled to notice of default and demand for performance, *Firemans Insurance Co. v. Brown* 529 P. 2d. 419, Purchaser should be given a reasonable time of "intent to forfeit contract," *Pacific Development Co. v. Stewart*, 195 P. 2d 748 (1948 Utah). "The unlawful detainer statute is a summary proceeding and in derogation of common law and it provides a severe remedy that must be strictly complied with before the cause of action may be maintained." *Parkside Salt Lake City Corp., v. Insure-Rite* 37 P. 3d. 1202.

Defendant had a right to a jury trial, *Pernell v. Southhall Realty,* 416 U.S. 363 (1974), "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner."

This court succinctly defined *Luger v. Edmondson Oil Company* 457 U. S. 922, a similar case to the case at bar, stating:

> The Court found potential § 1983 liability in *Lugar* because the attachment scheme was created by the State and because the private defendants, in invoking the aid of state officials to attach the disputed property, were "willful participant[s] in joint activity with the state or its agents." *Id.* at 941 *Wyatt v. Cole,* 504 U. S. 158, at 162.

That is exactly what happened in the case at bar, except it is an "abuse of authority" case, (as opposed to a unconstitutional statute case), where the judge abused his authority, as mentioned in *Lugar, Id.,* and defined in *Monroe v. Pape* 365 U. S. 167 (1961).

## REASONS FOR GRANTING THE WRIT

### 1. The Court Should Review a Rule 60(b)&(d) Case

This court gives final approval of the Federal Rules of Civil Procedure, prior to an amendment to the Rules, therefore it makes sense to review a case that brings into focus many of the parameters that Rule

60(b) and (d) speak of for relief from judgment.

The case at bar covers void judgment, fraud upon the court, due process and whether or not a court must refer to the record in writing the Statement of Facts and Conclusions of law, and by not doing so could it affect jurisdiction or due process rights. Inasmuch as this covers nearly all aspects of Rule 60 (b) and (d), such a case may not come up for 50 or a 100 years.

The only issues are the issues in the question to this court, because if the judgment in this case is void on its face, then there is nothing that happened after the void judgment was issued to give it legitimacy, *Armstrong,* 380 U. S. 545 (1965) Although the statute of limitations does not apply to void judgments, the statute has not ran if the judgment is not void as a matter of law, which is addressed below.

This case has been going on for more than 10 years. If courts know their duties in regard to void judgments, then it will cut down on the time courts must spend on a void judgment case. This Court's review is needed to ensure the continued availability of relief from such frauds, due process requirements and void judgments explained in the Federal Rules of Civil Procedure, Rule 60. In this case attorneys calculated and orchestrated a plan to steal Anderson's paid for home in violation of the Fourth Amendment. The random mathematical odds of continual misrepresentations of the law and written contractual facts 30 times in a row in a six-page document as defendants did are one in 1,073,741,824. Of course when the misrepresentations are calculated to deceive the odds are off of the charts.

2. Void Judgments That Reach this Court Are Extremely Rare

It may be decades before this court has another chance to explain the law concerning void judgments because of the Constitutional issue of case of controversy. *Hazel-Atlas, Id.,* was 76 years ago, *Dennis v. Sparks Id.,* was 33 years ago and *Nelson v. Adams Id.,* was 19 years ago. *United Student Aid Funds Inc v. Espinosa* 130 S. Ct. 1367, case was nine years ago, but just restated general principles of some types of void judgments. In the case at bar, conspiracy, fraud upon the court, denial of due process, and subject matter jurisdiction are the front and center constitutional issues. The six page memorandum by defendants show that judgment is void on its face as a matter or law.

Because it may be 50 or 100 years before another case like the case at bar comes along it makes sense for the court to address the issues. If the justices of the present court want to affirm past judgments or establish precedent for void judgments, this the opportunity to do so. From petitioners point of view, the judgment is void on its face because of the Eighth District court holding an evidentiary hearing at the motion to dismiss stage of the proceedings, and for not allowing any testimony. The judgment is also void on its face because there was no reference to the record in the "Statement of Facts and Conclusions of Law." The reason there is there was no record, if there was just argument by attorneys making the same misrepresentations, as in their memorandum, thereby making the judgement void.

