THE COMPILED

ARIZONA LAW &  REPORTER

A Study of Constitutional Case Law
in the United States District Court
for the District of Arizona

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Constitutional Convention
A Thought Experiment
(CC:ATE)

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* *Callaghan v. Myers*, 128 U.S. 617, 650 (1888) ("The general proposition that the reporter of a volume of law reports can obtain a copyright for it as an author, and that such copyright will cover the parts of the book [which the author wrote], although [the author] has no exclusive right in the judicial opinions published, is supported by authority."). But See, 17 U.S. Code § 105.

DEDICATED TO

LOVE, ALWAYS & FOREVER, and to . . .

THE DEDICATED JUDGES OF THE EVO A. DECONCINI COURTHOUSE

WHO ENSURE THE LIGHT OF JUSTICE SHINES ETERNAL.

DEFENDING THE SOVEREIGNTY OF '76

SINCE TIME IMMEMORIAL

PREFACE

This work complies each Arizona Law and ⚖ Reporter (ALR) into one book. Divided into thematic chapters, the ALRs report on cases adjudicated in the District of Arizona.

Chapter One: THE O.G. 16 oversees the transfer of executive power between the Obama Administration and #Trump'sMurica. The chapter initially orients the reader to several key concepts, such as Our Constitution, and then reviews some of the earliest reports on metaconstitutional jurisprudence.

Chapter Two: DOUBLE DUTY // DOUBLE COLUMNS broadens the scope of the project to reveal the breadth of metaconstitutional jurisprudence. The chapter weaves together the work of multiple federal judges within an overtly formalistic format.

Chapter Three: MONSOON SEASON SUPPLEMENT captures the mood of the law amid a downpour of justice. The chapter reports on an even number of civil and criminal cases, and then concludes with a timely case update.

Chapter Four: CONSTITUTIONAL HARVEST ends by reaping the bounty of the past—in the now—to nourish a prosperous future for ALL. The work closes with an R.I.P. to a fallen citizen.

Finally, for convenient reference, an attached Appendix contains the Court Orders cited in the ALRs.

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- A.F. Ball, Tucson, AZ, August 2019.

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* Provided separately in 1st ed.

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INTRODUCTION

The following presents a study on case precedent established in the United States District Court for the District of Arizona. Within the District, the Constitution of the United States of America reigns supreme. The law reported in each Arizona Law and ⚖ Reporter (ALR) confirms that.[1] The Reporters also confirm that justice continues to predominate the Arizona landscape: from the peaks of forested mountains to the floor of the grandest of canyons. The federal judges who serve Arizonians work tirelessly to ensure rule of law endures. This project documents their valiant efforts.

Court Reporters serve many practical purposes—foremost to preserve and transmit the law.[2] The preservation of judicial decisions dates back millennia,[3] and has occurred across various sociopolitical groups and legal systems.[4] Reporters help inform citizens about the fairness of their judiciary, because along with the rights of citizenship comes the duty to observe and respect the law. While it is unrealistic to stay current with every nisi prius, appellate, and supreme court order issued within a federal jurisdiction; reporters like the ALRs curate cases that expose fundamental principles and present the facts with simplistic precision so that anyone can understand the law—with a little 👈 effort.[5] Ultimately, reporters can unite a diverse and inclusive community into a shared conversation about the law. And through the resultant discourse, that community can better ensure Justice for ALL.

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[1] See, e.g., ALR, Ch. One: The O.G. 16, pg. 4 ("a 'court's duty is to say what the law is and to expound the Constitution as supreme law'") (quoting *Vera v. Ryan*, 15-CV-613 (D. Ariz., Oct. 6, 2017)).

[2] See James Kent, *Commentaries on American Law*, Vol. 1, Pt. III, Lecture XXI: Of Reports of Judicial Decisions, pg. 473 ("The reports of judicial decisions contain the most certain evidence, and the most authoritative and precise application of the rules of common law.").

[3] See, e.g., *The Digest Of Justinian*, Vol. 1, The Composition of the Digest (The Emperor Caesar Flavius Justinianus, Pious, Fortunate, Renowned, Conqueror And Triumpher, Ever Augustus) (Dec. 15, 530) ("We therefore command you to read and work upon the books dealing with Roman law, written by those learned [humans] of old to whom the most revered emperors gave authority to compose and interpret the laws, so that the whole substance may be extracted from them, all repetition and discrepancy being as far as possible removed, and out of them one single work may be compiled, which will suffice in place of them all.") (transl. ed. Alan Watson, 1985).

[4] See, e.g., *Al-Shāfi'ī's Risāla: Treatise on the Foundations of Islamic Jurisprudence*, Translator's Introduction (2nd ed. 1961) ("Different societies develop different legal systems, but every matured system reveals the ways in which the society from which it sprang endeavors to protect what it honors.") (transl. Majid Khadduri).

[5] 'Lo: Latin liberally liters the loquacious lines of the law. Cf. Oliver Wendell Holmes Jr., *The Path of the Law*, 10 Harvard Law Review 457 (1897) ("and high among the unrealities I place the recommendation to study the Roman law. ... That means mastering a set of technicalities more difficult and less understood than our own, and studying another course of history by which even more than our own the Roman law must be explained.").

A note about language.[6] Reporters, while riddled with legalese, help translate the law into a legal vernacular. Reporters help bridge the gap between those initiated into the language of the law and the public writ large. Bridging this gap allows more inclusive community discussion about the law and justice, and connects varied perspectives. By defining legal terms, court reporters let citizens use common vernacular to meaningfully debate fundamental concepts of constitutional law. And when communal discourse tends towards constitutional law, participants flourish.[7]

The cases reported in the ALRs span the work of several federal judges, each dedicated to their constitutional mission. Operating under rule of law, the district court judge, although a unique human being, must decide cases in accordance with the same, incorporeal law. These unique humans, each with a different voice, often must speak for a unified court. The reporters, accordingly, strive to remove a degree of idiosyncrasy from court orders to homogenize the law.[8]

Written between 2016–19 CE, the ALRs are divided into four chapters. Each chapter represents solutions to legal issues adjudicated within the District of Arizona. The chapters generally follow a theme, but report on a variety of interesting matters.[9]

Chapter One: THE O.G. 16 opens with a monologue on constitutional law, both in practice and theory. To help come to terms with the reader, the monologue gives key concepts evolving definitions. Concepts such as "the law," "sovereignty," "Our Constitution," and "Rule of Law" receive introductory treatment, so the reader can better comprehend the proffered thesis: metaconstitutional jurisprudence will improve the safeguarding of justice. Chapter One also traces the origins of metaconstitutionalism back to their roots in *A Statical Finding*. The study—which itself builds upon the bedrock of Our Constitution—explains the necessity of the reports: Rule of Law demands courts justify their acts with written text. The first chapter then provides a report of sixteen cases adjudicated under fœderal law. The Reports list each of the precedents the court's orders relied upon to decide the legal

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[6] Cf. Neil M. Gorsuch, *A Republic: If You Can Keep It*, CH. 3: THE JUDGE'S TOOLS, § Originalism and the Constitution, pg. 117 (2019) ("the law sometimes assigns specialized meanings to words and terms").

[7] Cf. Lawrence B Solum, *Virtue as the end of law: an aretaic theory of legislation*, Jurisprudence, Vol. 9, No. 1, pg 8 (2018) ("Flourishing requires rational activity, because humans are creatures that reason and can act on the basis of reasons. Flourishing requires social activity, because humans are social creatures who communicate and interact with one another. Finally, flourishing involves activities that express the human excellences or virtues.").

[8] Cf. Lawrence M. Solan, *The Language of Judges*, INTRODUCTION: JUDGING LANGUAGE, pg. 1 (1993) (insisting that a judge's "use of linguistic argument as justification is by no means consistent, and is frequently incoherent and idiosyncratic.").

[9] Cf. Kent, *supra* n. 2, at pg. 463 ("Law reports are dramatic in their plan and structure. They abound in pathetic incident, and displays of deep feeling.").

matters, and explains the core concept contained in the cited material. The chapter crescendos with a *fait accompli*.

Next, Chapter Two: presents an alternative method to record metaconstitutional jurisprudence, *viz.*, a traditional double-column format. The cases in this chapter encompass the work of several different judges, working in tandem, to deliver on the promise of an independent & just judiciary. Matters range from clashes between border security and the environment, to requests from the Executive Branch to enforce administrative subpoenas. Chapter Two also finds the Court responding to inmate's prayers, hearing appeals from orders issued by U.S. Magistrate Judges, and promoting judicial federalism. The chapter ends with the lessons learned from a long-winded case that finally ended after more than a decade of litigation.

Chapter Three: Monsoon Season Supplement, switches the vibe, and aesthetic, to update the original, O.G., ALR. As the chapter shows, the District of Arizona has colorful cases that span the criminal and civil spectrum, and nothing beats the radiance of a Sonoran Desert monsoon. Cases covered in Chapter Three involve fundamental questions of constitutional rights, sibling squabbles, US Marshal detainers, and international commerce disputes. Finally, a surprise bonus case is revealed, revisited, and reported.

In the last chapter, Chapter Four: Constitutional Harvest, a literary approach to the law roams the page. Building on the groundwork laid in the previous ALRs, the chapter covers tried-and-true jejune court procedures and experimental case management practices; all to benefit posterity's student. In the end, the work chronicles 10 Acts of Justice effectuated by the Court.

A final note. Reporters help track developments in jurisprudence.[10] Reporters can allow a jurist to reflect on macro trends, understand a colleague's reasoning, or receive public feedback to better achieve continuous improvement, reflexive equilibrium, and legal synthesis. The reports included in this work offer examples of the metaconstitutional jurisprudence they espouse. That jurisprudence strives for, *inter alia*, continuous improvement in judicial consistency and juridical enlightenment through education. One of the more striking features of the jurisprudence is the strategic use of color patterns. While every ALR has its own palette, the color choices of each aim to enhance legal understanding. Judgment of the final synthesis is best left to the reader, after a thorough investigation.

Without further ado, for your enjoyment, CC:ATE presents, the law—in live and living color. Apologies for any scrivener errors!

[10] Cf. Henry Wheaton, *Reports of Cases Argued and Adjudged in the Supreme Court of the United States, February Term 1816*, Preface, pgs. iii–iv (4th ed. 1883) (quoting Marcus Tullius Cicero and Lord Francis Bacon).

CHAPTER ONE

THE O.G. 16

THE ORIGINAL ALR WHICH CHRONICLES SIXTEEN CASES FROM 2016–17 AND INTRODUCES SEVERAL KEY CONSTITUTIONAL CONCEPTS.

Arizona Law & Reporter

REPORT OF 16 CASES & DECISIONS ADJUDICATED UNDER FŒDERAL CONSTITUTIONAL LAW

End of the Obama AdminiStration – Beginning of #Trump'sMurica

OUR CONSTITUTION: IN PRACTICE AND THEORY

Opening Remarks

Thank you. Your attention, truly appreciated. This discussion aims to further societal discourse on the *status quo* of constitutional law, from a pragmatically theoretical perspective.[1] As a wise scholar noted: "the ultimate goal of jurisprudence is to understand the law as a seamless web," demostravively, a "recursive argument."[2] To begin this task, again, anew, experience has logically led to the belief that we should initiate the cognitive journey by coming to terms on a few key words.[3]

So what is a/the/our constitution?[4] A constitution serves three main purposes: (i) to delineate separation of powers; (ii) protect inalienable rights & fundamental freedoms; and (iii) provide a legitimate basis for a legal system.[5] Constitutions can also claim or acknowledge sovereignty, establish political norms, help create peace, and even bind consciences.[6] With the rational mind goes the potential value of a constitution.[7] Constitutions can be written on paper, exalted, disregarded, burned, shredded, *et cetera, etc.*, *&c.*, &, *facilis descensus averno.*[8]

The United States of America has a constitution, the Roman Republic had a constitution, Cambodia—like many countries—has had, has, and continues to have, tho has not always had, a constitution.[9] You have a constitution, I have a constitution. We, together, can make a constitution; or take a daily constitutional *à la* Oliver Wendell Holmes, Jr., who laid out the common law in that eponymous *magnum opus*.[10]

Common Law Constitutionalism, *i.e.*, the evolution of constitutional law under the auspice of courts, has developed a theory of limited government. Suffice: constitutional-*ism* limits pure majority rule (aka democracy).[11] While the will of the *demos* remains a principled value within the system of governance, a constitution—through the art of political compromise—protects against the majority usurping minority rights.[12]

Constitutions organize government; so in some sense, constitutionalism focuses on managing conflict between government powers. *Ergo*, Constitutionalism ≈ Constitutional Supremacy ≠ Judicial Supremacy. Still → judicial review protects constitutionalism values as a/the/our judiciary must ensure its independence by guarding inalienable rights & fundamental freedoms. But concurrently, courts must refrain from making normative judgments about constitutional law.

Instead: The judiciary must say what the law *is*.[13] To do so, judges must know how constitutional law fits within the legal order.[14]

Natural Law > Constitutional Law > Statutory Law > Municipal Law > Bylaws > Legal Rules > Regulations

Natural Law → Rights → Sovereignty → Rule of Law → Constitution → Liberty → Freedom → Justice

Reputedly, a constitution operates as supreme law in certain jurisdictions.[15] And understanding that constitution requires conscious reflection, as a constitution is a reflective and reflexive document.[16] Effective advocacy of constitutional law requires an intimate familiarity with the document and an immense knowledge of precedent, history of the legal tradition, and principles of just governance.[17]

More substratum: a human brain can only perceive a "best guess" at the true reality of the world beyond the skull, actively predicting itself into existence.[18] And tho (potentially) ∞ beings, the law imposes a duty to rationally govern consciousness.[19] The law can also provide a reasonably probable account of past events. *But yet better still*: Reasonable → Logical → Understandable.[20]

Again, what is the law?[21] The legitimacy of the legal system which answers that question rests on the constitution.[22] And just as a constitution is a creature of creation, so too, the law derives from creation.[23] Jurisprudence allows a separate linguistic tradition to emerge which attempts to reason natural law through an adaptive language: the common law tradition.[24] To interpret that tradition,

courts construe our survived legal heritage and incorporate the revitalizing legislative patchwork that returns us to sometimes neglected first principles.[✿] Legitimacy, claimed to be undertheorized, must anchor the constitutional order, so accordingly, it must be based on an acceptable justification.[#] What legitimizes a constitution?

Here, the concept of sovereignty, in all its grandness (and ambiguity), plays a central role. Through ratification, sovereigns can legitimize a constitution.[⌗] Tho: most prevailing governments claim sovereignty over people who have never ratified its constitution; and certain *demos* still cling to an identity seemingly inseparable from a specific geographic territory, over which it claims all beings are subject to its command, and mostly absent any consent beyond that which can fairly be attributed as: deviously tacit. . .

This discussion will also aim to expound metaconstitutional jurisprudence as a means to resolve cases and controversies under Rule of Law.[♬] To comprehend the adjudicative process, consider, abstractly,[🏛] the law as nothing more than dispute resolution.[♖] Disputes can arise when one entity perceives an injustice perpetrated by another person, who either has a different concept of justice, or wishes to elude justice. A judge then uses their experience to apply mutual knowledge in order to resolve disputes brought before the court.[◠] While *where* the judge "draws the line" between the competing litigants' perspectives (based on the judge's own concept of justice) may appear to result in arbitrary line drawing, Rule of Law acts as an internal check on any power vested to the judge over the dispute.[Ψ] Σ Courts—through judges—protect rights by expounding their rhetoric as 'the law' to reach mutual understanding between discontent parties.

法律, 法院的:*La Loi: Lex, justitia, pax*

No one can ignore the law, therefore, the law should strive for a healthy relationship with ALL[♧]—because either you define your rights and relationship to the government, or the government does it for you. 😧!! We just *are* a part of universal law. nOw. iN 'tHiS' mOmEnT, living and breathing a/the/our constitution.[§] Socio-geo-political-economic-you-name-it—everything—in the universe appears to continuously evolve through spacetime in an unpredictable manner, as no single human being can hold the entire universe in their head/mind/body; let alone conceptualize it all, abstractly, philosophically, or otherwise.[⁂]

Metaconstitutionalism as a theory of the law, just adjudication, jurisprudence, or however you want to attempt to define it, for any useful exposé on the term, provides value as it explains that an independent judiciary should continuously attempt to resolve disputes by saying what *the law is*, and what *the law is*, is what the judiciary should judiciously seek in each case.[ᵽ] Tautological purity! Society simply selects individuals to administer justice within bounded jurisdictions. Metaconstitutionalism then educates those adjudicators to illuminate a path to emancipation based on prior knowledge and shared wisdom.[8] Practical application of this theoretical model can yield results, both consciously and cognitively.[◍]

To conclude, courts must write the story of justice in their world.[⍰] The text should empower the reader to understand more about the law.[ъ] That law should teach PEACE[ξ] and how to co-exist w/ ALL.[♚] Finally, judgment requires emotional stability, hence the judge must be at peace with the *status quo*—until it is proven necessary to apply legal force to correct a known injustice. *Wu wei*,[ϯ] and want not, for as Francis Bacon taught: the judicious judge takes the least liberty.[♳]

❁ *Cf.* Arizona Law & ⚖ Reporter, *Metaconstitutionalism's Impact on the Fœderal Courts: A Statical Finding*, *infra*, at pg. 6 n. * (offering a *sui generis* perspective on the law).

2 *See* Dr. Colin B. Colt, *Sexual Consent As A Common Law Doctrine*, PT. IV: ADVANTAGES OF THE COMMON LAW APPROACH, Section C: Unifying the Common Law, 19 Wyo. L. Rev. 453, 472 (2019).

ϕ *Cf.* Dr. Mortimer J. Adler, *How to Read a Book: The Classic Guide to Intelligent Reading*, Ch. VIII: Coming to Terms With an Author, at pg. 96 (articulating that "we can think of terms as a skilled use of words for the sake of communicating knowledge") (rev. ed. 1972). *But cf.* Thomas Paine, *The Age of Reason* ("Human language is local and changeable, and is therefore incapable of being used as the means of unchangeable universal information.") (1794).

Δ A definition proves useful if it correlates to linguistic *consensus ad idem*. *Cf.* Felix S. Cohen, *The Definition of Law*, 35 Colum. L. Rev. 809 ("Absolute certainty is as foreign to language as to life . . . And the words of a definition always carry their own aura of ambiguity. But a definition is useful if it insures against risks of confusion more serious than any that the definition itself contains.") (1935).

ϐ *Cf.* Charles Borgeaud and John Martin Vincent, *Adoption and Amendment of Constitutions in Europe and America*, Book I: The Origin, Growth, and Character of Written Constitutions, Ch. VI: The Nature of Written Constitutions, pgs. 35–43 (McMillian, 1895).

 *See, e.g.*, Clarence Thomas, *Judging*, 45 U. Kan. L. Rev. 1, 8 (1996) (admitting that "judges remain ... bound by the will of the people as expressed by the Constitution...").

 *See* Richard A. Posner, *The Federal Judiciary: Strengths and Weakness*, at pg. 101 (recognizing "the Constitution is puty in the hands of the judiciary; [and] the judges, especially the Supreme Court Justices, have to a considerable extent rewritten it") (Aug. 2017). *See also*, Patrick J. Monahan and Allan G. Hutchinson, *Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought*, 36 Stan.L.Rev. 199 ("Law is not so much a rational enterprise as a vast exercise in rationalization.") (1984).

ϟ *Cf.* Publius Vergilius Maro, *Aeneid*, Bk. 6, Ln. 126 (29–19 BC).