3. Lower Courts Need Definite Guidelines

Lower federal courts and State courts need guidelines as what the constitutional law is, and not having guidelines can cause extensive litigation as in the case at bar. A good example is the Rooker-Feldman doctrine where this court reigned in Courts of Appeals in the *Exxon Mobile Corp., v. Saudi Basic Industries* 544U. S. 280 (2005). In the case at bar the unbridled reigns stopped petitioners void judgment horse. Corruption takes the place of justice when procedural Rules are allowed to be disregarded. Definite guidelines speed up the efficiently of the courts, thereby cutting back on frivolous appeals where parties claim a judgment is void, when in reality it is not, or it may simply be a voidable judgment. This case shows that courts would rather side with large firms by dismissing on a non jurisdictional grounds than siding with a pro se litigant's constitutional rights that have been mandated by this court many times.

It makes sense for this court to reaffirm its past cases every so often, otherwise lower courts can assume that the court has changed its mind or the issue is not important if an issue has not been reaffirmed in decades.

Judge Posner stated that void "lacks a settled or precise meaning, and [t]he standard formulas are not helpful, *See In re Edwards* 962 F.2d 641, 644 (7th Cir. 1992).

In the 1946 amendment to Rule 60 of the Federal Rules of Civil Procedure, the advisory note stated, "It should be noted that Rule 60(b) does not assume to define the substantive law as to the grounds for vacating judgments, but merely prescribes the practice in proceedings to obtain relief."

The issue of void judgments is clearly an issue that needs guidance.

**4. Courts Should Not Be Used for the Theft of Property**

When the *Hazel-Atlas Id.*, patent was stolen this court was extremely critical of that theft. The same thing happened in *Dennis Id.*, involving the theft of oil land where the Fifth Circuit reversed its self in a en banc decision, which this court upheld.

In the case at bar the State courts legalized theft by their failure to follow State law and Constitutional law. The Eighth District Court judgment had more holes in it than a block of Swiss cheese. All subsequent judgments and orders were based on the Eighth District Court judgment. They were nothing more than piggyback judgments.

Even though the Tenth Circuit has stated that they review void judgments de novo, they did not follow their own rules. Courts camouflage the issues of void judgments by skipping them or in the case at bar, making a gesturing remark rather than going by their own purported mandatory rule

When lower courts don't address the issues in a logical and pragmatic way, it causes confusion for subsequent courts relying on that case as a precedent.

This court could expand on its federal bad faith test and mandate more teeth in it. For instance in *Hazel-Atlas Id.*, the court mandated that the Third Circuit Court of Appeals take various steps to insure the voidness of the judgment. If this was mandated in all instances where a judgment was void and bad faith existed that the infringing party would as a matter of law lose any right to counterclaim. This would not only be a deterrent to potential bad actors but would also expedite proceedings if bad actors forfeited any

right to counterclaim.

**5. The Tenth Circuit Did Not Follow its Own Mandated Case Law**

Some Circuits mandate de novo review of purported void judgments, and the Tenth Circuit is one of those circuits. If a court determines that relief under Rule 60(b)(4) is appropriate, relief must be granted. *V. T. A., Inc., v. Airco, Inc.*, 597 F. 2d 220, 224 n. 8 (10th Cir. 1979).

**The Tenth Circuit Claimed That Finding a Judgment Void Is Retrospective Relief**

The Tenth Circuit stated at p. 13

> See Opening Br. at 44 ("As to [the requirement of seeking prospective relief], Anderson asks the court for declaratory relief, and to declare the Eighth District Court judgment void."); Reply Br. at 20 ("Anderson sought prospective relief by requesting the court to find the judgments of the Eighth and Third District Courts void"). This is a request for retrospective, not prospective, relief. See *Buchheit*, 705 F.3d at 1159.