 U.S. Const. (1787) (rev. 1992). Polybius, *The Rise of the Roman Empire*, Bk. VI, Ch. 5: On the Roman Constitution at Its Prime (transl. Ian Scott-Kilvert, 1979). The Constitution of the Kingdom of Cambodia, Preamble (1993).

 *Cf.* Oliver Wendell Holmes, *The Common Law* (conditioning that the law must take a being's "mental constitution into account," and that a knowledgeable human walks on earth "at their own peril") (1881). *But see, Abrams v. United States*, 250 U.S. 616, 624 (Holmes, J., dissenting) (1919).

 *See, e.g.*, David A. Strauss, *Common Law Constitutional Interpretation*, 63 U. Chi. L. Rev. 877, 930 ("The idea behind common law constitutionalism is that sometimes Burkean incrementalism, implemented by judges, is a good counterweight to the potential excesses of democracy."). *See also* Friedrich A. Hayek, *Law, Legislation and Liberty*, Vol. 3, at pg. 12 (1979) (explaining that "unlimited democratic government produces a new set of 'democratic' pseudo-morals, an artifact of the machinery which makes people regard as socially just what is regularly done by democracies, or can by clever use of this machinery be extorted from democratic governments") (1996).

 *Cf.* Harry W. Jones, *An Invitation to Jurisprudence*, 74 Colum.L.Rev. 1023 ("... Law is not a form of art for art's sake.") (1974).

★ *Cf.* Roscoe Pound, *Hierarchy of Sources and Forms in Different Systems of Law*, 7 Tul.L.Rev. 475 (1933) ("observ[ing] that the answer to the question [*what is law?*] depends chiefly on who asks the question.").

 Cf. Douglas R. Hofstadter, *Gödel, Escher, Bach: an Eternal Golden Braid*, Ch. VII: Minds and Thoughts § The Self-Symbol and Consciousness, at pg. 388 (noting that "upon reflection, it seems that the one way one could make sense of the world surrounding a localized animate object [*e.g.*, a constitution] is to understand the role of that object in relation to the other objects around it").

 U.S. Const., Art. VI. *See also*, Alexander James Dallas, *The Life and Writings of Alexander James Dallas* (1871) ("Nay, that no doubt or ambiguity should rest upon the claim of *paramount allegiance for the federal government*, it is imperatively declared in this act of the people themselves, that 'the constitution and the laws['], '*shall be the supreme law of the land, and the judges in every State shall be bound hereby*, anything in the CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.' ") (emphasis in original).

 *Cf.* The Hon. Ruggero J. Aldisert, *The Judicial Process: Text, Materials and Cases*, Ch. V: The Judging Process: Making the Decision § 3 Factors that Alter Reflective Thinking, at pg. 556 (2d. ed. 1996) ("The conscientious judicial decision maker will: (1) recognize [that 'reflective thinking involves (i) a state of doubt, hesitation, perplexity, mental difficulty, in which thinking originates, and (ii) an act of searching, hunting, inquiry, to find material that will resolve the doubt, settle and dispose of the perplexity';] and (2) understand that forming tentative conclusions is all part of the reflective thinking process.") (quoting John Dewey, *How We Think* (1933)).

 See Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (1983) (claiming "the Western tradition of legality ... strikes a balance among rule, precedent, policy, and equity"). *But see*, *The Tibetan Book of the Dead: Liberation Through Understanding in the Between*, at pg. 11 (trans. Robert A.F. Thurman, 1994) ("In contrast to Western ideas, the Tibetan view is that mental or spiritual cannot always be reduced to material quanta and manipulated as such....").

⧖ *Cf.* Martin Heidegger, *Sein und Zeit*, Part One: The Interpretation of Dasein in Terms of Temporality, and the Explication of Time as the Transcendental Horizon for the Question of Being, *Division One: Preparatory Fundamental Analysis of Dasein*, Ch. V: Being-In Such § 34 Being-there and discourse. Language., pg. 203 (trans. by John Macquarrie and Edward Robinson, 1962) (stating that "*The existential-ontological foundation of language is discourse or talk* [&] *Discourse is existentially equiprimordial with state-of-mind and understanding*") (emphasis in original).

 See John Finnis, *Natural Law & Natural Rights*, Part One: Evaluation and the Description of Law, at pg. 14-15 (2nd ed. 2011) (arguing that justice "demands" legal theorists describe the legal order so that Rule of Law is presumptively a requirement of practical

reasonableness). *But see*, Jerome Hall, *Foundations of Jurisprudence* (1974) ("Justice is an irrational ideal[,] it is not subject to cognition.") (quoting Hans Kelsen, *General Theory of Law and State* (1945)).

Heidegger, *supra* ⧖ at pg. 401 (imparting that "the analysis of the temporal Constitution of discourse and the explication of the temporal characteristics of language-patterns can be tackled only if the problem of how Being and truth are connected in principle, is broached in the light of the problematic of temporality [and thus] "[u]nderstanding is grounded primarily in the future").

But see Roscoe Pound, *Jurisprudence* § 2 The Nature of Law ("It is no longer necessary to 'define' law.") (1959).

Cf. *, *A Metaconstitutional Analysis of Constitutional Conventions* (tracing back to the origin a legitimate legal system) (2016). *See further*, Thomas Paine, *Agrarian Justice* ("It is only by tracing things to their origin, that we can gain rightful ideas of them . . .") (1797).

A Metaconstitutional Analysis of Constitutional Conventions (explaining that the implicature of constitutional authorship doesn't necessarily imply its relevance to constitutional adjudication or even a constitution's meaning). *See also*, *A Metaconstitutional Declaration* (creating metasovereign) (2016).

Cf. Thomas Jefferson, *Letter to Samuel Kercheval* (July 12, 1816) ("... laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times."). *See also*, Jerome N. Frank, *Some Reflections on Judge Learned Hand* (1957) (identifying that the common law language also evolves through changes in speech patterns and that "poetry [ᔑᑎ] style signalizes the poet [ᓰ]the judge").

Cf. Solomon Wachtler, *Judicial Lawmaking* 65 N.Y.U. L. Rev. 1 (1990) ("...the evolutionary process has formed what is an intimate lawmaking partnership—sometimes fluid, sometimes halting—between the legislature and the common law courts.").

See Lawrence B. Solum, *Legal Theory Lexicon 46: Legitimacy* (last rev. Oct. 16, 2016) ("Because legitimacy has different senses and is undertheorized, it is very easy to make claims about legitimacy that are ambiguous or theoretically unsound.").

See A.J. Dallas, *supra* ⛨, at pgs. 100-01 ("The institution of government is thus an exercise of the sovereignty of [the People] acting as the creator . . .") *But see*, Saul Cornell, *The Other Founders: Anti-Federalism & the Dissenting Tradition in America*, Ch. 10. The Dissenting Tradition, from the Revolution of 1800 until Nullification § The Revival of Anti-Federalism: Robert Yates' Secret Proceedings, at pg. 290 (expressing the "idea of an American People ['was'] a fiction invented by Federalists to procure ratification") (1999) (citing John Taylor, *New Views of the Constitution of the United States* (Washington, D.C., 1823).

ALR, pgs. 10-15 (expounding metaconstitutional jurisprudence and reporting on new precedent). *Cf.* Marshall B. Mathers, ƎNCORE, *We As Americans* (2004) ("It's never been said, but I set precedents . . .").

Dr. Adler, *supra* n. ϕ (proving humans can acquire knowledge, abstractly, through reading).

See Posner, *supra*, n. ◥ at pg. 53 ("Law is basically dispute resolution.").

See, *e.g.*, *Segal v. Wright Medical Group*, 17-CV-355 (D. Ariz., Oct. 18, 2017) (applying judicial experience and common sense). *See also*, *Caldwell v. USA*, 17-CV-9, at pg. 2 n. 1 (D. Ariz., Jan. 9, 2017) (citing *Eagle Eye v. Agricola Faader*, CV-16-103 (D. Ariz., Sept. 1, 2016)).

Cf. Benjamin Nathan Cardozo, *The Nature of the Judicial Process*, Introduction: The Method of Philosophy, at pgs. 30-33 (1921) (discussing the various lines that flow from the "directive force of a principle" but acknowledging that "some lines, once wavering, have become rigid. We leave [perhaps less to judges today]. Yet even now there is change from decade to decade. The glacier still moves.").

Cf. David Mellinkoff, *The Language of the Law*, Ch. XVI § 136 The priesthood (1963) (concluding that "the law has become common, the possession of [all] far more immediately than when the *common law* got its name.") (emphasis in original).

Cf. Friedrich A. Hayek, *The Sensory Order: An Inquiry into the Foundations of Theoretical Psychology*, Ch. VI: Consciousness and Conceptual Thought § 3 The Common Space-time Framework at pg. 137 (1963) ("The 'unity of consciousness' means, above all, that conscious events occupy a definite position in the same spatial and temporal order, that they are 'dated' and 'placed' in relation to other conscious events, and that all sensory and affective events which 'enter consciousness', together with the reproductions or images of such experiences, belong to the same order or universe.").

Cf. F.A. Hayek, supra n. ✗ at pg. 68 ("The real issue is how we can best assist the optimum utilization of the knowledge, skills, and opportunities to acquire knowledge, that are dispersed among hundreds or thousands of people, but given to nobody in their entirety.").

See Vera v. Ryan, No. 15-CV-613 (D. Ariz., Oct. 6, 2017) (resolving pending motions in a dispute by holding that a "[c]ourt's duty is to say what the law is and to expound the Constitution as supreme law") (citing *Cooper v. Aaron*, 358 U.S. 1, 18 (1958)).

Cf. The Honorable Frank R. Zapata, *Remarks @ a Naturalization Ceremony* (March 3, 2017) (teaching new citizens that "education is the key to success in this country," and that English is the language of power). *See also*, Sir Henry Newbolt, *Poems of John Keats*, Introduction ("And this is one way of English education: *itur in antiquam silvam*. It is only possible where the forest is old.") (1926) (quoting Virgil, *supra*, n. ᚼ).

Cf. Essential Sufism at pg. 105 (edited by James Fadiman & Robert Frager, 1997) ("... when a rare and wonderful idea arises in your mind, you become obsessed with it and have to express it in speech or writing.") (quoting نورالدين عبدالرحمن جامی).

See Roscoe Pound, *An Introduction to the Philosophy of Law*, Ch. I: The Function of Legal Philosophy, at pg. 24 (conjecturing that "the jurist of tomorrow will stand in need of some new philosophical theory of law [...] to "achieve justice in [their] time and place") (1922).

Cf. Padmasambhava, *The Natural Liberation Through Naked Vision, Identifying The Intelligence* (trans. by John Myrdhin Reynolds, 1989) (indicating the work "is a direct introduction to one's own intrinsic awareness. [And] it is for the benefit of those sentient beings belonging to the later generations of those future degenerate times/ that all of my Tantras, Agamas, and Upadesas/ though necessarily brief and concise, have been composed. And even though I have disseminated them at the present time, yet they shall be concealed as precious treasures/ so that those whose good karma ripens in the future shall come to encounter them. SAMAYA! Gya! Gya! Gya!").

Cf. Doctor Stephen Del Giudice, *I'm Out of My Mind: so why can't I stay there?* § True Freedom Means Having No Choices, at pg. 102 (2011) ("A peaceful mind attends to what's going on right now. Such a mind is free to find the right thing to do in any situation—without distraction, without constraint, without the barriers of choice to be found anywhere.").

Cf. Richard M. Nixon, *Beyond Peace*, at pg. 25 (1994) (instructing that "peace is improvisation" and that in "moving beyond peace, we must recognize that while human nature prevents us from ever attaining perfection, the infinite potential of human beings compels us to embark on a search for the best practicable good").

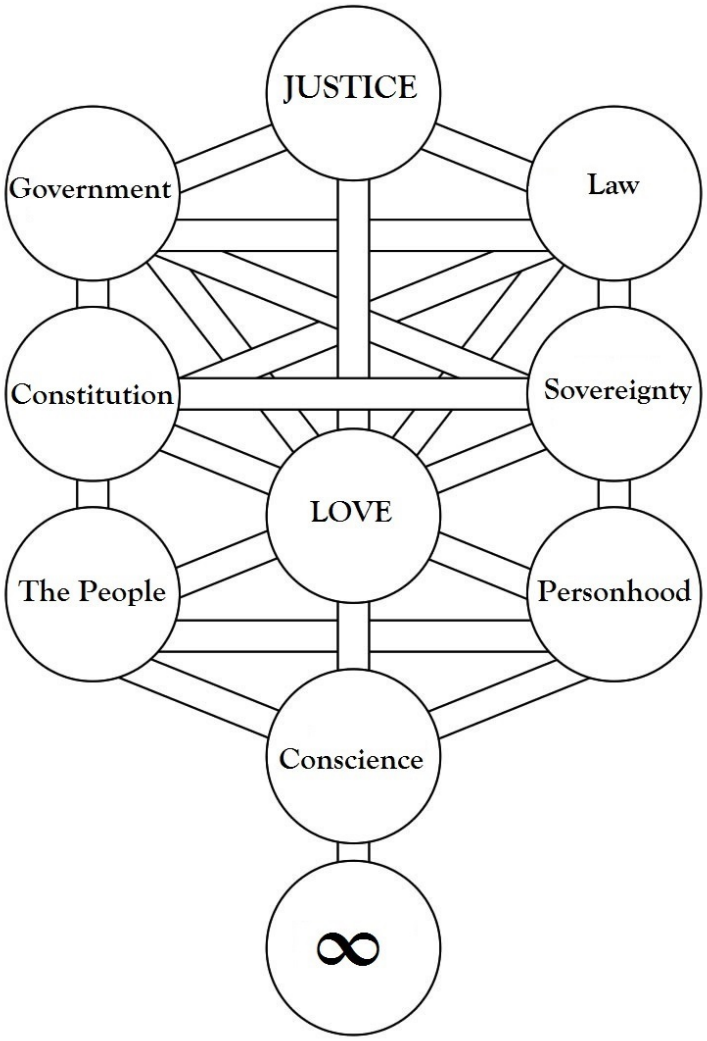
See 老子, 道德經, Ch. 81 (trans. John C. H. Wu, 1961) ("Sincere words are not sweet, sweet words are not sincere. Good [people] are not argumentative, the argumentative are not good. The wise are not erudite, the erudite are not wise."). *See also*, Lao Tzu, *Tao Te Ching*, Ch. 81 (trans. Stan Rosenthal, 1984) ("The truth is not always beautiful, nor beautiful words the truth. Those who have virtue, have no need of argument for its own sake, for they know that argument is of no avail. Those who have knowledge of the natural way do not train themselves in cunning, whilst those who use cunning to rule their lives, and the lives of others, are not knowledgeable of the Tao, nor of natural happiness.").

Cf. Dallas, *supra* ⛨ at pg. 84 (quoting "Lord Bacon"). *See also*, Sir Francis Bacon, Viscount Saint Alban, *Of Judicature* (1612) (discussing the duties of a judicious judge in the hallowed "place of justice," and concluding: "*Nos scimus quia lex bona est, modo quis ea utatur legitime*").[&&]

[&&] *Cf.*, SALAZAR v. STEWART, *A View from the Interpreter's Table*, Appendix of Alliterative Aphorisms (2017) (concluding: "*Judicium de judicare*: judgmatic judiciaries just judicate judicialized judicable *justa causaus* by a justicer justifying justiciability *juxta justa et justiciarius e justitiariae*").

ENDNOTE: The legal community vigorously debates the semantics of constitutional terms, *see*, *e.g.*, *Hughes v. Kisela*, 11-CV-366 (D. Ariz., Oct. 16, 2017) (Oral Argument on Motion to Stay); and the law also benefit from contributions from theorists and philosophers. *See Vera v. Ryan*, 15-CV-613, at pg. 4 n. 12 (D. Ariz. September 7, 2017); and *Purcell v. Ahmed*, 15-CV-291, at pg. 1 n. 1 (D. Ariz., Oct. 17, 2016).

Ultimately: tightening linguistic systems can reduce ambiguity in language, and since a "good conscience" disdains ambiguity; and yet the lawyer's job is to divine prophecies from the ambiguous and uncertain → improvement upon the language of the law improves the administration of justice in a community. *Cf.* Oliver Wendell Holmes, *The Path of the Law* (1897); Thomas Paine, *Federal Propaganda: The Federalist Papers* at pgs. 3–4 (2016) (stating "the consciousness of [correctness] disdains ambiguity") (quoting Alexander Hamilton, *Federalist No. 1* (1788)); and *Court Reporter for the United States District Court for the District of Arizona*, Volume II (June 27, 2016 – July 12, 2016) (concluding "LEGE ARTIS").



Cf. Luigi Serafini, *Decodex*, at pg. 9 (July 3, 2013, 12:30:00 p.m.) ("The combining of a text and an image, we all know, generates a semblance of meaning, even if we understand neither the one nor the other.").

Metaconstitutionalism's Impact on the Fœderal Courts

A Statical Finding*

Metaconstitutionalism entered American jurisprudence in *Brinkman v. Ryan*.[1] Fundamental Fact: the State of Arizona petitioned the Court to enter an Order finding that it lacked jurisdiction.[2]

Beginning with the rudimentary principle that a "Court possesses the jurisdiction to inquire into its own jurisdiction,"[3] the Court held that its Order—requiring "all parties comply with this Court's [Orders]"—contained legal force.[4]

This finding samples the impact of metaconstitutional jurisprudence on the American legal system;[5] and demonstrates how it incorporates continuously expanding knowledge the constitution, while still maintaining a consistent meaning of what 'the law' *is*.[6]

*** "But although practical [beings] generally prefer to leave their major premises inarticulate, yet even for practical purposes theory generally turns out the most important thing in the end. [*sic*]." Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 6 at pg. 420 (January 25, 1899). *See also*, Tupac "Makaveli the Don" Shakur, *Against All Odds*, The 7 Day Theory (November 5, 1996) ("This be the realest ʃh̲īⓉ I ever wrote").**

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1. 16-CV-2093 at pg. 1, n. 2 (D. Ariz., December 2, 2016) (citing *, *A Metaconstitutional Analysis of Constitutional Conventions*, at pgs. 4–8 (2016)).

2. For case background see *Brinkman v. Ryan*, 16-CV-2093, Doc. 174 (D. Ariz., October 31, 2016).

3. *See also Keyes v. New Mexico*, No. 15–018 (SCCG, December 7, 2015) (explaining that "jurisdiction" presents "the first existence condition question that [a court must resolve] in every dispute, even if it must be raised *sua sponte*").[3.1]

   3.1 *See* Matthew D. Adler & Michael C. Dorf, *Constitutional Existence Conditions and Judicial Review*, 89 Virginia Law Review, 1105–1202 (2003) (summarizing that "much (if not all) of the Constitution consists of existence conditions rather than application conditions").

4. 16–CV–2093 at pg. 1, n. 2 (D. Ariz., December 2, 2016) (tacitly acknowledging that " '*Legal Force*' can encompass [∞] meanings, but is best understood as any conscious deviation from *wu wei*").[4.1]

   4.1 *See* Alan Watts, *Tao: The Watercourse Way*, Wu–Wei, pgs. 75–105 (1975) (providing further conceptual clarity).

5. *See* Oliver Wendell Holmes, *The Common Law*, pg. 1 ("The life of the law has not been logic; it has been experience"). *See, e.g.*, Donald J. Trump, *Twitter* (February 11, 2017 5:12 AM) ("Our legal system is broken!").