In other words, "a federal court can't review a void judgment pursuant to Rule 60(b)&(d), of the Federal Rules of Federal Procedure." It is also a constructive thumbing of their nose at the Supreme Court precedent in numerous decisions such as *Dennis, Id. Hazel-Atlas, Id. Jefferson v. Upton Id.*

**6. Crooked Lawyers Should Be Stopped from Deviating from Constitutional Law**

Crooked Lawyers give the legal profession a bad name. Crooked Lawyers have always been a problem and might be the second oldest profession in a democratic society. Their corruption creates severe consequences because they can have huge impacts on a citizens life and constitutional rights and take up valuable time of the courts, *see* "The First Statute of Westminister" in the year 1275, putting crooked lawyers in prison for a year and a day.

Lower courts state what they think the law is, concerning void judgments but when it comes down to making a decision, many times they allow corruption to prevail when large law firms are involved. As an example, examine the statement by the federal District Court judge in the case at bar, in stead of tackling the void judgment issue head on he dismissed Petitioners motion for summary judgment in a footnote because he dismissed the case. However, the case was dismissed after Petitioner filed the motion.

It is unfair to allow a court of appeals to dismiss a case on issues that are not jurisdictional when the case is void because the plaintiff's only option is to request a writ of certiorari, because if the plaintiff goes back to district court, the district court will simply quote the appellant court. This in turn places a petitioners chances of prevailing at about 100 to one, the amount of petitions for certiorari divided by the number of cases actually heard by the Supreme Court. If the district court does it job in the first place, of looking at each of plaintiff's cause of action separately, the courts of appeals is not faced with issue of void judgments. It is easy for the court of appeals to

assume the judgment was correct, especially when the plaintiff is pro se.

Of course federal courts have inherent power to sanction unscrupulous parties, but because there have been so few Supreme Court cases, courts may be hesitant to sanction bad actors from large influential law firms without guidance.

High-powered attorneys should not be allowed to change the procedure established by the Supreme Court and Tenth Circuit that District Courts must analyze each constitutional cause of action separately. In the case at bar no court analyzed the claims separately, but instead dismissed on non jurisdictional issues. When attorneys are allowed to bend the rules because their client is a judge or other high ranking purported civil servants, citizens lose faith in government.

**7. Pro Se Litigants Should Have Full Constitutional Rights Regarding Void Judgments**

Pro se litigants should have the same constitutional protections as litigants who hire large big law firms. Petitioner's rights were trampled on in every court, both state and federal. Pro se litigants need to be reassured that their rights will not be trampled on because they don't have an attorney. In the case at bar, Defendants stole Anderson's paid-for home and $50,000 belonging to Anderson that he invested in the partnership and three years of hard work for the partnership. Therefore Petitioner had no choice except to proceed pro se.

**8. This Court Should Once Again Remind Lower Courts That a Void Judgment Cannot Gain**

**Legitimacy, Therefore Any Issue Trying to Justify the Void Judgment Is Also Void as a Matter of Supreme Court Law**

The definition of void ab initio by that definition mandates that a void judgment can never gain legitimacy because it is void from the inception. Therefore this case is simple, if the judgment is void, then all subsequent orders and judgments are void as a matter of law. The fact is that each and every decision in each and every court was based on the Eighth District Court void judgment. The decisions were all piggyback decisions. No court delved into the void judgment issue in spite of the fact it is void on its face. Inasmuch as the judgment is void on its face, this is a very simple case. The volume of exhibits is needed by this court's rules. However, only small parts of the exhibits need be examined as is shown below.