6. *See RTC v. Lilly*, No. 16-CV-191 (D. Ariz., May 9, 2017) (holding what 'the law' *is*). *See also*, *Trump v. Washington*, 17-35105 (9th Cir., February 7, 2017) ("Within our system, it is the role of the judiciary to interpret the law").[6.1]

   6.1 *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015) (Thomas, J., dissenting) (stating that "judgments entered by Article III courts bear unique qualities that spring from the exercise of the judicial Power" and recognizing that the "inalienable" judicial Power under Article III includes the Power to interpret 'the law' for the "ascertainment" of individual rights and the "redress" of constitutional harms).

and

but

so

• • •

To Begin: Our Constitution explicitly vests executive and legislative powers with the federal government.[7]

7. *See* *, *A Metaconstitutional Analysis of Constitutional Conventions* (2016) (explaining that 'Our Constitution' "vest[s] all executive power in the SHAFT" and permits the THUNDERDOME to "exercise all legislative power"). *See also*, *U.S. Term Limits, v. Thornton*, 514 U.S. 779, 846 (1995) (Thomas, J., dissenting) ("Our system of government rests on one overriding principle: All power stems from the consent of the people.").

The constitutional text also allows for the legitimate exercise of limited "judicial Power" by ARTICLE III Courts.[8]

But never forget: the true metasovereign retains ALL Rights.[9]

Recall that Rule of Law requires a court justify the use of legal force.[10] This cognitive requirement creates an inherent limit to judicial power that ensures "just administration" of the law governs current instances of dispute.[11]

Within our system of constitutional governance, an independent judiciary guards natural rights and secures the law by resolving disputes brought before its courts on metaconstitutional principles.[12]

. . .

8. *See*, *e.g.*, *Inouye v. McHugo*, 16-CV-517 (February 16, 2017) (acknowledging a constitutional basis for exercising "independent" Article III *legal force* to resolve a dispute). *See also*, *Espinosa v. Lynch*, 15-CV-324, Doc. __ (February 28, 2017) (propounding: Article III courts possess the judicial power to review executive and legislative actions).

9. *See* 'Our Constitution', THE BILL OF RIGHTS (April 16, 2016). *See also*, Transmission of the Executive Board of CC:ATE to Friends, Humans, and Metasoverign, *Re: "Laboratory Notes on Democracy"* (April 23, 2016) ("Our federal government's powers were unlimited, and but so were the legal rights retained by individuals.").

10. *See* Thomas Paine, *Fœderal Propaganda: The Federalist Papers* at pgs. 1–5 (2016) (citing *McGown v. Michigan*, 15–008 (SCCG, October 29, 2015)).

11. *See Brinkman v. Ryan*, 14-CV-2093 (February 10, 2017) (exercising judicial power only to the extent it "aided in the effectuation of justice") (quoting *Smith v. Ryan*, 16-CV-169 (January 17, 2017).

12. *See Vera v. Ryan*, 15-CV-613 at pg. 4, n. 12 (D. Ariz. September 7, 2017) (acknowledging the judge's duty to do justice).[12.1]

    [12.1] *See id.* at pg. 4. n. 9 (Sept. 12, 2017) (professing the "extreme difficulty of regulating the movements of sovereign power; and the absolute necessity, after every effort that can be made to govern effectually, that will, still exist to leave some space for the exercise of discretion, and the influence of justice and wisdom.") (quoting *Ogden v. Saunders*, 25 U.S. 213, 292 (1827) (Johnson, J., seriatim)).

. . .

ACCORDINGLY, this work reports on judicial business and the use of legal force to adjudge disputes under Our Constitution.[13]

13. *See* John G. Roberts, *2015 Year-End Report on the Federal Judiciary* (December 31, 2015) (acknowledging that: Our "courts are today's guarantors of justice" and their independence necessitates they can prescribe rules to conduct their business). *Cf.* Alexander James Dallas, *Reports of Cases Ruled and Adjudged in the Courts of Pennsylvania, Before and Since the Revolution*, Vol. I (4th. ed., 1905) (providing some of the earliest reports on "American" jurisprudence).[13.1]

13.1 *The Official Court Reporter for the United States District Court for the District Of Arizona*, VOLUME III (July 13, 2016–Aug 13, 2016) (beginning the report

↳ "One can only write
based upon their own observations,
on how they perceive
the universe 'to be'
[and]
for the reader's benefit,
the adjudicator wrote the following…").

. . .

Report of Cases & Decisions Adjudicated under Fœderal Constitutional Law

I. *Urs v. Canelos R*

The Court dismissed the case because no litigant had sworn an *Oath of Allegiance* to the government.

16-CV-267, Doc. 28 (D. Ariz., Aug. 8, 2016)

citing: *Montalet v. Murray*, 8 US 46 (1807) (Marshall, C.J.) ⇄ Federal Court Jurisdiction

II. *Purcell v. Ahmed*

A U.S. citizen served an impoverished foreign defendant with a complaint, but the Court determined Article III judication over the personal dispute wouldn't comport with Our Constitution when alternative routes to relief existed.

15-CV-291, Docs. 57, 66, 81, 90, 94 (D. Ariz., 2016)

citing:

Urs v. Canelos R, 16-CV-267 (D. Ariz. 2016)	⇄ Judicial Efficiency
Brinkman v. Ryan, 14-CV-2093 (D. Ariz. 2016)	⇄ "Rules" of Civil Procedure
Hollingsworth v. Barbour, 29 U.S. 466 (1830) (Baldwin, J.)	⇄ Natural Justice
Purcell v. Ahmed, 15-CV-291 (D. Ariz. 2016)	⇄ Constitutional Service
Dictionary of Philosophy and Psychology, "Vague" (Charles S. Peirce, 1902)	⇄ Legal Linguistics
Musial v. Telesteps, 14-CV-1999 (D. Ariz. July 25, 2016) (Tuchi, J.)	⇄ Judicial Discretion
Walden v. Fiore, 571 U. S. __ (2014) (Thomas, J.)	⇄ Constitutional Jurisdiction
World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980) (White, J.)	⇄ Full Faith & Credit Clause
Int'l Shoe Co. v. Wash. Office of Unemploy't, 326 U.S. 310 (1945) (Black, J., concurring)	⇄ "Our Federalism"
Divergent Paths: The Academy and the Judiciary (Richard A. Posner, 2016)	⇄ Judicial Writing
Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981) (Marshall, J.)	⇄ Common Law & Statutory Law
Preamble of the Constitution of the United States of America (1787)	⇄ Constitutional Preambles
Chisholm v. Georgia, 2 U.S. (Dall.) 419 (1793) (Wilson, J., seriatim)	⇄ Constitutional Conventions
Britton v. O'Callaghan, CanLII 41471 (ON C.A. October 10, 2002) (Borins J.A.)	⇄ Comparative Con Law
Godbehere v. Phoenix Newspapers, 162 Ariz. 335 (1989) (Feldman, V.C.J.)	⇄ Free Speech
Purcell v. Ahmed, 15-CV-291 (D. Ariz. 2016)	⇄ JUSTICE

III. *Ledezma-Ortiz v. USA**

A federal inmate filed a motion for resentencing based on "a bill introduced into Congress." Never passed, the Court held that all jurists would agree the bill lacked legal effect.

* 16-CV-632, Doc. 3 (D. Ariz., Sept. 27, 2016)

citing:

U.S. Constitution art. 1, § 7, cls. 2	⇄ Legal Force
I.N.S. v. Chada, 462 U.S. 919 (1983) (Burger, CJ.)	⇄ Separation of Powers

IV. *Arce-Rod. v. USA**

An essentially blank template-form failed to invoke the Court's Article III jurisdiction.

* 16-CV-359, Doc. 3 (D. Ariz., June 16, 2016)

citing:

U.S. Constitution, art. III § 2	⇄ Judicial Power
Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992) (Scalia, J.)	⇄ Standing Doctrine

V. *Caldwell v. USA**

The Court dismissed an improperly plead allegation that three different federal courts illegally posted "confidential" medical information and refused to redact it. With no jurisdiction over another judge's docket, the Court granted permission to seal the personal medical information *only* in this case.

* 17-CV-9, Doc. 8 (D. Ariz., Jan. 9, 2017)

citing: *Eagle Eye v. Faader*, 16-CV-103 (D. Ariz. June 6, 2016) ⇄ Motion to Dismiss Standard
Brinkman v. Ryan, 15-CV-2093 (D. Ariz. June 20, 2016) ⇄ Mootness Doctrine

VI. *Ramirez-Matias v. USA**

Petitioner claimed to have received an "unconstitutionally enhanced" sentence. The Court noted that Petitioner had waived the right to attack the sentence, but nevertheless scanned the record for evidence of constitutional harm—none existed.

* 16-CV-447, Doc. 3 (D. Ariz., July 7, 2016)

citing: *Johnson v. U.S.*, 135 S.Ct. 2551 (2015) (Thomas, J., concurring) ⇄ Due Process of Law

VII. *Diaz-Ozuna v. USA**

The facts don't materially differ from *Ramirez-Martias v. USA*.

* 16-CV-442, Doc. 7 (D. Ariz., Dec. 2, 2016)

citing: *Ramirez-Matias v. USA*, 16-CV-447 (D. Ariz. July 7, 2016) ⇄ Constitutional Harms

VIII. *Sauce.-Parra v. USA**

The Federal Public Defender filed a meritless motion pursuant to a districtwide general order, so the Court declared the document lacked legal effect.

* 16-CV-438, Doc. 7 (D. Ariz., Sept. 27, 2016)

citing: *Missouri v. Frye*, 132 S. Ct. 1399 (2013) (Kennedy, J.) ⇄ 6th Amendment
Fletcher v. Peck, 10 U.S. 87 (1810) (Marshall, CJ.) ⇄ Constitutional Contract Law

IX. *Nunez v. Rivera*

The litigants failed to file a joint report or proffer a legally valid excuse for disobeying an order … still the Court granted a joint motion to reschedule the scheduling conference, and in the interest of judicial economy … everyone settled.

16-CV-343, Doc. 24 (D. Ariz., Oct. 18, 2016)

citing: LRCiv 83.10 ⇄ Dispute Resolution
Don v. Omni, 16-CV-599 (D. Ariz., October 11, 2016) ⇄ Case Management

X. *Smith v. Ryan*

The Court performed metaconstitutional analysis on its own jurisdiction to "aid in the effectuation of Justice."

16-CV-169, Doc. 19 (D. Ariz., Jan. 17, 2017)

citing: *Kakarala v. Wells Fargo*, No. 15-712 (April 4, 2016) (Thomas, J., dissenting from denial of cert.) ⇄ SCOTUS Precedent
Brinkman v. Ryan, 16-CV-2093 (D. Ariz. December 2, 2016) ⇄ Metaconstitutionalism

XI. *Inouye v. McHugo*

Plaintiff failed to establish a legal basis for a restraining order; and after a settlement conference proved unsuccessful, the Court lacked further jurisdiction to construe the legal effect of contested wills lying at the heart of the dispute.

16-CV-517, Docs. 4, 17, 38, 45, and 55 (D. Ariz., 2016–17)

citing: *Granny Goose Foods. v. Bd. of Teamsters*, 415 U.S. 423 (1974) (Marshall, J.) ⇄ "Our Legal Order"
Legal Theory Lexicon: Textualism (Lawrence B. Solum, revised on June 26, 2016) ⇄ Theory of Legal Interpretation
List of Errata in the Opinions in Peters' Reports, 42 U.S. (1 How.) (1843) (Catron, J.) ⇄ Scrivener's Errors
Ass'n of Retired Employees v. Sonoma Cty., 708 F.3d 1109 (9th Cir. 2013) ⇄ Ninth Circuit Liberalism
Arizona Rules of Professional Conduct ⇄ Legal Ethics
Stern v. Marshall, 564 U.S. 462 (2011) (Roberts, CJ.) ⇄ Judicial Independence
Younger v. Harris, 401 U.S. 37 (1971) (Black, J.) ⇄ Our Federalism
Marshall v. Marshall, 547 U.S. 293 (2006) (Ginsburg, J.) ⇄ Limits to Art. III Jurisdiction
Markham v. Allen, 326 U.S. 490 (1946) (Stone, CJ.) ⇄ Discretionary Jurisdiction
Dragan v. Miller, 679 F.2d 712 (7th Cir. 1982) (Posner, J.) ⇄ Judicial Economy
The Declaration of Independence (Thomas Jefferson, 1776) ⇄ SOVEREIGNTY

XII. *Cebreros-Acosta v. USA*

Petitioner pled guilty, then alleged their lawyer provided ineffective assistance at sentencing. The Court intently inspected the record and determined that *even if* the lawyer was ineffective, *no one could legitimately question the integrity of the process or justness of the resulting sentence*.

12-CR-01531, Doc. 46 (D. Ariz., March 3, 2017)

citing: *Boykin v. Alabama*, 395 U.S. 238, 244 (1969) (Douglas, J.) ⇄ Plea Bargaining and Waiver of Rights
Strickland v. Washington, 466 U.S. 668, 696 (1984) (O'Connor, J.) ⇄ "Ineffective assistance of counsel"

XIII. *Espinosa v. Lynch*☩

Assigned limited jurisdiction over the dispute, the Court recognized separation-of-power principles prevented any action beyond accepting the magistrate judge's recommendation to dismiss a complaint against agents of the Department of Justice for sending a letter that declined an executive branch interdepartmental request to prosecute.

☩ 15-CV-324, Doc. 32 (D. Ariz., February 28, 2017)

citing:	*Franklin v. Joseph*, Vol. I SCCG (September 17, 2015) (Ball, J., concurring)	Constitutional Rights
	Of the Absolute Rights of Individuals, Blackstone's Commentaries, bk. I ch. I (1765)	Individual Rights
	McDonald v. City of Chicago., 561 U.S. 742 (2010) (Thomas, J., concurring)	Privileges and Immunities
	U.S. Constitution art. III § 2	Article III Power
	Brinkman v. Ryan, 14-CV-2093 (D. Ariz., December 2, 2016)	MetaConstitutionalism
	Washington v. Trump, 17-35105 (9th Cir. February 9, 2017)	Executive Branch
	The Law of Judicial Precedent (Garner, *et al.*, 2016)	"Judicial Precedent"
	Gilbert v. Homar, 520 U.S. 924 (1997) (Scalia, J.)	"Property Interests"
	Bd. of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) (Stewart, J.)	Constitutional Meaning
	Koziara v. BNSF Ry. Co., 840 F.3d 873 (7th Cir. 2016) (Posner, J.)	"Proximate Cause"
	Dep't of Transp. v. Ass'n of Am. Railroads, 135 S. Ct. 1225 (2015) (Thomas, J., concurring)	Separation–of–Powers

XIV. *Kakarala v. Wells Fargo*

The Court denied a motion to dismiss for lack of jurisdiction because Plaintiff had alleged a plausible injustice that the Court could correct ☙ everyone settled.

10-CV-208, Docs. 70 and 92 (D. Ariz., 2016–17)

citing:	*United States v. Washington*, 172 F.3d 1116 (9th Cir. 1999) (Leavy, J.)	"Limited Remand"
	Harvey v. Richards, 11 F. Cas. 740 (C.C.D. Mass. 1814) (Story, J.)	Null Judgments
	U.S. v. Cuddy, 147 F.3d 1111 (9th Cir. 1998) (Pregerson, J.)	Law of the Case
	Lugar v. Edmondson Oil, 457 U.S. 922 (1982) (White, J.)	14th Amendment & §1983
	Caterpillar v. Lewis, 519 U.S. 61 (1996) (Ginsburg, J.)	Remand & Removal Jurisdiction
	Chisholm v. Georgia, 2 U.S. 419 (1793) (Jay, CJ., seriatim)	Equal Sovereignty
	USA v. Bradbury, No. 16-1532 (7th Cir., 2017) (Posner, J.)	Legal Relevancy
	Prigg v. Com. of Pennsylvania, 41 U.S. 539 (1842) (Story, J.)	Constitutional Interpretation
	U.S. Constitution amend. XIV (1868)	The Fourteenth Amendment
	42 U.S.C. § 1983	Constitutional Torts
	Flagg Bros. v. Brooks, 436 U.S. 149 (1978) (Rehnquist, CJ.)	"under color of state law"
	Monell v. Dep't of Soc. Servs. of City of N.Y., 436 U.S. 658 (1978) (Brennan, J.)	Legislative History
	Brentwood Acad. v. Tennessee Sch. Athletic Ass'n, 531 U.S. 288 (2001) (Souter, J.)	"State Action"
	Monroe v. Pape, 365 U.S. 167 (1961) (Douglas, J.)	Statutory Interpretation
	Shelley v. Kraemer, 334 U.S. 1 (1948) (Vinson, CJ.)	State Judicial Action

XV. *Lisa Frank v. CCS Industries*

Defendant had plausibly violated private contract rights. The Court set the matter for a pretrial conference ☙ everyone settled.

12-CV-180, Doc. 55 (D. Ariz., March 29, 2017)

citing:

Jenkins v. Medtronic Inc., CV-16-01802 (D. Ariz., August 5, 2016)	Arizona Pleading Standard
United States v. New Wrinkle, Inc., 342 U.S. 371 (1952) (Reed, J.)	the Sherman Act
Cooperation—What Is It and Why Do It?, (David J. Waxse, 2012)	Litigation Cooperation
Berger v. Brannan, 172 F.2d 241 (10th Cir. 1949) (Huxman, J.)	Pretrial Scheduling Conference
Cherney v. Holmes, 185 F.2d 718 (7th Cir. 1950) (Duffy, J.)	Duty of Disclosure

XVI. *Brinkman v. Ryan*

The crux of this dispute: whether state officials violated Plaintiff's constitutional rights when they refused to discuss the possibility of granting an exception to the prison grooming policy until Plaintiff, in violation of sincerely held religious oaths, shaved. Not yet exhausted of the matter, the Court denied Defendants' maneuver behind the Prison Litigation Reform Act . . .

14-CV-2093, Docs. 93, 97, 98, 102, 107, 109, 114, 132, 141, 156, 164, 174, 192, 194, and 211 (D. Ariz., 2016–17)

citing:

Haywood v. Drown, 556 U.S. 729 (2009) (Thomas, J., dissenting)	Fœderal Convention of 1787
A Metaconstitutional Analysis of Constitutional Conventions (*, 2016)	Our Constitution
Jones v. Bock, 549 U.S. 199 (2007) (Roberts, C.J.)	Our Legal System
U.S. v. Ruiz, 536 U.S. 622 (2002) (Breyer, J., & Thomas, J., concurring)	Constitutional Obligations
Kindschi v. FedEx, CV-15-00173 (SCCG, June 20, 2016) (2016)	Article III Limits to Jurisdiction
Justiciability & Separation of Powers, 81 Cornell L. Rev. 393 (1996)	Constitutional Jurisprudence
Lewis v. Casey, 518 U.S. 343 (1996) (Thomas, J., concurring)	Role of Federal Judges
James v. Eli, No. 15-3034, (7th Cir. 2017) (Posner, J.)	Judicial Duty & Legal Resolution
Fed.R.Civ.P 1	Just, Speedy, & Inexpensive Determinations
Brinkman v. Ryan, 14-CV-2093 (D. Ariz. June 13, 2016)	Just Construction of Legal "Rules"
Civil Rules Interpretive Theory (Lumen N. Mulligan, *et al.*, 2016)	"Rules Interpretive Theory"
Fœderal Propaganda: The Federalist Papers (Thomas Paine, 2016)	Legal Linguistics
Motion for Counsel by Albert L. Brinkman (July 29, 2016)	"the Goddess"
Mitchell v. Overman, 103 U.S. 62 (1880) (Harlan, J.)	Granting & Denying Motions
Earl Felton Crago v. Ryan, 14-CV-2007 (D. Ariz. 2016)	"Multi-factor tests"
Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) (Roberts, CJ.)	Equitable Relief
Ashcroft v. Am. Civil Liberties Union, 542 U.S. 656 (2004) (Kennedy, J.)	1st Amendment & Equitable Relief
Brinkman v. Ryan, No. 16-17172 (9th Cir. May 17, 2017).	Indicative Rulings
LRCiv 7.2(m)	Docket Preservation
Vail v. Hartford, No. 17-CV-273, at 1, fn. 1 (D. Ariz., August 2, 2017)	Aiding Justice
Evans v. U.S. Dep't of Interior, 135 F. Supp. 3d 799 (N.D. Ind. 2015)	Page Limits
Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014)	Exhaustion
U.S. v. Taylor, No. 16–1019, (7th Cir. 2016) (Posner, J.)	District Court Sentencings

Qoud Eram Faciendum.