Because a void judgment cannot gain legitimacy, any subsequent claim or argument is also void and without merit. The Tenth Circuit dismissed the complaint on various grounds, which are issues for a jury, and should not be issues for dismissal at the motion to dismiss stage of the proceedings. These issues would and should not be reasons for dismissal pursuant to case law, prior to Defendants answering the complaint. The Tenth Circuit got the buggy in front of the horse. The point is, if the judgment is void all other orders and issues are irrelevant and also void. Every issue that happened subsequently to a void judgment is without merit because a void judgment can never gain legitimacy, any argument is also therefore without merit and also void. See *Armstrong v. Manzo* 380 U. S. 545, 551 552, the slate must be

wiped clean when the right to be heard has been denied. With this in mind, the only issue in front of the court is whether or not the judgment is void. Even though the issues are void, because the judgment is void, they will be addressed briefly below to show they were not proper issues before any Court for other reasons.

In the *Civil Rights Cases* 109 U. S. 3, 11, 17 (1883), this Court pointed out that the Amendment makes void "State action of every kind" which is inconsistent with the guaranties therein contained, and extends to manifestations of "State authority in the shape of laws, customs, or judicial or executive proceedings. *Shelley v. Kraemer* 334 U. S. 1, at 14. In *Brinkerhoff-Faris Trust & Savings. v. Hill,* 281 U. S. 673, 680 (1930), this Court, through Mr. Justice Brandeis stated:

> The federal guaranteed right of due process extends to state action through its judicial as well as through its legislative executive or administrative branch of government.
>
> The action of state courts in imposing penalties of depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment . . . opportunity to defend was put off for another day and another court. *Brinkerhoff-Faris Trust & Savings. v.*

*Hill, supra.* Cf. *Pennoyer v. Neff*, 95 U. S. 714 (1878).

The case at bar has been going on for 10 years. If courts were mandated to address void judgments, it would help cut down on court time on void judgment cases. The reason the case has continues to go on is Defendants have tried to put lipstick on the void judgment by using red-herring arguments.

If the court addressed void judgments in contrast with voidable judgments, it would help lower courts address the void judgment issue.

**9. In the Interest of Justice**

What about "in the interest of justice," when cases are extremely flagrant like the case at bar where the attorneys and judge broke nearly every rule mandated under the constitution? Under Utah law there is law concerning stealing real property. Of course the only way to steal real property is through fraud, because it can't be moved. In this case the defendants used the courts to steal Anderson's paid for home.

Litigants need to feel like they got a fair shake and that does not happen when courts say one thing but do another as in the case at bar.

**10. This Court Should Act Here Because the Defense Attorneys Have Constructively Thumbed the Nose at Justice Ginsberg and Other Justices**

In the various courts Petitioner Anderson has been in front of, the defense attorneys have

constructively thumbed their noses at Justice Ginsberg and the eight other members of the *Nelson Id.*,court because it was a unanimous decision. Justices Thomas and Breyer who were part of the *Nelson* decision are still members of the Supreme Court.

It is not just the *Nelson Id.*, case written by justice Ginsberg that is at issue here, there are four other cases involved in Anderson's question to this court, that could have enormous implications if the judgment is allowed to stand. Courts could surmise there is not such a thing as a void judgment because the issue was not addressed here.

*Dennis v. Sparks Id.*, was decided in 1980, so it appears defendants disregard the Dennis ruling in regards to the case at bar as non stare decisis. They must think the precedent does not apply when the justices that were part of the decision are no longer on the court. However, *Nelson v. Adams Id.*, a unanimous decision was written by Justice Ginsberg. Justice Thomas was also involved in that decision. You would think that lower courts would wait until justices are no longer on the court before they try to throw aside stare decisis. Of course *Hazel-Atlas, Id.*, was decided in 1942, but the other side of the coin is that *Jefferson v. Upton Id.* was decided in 2010. Besides the case at bar was decided on non jurisdictional issues at the motion to dismiss stage of the proceedings officers of the court should not be thumbing their nose at the justices of this court, by refusing to address every single constitutional issue in the question before this court. *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 made it clear that a void judgment is still a part of present law, but did not define what constitutes a void judgment. Commentators and lower courts have