"Westside, but you already knew that."

Jayceon Terrell Taylor, *The Documentary 2*, The Documentary 2 (October 9, 2015) (demonstrating: the amount of knowledge that can be creatively dispensed in increments of 16s & ¶s by "spit[ting] a 16 sixteen ways"). *See also*, Donald Glover, *Freestyle* (September 8, 2014) (conveying the work of an artist who's "been grindin' [their] whole life"). *Cf. quilibet, adfinitum* ([* *]); . . .; Albert Einstein, *My Credo* (1932) (tapping into the "consciousness of belonging to the invisible community of those who strive for truth, beauty, and justice").....

CHAPTER TWO

DOUBLE DUTY // DOUBLE COLUMNS

Constructed during 2018, this ALR reports on the Docket of various Federal Judges in a classic law reporter format.

Arizona Law & Reporter

DOUBLE DUTY // DOUBLE COLUMNS

QUINONES v. MTC FINANCIAL

17-CV-481

A CASE COMMENCED in state court against multiple Defendants, including MTC Financial and its agent Amanda Alcantara. *See* Doc. 1-1 (stating various counts related to an allegedly unlawful foreclosure). Defendants removed the case to federal court and then claimed Amanda Alcantara—the only non-diverse defendant—was "fraudulently joined," so "complete diversity" existed for purposes of federal jurisdiction. *See* Doc. 1 at pg. 5.[1]

Plaintiff sought a remand, asserting the Complaint alleged a "possible" claim against Alcantara. *See* Doc. 20 (claiming that Defendants have not overcome the "heavy burden" of demonstrating that Alcantara was "fraudulently joined").

Fraudulent joiner occurs if the plaintiff "fails to state a cause of action against a [non-diverse] defendant, and the failure is obvious according to the settled rules of the state."[2] Courts resolve uncertainty in favor of remand,[3] and can only retain jurisdiction if a plaintiff has no reasonable possibility of legal recovery against the non-diverse defendant.[4]

Here, Defendants provided no extrinsic evidence that Plaintiff specifically named Alcantara as a defendant simply to destroy complete diversity. *See generally*, Docs. 25 & 27. Defendants, rather, argued Plaintiff had failed to allege a plausible claim for relief against Alcantara based on state law. *Id.* (relying on analysis that turns on the correct interpretation of contested state law).[5] But, Arizona law holds agents independently liable for actions taken within the scope of their responsibilities.[6]

So while ultimate liability remained uncertain, Plaintiff had stated a *possible* tort claim against Alcantara for fabricating allegedly fraudulent documents on MTC's behalf. *See* Doc. 1-1 at pgs. 12 & 22 (alleging a violation of A.R.S. § 33-420(A) and "aiding and abetting").[7]

∴ The matter was REMANDED to Pima County Superior Court.

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[1] *See also*, *Roth v Allstate*, 17-CV-587 (D. Ariz., Feb. 7, 2018) ("A federal court only possesses jurisdiction pursuant to 28 U.S.C. § 1332 if 'complete diversity' exists.").

[2] *See IDS Prop. Cas. Ins. Co. v. Gambrell*, 913 F. Supp. 2d 748, 752 (D. Ariz. 2012) (quoting *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336 (9th Cir. 1987)).

[3] *Id.* ("there is a presumption against removal [and] the defendant has the burden of establishing that removal is proper and thus that fraudulent joinder exists").

[4] *See Diaz v. Allstate Ins. Grp.*, 185 F.R.D. 581, 586 (C.D. Cal. 1998) ("merely showing that an action is likely to be dismissed against that defendant does not demonstrate fraudulent joinder").

[5] *See further*, *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990) (when adjudicating a motion to remand, a "district court must resolve all contested issues of substantive fact in favor of the plaintiff and must resolve any uncertainties as to the current state of controlling substantive law in favor of the plaintiff").

[6] *See Griffith v. Faltz*, 162 Ariz. 599, 600–01 (Ct. App. 1990) ("It is well-established law that an agent will not be excused from responsibility for tortious conduct [when] acting for [a] principal."). *See also*, *4801 E. Washington St. Holdings, LLC, acting ex rel. CW Capital Asset Mgmt. LLC v. Breakwater Equity Partners LLC*, 2015 WL 1859057, at *8 (D. Ariz. Apr. 23, 2015) (under Arizona law, "whether an agent is acting on [their] own behalf or for another is immaterial to [personal] liability") (quoting *Griffith*).

[7] *See further, Wells Fargo Bank v. Arizona Laborers, Teamsters & Cement Masons Local No. 395 Pension Tr. Fund*, 201 Ariz. 474, 485 (2002) ("Arizona recognizes aiding and abetting as embodied in Restatement § 876(b), that a person who aids and abets a tortfeasor is [themselves] liable for the resulting harm to a third person").

ACOSTA V. POT A GOLD WESTERN ADVENTURES

18-MC-005

THE SECRETARY of Labor petitioned the Court to enforce an administrative *subpoena duces tecum* issued by the Wage and Hour Division of the U.S. Department of Labor. Doc. 1.

The Petition alleged that the government had initiated an investigation to determine whether Respondent "violated or is about to violate" the Fair Labor Standards Act (FLSA), and that—during a visit to Respondent's place of business—officials had observed a ten-year-old child operating industrial machinery. *See* Doc. 1-1 at 3.

The Petition also alleged that Respondent had failed to produce requested documents, despite the Department of Labor sending multiple written requests and eventually serving Respondent with an administrative *subpoena duces tecum*. *See id.* at 3-4 (detailing multiple attempts by the Wage and Hour Division to obtain documents necessary to its investigation). *See also*, Doc. 1-9 (Copy of the Subpoena).

A federal court can enforce an administrative subpoena after it determines: (1) Congress has granted the agency the authority to investigate; (2) the evidence is relevant and material to the investigation; and (3) proper procedure was followed.[1] Once these conditions are satisfied, the court *must* enforce the subpoena, "unless the [respondent] establishes that the subpoena is "too indefinite," has been issued for an "illegitimate purpose," or is unduly burdensome.[2]

Here, the Secretary attested that Congress had authorized the investigation pursuant to 29 U.S.C. § 211(a), and that the requested documents were relevant and material to the agency's investigation into whether Respondent violated the FLSA. *See* Doc. 1-1 at 8-9 (stating that the subpoena sought information related to Respondent's time-keeping, payroll, and tax records).[3]

The Secretary further attested that the subpoena issued from the "Western Regional Administrator for the Wage and Hour Division of the United States Department of Labor" pursuant to "the appropriate procedures." *See* Doc. 1-1 at 8.[4]

Upon inspection, the Secretary had established a *prima facie* case for the Court to hold a hearing on whether an enforcement order should issue.[5]

Equitably, Respondent was ordered to appear and SHOW CAUSE why it should not have to comply with the administrative subpoena.

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[1] *See, e.g., E.E.O.C. v. Fed. Exp. Corp.*, 558 F.3d 842, 848 (9th Cir. 2009) (indicating that this "judicial inquiry is narrow").

[2] *McLane Co. v. E.E.O.C.*, 137 S. Ct. 1159, 1165 (2017).

[3] *See also, E.E.O.C. v. Children's Hosp. Med. Ctr. of N. California*, 719 F.2d 1426, 1430 (9th Cir. 1983) ("unless jurisdiction is 'plainly lacking' the court should enforce the subpoena") (quoting *Marshall v. Burlington Northern, Inc.*, 595 F.2d 511, 513 (9th Cir.1979)).

[4] *See also, FDIC v. Garner*, 126 F.3d 1138, 1143 (9th Cir. 1997) ("An affidavit from a government official is sufficient to establish a

prima facie showing that [the initial] requirements have been met").

[5] *See United States v. Powell*, 379 U.S. 48, 58 (1964).

MONTGOMERY v. ANDERSEN

17-CV-109

PLAINTIFF APPLIED to the Clerk of the Court for a default judgment. *See* Doc. 15 at pg. 1 (presenting an affidavit that claims Defendant owes $403,425.33). The law disfavors default judgments because "[c]ases should be decided upon their merits whenever reasonably possible."[1] And the Clerk of Court can only enter a default judgment when the "claim is for a sum certain or a sum that can be made certain by computation."[2]

We rewind. Plaintiff alleged a breach of contract based on a joint business venture between Plaintiff and Defendant. See Doc. 1. The contract—an Operating Agreement—dictated all fixed expenses would be borne equally, and variable expenses would be borne individually by the member incurring the expense. *See* Doc. 1 at pgs. 8-9.

The Agreement also stated that if one member owed a financial obligation to another member → then the "Debtor-Member [was] required to provide a financial report on the 1st and 15th of each month showing the present total profit/loss report." *See id.* at pg. 9. The Agreement further stated that the members must keep business records and books. *See id.* at pgs. 11-12 (including "yearly statements, separate capital and distribution accounts for each member, and copies of tax returns and reports").

Exhibits attached to Plaintiff's affidavit for default judgment purportedly contained spreadsheet printouts of the company's business records, including summaries created for litigation. *See* Doc. 15 at pgs. 5-7.[3]

Yet the attached records did not comply with the company's own internal requirements described above,[4] and were presented to the Clerk in a nearly indecipherable format that left much more to do than the "purely ministerial" task Fed. R. Civ. P. 55(b)(1) authorizes the Clerk to perform. *See, e.g.*, Doc. 15 at pg. 35.[5]

To compound the errors, Plaintiff filed an affidavit that claimed monetary damages in excess of the amount requested in the Compliant. *Compare* Doc. 19-1 (claiming Defendant owes $403,425.33) *with* Doc. 1 at pg. 4 (requesting $380,000.00).

After a defendant defaults, "a court can award only up to the amount prayed for by a plaintiff in its complaint."[6] The court assumes facts in the complaint are true, but: "allegations as to amount of damages are not automatically accepted."[7]

With sangfroid, the Court DENIED Plaintiff's motion, without prejudice.

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[1] *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986) (listing factors courts consider when exercising discretion whether to enter default judgment).

[2] Fed. R. Civ. P. 55(b)(1).

[3] *See also*, *Reyes v. Kimuell*, 270 F. Supp. 3d 30, 34 (D.D.C. 2017) (explaining that a plaintiff can "establish a basis for the amount of damages through detailed affidavits or other documentary evidence").

[4] Not only did the attachments fail to clearly identify between fixed and variable expenses, but the records did not include any yearly statements, tax filings, or even the bi-monthly debtor-member statements as mandated by the Operating Agreement. *See* Doc. 15.

[5] *See also*, *Combs v. Coal & Mineral Mgmt. Servs., Inc.*, 105 F.R.D. 472, 474 (D.D.C. 1984) (the "Rule carefully limits the clerk's authority to those cases where entry of judgment is purely a ministerial act").

[6] *Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173, at *13 (N.D. Cal. May 29, 2007) (citing Fed. R. Civ. Pro. 54(c)).

[7] *Truong Giang Corp.*, at *13.

MOUSSA V. PIMA COUNTY

17-CV-523

MAGISTRATE JUDGE Kimmins recommended the Court grant Plaintiff's motion to remand because the Court lacked jurisdiction. *See* Doc. 23 (Report & Recommendation (R&R)).

Defendant objected to eight specific statements in the "Factual and Procedural Background" of the R&R, and further requested that the Court clarify a matter of state law. *See* Doc. 24. Defendant did not object to the R&R's conclusion that the Court lacked jurisdiction. *Id.* Defendant, instead, objected to Judge Kimmins expressing Plaintiff's factual allegations as true—for purposes of adjudicating the motion to remand—and requested the Court modify the R&R to "clarify that the allegations are disputed." *See id.* at pg. 2.

A district court reviews objected to portions of a magistrate judge's R&R under a *de novo* standard and unobjected portions for clear error.[1]

The R&R did not misstate the law—nor did Defendant contend it did. *See generally*, Doc. 24. And once a federal court determines that it does not have jurisdiction, it must remand the case, posthaste.[2] Any further inquiry into the matter stops.[3]

The Court, undisputedly, lacked jurisdiction to adjudicate. *See* Doc. 23 (explaining that Plaintiff raised no claim that created Article III jurisdiction). The matter, therefore, warranted no further inquiry or explication.[4]

The Court promptly ACCEPTED the legal conclusion from Magistrate Judge Kimmins' R&R and GRANTED Plaintiff's Motion to Remand.

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[1] *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) ("the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made,* but not otherwise") (emphasis in original).

[2] *See Polo v. Innoventions Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016) ("Remand is the correct remedy because a failure of federal subject-matter jurisdiction means [] that the federal courts have no power to adjudicate the matter."). *See also*, *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand for lack of subject matter jurisdiction "is mandatory, not discretionary").

[3] *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). *See also*, *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (clarifying that when a federal court resolves a case "short of reaching the merits ... the court will not 'proceed at all' to an adjudication of the cause").

[4] *See Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 640 (2006) (expounding Congress's policy for federal courts to quickly remand cases when the court lacks jurisdiction).

MARTINEZ v. RYAN

15-CV-566

PETITIONER—CONVICTED by a jury on four counts of armed robbery and five counts of aggravated assault relating to those robberies—filed for habeas relief after receiving a 90-year sentence for robbing multiple pharmaceutical stores to fuel an opioid

addiction. *See* Doc. 16 at pgs. 2-6 (First Amended Petition).

Federal courts analyze habeas claims under the Antiterrorism and Effective Death Penalty Act (AEDPA),[1] and can grant relief only "on the ground that [petitioner] is in custody in violation of the Constitution or laws or treaties of the United States."[2]

Petitioner raised two grounds for relief: (1) a due process violation based on prosecutorial misconduct; and (2) a Sixth Amendment violation based on ineffective assistance of counsel (IAC) during state court proceedings.

THE DUE PROCESS CLAIM

Petitioner claimed the state violated the due process of law by improperly interfering with a witness's testimony. *See* Doc. 16 at pg. 19. The state trial court already adjudicated this claim on the merits[3] and ruled that: "Trial counsel raised the issue. The jury hung on the counts this witness' [sic] testimony related to and those counts were subsequently dismissed. No prejudice has been demonstrated. The suggestion that other witnesses may have been [manipulated] is pure speculation." *See* Doc. 16-4 at pg. 57.

On appeal, the state court found the claim precluded under an adequate and independent state law ground because Petitioner failed to directly present it. *See* Doc. 16-4 at pg. 119 (citing Ariz. R. Crim. P. 32.2(a)(3)).[4]

Petitioner did not demonstrate that the state appellate court's decision—*i.e.*, the claim was precluded—was incorrect; or that any prejudice had resulted from that decision. *See* Doc. 23-9 at pg. 4 (reiterating that the due process claim was precluded, and regardless, the jury didn't convict Petitioner on the count associated with the alleged "misconduct"). Therefore, the Court could offer no relief.[5]

THE SIXTH AMENDMENT CLAIMS

Petitioner's IAC claims also arrived to federal court procedurally defaulted on an adequate and independent state ground. *See* Doc. 16-6 at pg. 131 (holding that Petitioner's "claims of ineffective assistance of counsel specifically addressed in the court's ruling, are precluded") (citing Ariz. R. Crim. P. 32.2). But, a federal court can still entertain a procedurally defaulted IAC claim if the petitioner "demonstrate[s] that the claim has some merit" and can show "cause for the default and prejudice from a violation of federal law."[6]

An IAC claim has "some merit," if "reasonable jurists could debate" whether trial-counsel's performance was objectively unreasonable, and caused prejudice; *or* that the claim "deserved encouragement to proceed further."[7]

Here, Petitioner claimed that trial-counsel had failed to show Petitioner surveillance videos of the robberies before Petitioner rejected the state's plea offer. *See* Doc. 16 at pgs. 12-14. Petitioner claimed that the videos were "the most important evidence," and therefore, trial-counsel did not provide Petitioner with accurate knowledge of the content and strength of the state's case. *See* Doc. 16 at pgs. 13-14 (claiming that Petitioner received "no informed, properly counseled decision to reject the plea offer because it was based on incomplete information, [and ...] had Petitioner been competently represented while the plea negotiations were open, Petitioner would have accepted the offer.").

Did prejudice abound? If shown the videos, would Petitioner have accepted a plea deal that purportedly capped any sentence at (*maybe?*) 21 years?[8] At this

juncture, it seemed that the IAC claim at least deserved some encouragement to proceed further....

Still, before a court can opine on a procedurally defaulted IAC claim, a petitioner must show "cause" for the default and resulting prejudice.[9]

Petitioner claimed that their PCR-counsel's inexplicable actions to: (1) withdraw the IAC claim in a reply brief, (2) not submit Petitioner's completed affidavit to the state court before it ruled, and (3) not timely file a motion for rehearing or motion to amend—resulted in a Sixth Amendment violation that constituted "cause" for the procedural default. *See* Doc. 16 at pgs. 14-16.

Undeniably, PCR-counsel's conduct was objectively unreasonable and prejudiced Petitioner because their acts and omissions caused the state court to forever preclude adjuding the merits of Petitioner's IAC claim.[10] Had PCR-counsel not withdrawn the claim (or even timely filed Petitioner's affidavit—*or even* timely filed a motion to amend) there is a "reasonable probability" that the state court would have adjudicated Petitioner's IAC claim on the merits.[11]

The Court, therefore, arrived back to the merits of the underlying IAC claim that trial-counsel's failure to show Petitioner the surveillance videos of the robberies required habeas relief.[12] Yet, saliently, the record did not establish[13]—nor did Petitioner explicitly claim—that trial-counsel failed to mention the existence of the videos, withheld the videos after Petitioner requested to view them, or that counsel even advised Petitioner to reject the plea offer. *See* Doc. 22 at pg. 17 (pointing out that "Petitioner does not avow that trial counsel advised him to reject the plea offer"). Petitioner instead argued that trial-counsel claimed to have secured an expert witness whose testimony was "a dead-bang winner." *See* Doc. 16 at pg. 13. And this statement induced Petitioner to reject the plea offer. *Id.* But advising a client that an expert's testimony will be beneficial ≠ counsel unconstitutionally promising the client an acquittal.