different ideas interpreting what this court meant in *Espinosa, Id.*

**11. Rule 60(b)&(d) of the Federal Rules of Federal Procedure Should Be Addressed**

Rule 60(b)(4) and (d)(1) and (3) of the Federal Rules of Civil Procedure should be addressed and the case at a bar brings this Rule into focus. This Court has provided little guidance on applying Rule 60 for fraud upon the court misrepresentation or void judgments. Of course the reason is that void judgments are rare. In *Herring v. United States of America* 424 F.3d 384, 386 (3rd Cir. 2005) the court stated, "Actions for fraud upon the court are so rare that this Court has not previously had the occasion to articulate a legal definition of the concept." The court went on to quote some definitions of other circuits in the footnotes. The Court then rejected the Tenth Circuit requirements for a void judgment and went to make their own requirements.

When appellant Courts go through the motions without addressing the major issue of a case prior to their decision, it is unfair. This is especially true when a judgments is void on its face. Without some type of mandate which the Tenth Circuit claims to use justice will not be served and crooked lawyers will prevail.

**12. When a Litigant Claims a Judgment Is Void on its Face, All Courts Should Be Mandated to Review That Issue in Their Decision**

In everyday life, when a person does not want to take about a certain subject, they change the subject. How can a litigant feel like the court was fair

when the lawyers and judges refuse to address the issue in a pragmatic manner instead of avoiding the void issue like the plague by simply issuing piggyback judgments based on the Eighth District Court judgment. In the case at bar if a single judge would have explained the reason for their decision, Petitioner may have felt the proceeding was fair, but of course that never happened, not a single time, nor could they. However all courts state that if a judgment is void it must be addressed. This court set the example in *Hazel-Atlas Glass Co. v Hartford-Empire Co.*, 322 U.S. 238 (1944), by mandating that,

> The judgment is reversed with directions to set aside the 1932 judgment of the Circuit Court of Appeals, [1] recall the 1932 mandate, [2] dismiss Hartford's appeal, and [3] issue mandate to the District Court directing it to set aside its judgment entered pursuant to the Circuit Court of Appeals' mandate, [4] to reinstate its original judgment denying relief to Hartford, and [5] to take such additional action as may be necessary and appropriate.

If the title of pro se instead of J.D. is a reason for a decision and/or avoiding the issues then the constitution is meaningless.

It has been said that a void judgment can never gain legitimacy. Who is going to tell the lower courts that the judgment against Petitioner is unconstitutional for four or five reasons, and that void judgments cannot stand?

When a court refuses to even talk about misrepresentations, void judgments, fraud upon the

court and due process or explain why it will not address the issue, it obviously means the court has no answer. It is not just the courts that have refused to talk about the void judgment, but is also all defendants, and the lawyers for the State and the lawyer for Utah courts. When a court slides an issue under the rug it is an obvious thumb on the scales of justice. There can be no justice without transparency. Petitioner brought up the issues of void judgment and due process but each and every court refused to address the issues and rendered piggyback judgments relying on misrepresentations of Defendants in the Eighth District Court judgment.

### 13. Void Judgments Are Part of Common Law

Void judgments can be traced back to early English common law. It made sense then and now because declaring a void judgment void promotes the integrity of the courts. Courts and citizens in this age of computers have no problem quickly finding what the law is regarding various legal issues. So, if a court says the law is such and such then does something else, citizens rightfully feel they got a raw deal.

Stretching the law is evolution of the law that can happen because no person thinks the same including judges. Attorneys trying to help their clients clutter the law with minuscule phrases when put together can change the meaning of the law over time. The issues that come before a court no doubt have implications as to decisions on future opinions, therefore because all cases are different, the law gets stretched, pulled and pushed in different directions simply by purported stare decisis of each circuit. The need for Realigning the various issues that have veered off in different directions is important,

especially on due process and equal protection issues. The case at bar covers both issues, and other constitutional issues. The case is important because it covers various ways a judgment may be considered void.