Further, the record did not establish, with any certainty, the exact terms of the plea offer; so the Court could not determine that, even after seeing the surveillance videos, Petitioner would have accepted a specific plea offer. *See supra*, at n. 8 (pointing out varying descriptions of the state's plea offer on the record).[14]

Fundamentally, Petitioner had not *proved* that trial-counsel's conduct was unconstitutional, or the plea bargaining process was fundamentally unfair.[15]

IMHO, the Court should have DENIED the Petition for the Great Writ of Habeas Corpus ad Subjiciendum on the merits. Instead, the Court DENIED the Petition as time-barred[16] and GRANTED a Certificate of Appealability on that same issue.[17]

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[1] Respondents incorrectly asserted that the Petition is untimely under the AEDPA. *See* Doc. 22 at pgs. 6-11. Petitioner already filed a post-conviction relief (PCR) notice on Nov. 4, 2010, before the conviction became final on Jan. 19, 2011. *See* Doc. 23 at pg. 42. Petitioner filed a second PCR notice before the state court of appeals issued its first mandate on Sept. 27, 2013—so the clock on the 1-year deadline to file for habeas relief was constantly tolled until the court of appeals mandate issued on Dec. 4, 2014. *See* Doc. 16-5 at pg. 20 & Doc. 23-10 at pg. 2; *see also*, *Celaya v. Stewart*, 691 F. Supp. 2d 1046, 1054 (D. Ariz. 2010) ("a decision of the Arizona Court of Appeals is final upon the issuance of the

mandate"). Petitioner filed the pending habeas petition on Dec. 4, 2015. *See* Doc. 1.

[2] 28 U.S.C. §2254(a).

[3] *See* 28 U.S.C. §2254(d) (restricting courts from granting relief on "any claim that was adjudicated on the merits in State court unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding").

[4] *See also*, 28 U.S.C. § 2254(b)(1)(A) (requiring petitioners exhaust available state remedies).

[5] *See Davila v. Davis*, 137 S. Ct. 2058, 2062 (2017) (Thomas, J.) ("Federal habeas courts reviewing convictions from state courts will not consider claims that a state court refused to hear based on an adequate and independent state procedural ground.").

[6] *Martinez v. Ryan*, 566 U.S. 1 (2012) (noting that a "finding of cause and prejudice does not entitle the prisoner to habeas relief [rather, it] merely allows a federal court to consider the merits of a claim that otherwise would have been procedurally defaulted.").

[7] *See Apelt v. Ryan*, 878 F.3d 800, 828 (9th Cir. 2017) (a claim has "some merit" if it meets the standard for issuing a certificate of appealability). *See also*, *Martinez v. Ryan*, 2016 WL 1268344, at *16 (D. Ariz. Mar. 31, 2016) (summarizing the adjudicative framework for resolving procedurally defaulted *Martinez* claims) (citing *Clabourne v. Ryan*, 745 F.3d 362, 377 (9th Cir. 2014)).

[8] The Court could not ascertain, with any certainty, the specifics of the plea deal. *Compare* Doc. 16 at pg. 2 (stating that the "prosecutor had agreed to seek no more than the mid-term of the 20-year maximum sentence, 10.5 years, if petitioner pled guilty to one of the robberies") *with* Doc. 16-4 at pg. 64 (Petitioner's Affidavit) (stating that Petitioner turned down the State's plea offer of 5 to 14 years in prison). *See also*, *id.* at pg. 77 (stating that the "range of sentence would be from the minimum 7-year term to the maximum 21-year term"). *See further*, Doc. 16 at pg. 14 ("The sentencing range under the offer was 7 to 10 years, with the agreement that the state would recommend the presumptive term of ten years 6 months.").

[9] *See Martinez* at 17 (" 'Cause,' however, is not synonymous with 'a ground for relief.'"). *See also*, *Davila v. Davis*, at 2065 ("It has long been the rule that attorney error is an objective external factor providing cause for excusing a procedural default only if that error amounted to a deprivation of the constitutional right to counsel.").

[10] Respondents incorrectly assert that Petitioner "acted *pro se* in filing [the] petition in the court of appeals" so "*Martinez* cannot provide cause to excuse [the] default of this claim." *See* Doc. 22 at pg. 16. But, PRC counsel filed the petition in the court of appeals, too. *See* Doc. 16-4 at pg. 71.

[11] The state court explicitly never adjudicated the merits of the underlying IAC claim because PCR-counsel withdrew the claim in a reply brief, and the court construed a subsequent (untimely) motion to redact the withdrawal as an untimely motion for a rehearing. *See* Doc. 16-4 at pg. 70. On appeal, the state court found that "the only reasons [Petitioner] has given for attempting to reassert the [IAC] claim [after it was withdrawn] were that [Petitioner] had completed [an] affidavit stating he would have accepted the state's plea offer had he seen the video recordings and that the United States Supreme Court had decided *Lafler v. Cooper*." *See* Doc 16-4 at pg. 116. But Petitioner had actually already completed the affidavit before PCR-counsel filed the reply brief that withdrew the claim. *See* Doc. 16-4 at pgs. 39 & 64. Still, the state court of appeals held that Petitioner "did not provide any explanation for the late filing of [the] affidavit" and therefore the trial court didn't abuse its discretion by denying post-conviction relief. *See id.*at pg. 70.

[12] *See Martinez* at 18 ("...a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding [...] counsel in that proceeding was ineffective."). *See also*, *State v. Diaz*, 236 Ariz. 361, 363 (2014) ("In sum, because [Petitioner's] counsel [was ineffective in the] PCR proceedings and those failures were not [Petitioner's] fault, he did not waive his IAC claim.").

[13] Petitioner requests an evidentiary hearing to expand the record in this matter, but pursuant to 28 U.S.C. § 2254(e)(2), a court cannot "hold an evidentiary hearing on the claim unless the [petitioner] shows that the claim relies on a new rule of constitutional law ... or [facts] could not have been previously discovered through the exercise of due diligence" *and* the facts sufficiently establish "by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found [petitioner] guilty of the underlying offense." Here, there is no suggestion that any of these factors apply, and certainly no evidence that Petitioner did not commit the robberies for which he was convicted. *See*, *e.g.*, *Thorpe v. Riveland*, 617 F. Supp. 63, 65 (D. Colo. 1985) ("Nowhere is there any suggestion that defendant is anything other than guilty of the crimes charged."). *See further Dickens v. Ryan*, 740 F.3d 1302, 1321 (9th Cir. 2014) (clarifying that a court may take evidence on a claim of ineffective assistance of trial counsel, but only to determine if 'cause' exists to excuse a procedural default).

[14] *See also*, *Missouri v. Frye*, 566 U.S. 134, 145 (2012) (requiring a defendant to establish a "reasonable probability" that specific terms of a plea offer would have been accepted by the defendant, prosecutor, and the Court).

[15] *See Strickland v. Washington*, 466 U.S. 668, 696 (1984) ("the ultimate focus of inquiry [in IAC claims] must be on the fundamental fairness of the proceeding whose result is being challenged").

[16] *But see*, Ariz. R. Crim. P. 31.22(a) (Re: Appellate Court Mandates) ("Definition. The mandate is the final order of the appellate court, which may command another appellate court, superior court, or agency to take further proceedings or to enter a certain disposition of a case. An appellate court retains jurisdiction of an appeal *until it issues the mandate*.") (emphasis added). *See further*, *supra* at n. 1.

[17] 28 U.S.C. § 2253(c)(2). *See also*, *Slack v. McDaniel*, 529 U.S. 473, 475 (2000) (COA issue when "reasonable jurists could debate whether [] the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further'") (citing *Barefoot v. Williams*, 463 U.S. 880, 893 (1983)).

SEGALA v. USA

18-CV-163

SEGALA PRAYED the Court would reconsider its Order that had denied extra time to appeal the judgment in this civil case. *See* Doc. 6.

The case only originated when the Clerk of the Court construed correspondence in an underlying criminal case as a motion to vacate the Court's sentence. *See* Doc. 3. Per local custom, the Clerk filed the "motion" in the criminal case and then opened a new civil case docket for the Court to adjudicate the claim. See Doc. 1.

Concurrently, in the criminal case, the Court denied the "motion" and informed Segala of the specific Ninth Circuit Rule to correctly appeal, and dismissed this civil case as "moot." *See id.* at pgs. 3–5.

Segala then filed a request for an extension of time to file a notice of appeal in this civil case, but failed to provide "a showing of excusable neglect or good cause." *See* Doc. 5 (Order of the Court). Segala finally filed a proper notice of appeal in the underlying criminal matter. *See USA v. Segala*, 05-CR-962-41 (D. Ariz.) (Doc. 1770).

Perplexingly, Segala still requested the Court reconsider the order denying an additional 45-days to file an appeal in this civil matter. *See* Doc. 6. But a motion to reconsider must include "a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence."[1] And Segala failed to provide any new evidence or show that the Court's prior order was legally incorrect. *See* Doc. 5

(re-iterating the same arguments contained in the original motion for an extension of time that the Court DENIED).

Segala remained free to pursue an appeal of the underlying criminal case and follow Ninth Circuit procedure to secure appellate-counsel, but no further relief was warranted in this civil action which was previously dismissed as moot. *See* Doc. 3.

Segala's prayer was REJECTED.

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[1] LRCiv 7.2(g).

ROTH v. ALLSTATE

17-CV-587

PLAINTIFF SOLICITED attorneys' fees pursuant to 28 U.S.C. § 1447(c) after the case was remanded. Doc. 23. Everyone agreed that *Martin v. Franklin Capital Corp.*, 546 U.S. 132 (2005), provided the framework to adjudicate the request. *See* Doc. 25 at pg. 1.

In *Martin*, the Supreme Court held that: "Absent unusual circumstances, courts may award attorneys' fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal."

To resolve whether removal was proper, the Court had requested briefing (beyond the initial pleadings), regarding the appropriateness of a claim against the non-diverse Defendant. *See* Doc. 13 (consolidating "competing motions to remand and dismiss"). This additional information helped clarify that the Court had to remand the matter back to state court. *See* Doc. 21. The decision, therefore, to remove the case based on the pleadings, at the time of removal, was not objectively unreasonable because even the Court—at that time—did not have enough information to adjudicate the matter. *See* Doc. 24 at pg. 3 (arguing that "the Court implicitly recognized the reasonableness of Defendants' arguments when it denied Plaintiff's remand motion and ordered additional briefing on the legal issues applicable to remand").

Further, Defendants supported all their arguments by citing relevant legal authorities and—although Defendants did not carry the "heavy burden" to prove fraudulent joinder—their "arguments [to the merits could] ultimately prevail in the remanded state-court action."[1]

Plaintiff's motion : DENIED.

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[1] *See, e.g., Gardner v. UICI*, 508 F.3d 559, 562 (9th Cir. 2007) (finding that attorneys' fees were inappropriate when a state court "could find" for or against a defendant allegedly "fraudulently joined") (emphasis in original).

CENTER FOR BIOLOGICAL DIVERSITY v. DUKE

17-CV-163

PLAINTIFFS ALLEGED that Defendants[1] violated the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), and requested declaratory and injunctive relief. *See* Doc. 14 (First Amended Complaint) (also adding a claim pursuant to the Freedom of Information Act not material to this order).

Specifically, Plaintiffs alleged Defendants violated NEPA by failing to "further supplement its programmatic environmental impact statement [EIS] for the southern border enforcement program." *See id.* at pg. 2. And further, that Defendants violated ESA by failing to "undertake and complete consultation with the U.S. Fish and

Wildlife Service regarding the impacts of the southern border enforcement program on threatened or endangered species, and their designated critical habitat." *See id.* at pg. 3 (alleging separate violations of Section 7(a)(1) & (2)).

Defendants asserted the Court lacked jurisdiction over Plaintiffs' ESA claim, and moved to dismiss the alleged NEPA and ESA violations for failure to state cognizable claims under either Act. *See* Doc. 22 (Motion to Dismiss filed pursuant to Fed.R.Civ.P. 12).

THE NEPA CLAIM

Discretionary agency action that significantly affects the quality of our environment must comply with NEPA.[2] Because NEPA does not provide a private cause of action, persons can only challenge agency actions—or lack thereof—under the Administrative Procedure Act (APA).[3]

The APA allows a person to challenge a final agency action in a federal court if they have suffered a legal wrong because of that agency action.[4] Final agency action includes an agency's failure to act when the action is legally required.[5]

Here, Plaintiffs alleged that Defendants had failed to undertake their legal duty to supplement a 2001 "supplemental programmatic" EIS (SPEIS). *See* Doc. 29 at pg. 24. An agency has a duty to supplement an EIS if: (1) it introduces "substantial changes" to a "proposed action"; or (2) "significant new circumstances or information" relevant to the environmental impacts of the agency's action have come to light and "major Federal action" will still occur.[6]

Plaintiffs alleged a number of events subsequent to the 2001 SPEIS qualify as substantial changes; and that new, significant information required Defendants supplement the SPEIS. *See* Doc. 14. Namely: that "[s]ince approval of the 2001 SPEIS, border security appropriations, personnel, fencing and infrastructure, and surveillance technology have dramatically increased, [and these actions resulted] in direct, indirect, and cumulative environmental impacts along the U.S.-Mexico border that were unaddressed or inadequately addressed" in prior analysis. *See id.* at pg. 45.

Plaintiffs further alleged that Defendants failed to sufficiently consider "greatly improved scientific understanding of the conservation needs of borderland wildlife species, [and] new [statutorily relevant] information regarding threatened and endangered species in the borderlands." *See id.* at pg. 46.

Defendants retorted that Plaintiffs failed to allege what agency action will still occur based on the 2001 SPEIS, and that the "southern border enforcement program" doesn't exist. *See* Doc 22 at pg. 2. But—program labels aside—a case proceeds to discovery when the complaint alleges enough plausible facts that, if proven true, would render Defendants liable for Plaintiffs' injuries.[7]

Supposing the Complaint is true,[8] Defendants had plausibly taken a number of discrete, discretionary actions to enforce border security that substantially changed the agency's proposed action in the 2001 SPEIS, and that both significant new circumstances and information relevant to the agency's environmental impact had emerged. *See* Doc. 14 at pgs. 29-41.[9] Crucially, Defendants had not yet shown that they conducted a 'hard look' to determine

whether they had a duty to supplement the 2001 SPEIS, or proved that the agency no longer uses the 2001 SPEIS to justify actions.[10]

Defendants additionally challenged Plaintiffs' NEPA claims as time-barred, *see* Doc. 22 at pgs. 16–18; but because discovery had not taken place, the relevant scope and timing of agency decisions remained unclear—as no one actually provided the Court with the 2001 SPEIS. Ultimately, discovery could uncover whether Defendants had sufficiently considered NEPA's requirements and applied reasoned decision-making to the final decision to not supplement to the 2001 SPEIS.[11]

THE ESA CLAIMS

A person has standing to bring a claim under the Endangered Species Act if the complaint generally alleges a concrete injury, caused by a defendant, that the court can remedy.[12] Further, the person must provide the defendant written notice of the alleged violation at least 60 days before filing suit.[13]

Here, Plaintiffs alleged that Defendants had failed to initiate consultation with the U.S. Fish and Wildlife Service in regards to their continued southern border activities, and that this procedural delinquency resulted in changes to the border environment that negatively impacted the aesthetic, recreational, and scientific use of the area—an area that Plaintiffs frequent. *See* Doc. 29 at pgs. 33-35 (averring that equitable relief requiring consultation would remedy this procedural injury).[14]

Defendants countered that Plaintiffs had failed to identify "any specific affirmative agency action allegedly requiring ESA consultation" in its written notice, and that this failure created a jurisdictional barrier. *See* Doc. 22 at pg. 29. Yet, notice satisfies due process requirements if Defendants "understood or reasonably should have understood the alleged violations."[15]

Again, the adequacy of the notice doesn't turn on the exact name or label Plaintiffs gave to Defendant's actions, as long as Defendants could reasonably make out the alleged grievance. And for purposes of resolving the motion to dismiss, it was reasonable to conclude that Defendants—who in the past had relied upon programmatic actions along the "southern border" and, in 2012, had created an EIS for its "northern border" activities—were sufficiently provided the opportunity to identify and address the violations alleged by Plaintiffs in the written notice. *See* Doc. 22 at pgs. 51-58 (detailing 27 species that have newly designated critical habitat areas within an explicitly described geographic zone that Defendants operate within and the general activities that threaten life in these areas).

However, although the Court had jurisdiction to adjudicate Plaintiffs' claims pursuant to section 7(a)(2), for failure to consult with the U.S. Fish and Wildlife Service ∿ Plaintiffs had not adequately alleged a violation pursuant to section 7(a)(1).

Section 7(a)(1) of the ESA requires federal agencies implement programs for the "conservation of endangered species and threatened species," but it grants agencies discretion on how to implement those programs.[16]

Plaintiffs had not alleged that Defendants completely lack agency programs to protect endangered species or they had never consulted with the U.S. Fish and Wildlife Service about how to fulfill their statutory duty.[17] Rather, Plaintiffs alleged that

Defendants lacked a program to protect *certain* species in a *specific* geographic region—requirements not found in section 7(a)(1).[18] Plaintiffs, therefore, failed to provide due notice or adequately allege a viable claim for relief based on this section of ESA.

CONCLUSION

An agency cannot avoid litigation by obfuscating the designation of its activities or "programs" to the degree that persons cannot challenge its actions. Defendants admittedly created an EIS in 1994 that covered their activities along the "southern border" and supplemented that EIS in 2001. To the extent agency actions continued in that geographic area without compliance with environmental regulations, Plaintiffs adequately alleged Defendants failed to take the required action to supplement the 2001 SPEIS or engage in required consultation with the U.S. Fish and Wildlife Service—as mandated by NEPA and ESA.

The Court therefore DENIED (in-part) and GRANTED (in-part) Defendants' Motion to Dismiss. Specifically, only Plaintiffs' claim pursuant to section 7(a)(1) of the Endangered Species Act was DISMISSED.

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[1] All Named Defendants: the Secretary of the Department of Homeland Security, the Department itself (DHS), its component agency U.S. Customs and Border Protection (CBP), and the acting CBP Commissioner.

[2] 42 U.S.C. § 4332(2)(C).

[3] *See Cent. Delta Water Agency v. U.S. Fish & Wildlife Serv.*, 653 F. Supp. 2d 1066, 1089 (E.D. Cal. 2009) ("NEPA contains no private right of action [therefore] NEPA claims must be brought under the APA") (citing *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1179 (9th Cir.2004)).

[4] *See* 5 U.S.C. § 701, *et seq.*

[5] *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) ("a claim under [the APA] can proceed only where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required to take*") (emphasis in original).

[6] *See* 40 C.F.R. § 1502.9(c)(1)(i)-(ii). *See also*, *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1094 (9th Cir. 2013)) (quoting *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 73 (2004)).

[7] *See Concerned About Trident v. Rumsfeld*, 555 F.2d 817, 825 (D.C. Cir. 1976) (describing the relevant inquiry into the alleged need for an environmental impact study as fact-based, rather than guided by "program 'labels' "). *See also*, *OSU Student All. v. Ray*, 699 F.3d 1053, 1078 (9th Cir. 2012) (explaining that plaintiffs are entitled to discovery if they allege a "plausible" claim).

[8] *See*, *e.g.*, *Landers v. Quality Commc'ns, Inc.*, 771 F.3d 638, 641 (9th Cir. 2014) (Rawlinson, J.) (expounding the *Twombly/Iqbal* pleading standard as relying on "judicial experience and common sense to determine whether the factual allegations, which are assumed to be true, plausibly give rise to an entitlement to relief") (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

[9] *See also*, *Churchill Cty. v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001) ("'Significance' is a function of the context and the 'intensity' of the action.") (citing 40 C.F.R. § 1508.27).