**14. It Is Unfair for a District or Circuit Court to Use non Jurisdictional Issues to Dismiss a Law Suit at the Motion to Dismiss Stage of the Proceedings**

It is unfair for this court to use non jurisdictional issues to dismiss a law suit at the motion to dismiss stage of the proceedings, when refuses to go into detail on a judgment that is void on its face as a matter of law. In this case the District and Tenth Circuit courts dismissed Anderson's claims that are issues for the jury. Of course if the judgment is void the slate should be wiped clean, *Armstrong, Id.*

Because the judgments against Anderson are void on their face as a matter of law, independent of which federal court of appeals is quoted, the reasons for granting the writ of certiorari are more important than this particular case. The court's input would give clear guidance for future cases that come before all courts, both state and federal.

**15. Courts Are Afraid to Undue Another Court's Judgment Thereby Denying Constitutional Rights**

Courts are afraid to undue another courts judgment because the parameters have been laid out by the circuit courts for the most part. Anderson presented the issue to the Eighth District Court, the Third District Court, Utah Court of Appeals, the

federal District Court and the Tenth Circuit Court of Appeals. Each and every court avoided the void judgment issue like the plague. They all refused to even mention the words, "void judgment." If a single court would have had the intestinal fortitude to at least say, "The judgment is not void because of such and such or so and so," it would at least have the appearance of a fair proceeding. However, not a single court dared go there. The courts have no answer because the judgement was void on its face from the beginning as a matter of law, therefore the courts issued piggyback judgments relying on the Eighth District Court judgment and arguments that may apply if the judgment was not void. This problem is nation wide and an internet article was written about the issue entitled, Rule 60(b)(4): "When the Courts of Limited Jurisdiction Yield to Finality," by Stephen Ludovici.

In addressing most or all issues involving void judgments at one time, it makes the law clear as to when a judgment is, void thereby avoiding confusion in later cases. This is a simple case to adjudicate, because the judgment is void on its face as a matter of law under Tenth Circuit precedent, which automatically does away with non-jurisdictional issues, that should be decided by a jury.

There can be no question that the Eighth District Court judgment was void on its face, and each and every subsequent judgment at best relied upon the Eighth District Court's void judgment. There was a total of six serial piggyback judgments happening in every single court where the issue of the void judgment was raised. The point being that even though courts claim that they review a pro se litigant's complaint liberally, it is much easier to rely on a large law firm's claims.

## 16. No One Is above the Law

The old adage "No one is above the law," does not exist in this case because Defendants stole a paid for home with impunity, and they used the courts to do it. Hearing the case would reaffirm that "no one is above the law."

"EQUAL JUSTICE UNDER LAW" - These words, written above the main entrance to the Supreme Court Building, express the ultimate responsibility of the Supreme Court of the United States. The Court is the highest tribunal in the Nation for all cases and controversies arising under the Constitution or the laws of the United States. As the final arbiter of the law, the Court is charged with ensuring the American people the promise of equal justice under law and, thereby, also functions as guardian and interpreter of the Constitution.

In the case at bar, all courts both State and federal have been afraid to mention due process, equal protection, void judgment, or any other constitutional issue mandated upon all courts by the constitution. At the same time the courts say they address pro se complaints liberally.

In contrast, regarding constitutional cases, in *M. A. K. Investment Group, LLC v. City of Glendale* No. 16-1492 (May 14, 2018), with numerous lawyers for the plaintiff, the Tenth Circuit reversed on a narrow due process issue, while refusing to mention due process, or void judgment in Anderson's pro se case. *M. A. K. Id.* was decided less than two months prior to Anderson's case. Although courts claim they review pro se cases liberally, the analogy says wrong. Anderson's complaint has thirteen federal causes of

action. Neither the District Court of the Court of Appeals addressed the issues separately, as mandated by the Tenth Circuit and this court.

Justice Oliver Wendell Holmes Jr., more than a hundred years ago writing for the Court in *McDonald v Mabee* 243 U. S. 90, 91 (1917) explained,

> Subject to its conception of sovereignty even the common law required a judgment not be contrary to natural justice. *Douglas v. Forrest*, 4 Bing. 686, 700,701, *Bequet v. MacCarthy*, 2 B. & Ad. 951, 959. *Maubourquet v. Wyse* (1867), 1 Ir. Rep. C. L. 471, 481. And in States bound together by a Constitution and subject to the Fourteenth Amendment, great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact. *Baker v. Baker, Eccles & Co.*, 242 U. S. 394.

The *McDonald Id.*, judgment was void for lack of service because the defendant has left the state prior to service by publication. In the case at bar, Petitioner does not contest the service, but subsequently the Court broke nearly every due process requirement of the Fourteenth Amendment.

The *McDonald Id.,* Court at 92 also explained that a judgment void in one state could not gain validity in another state. Likewise, a judgment void for Constitutional violations of procedural due process, misrepresentation of the law, together with Statement of Facts and Conclusions of Law with no reference to the record, because no record existed would also be

void in any court in which it is brought. This court reaffirmed that position in *Armstrong Id.*

### 17. Rogue Attorneys Should Be Exposed

Rogue High-powered law firms should be exposed not protected. Petitioner made a motion that the Tenth Circuit hire a "Special Master" to investigate this case, and if Petitioner was wrong about the judgment being void, he would pay for the special master, however if the judgment was void, then the defendants would pay for the special master. The court refused to entertain petitioner's motion, but instead dismissed on non-jurisdictional grounds. If the Tenth Circuit would have mandated that the defendants answer the complaint with specificity it would have exposed the corruption that started in the Eighth District Court case.

As an example, even though all private party defendants were Defendants in Petitioners first federal law suit, they claimed in Utah's Third District Court, the case was dismissed by the federal district court with prejudice, when in fact it was dismissed without prejudice. Defendants refused to correct their statement until the judge ruled in their favor.

In *Wyatt v. Cole,* 504 U. S. 158, at 161 this Court stated:

> The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Carey v. Piphus*, 435 U. S. 247, 254-257 (1978).

The *Wyatt* court then sent the case back to District court to see if the attorney involved was a state actor, which shows the Tenth Circuit was wrong in dismissing on privilege. Privilege is not a jurisdictional issue. In addition privilege cannot prevail over fraud, *See Moss v. Parr Waddoups Brown Gee & Loveless* 287 P.3d 1157, 1166 (Utah 2012).

**18. Petitioner Has Been Falsely Accused of Being a Dead Beat Renter Because He was not Allowed to speak in the Eighth District Court in violation of the First Amendment**

Petitioner has been falsely accused of being a dead beat renter, which could be on his credit report for eight years. Petitioner has never had a right to be heard and to betaken seriously and this case is not a he said she said case. The six page memorandum entitled "Opposition to Motion to Dismiss" speaks for itself. The memorandum shows 30 misrepresentations and by its very title shows the court held the evidentiary hearing at the motion to dismiss stage of the proceedings. The lower courts did not allow the document to speak or for Petitioner to speak.

In *Nelson v. Adams U.S.A., Inc.*, 529 U. S. 460, 466 (2000), a case that is not only on point, mirroring the case at bar, Justice Ginsburg writing for this court stated:

> We hold that the District Court erred in amending the judgment immediately upon permitting amendment of the pleading. Due process as reflected in Rule 15 as well as Rule 12 required that Nelson be given an opportunity to respond and contest his

personal liability for the award after he was made a party and before the entry of judgment against him.

The opportunity to respond, fundamental to due process, is the echo of the opportunity to respond to the original pleadings under Rule 12(a)(1)

To summarize, Nelson was never afforded a proper opportunity to respond to the claim against him. Instead, he was adjudged liable the very first moment his personal liability was legally at issue.