[10] *See Nevada v. Dep't of Energy*, 457 F.3d 78, 93 (D.C. Cir. 2006) (recognizing that an agency's actions must comport with the "rule of reason").

[11] *See*, *e.g.*, *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97–98 (1983) (acknowledging that a court's task is to "ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious").

[12] *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (holding that for purposes of adjudicating motions to dismiss, "general factual allegations of injury resulting from the defendant's conduct may suffice").

[13] *See Klamath-Siskiyou Wildlands Ctr. v. MacWhorter*, 797 F.3d 645, 647 (9th Cir. 2015)

(describing "notice" as a "jurisdictional" bar) (citing 16 U.S.C. § 1540(g)(2)(A)(i)).

[14] *See also*, *Ecological Rights Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1149 (9th Cir. 2000) (stating that plaintiffs "can establish 'injury in fact' by showing a connection to the area of concern sufficient to make credible the contention that the person's future life will be less enjoyable").

[15] *Klamath-Siskiyou Wildlands Ctr. v. MacWhorter*, 797 F.3d 645, 651 (9th Cir. 2015) (expressing that "the analysis turns on the 'overall sufficiency' of the notice," and that a plaintiff doesn't need to "list every specific aspect or detail of every alleged violation") (quoting *Cmty. Ass'n for Restoration of the Env't v. Henry Bosma Dairy*, 305 F.3d 943, 951 (9th Cir.2002)).

[16] *See* 16 U.S.C. § 1536(a)(1). *See also*, *Pyramid Lake Paiute Tribe of Indians v. U.S. Dep't of Navy*, 898 F.2d 1410, 1418 (9th Cir. 1990) ("That some discretion should be allowed is also evident from the regulations promulgated under the Act.").

[17] *See Defs. of Wildlife v. U.S. Fish & Wildlife*, 797 F. Supp. 2d 949, 953 (D. Ariz. 2011) (determining that the relevant inquiry is whether agency action has been so "insignificant" as to amount to "total inaction").

[18] 16 U.S.C. § 1536(a)(1). *See also*, *Nw. Envtl. Advocates v. U.S. E.P.A.*, 268 F. Supp. 2d 1255, 1273 (D. Or. 2003) ("The statute does not mention species-specific programs.").

MELLBERG v. WILL

14-CV-2025

PLAINTIFFS OBJECTED to portions of Magistrate Judge Kimmins' Order that limited discovery. *See* Doc. 282. A district court reviews a magistrate judge's non-dispositive pretrial discovery motion for "clear error."[1]

Plaintiffs objected that Judge Kimmins denied a request to compel Defendants to produce additional information. *See* Doc. 271 at pgs. 3–4. Judge Kimmins reasoned that the request did not "qualify as follow-up based on the [previous] document productions," *id.* at pg. 6; which was the only discovery allowed in the case after Plaintiffs "did not comply with the Court's deadline[s]." *See* Doc. 217 at pg. 2. *See also*, Doc. 271 at pg. 4 (explaining that "[t]he Court precluded further follow-up").

As Judge Kimmins wrote in the challenged order: "The two-week [discovery] deadline for follow-up was specifically to allow Plaintiffs to address any new issues identified from review of the long-delayed [previous] document productions." *See* Doc. 271. And altho Plaintiffs may be correct that the desired documents could yield relevant information, this fact did not render Judge Kimmins' ORDER legally incorrect.[2]

An independent review of the magistrate judge's order and the documents that formed the basis for the decision did not reveal any legal or factual error. The Court agreed with Judge Kimmins' assessment that "Plaintiffs may address any remaining [discovery] issues during Defendants' depositions." *Id.* at pg. 4.

Plaintiff's objections? OVERRULED.

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[1] *See* Fed. R. Civ. P. 72(a) (requiring a district judge to "modify or set aside any part of the order that is clearly erroneous or is contrary to law").

[2] *See*, *e.g.*, *Robinson v. Hall*, 2013 WL 791268, at *2 (D. Ariz. Mar. 4, 2013) ("recognizing the importance of a [federal] court's ability to control its docket by enforcing a discovery termination date, even in the face of requested supplemental discovery that might have revealed highly probative evidence, when the party's prior discovery efforts were not diligent") (quoting *Cornwell v. Electra Central Credit Union*, 439 F .3d 1018, 1027 (9th Cir.2006)) (internal quotation marks omitted). *See further*,

In re Sonoma V, 703 F.2d 429, 432 (9th Cir. 1983) (holding courts can enforce deadlines to "[e]nsure the proper flow of judicial business") (citing 4 C. Wright & A. Miller, *Federal Practice and Procedure* § 1165, at 627-28).

[3] *See*, *e.g.*, *Vail v. The Hartford*, 17-CV-273 (D. Ariz., June 13, 2018) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1425 (9th Cir. 1986)).

And finally,

JARNDYCE v. JARNDYCE III[*]

… AKA …

BOBBITT v. MILBERG

09-CV-629

IN THE second millennium *vulgaris æræ*, William the Conqueror commissioned the Domesday Book,[1] Kubla Khan decreed a "stately pleasure dome,"[2] Americans valiantly seized sovereignty,[3] and Variable Annuity Life Ins. Co. (VALIC) sold individual variable deferred annuity contracts that allegedly violated federal securities laws. *See* Doc. 1.

James Drnek was among those who purchased these annuity contracts and, in 2001, Drnek filed a lawsuit in Pima County Superior Court that alleged 21 counts against VALIC, based (in-part) on the Securities Exchange Act of 1934. *See* Doc. 3. *See also*, *Drnek v. VALIC*, 01-CV-242 (D. Ariz. May 4, 2004). VALIC removed the case to federal court, where it survived two different motions to dismiss. *Id.* And, in 2004, Judge William D. Browning certified the case as a class action lawsuit. *Drnek v. VALIC*, at Doc. 193. The law firm of Milberg Weiss Bershad & Schulman LLP (Milberg) was approved as class counsel. *Id.*

The case was reassigned to Judge Alfredo C. Marquez, who in turn assigned the matter to Magistrate Judge Nancy F. Fioria. *Id.* at Docs. 313 & 314. The parties, however, elected the case remain with a district court judge, so the matter was reassigned to Judge Cindy K. Jorgenson. *Id.* at Doc. 316. Judge Jorgensen then referred the case to Magistrate Judge Hector C. Estrada to conduct all pretrial proceedings. *Id.* at Doc. 318. Eventually, VALIC moved for summary judgment on all remaining claims, and, in 2005, Judge Jorgenson granted that motion and entered judgment in VALIC's favor. *See id.* at Doc. 322.

Drnek, and the rest of the class, appealed to the Ninth Circuit. *Id.* at Doc. 325. But, in 2007, Circuit Judges J. Clifford Wallace, Andrew J. Kleinfeld, and Johnnie B. Rawlinson unanimously affirmed the district court's judgment.[4]

Philip Bobbitt, a member of the certified class, was unsatisfied with the result and blamed the unfavorable judgment on Milberg inexcusably violating multiple Court deadlines. *See* Doc. 1. In 2009, Bobbitt (and one other individual) filed a lawsuit in federal court against Milberg that alleged negligence and breach of fiduciary duty for the mishandeling of the class action lawsuit. *Id.*

Milberg—and several other named Defendants—filed cross-claims and a motion to dismiss that was referred to Magistrate Judge Jennifer C. Guerin,[5] who recommended the Court enter an Order "denying in part and granting in part Defendants' motion to dismiss such that [the Complaint] would be dismissed with leave to amend." *See* Doc. 61. Over multiple objections, the Court accepted the recommendation and adopted Judge Guerin's report. Doc. 68.

True to form: Plaintiffs filed an amended complaint and Defendants filed another motion to dismiss. *See* Doc. 76. That motion was denied, and the matter was set for a Scheduling Conference before the Judge's then-law clerk, Kevin M. Rudh.[6] *See* Docs. 91 & 92. More legal maneuvering followed….

For also in 2009, a new, separate, class action lawsuit was filed in federal court, by different plaintiffs, against VALIC for selling the same type of individual variable deferred annuity contracts that prompted the first lawsuit.[7] The case was assigned to Chief Judge John M. Roll.

In 2010, Plaintiff Bobbitt filed a motion to consolidate the two cases; but the Court ruled that motion unripe until Chief Judge Roll first ruled on a then-pending motion to transfer the 2nd class action case against VALIC to the Southern District of Texas. *See* Doc. 93. In 2011, unspeakable tragedy took the Chief Judge's life (RIP),[8] and Circuit Judge A. Wallace Tashima stepped-in to grant VALIC's motion to transfer the case.[9]

In 2012, the Court denied Plaintiffs' motion to certify a class against Defendants because the proposed class had "failed to meet their burden to show that Rule 23(b)(3) ha[d] been satisfied." Doc. 229.

Plaintiffs filed to stay the case pending appeal to the Ninth Circuit, *see* Doc. 231; but Circuit Judges Edward Leavy and Johnnie Rawlinson exercised their discretion to deny Plaintiff's petition to appeal the district court's decision to deny class certification. *See* Doc. 237.

In 2013, the Court granted Plaintiffs' joint Rule 41(a)(2) Motion for Voluntary Dismissal of all claims, essentially ending the case. *See* Doc. 242 (dismissing the individual claims "with prejudice"). *See also*, Doc. 254 (entering final judgment). But not so fast, for after judgment was ordered, Lance Laber intervened "for the limited purpose of appealing the denial of class certification." Doc. 304.

In 2015, the Ninth Circuit's Chief Judge Sidney R. Thomas, Circuit Judge John B. Owen, and District Court Judge Anthony J. Battaglia, sitting by designation, vacated the district court's order denying class certification, and remanded the case for further proceedings. *See* Doc. 264.

The case was reopened in the district court, and simultaneous briefs were ordered from the parties on how best to proceed. *See* Doc. 265. But in 2016, the parties jointly filed to stay the case in the district court because the Supreme Court had decided to withhold a decision on Defendants' petition for certiorari pending a decision in *Microsoft v. Baker*. *See* Doc. 290.

In 2017, the Supreme Court issued its decision in *Baker* and held that federal courts of appeals lack jurisdiction to review an order denying class certification after the named plaintiffs have voluntarily dismissed their claims with prejudice.[10]

The Supreme Court then vacated the Ninth Circuit's opinion in this case that had vacated the order denying class certification. The case was remanded back from whence it came. *See* Doc. 295

On remand, the Ninth Circuit concluded that it "lacked appellate jurisdiction over [the case in the first place,] and dismissed the appeal." Doc. 304. The Supreme Court then denied

another request, this time by Intervenor Labor, to adjudicate the case. *Id.* at pg. 2.

So with nothing left to lose, in 2018, Plaintiff Philip Bobbitt filed a motion for the Court to conduct a status conference and expressed intent to proceed with an individual claim. *See* Doc. 304. But Bobbit had no claims pending before the Court. *See* Doc. 305 at pg. 2. Judgment had already been ordered, back in 2013, on all claims Bobbitt raised in the case. *See* Doc. 254 and Doc. 263.

Bobbit's motion was DENIED and the Clerk of the Court was ordered to close the case, as it was—*finally*—"Over for good!"[11] But Bobbitt sought more, and filed a motion to alter the judgment. *See* Doc. 310. The Court clarified the law had been followed, faithfully. *See* Doc. 317.[12] *No más*.[13]

[✻] *See Stern v. Marshall*, 564 U.S. 462 (2011) (Roberts, C.J.) (describing the "long procession of judges [that have] come in and gone out" during the time it took the the case to "drag[] its weary length before the Court") (quoting C. Dickens, *Bleak House*).

[1] *Anglo-Saxon Chronicle*, Entry for A.D. 1085 (recounting how the King gathered council and clerks at "midwinter" and "commissioned them to record in writing," a complete survey of the kingdom).

[2] Samuel Taylor Coleridge, *Kubla Khan; or, A Vision in a Dream: A Fragment* (written 1797; published 1816).

[3] George Washington, *First Inaugural Address* (Federal Hall, New York City, April 30, 1789) (proclaiming "the preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally staked on the experiment entrusted to the hands of the American people"). *See also*, James Monroe, *Seventh Annual Message to Congress* (December 2, 1823) (announcing that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers").

[4] *Drnek v. VALIC*, 261 F. App'x 50, 52 (9th Cir. 2007) (holding that the "district court did not abuse its discretion").

[5] Now the Honorable District Court Judge Jennifer G. Zipps. *See* Federal Judicial Center.

[6] Now law clerk to the Honorable District Court Judge James A. Soto.

[7] *Hall v. VALIC*, 09-CV-712 (D. Ariz.).

[8] *See* Chief Justice John G. Robert, *Written Statement Re: Judge Roll's assassination* (Jan. 9, 2011) ("Chief Judge Roll's death is a somber reminder of the importance of the rule of law and the sacrifices of those who work to secure it.").

[9] *See Hall v. VALIC* (Oct. 3, 2011).

[10] *See Baker v. Microsoft*, No. 15–457 (2017) (Ginsberg, J.) (finding that court of appeals lack statutory jurisdiction to hear such an appeal), and *id.* at pg. 22 (Thomas, J., concurring in judgment) (finding no basis for constitutional jurisdiction in such an appeal).

[11] Charles John Huffam Dickens, *Bleak House*, CH. 65: BEGINNING THE WORLD (1853).

[12] *Bobbitt v. Milberg*, 16-CV-629 (D. Ariz. Dec. 12, 2018) (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013) (Thomas, J.) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–478 (1990) (Scalia, J.) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) (White, J.) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962) (Brennan, J.))). *Id.* at pg. 3 (resting judgment on *Pac. R.R. v. Ketchum*, 101 U.S. 289, 298 (1879) (Waite, C.J.)).

[13] *Cf.* Philip C. Bobbitt, *The Garments of Court and Palace: Machiavelli and the World that He Made*, at pg. 184 (2013) (ending: "because Dante says that no one understands unless he retains what he has understood, I have jotted down what I have profited from [my studies]") (quoting Niccolò di Bernardo dei Machiavelli).

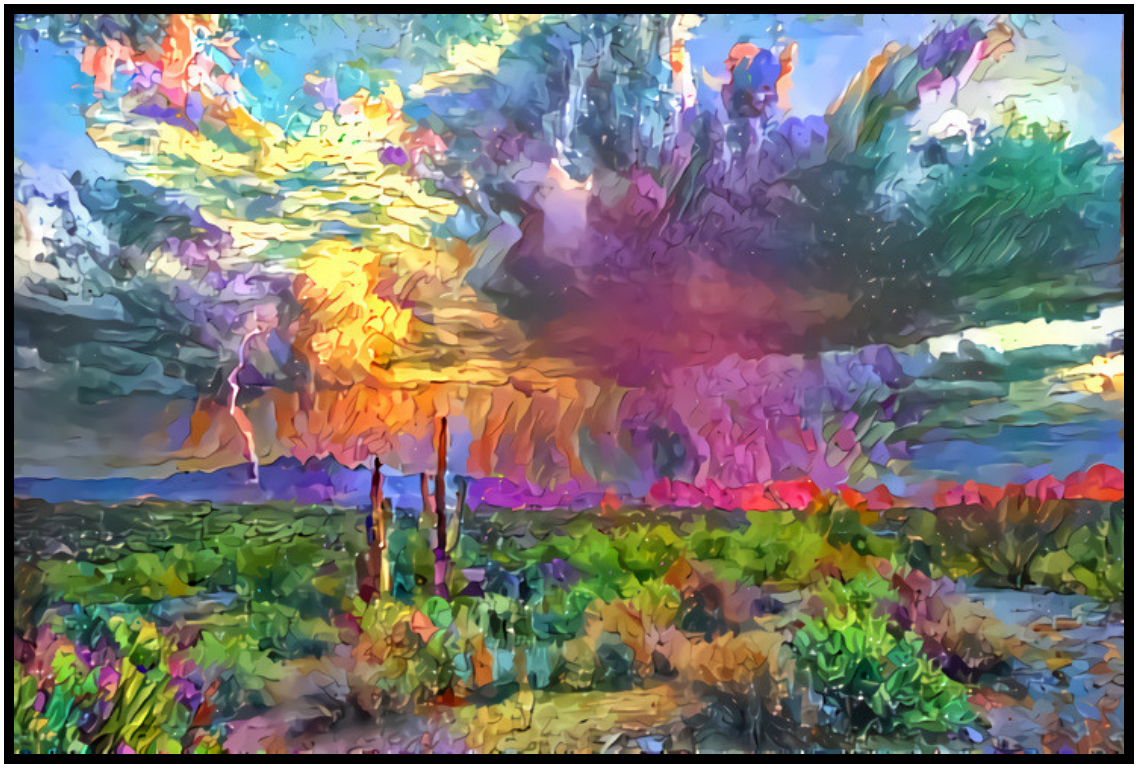
CHAPTER THREE

MONSOON SEASON SUPPLEMENT

An ominous update to the Original ALR that portends the end and yet transcends attempts to misapprehend.

Arizona Law & Reporter

Monsoon Season Supplement



CRIMINAL CASES

USA v. Flores
USA v. Ontiveros
USA v. Martinez
USA v. Sierra-Zazueta

CIVIL CASES*

Brown v. Brown
Eagle Eye v. Faader
State Auto v. Ramirez
Webb v. Pima County

IN THE CRIMINAL MATTER OF

UNITED STATES OF AMERICA v. GERARDO A. FLORES

01-CR-313-002

Defendant's motion requested relief from a prior order. See Doc. 853 (filed pursuant to Fed. R. Civ. P. 60(b)). The Federal Rules of Civil Procedure cannot provide a defendant relief in a criminal proceeding.[♣] Further, despite Defendant's argument to the contrary, the Interstate Agreement on Detainers Act does not apply to US Marshal detainers placed on a state prisoner who allegedly violated federal supervised release.[♞]

RATIONALLY : IT WAS ORDERED : Defendant's motion : DENIED.

♣ See *United States v. McCalister*, 601 F.3d 1086, 1087–88 (10th Cir. 2010) (citing *United States v. Mosavi*, 138 F.3d 1365, 1366 (11th Cir.1998), for the proposition that "Fed. R. Civ. P. 1 'unambiguously provides that' the Federal Rules of Civil Procedure only apply in civil proceedings").

♞ See *Carchman v. Nash*, 473 U.S. 716, 726 (1985) (concluding → "from the language of the Agreement ... a detainer based on a probation-violation charge is not a detainer based on 'any untried indictment, information or complaint,' within the meaning of the Act"). See also, *United States v. Reed*, 620 F.2d 709, 711 (9th Cir. 1980) (agreeing that: "neither a pretrial detainee nor a parole violator has a sufficient interest in the rehabilitation programs of [a] confining institution to justify invocation of the Act.").

IN THE CRIMINAL MATTER OF

UNITED STATES OF AMERICA v. JOSEPH FRANCISCO ONTIVEROS

09-CR-329-001

PREVIOUSLY: Defendant requested a reduced sentence. See Doc. 65 (filed pursuant to 18 U.S.C. § 3582(c)(2)). The Court dutifully reviewed the case and denied the request because "Defendant's sentence was not based on a 'sentencing range that has subsequently been lowered by the Sentencing commission' as required by [18 U.S.C.] § 3582." See Doc. 67 (Order of the Court).

DÉJÀ VU. Defendant, through counsel, again filed a motion for a reduced sentence based on the same logic the Court previously found insufficient to grant relief. See Doc. 75. Tellingly, the new motion didn't address or refute the Court's analysis denying Defendant's previous motion. Id.

THO. Recently, the Supreme Court modified the standard to determine eligibility for a sentence reduction pursuant to § 3582(c)(2), and held that "a sentence imposed pursuant to a Type–C agreement is 'based on' the defendant's Guidelines range so long as that range was

part of the framework the district court relied on in imposing the sentence or accepting the agreement [and] was a basis for the court's exercise of discretion in imposing a sentence." [‡]

BUT. As adjudged, the Court didn't "base" Defendant's sentence on the guidelines range. See Doc. 67. Instead, the Court "consulted" the advisory guideline calculation to accept the plea agreement; and then at sentencing stated: "The sentence that I'm going to give you is the least sentence I can give you [under the plea agreement and ...] there's no question ... that the punishment fits the crime because of the dangerousness to the other people that were involved." See Doc. 74 at pg. 12 (Sentencing Transcript).

CUMULATIVELY, discretion—guided by the "applicable policy statements issued by the Sentencing Commission"—determines eligibility for statutory sentencing relief.[⁂] And Defendant already benefited from the Court accepting a plea agreement that dismissed conduct charged in the indictment which would have carried 100+ years of mandatory minimum time. See Doc. 77 at pgs. 3–4.

JUDICIOUSLY : IT WAS ORDERED : Defendant's motion : DENIED.

‡ *Hughes v. United States*, 138 S. Ct. 1765, 1775 (2018).

⁂ 18 U.S.C. § 3582(c)(2).

IN THE CRIMINAL MATTER OF

UNITED STATES OF AMERICA v. STEPHEN JAMES MARINEZ

17-CR-145-001

Defendant asked for a new sentence → even tho the Court imposed the sentence according to the signed plea agreement. See Doc. 1 (Motion to Vacate filed pursuant to 28 U.S.C. § 2255).

Prefuppofing the motion's facts as true, the evidence provided didn't prove that the sentence "was imposed in violation of the Constitution or laws of the United States."[※] Precisely one fact was alleged to support an unconstitutionally contaminated sentence, *viz*: "on the day of sentencing, September 13, 2017, counsel failed by not raising textual argument regarding commentary issues [*sic*]." See id. Neither Defendant's motion nor the attached memorandum clarified what "textual argument" defense counsel failed to raise. See id.[⊛]

The Sixth Amendment commands: "In all criminal prosecutions, the accused shall enjoy the right to ... have the Assistance of Counsel for [their] defence."[ε] But Defendant hadn't established that defense

counsel's conduct had rendered that constitutional right illusory, or any alleged ineffectiveness prejudiced the Court's sentence.[☀]

A District Court must summarily dismiss a § 2255 application if "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief."[♂] Adjournment pending a hearing or response from the government—superfluous.[☆]

Without hesitation : Defendant's Motion to Vacate was DENIED; and the Motion to Appoint Counsel : TERMINATED as moot.

IT WAS FURTHER ORDERED that no Certificate of Appealability would issue because rational jurists couldn't legally quible with the Court's ruling.[▲]

※ See 28 U.S.C. § 2255(a).

♈ Defendant's attached memorandum in support of the Motion to Vacate simply cites a nonbinding decision from another circuit issued after Defendant was sentenced in the underlying criminal case. See Doc. 1-1 (citing the "unusual case" of *United States v. Winstead*, 890 F.3d 1082 (D.C. Cir. 2018)).

ℰ U.S. Const. Amend. VI.

☀ See, e.g., *Strickland v. Washington*, 466 U.S. 668, 694 (1984) ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.").

♂ Rule 4(b), Rules Governing Section 2255 Proceedings for U.S. District Courts.

☆ See *Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985). See also, *Baumann v. United States*, 692 F.2d 565, 571 (9th Cir. 1982).

▲ See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IN THE CRIMINAL MATTER OF

UNITED STATES OF AMERICA v. JOSE SIERRA-ZAZUETA

18-CR-461-001

The Court DENIED Defendant's meritless motion—requesting relief pursuant to a bill put to chill on Capitol Hill.[♑] Exacting analysis? Gratuitous.[↯]

♑ See *Ledezma-Ortiz v. USA*, 16-CV-632, Doc. 3 (D. Ariz., Sept. 27, 2016) (noting the *Federal Prison Bureau Nonviolent Offender Relief Act of 2003* passed neither legislative chamber of Congress).

↯ Cf. *Upper Skagit Indian Tribe v. Lundgren*, 138 S. Ct. 1649, 1655 (2018) (Gorsuch, J.) ("That is work enough for the day."). See further, ALR (2017) (reporting on *Diaz-Ozuna v. USA*, 16-CV-442, Doc. 7 (D. Ariz., Dec. 2, 2016)).

IN THE CIVIL MATTER OF

BROWN v. BROWN

18-CV-335

Plaintiff Brown initiated a federal suit against their sibling. See Doc. 1 at pg. 5 (alleging "intermittent harassment and stalking"). The Court sought a basis for jurisdiction as plaintiffs have the duty to affirmatively establish the Court has jurisdiction over their 'cause of action'.[ϕ]

The Constitution of the United States and its Congress determine a district court's jurisdiction.[◆] And Congress has not authorized district courts to adjudicate cases when the "amount in controversy" is less than $75,000.[א] Plaintiff Brown filled-out a generic form for injunctive relief, yet asked exclusively for $75,001. See Doc. 1 at pg. 6 (a form asking the user to: "Explain why monetary damages would not adequately compensate you ..." to which Plaintiff responded by writing under the "Relief" heading: "The Plaintiff asks for monetary damages ...").

Ultimately, the document failed to invoke the Court's jurisdiction because the majority of the alleged events transpired between 9–31 years ago and didn't state a cognizable claim. See, e.g., id. at pg. 5 (alleging "Defendant joined a religion to harass Plaintiff" and detailing the time Defendant "ended up" in Plaintiff's wedding as "The best man").[⋖]

Assuredly : IT WAS ORDERED : Plaintiff's Complaint : DISMISSED, without prejudice.

ϕ See, e.g., *Gray v. Occidental Life*, 387 F.2d 935, 937 (3d Cir. 1968) ("This jurisdictional requirement is one which must be made to appear affirmatively on the face of the complaint."). See also, *Davis v. Passman*, 442 U.S. 228, 255 (1979) (Brennan, J.) ("the pleading still must state a 'cause of action' in the sense that it must show 'that the pleader is entitled to relief.' It is not enough to indicate merely that the plaintiff has a grievance but sufficient detail must be given so that the defendant, and the court, can obtain a fair idea of what the plaintiff is complaining, *and can see that there is some legal basis for recovery*") (quoting A J. Moore, *Federal Practice* ¶ 8.13, pp. 1704–1705 (2d ed. 1975) (emphasis added)).

◆ See U.S. Const., Art. I, Sec. 8 (assigning Congress the power to "constitute tribunals inferior to the Supreme Court").

א See 28 U.S.C. § 1332(a).

⋖ See *Vance v. Vandercook*, 170 U.S. 468, 472 (1898) ("jurisdiction cannot attach, even though the damages be laid in the declaration at a larger sum" if no legal judgment could sustain the sum). See also, *First Nat. Bank v. Louisiana Highway Comm'n*, 264 U.S. 308, 310 (1924) ("The mere assertion that more than the required amount is involved is not enough where, as in this case, the facts alleged do not even tend to support the claim. [And] there is nothing to indicate that the matter sought to be enjoined would be of any pecuniary detriment to the [Defendant] or would in any way detract from the value of its property."). See further, *Caldwell v. USA*, 17-CV-007 (D. Ariz., Jan. 9, 2017) (denying relief to a *pro se* Plaintiff who failed to allege facts that could "plausibly give rise to an entitlement to [judicial] relief") (quoting *Eagle Eye v. Faader*, 16-CV-103 (D. Ariz., Sept. 1, 2016) ("expounding the *Twombly/Iqbal* pleading standard")).

IN THE CIVIL MATTER OF

EAGLE EYE v. FAADER

16-CV-103

Defendants L&M and Santa Sofia argued the Court lacked jurisdiction and, tangentially, applied for summary judgment. See Docs. 93 & 95. Defendants opined Plaintiff "conflated" claims against Defendants Faader and Espinoza with claims against Defendants L&M and Santa Sofia. See Doc. 95 at pg. 6. (alleging the case does not meet the requisite "amount in controversy" to confer diversity jurisdiction).

A United States district court can adjudicate claims substantially related to events that form the same case if at least one claim places more than the minimum jurisdictional amount in controversy.[ϰ]

Plaintiff's claim for damages due to an alleged breach of contract by Defendant Faader far exceeded the minimum jurisdictional amount. See Doc. 28 at pg. 14 (alleging damages at least $1,089,729.59).[ϕ] Plus, the Court previously determined that Defendant Santa Sofia could plausibly be considered a "mere corporate continuation" of Faader and that Plaintiff's perfected security interest against Faader may plausibly extend to Santa Sofia's assets. See Doc. 45 at pg. 3 (Order of the Court). *Ergo*, the Court's supplemental jurisdiction extended to Plaintiff's claim for conversion against Defendant L&M because L&M *allegedly* continued to possess assets—rightfully owed to Plaintiff—despite receiving due notice of a prior perfected security interest in those assets. See Doc. 45 at pg. 4.[ϟ]

Alternatively, Defendants L&M and Santa Sofia requested summary judgment on the basis that Santa Sofia is not the successor corporation of Faader and *a priori* not liable to Plaintiff. See Doc. 93 at pg. 2 (claiming Santa Sofia has paid adequate consideration for all property rented or purchased from Faader). As a corollary, Defendants argued that if Santa Sofia is not the successor corporation of Faader, then Plaintiff does not have a perfected security interest against Santa Sofia or L&M. Id.

A District Court must grant summary judgment when no genuine dispute of material fact remains and the moving party is entitled to judgment.[ϗ] A court simply determines if such a dispute exists, and does not "weigh the evidence and determine the truth of the matter."[ϒ]

Here, a genuine dispute remains regarding facts essential to discern whether Santa Sofia was a "mere continuation" of Faader.[ϙ] Plaintiff has alleged that Faader and Santa Sofia: (1) shared financial activity and bank accounts; (2) had substantially similar offices, land,

assets, employees, managers, and directors; (3) transferred intangibly valuable certifications (*e.g.*, food safety and U.S. Customs designations); and (4) represented to third-parties that the two corporations *were* the same entity. See Doc. 102 at pg. 9 (listing examples of third-parties the companies made such representations to—including Primus Labs, Walmart, and U.S. Customs).

Defendants provided invoices and bank wire receipts to demonstrate that Santa Sofia did pay sufficient consideration to Faader for the use of assets. See Docs. 93, 94, and 105. This evidence, however, provides an incomplete nature of the financial records and *reputedly* contains inconsistencies and errors. See Doc. 99 (Declaration of Rosendo Flores) (citing omitted reference numbers for relevant bank transfers, dates of payments controverted by Defendants' own statements, and evidence that payments didn't match generated invoices).

Defendants moved to Strike Plaintiff's—just cited—Declaration used to oppose the Motion for Summary Judgment. See Doc. 106 (arguing that the Declaration of Rosendo Flores "should be struck as a sham declaration"). Defendants contend that the 20-page declaration by Rosendo Flores "contradicts" an earlier 1-page answer to an interrogatory signed under oath. Id. at pg. 5.

A District Court may strike a declaration as a sham to "maintain summary judgment as integral to the federal rules."[x] The Ninth Circuit instructs courts to apply this "sham affidavit rule" "with caution" and when a logical inconsistency seems "clear and obvious."[y]

The declaration and the 1-pg. answer didn't contain any "clear and obvious" contradictions that warranted striking the document pursuant to the "sham affidavit rule." Compare Doc. 106-1 with Doc. 99. The challenged declaration relied on newly discovered evidence that required an order to compel Defendants to disclose. See Doc. 109. at pg. 7 (expressing that "rather than 'contradicting' the Interrogatory Answer, [Rosendo] Flores' Declaration provides further detail based upon the information discovered from L&M and Santa Sofia after the Interrogatory answer was drafted."). In fact, the declaration attests that even more "documents must exist ... which have not been produced by [Defendants]." See Doc. 99 at pg. 10.

After neither party initially compiled with Fed.R.Civ.P. 37, Defendant L&M motioned the Court to order Plaintiff verify that answers to discovery requests were submitted "under oath." See Doc. 90. Plaintiff subsequently remedied any defect by providing certified answers to the discovery requests without causing prejudice, rendering the motion "moot." See Doc. 97 at pg. 4.[†]

Finally, confoundingly, L&M asked the Court to reconsider an order that DENIED a motion to dismiss. See Doc. 107. The terribly untimely entreaty provided no facts unavailable when the original motion was denied; nor any evidence the order was legally incorrect.

See id. (citing LRCiv 7.2(g), which requires a motion for reconsideration be filed within 14 days of the challenged order).

Unsurprisingly, a litany of orders DENIED the motions to: dismiss, strike an affidavit, compel discovery, receive summary judgment, and reconsider.

[See U.S. Const., Art. III ("The judicial Power of the United States, shall be vested in ... inferior Courts as the Congress may from time to time ordain and establish ... [and] shall extend to ... controversies ... between citizens of different states."). See also, 28 U.S.C. § 1367 (authorizing District Courts' supplemental jurisdiction over substantially related claims).

\ See *Brown v. Brown*, 18-CV-335 (D. Ariz. July 16, 2018) ("Congress has not granted this Court the ability to adjudicate cases when the "amount in controversy" is less than $75,000.").

] See also, *Exxon Mobil v. Allapattah Services*, 545 U.S. 546, 558-59 (2005) (holding that if at least one claim meets the amount in controversy threshold, a court can exercise supplemental jurisdiction over related claims).

^ See Fed. R. Civ. P. 56(c).

_ See *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986).

` See also, *A.R. Teeters & Assocs. v. Eastman Kodak*, 172 Ariz. 324, 329 (App. 1992) (listing relevant factors in analyzing whether a successor may be liable for the former corporation's debts and liabilities—including substantial similarity in the ownership and control of the two corporations).

a *Yeager v. Bowlin*, 693 F.3d 1076, 1080–81 (9th Cir. 2012).

b See, e.g., *Tarleton v. State Farm Fire & Cas.*, 2014 WL 2126567, at *7 (D. Or. May 21, 2014).

c See also, *Brinkman v. Ryan*, 14-CV-2093, at pg. 2, n. 1 (D. Ariz., June 17, 2016) (maintaining that a "change in facts can render an issue moot").

IN THE MATTER OF

STATE AUTO v. RAMIREZ

18-CV-195

Plaintiff petition to amend the Complaint. See Doc. 15 ("seeking leave to add Steve Cota and Articia Gonzales" because of their "interest in this declaratory judgment action"). The law guides courts bestow leave to amend "when justice so requires."[d]

The Complaint sought declaratory relief under an insurance contract, against which, no claim had been alleged. See Doc. 15-2. (averring that the insured had received a "settlement demand" based on events that the insurer (Plaintiff) believes "no coverage is available under the Policy").[e]

Plaintiff argued an amended complaint was necessary to add Defendants "Articia Gonzales and Steve Cota individually, not solely as parents of JC." See Doc. 15 at pg. 3. Yet the reason Plaintiff sought to amend was: "because as parents of JC, [Steve Cota and Articia

Gonzales] have an interest in this declaratory judgment action." See id. at pg. 4.

The case already included Steve Cota and Articia Gonzales as "defendants" due to their status as JC's parents. See Doc. 1 at pg. 1 (listing Defendants as: "ARTICIA GONZALES and STEVE COTA, as parents and natural guardians to JC"). Further, as mentioned, no claim had been made against the insurance policy nor lawsuit filed based on the events described in the Complaint. See Doc. 15-2. Thus, Plaintiff didn't persuade the Court that justice *required* a pure form-over-substance amendment. See Doc. 15 at pg. 5 (noting Defendants "have had full knowledge of the lawsuit and this matter is only in the beginning stages").

Defendants raised the specter of "double recovery," but the law already prevents inequitable recovery for parents bringing actions on behalf of their minor children.[❦]

Systematically : Plaintiff's motion : DENIED, *without prejudice.*

⊗ Fed. R. Civ. Pro. 15(a)(2).

⧖ The Lodged Proposed Amend Complaint—filed pursuant to LRCiv 15.1(a)—differs from the Complaint by *exactly* one line. See Doc. 15-2 at pg. 3 (adding: "Defendants Articia Gonzales and Steve Cota are the parents of JC.").

❦ See *Estate of DeSela v. Prescott Unified Sch. Dist. No. 1*, 226 Ariz. 387, 390 (2011) (holding that "the right to recover pre-majority medical expenses belongs to both the injured minor and the parents, but double recovery is not permitted").

IN THE MATTER OF

WEBB v. PIMA COUNTY

18-CV-268

Pro se Plaintiff Travis Webb aired grievances against Pima County, the County's current Sheriff Mark Napier, former Sheriffs Clarence Dupnik and Chris Nanos, County Attorney Barbara LaWall, and Detective Jeffrey Castillo. See Doc. 1.

Plaintiff's 280-paragraph-long Complaint alleged a "Fourteenth Amendment Violation" against all named Defendants based on an encounter with law enforcement officials that resulted in Plaintiff's arrest, brief incarceration, and indictment on felony stalking charges. See id. at pgs. 9–34.

The story: Plaintiff flew from Kentucky to Arizona to contact Jill Shaw, a former romantic acquaintance. Id. at pg. 5. Hours later, police responded to a 9-1-1 call after Plaintiff showed up uninvited, on the evening of March 15, 2014, at Shaw's residence (which Shaw cohabitated in marital union) . See id. at pgs. 5–9.

When the confrontation palliated, a Pima County Deputy Sheriff requested to meet separately with Plaintiff, who obliged. Id. Based on that in-person meeting, and the aftermath of the 9-1-1 call, Plaintiff was arrested on a felony stalking charge. Id. at pg. 11.

The County presented its case against Plaintiff to a grand jury on March 25, 2018. Id. at pg. 16. "Detective Castillo was the sole witness for the State at the Grand Jury Hearing." Id. Plaintiff claimed Detective Castillo imparted false information—obtained from Shaw—to the Grand Jury as "fact." Id. Specifically, that Detective Castillo's vague answers to questions about Plaintiff and Shaw's past relationship "incorrect[ly]" characterized the truth, and that a sufficient investigation into the matter would have revealed the actual extent of Plaintiff and Jill Shaw's relationship, and their contact over the years. Id. Ultimately, "the jurors returned a true bill by a 14-2 vote" and Plaintiff was indicted on the felony stalking charge. Id. at pg. 19.

After several pretrial proceedings in state court—including Plaintiff's arraignment, multiple case management conferences, and Plaintiff's motion to remand the case back to the grand jury to redetermine probable cause—the state court granted the County's motion to dismiss the case against Plaintiff. Id. at pgs. 20–25. On May 25, 2018, Plaintiff submitted this action against Defendants pursuant to 42 U.S.C. § 1983. Id. at pg. 35.

The gist of the Complaint contended the state government's subsequent investigation into the case was based on false information provided by Shaw, and that officials ignored or discredited Plaintiff's evidence and pleas of innocence. Id. at pgs. 11–16. Plaintiff asserted that no one met with Shaw in-person—and Detective Castillo only interviewed Shaw by telephone to obtain a victim statement. Id. at pg. 17.

The relevant text of 42 U.S.C. § 1983 reads: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... 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.