Nelson's winning argument . . . rests on his right to have time and opportunity to respond to the claim once Adams gained leave to sue Nelson in his individual capacity, and thereby to reach beyond OCP's corporate till into Nelson's personal pocket. *Nelson, Id.* at 469

We say . . . that judicial predictions about the outcome of hypothesized litigation cannot substitute for the actual opportunity to defend what due process affords every party against whom a claim is stated. As judge Newman wrote in his decent: "The law, at its most fundamental, does not render judgment simply because a person might have been found liable had he been charged." [*Nelson Id.,* at 471]

As this Court held that such action violated the corporate president's due process rights since he had no opportunity to defend. The District Court had usurped his right to have time and opportunity to defend the claim. Conspiracy was not an issue in [*Nelson, Id.*]

Anderson was refused time and opportunity to respond after his 12(b)(6) motion was denied. This was accomplished by Respondent-attorneys misrepresenting the law and facts to Judge Anderson. Judge Anderson in one fell swoop denied Petitioner Anderson's 12(b)(6) motion and ruled for Respondents without testimony or confrontation from either side. The decision denied Petitioner his Fourteenth Amendment due process rights, and his Utah Rules of Civil Procedure rights under Rule 12(a)(1).

legislative executive or administrative branch of government. *The Nelson Id.*, Court continued,

> The action of state courts in imposing penalties of depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment. . . . opportunity to defend was put off for another day and another court. *Brinkerhoff-Faris Trust & Savings. V. Hill, supra.* Cf. *Pennoyer v. Neff*, 95 U. S. 714 (1878)

In the Eighth District Court case, Anderson was

never given an opportunity to respond to the claim that he was a renter. There was no indication that the Court planned to end the proceedings at the motion to dismiss stage of the proceedings. In fact, petitioner was under the assumption and confident that he would prevail with his Motion to Dismiss, (App. Pp. 232)

**19. The Court Splits should be addressed concerning void judgments**

In *Herring v. United States of America* 424 F.3d 384, 386 (3rd Cir. 2005) the Court in its foot notes explained the various definitions of void judgments by various circuits. The splits and various definitions by the Circuits should be addressed.

Moore's Federal Practice 3D 60-159 §60.44, details different Circuits reasons for void judgments. At 60-163 § 60.44[5][b][a], Moore.s stated,

> Every Rule 60(b) motion is, at least theoretically, subject to the court's discretion (see § 60.22[1] However, if a judgment is void, the only way the court can exercise its discretion is by granting relief. In other words, if a court determines that a judgment is truly void, and not simply erroneous (see[1], above, the court really has no discretion at all; it must recognize that the judgment is a nullity and grant relief.
>
> At [c] Moore's continued,
> as discussed in § 60.65[1], Rule 609(c)(1) requires that every motion seeking relief from judgment under Rule 60(b) be brought "within a reasonable time. This

> requirement technically applies to motions under Rule 60(b)(4), because of the unique considerations applicable to void judgments, a motion brought many years after the judgment was obtained may nevertheless be made within a reasonable time. The mere fact that a significant amount of time has passed since a void judgment since a void judgment was rendered cannot "cure" its fatal infirmity. For this reason, some authority states that a motion under Rule 60(b)(4) may be made at any time. [5] footnotes detailing various circuits position omitted]

**20. Wiping the Slate Clean**

By wiping the slate clean as this court did in *Armstrong Id.*, it will send a message that fraud upon the court, denial of due process, denial of equal protection, conspiracy, and refusal to refer to the record will not be tolerated. If this court were to make mandates as it did in *Hazel-Atlas Id.,* it will send a message of what can happen when courts deny Constitutional rights.

## CONCLUSION

Because of the 20 reasons Petitioner has put forth, in this Petition for certiorari this Court should set aside the Eighth District Court judgment against Petitioner. The Court should also wipe the slate clean as in *Armstrong Id.,* mandate the lower courts and State courts set aside their Orders and Judgments as in *Hazel Atlas Id,* and clarify other issues in this

Petition as it sees fit. The issues presented are conspiracy, due process, equal protection, First Amendment violations, fraud upon the court, and referring to the record when writing the Findings of Fact and Conclusions of Law.

Respectfully Submitted October, 2018

Greg Anderson