The Supreme Court has held: a valid claim under § 1983 must allege the plaintiff suffered a specific injury as a result of specific conduct by a defendant and show an affirmative link between the injury and the conduct of that defendant.[ᔑ] Further, a defendant's position as the supervisor of persons who allegedly violated a constitutional rights does not impose liability under § 1983.[ᔑᔑ] Rather, "a plaintiff must plead that each Government official defendant, through the official's own individual actions, has violated the Constitution."[ᐃ] A complaint must contain "facts, not simply

conclusions, that show that an individual was personally involved in the deprivation of [the] civil rights."[⌘] And although *pro se* pleadings are liberally construed,[ϕ] conclusory and vague allegations do not support a cause of action.[⊞]

Plaintiff failed to satisfied Rule 8(a)(2)'s requirement of "a short and plain statement of the claim showing that the pleader is entitled to relief."[$] Liberally construed—Plaintiff second-guessed how Detective Castillo investigated the incident and the manner in which that investigation proceeded. *See* Doc. 1 (alleging that Detective Castillo may have misinformed the Grand Jury on relevant facts, which Plaintiff attributes to the Detective's subpar investigation and Jill Shaw's fabrications). Plaintiff didn't specify *which* constitutional privilege or right(s) any Defendant allegedly violated; or how any of the Detective's actions rendered the County or its employees liable—personally, or in an official capacity.[⊜]

Appropriately : IT WAS ORDERED : Plaintiff had 30 days to file an amended complaint.[⟠] Further, the Clerk of the Court was ordered to dismiss the action, without further notice, if Plaintiff failed to timely comply with the Order.[☛]

ᔓ See *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

ℜ See *Monell v. Dep't of Soc. Servs. of New York*, 436 U.S. 658 (1978). See also, *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); and *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

∆ *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

⌘ *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

ϕ *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

⊞ See *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982) (explaining that a liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled).

$ Fed. R. Civ. P. 8(a).

⊜ See *Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 404 (1997) (holding "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights").

⟠ See, e.g., *Stowe v. Arizona Workforce Connection*, 16-CV-533 (D. Ariz., Aug. 11, 2016) (dismissing a complaint filed pursuant to 42 U.S.C. § 1983 that "failed to even specify *which* 'civil right' Plaintiff was allegedly deprived of by Defendants") (emphasis in original).

☛ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order).

SURPRISE! The infamous Albert L. Brinkman is back!

Brinkman v. Ryan

14-CV-2093

August 3, 2018

Plaintiff's (long-sought, court-appointed) counsel moved to withdraw. See Doc. 288 (citing "irreconcilable conflicts of opinion on how to proceed with the case"). 😶

Plaintiff's *pro se* response claimed "irreconcilable conflict" existed over counsel's refusal to draft a motion for leave to amend or to consolidate Plaintiff's pending cases. See Doc. 298 at pg. 2. 😐

That shouldn't have been an issue. The Court already ruled—multiple times—that Plaintiff couldn't file an Amended Complaint and the case could only proceed on the single remaining claim. See Doc. 295 (Order of the Court) (denying Plaintiff's motion to reconsider an order denying leave to amend). 😑

Counsel alleged their withdrawal wouldn't cause prejudice because Plaintiff had been litigating this matter *pro se* for over three years and the case was not "on the cusp of trial." See Doc. 300. 🤔

But Plaintiff avered to now thoroughly understand the Court wouldn't allow an amended complaint; hence all irreconcilable differences ended. See Doc. 298 at pg. 3. Plaintiff further claimed lack of counsel would severely prejudice the ability to appear in court or conduct discovery because Plaintiff remained incarcerated out-of-state—in "max-lockdown" Id. at pg. 4. 😬

A court cannot grant a counselor's motion to withdraw without learning for certain whether "irreconcilable" differences do exist. 🧐

Resolutely : IT WAS ORDERED : Plaintiff's counsel MUST provide the Court with specifics regarding any remaining irreconcilable differences between Plaintiff and counsel that would prevent counsel from zealously representing on Plaintiff's behalf—before August 17, 2018

The Court continued <<unabated>> for Plaintiff had also filed two *pro se* "motions." See Docs. 296 & 299.

The first motion—docketed in each of Plaintiff's pending cases across the federal courts, including this matter—requested appointment of counsel or, alternatively, a "stay." See Doc. 296.

The second motion requested the Court place 'that very document' on the record to preserve issues for appeal. See Doc. 299. The motion griped about appointed counsel; but as Defendants pointed out in response: the "motion is redundant in many respects, and the Court can offer [Plaintiff] no further relief. If [Plaintiff's] intent was to preserve issues on appeal, the Court [docket] has accomplished that..." See Doc. 301.

The Court admonished Plaintiff—still represented by counsel—to communicate with the Court only through their counsel unless instructed otherwise. The Court also indicated it might ignore any non-compliant filing. See, e.g., Doc. 257 (citing LRCiv 7.3(m)).

Plaintiff's *pro se* motions were : DENIED.

The matter was revisited on Aug. 20, 2018 when ...

Plaintiff's counsel requested to file an *ex parte* second reply to the motion to withdraw as counsel. See Doc. 305 (explaining the request is unopposed as to not prejudice Plaintiff).

The *ex parte* document—lodged with the Court—provided ample reason to grant Plaintiff counsel's motion to withdraw as counsel. See Doc. 306. (concluding that it is in Plaintiff's best interest to grant counsel's motion).

The Court deduced any *de minimis* prejudice to the litigants was outweighed by the justifications for granting the motion. See Doc. 300 at pg. 2 (noting Plaintiff has "litigated this case *pro se* for over 3 years prior to Counsel's appearance" and " Counsel's withdrawal would cause no prejudice to any litigant").

Reluctantly : the Court ORDERED : Plaintiff counsel's motions to file *ex parte* and to withdraw from the case : GRANTED.

★Plaintiff returned to *pro se* status and was reminded to comply with the Rules of the Court.★

IT WAS FURTHER ORDERED : Plaintiff's motion to extend pretrial deadlines : GRANTED.

Stay tuned: the new pretrial deadlines are:

End of Discovery—September 17, 2018
Dispositive motions—October 17, 2018
Joint Proposed Pretrial Order—November 16, 2018 (or 45 days after the resolution of dispositive motions).

CHAPTER FOUR

CONSTITUTIONAL HARVEST

Reaping the blessings of the past, the final installment of ALR enunciates, with acts of grace, the future of metaconstitutional jurisprudence.

Arizona Law & Reporter

Constitutional Harvest

Gil v. U.S. Customs and Border Protection
Lee v. Shartle
Segal v. Wright Medical Group
Rivera v. Federal Bureau of Prisons
Vail v. The Hartford
Artzi v. Greenbriar Equity Group
Donnelly v. Arizona
Guarantee Company v. Falcone Brothers
Light v. Cochise County Superior Court
+10 Acts of Justice

Gil v. U.S. Customs and Border Protection

Case №. 17-CV-593

A PLAINTIVE cry emanated out the ether. See Doc. 1. The mighty federal government had seized a 2005 Jeep Grand Cherokee purportedly involved with illegally importing controlled substances, and the alleged owner demanded its return. See Doc. 6-1 at pgs. 2–3. But a preliminary "motion"—to vacate a forthcoming forfeiture order of the U.S. Department of Homeland Security—failed to establish the Court's jurisdiction. See Doc. 5.

The motion—filed pursuant to Fed. R. Civ. Pro. 55 & 60—claimed a constitutional right to "notice" of the forfeiture proceedings. See Doc. 1. Yet, the government had followed the codified procedure for posting a public notice, and ostensibly Plaintiff was put on notice—by proof of this case existing—before a final order had been entered by the administrative judge. See Doc. 1[1]

Plaintiff demanded a hearing. See Doc. 1. The law established no right to a federal district court hearing when administrative proceedings were on-going.[2] The Court provided Plaintiff a chance to correct the faulty pleadings. Id. But Plaintiff's second attempt also failed to invoke the Court's jurisdiction. See Doc. 7.[3]

In the end, Plaintiff never produced the order it sought to vacate, nor alleged proper administrative remedies had been pursued, and crucially, never presented any evidence that Plaintiff actually owned the vehicle. See Doc. 5. . . . Silence, again, descended upon the Courthouse. See Doc. 8 (Judgment) ("Plaintiff to take nothing, and the complaint and action are dismissed for lack of jurisdiction.")[4]

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[1] See 18 U.S.C. § 983(e) (delineating the requirements for a motion to set aside a forfeiture order)

[2] See *id.* at (e)(5) ("A motion filed under this subsection shall be *the exclusive remedy* for seeking to set aside a declaration of forfeiture under a civil forfeiture statute.") (emphasis added). See also, *United States v. Eight Thousand Eight Hundred & Fifty Dollars in U.S. Currency*, 461 U.S. 555, 563 (1983) ("*Pearson Yacht* clearly indicates that due process does not require federal Customs officials to conduct a hearing before seizing items subject to forfeiture.").

[3] See *United States v. $31,000.00 in U.S. Currency*, 872 F.3d 342, 348 (6th Cir. 2017) (explaining that claimants must carry the burden of proof that they "have Article III standing").

[4] Cf. Erich Maria Remarque, *All Quiet on the Western Front*, CH. SIX (trans. A W. Wheen, 1929) ("A great quietness rules in this blossoming quadrangle, the sun lies warm on the heavy grey stones....").

Lee v. Shartle

Case №. 18-CV-199

FERRIS LAVELLE Lee, while in federal custody, petitioned for the Great Writ of Habeas Corpus. See Doc. 6. The Petition raised one cognizable ground for relief, so the Court ordered a response from Warden J.T. Shartle. Id. The matter was referred to Magistrate Judge Bernardo P. Velasco—pursuant to Local Rules of Civil Procedure 72.1 & 72.2—for further proceedings and a report and recommendation (R&R). Id.

Judge Velasco issued two orders allowing each side extra time to brief the case. See Docs. 10 & 14. Once ripe for a ruling, Judge Velasco reported that the Court was without jurisdiction to adjuge the Petition, and recommended the Court—after its independent review of the matter—dismiss the case. See Doc. 17.

Over no objections, the Court—after its own review of the record[1]—agreed the R&R correctly stated the law: Petitioner had not "'satisfied the requirements of the escape hatch' of 28 U.S.C. § 2255(e)," *ergo* the Court lacked jurisdiction "to adjudicate Ferris Lavelle Lee's Petition for a Writ of Habeas Corpus." Doc. 18 (quoting Judge Velasco's R&R). The R&R was ACCEPTED and ADOPTED, the petition DISMISSED, and the case CLOSED. See Doc. 19 ("ORDERED AND ADJUDGED").

[1] See *Jacobson v. Peter Piper Pizza, Inc.*, 2018 WL 3708043, at *1, n. 1 (D. Ariz. Aug. 3, 2018) (Soto, J.) ("The Court reviews for clear error the unobjected-to portions of the Report and Recommendation.") (citing *Johnson v. Zema Systems Corp.*, 170 F.3d 734 (7th Cir. 1999), and *Conley v. Crabtree*, 14 F. Supp. 2d 1203 (D. Or. 1998)).

Segal v. Wright Medical Group

Case №. 17-CV-355

A SURGICALLY implanted device produced by Wright Medical Group (Defendant) allegedly contained "excessive" metallurgical impurities and caused Segal unspecified "injuries" that would be detailed in a forthcoming filing. See Doc. 1 (claiming ten different "theories of recovery"). The Court issued its then-standard case management order explaining the Mandatory Initial Discovery Pilot (MIDP) framework and returned to repose. See Doc. 5 (ordering compliance with Fed. R. Civ. P. 26).

Days later, Segal implored the Court for an extra 45 days to serve Defendant and comply with the Court's order. See Doc. 6 (claiming to require the favor

"due to [Defendant's] numerous identities and corporate structures"). The "experimental MIDP program"—designed "to help streamline case management to quickly resolve disputes under rule of law"—guided the Court's discretion See Doc. 7.

The Court observed that Segal had not tried to follow Fed.R.Civ.P. 4(d)(1) "before filing a request to delay this litigation," but more importantly, pointed-out that Plaintiff still had not filed an amended complaint as promised. See id.[1] The Court provided twenty extra days for Plaintiff "to file an amended complaint alleging a case of injustice that this Court [could] remedy." Id. at pg. 2.

Months later, it became clear that Plaintiff had abandoned the case and, with no jurisdiction over Defendant,[2] the Court exercised its *sua sponte* powers and dismissed the matter. See Doc. 8.[3]

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[1] See further, *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014) (describing the *Iqbal/Twombly* 2-step).

[2] See *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) ("A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed.R.Civ.P. 4.").

[3] See, e.g., *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984) (holding that it "is within the inherent power of the court to *sua sponte* dismiss a case for lack of prosecution" and listing factors to consider before dismissing a matter). See further, *Nicklaw v. Citimortgage, Inc.*, 839 F.3d 998, 1001 (11th Cir. 2016) ("There is no case or controversy [...] when there are no adverse parties with personal interest in the matter.") (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881(1983)).

Rivera v. Federal Bureau of Prisons

Case №. 18-CV-53

$350.00 = the amount the Tucson federal courthouse charges to adjudicate a case. See Doc. 3. Prisoners must pay an additional $50 administrative filing fee before the Court will adjudicate allegations against government employees or entities. Id.

Rivera, an imprisoned plaintiff, never sent the filing fees or "a complete Application to Proceed In Forma Pauperis [IFP]." Doc. 3. The Court noted the deficiencies and mailed Rivera "a court-approved form" for a prisoner applying for IFP status. Id. The Court also issued several warnings, including what to do if Plaintiff's address changed. Id. (warning that "failure to comply may result in dismissal of this action").

Soon after, a notice of change of address indicated Rivera was no longer imprisoned. See Docs. 6&7. So when Rivera returned the IFP application completed on the prisoner form, the Court terminated the pending IFP application as moot[1] to save Rivera from paying the fee required of all prisoners (regardless of IFP status), and mailed out a new court-approved form for non-prisoners to apply for IFP status. See Doc. 9.

A month later, the Court received—not the completed form—but a motion to vacate the Court's order, filed by an attorney appearing on Rivera's behalf. See Doc. 10. Allegedly, Rivera had violated the terms of probation and was back in prison at the time the Court issued its order declaring the IFP application moot. See id. But the motion didn't prove the Court's order was legally incorrect[2] ∿ simply that Rivera failed to adhere to LRCiv 83.3(d), despite the Court's explicit warnings about any change of address. Id.

The Court denied the motion, required Rivera to pay the prisoner filing fee, and admonished Plaintiff to comply with Fed. R. Civ. Pro. 11. See Doc. 12. Rivera nor counsel were ever heard from again. See Doc. 13 ("JUDGMENT IN A CIVIL CASE").

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[1] See 28 U.S.C. § 1915(b)(1) ("if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee," even if the prisoner is permitted to proceed in forma pauperis). There is no requirement that non-prisoners pay the full amount of the filing fee if they are permitted to proceed in forma pauperis. See Doc. 9 at pg. 2, n. 2.

[2] See *Vera v. Ryan*, 15-CV-613, Doc. 43, at pg. 3 (D. AZ. September 12, 2017) (conveying that a court will generally deny a motion for reconsideration absent proof of a legal error or manifest injustice). See also, *Fimbrez v. McMillan*, 17-CV-267, Doc. 27, pg. 1, n. 1 (D. AZ. November 20, 2017) (quoting LRCiv 7.2(g)(1)).

Vail v. The Hartford

Case №. 17-CV-273

WINDS FROM a savage summer monsoon damaged Plaintiff's real property. See Doc. 1 (reporting wind gusts over 60 mph). At the end of a four-year insurance claims process, Plaintiff—still upset with the process and outcome—filed suit in state court. See id. at pg. 2. Plaintiff alleged that The Hartford (Defendant) breached an insurance contract that covered the incident and that Defendant also violated their duty of good faith during the claims process. See id. (alleging Defendant failed to carry out its contractual obligations and acted in bad faith on multiple occasions).

Defendant removed the case to federal court. See id. at pg. 3 (claiming the Court had jurisdiction under 28 U.S.C. § 1332). The Court immediately set the matter for a scheduling conference and ordered that the parties file a joint Case

Management Plan that complied with the then-still-relatively-new Mandatory Initial Discovery Pilot (MIDP). See Doc. 11.

The Court's order explicitly raised 16 issues the parties had to address in the plan. Id. But the parties submitted a plan that inexplicably failed to engage with the Court's order. See Doc. 12. The submitted plan, instead, responded to the parties' own unique set of 19 discussion points. Id. The limited and immaterial information in the submitted plan thwarted the Court's goals for the scheduling conference,[1] so the conference was vacated until the parties provided a compliant plan. See Doc. 16.

A still deficient plan arrived 15 days later. See Doc. 17. The plan failed to provide an update on settlement negotiations—as expressly requested by the Court—but at least the plan contained enough information to reschedule the scheduling conference. See Doc. 18. The Court enjoined the parties to reconvene and provide an update on settlement progress. See id.

Shockingly, three months into a case governed by the MIDP, the parties simply submitted a cursory notice that stated "[d]iscovery is nascent" and the parties couldn't "fully assess settlement prospects at this time." Doc. 19. The Court was nonplus. See Doc. 20 (quoting General Order 17-08). After recapping the history of the parties' failures to follow multiple court orders and rules, the Court scoured the previous filings and sought answers to factual issues that it found most relevant to nudge the parties towards settlement. See id. at pg. 2. On 9/11/17, three days before the rescheduled Pretrial Scheduling Conference, the parties filed an update on settlement talks and an amended joint Case Management Plan, and supplemented their MIDP responses. See Docs. 21–24.

At the Pretrial Scheduling Conference, the Court accepted the parties' extended proposed pretrial deadlines and, in exchange, insisted that the parties update the Court on the progress of settlement discussions in two months and set a date for the parties to provide compelling reasons on whether the matter should be referred to a magistrate judge to conduct a court-ordered settlement conference. See Doc. 25 (citing LRCiv 83.10).

Tragedy befell the case when the hyperactive hurricane season of 2017 caused both counsel personal and logistical setbacks; therefore the Court pushed back the deadlines again. See Doc. 26 (noting "the recent hurricanes and other major natural disasters") and Doc. 27 (ordering an updated report of discovery within 45 days). The Court reiterated that "extensions are strongly discouraged" under the MIDP;[2] and tried to gracefully shepard the parties towards settlement by bringing attention to cognizable damages and the Court's own resources. See Doc. 27.[3]

The parties finally saw the light on the road to Damascus. See Doc. 29 (noting that the "parties have agreed to schedule a mediation").[4] And without further judicial involvement, they "reached a settlement in principle," and promised to

promptly file a Notice of Dismissal. See Doc. 32 (connoting the Notice would be filed "within sixty days"). But sixty days came and went without any word from the parties. Had the settlement been finalized? Did an active controversy exists? The Court queried whether the case should be dismissed. See Doc. 33.[5]

Spurred to action, the parties quickly filed a joint stipulation to dismiss the case "with prejudice, each party to bear its own costs and attorneys' fees." See Doc. 34. The Court ratified the proffer, and the Clerk entered judgment. See Docs. 35 & 36.

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[1] See, e.g., *Hernandez v. Rivera*, No. 16-CV-343 (D. Ariz., Oct. 17, 2016) (postponing a Pretrial Scheduling Conference until the parties provided enough information for the discussion to efficiently aid justice). See also, *RCT v. Eli Lilly*, No. 16-CV-191 (D. Ariz., April 3, 2017) (reiterating that attorneys "owe a duty ... to make a full and fair disclosure of their views as to what the real issues at the trial will be") (quoting *Cherney v. Holmes*, 185 F.2d 718, 721 (7th Cir. 1950) (Duffy, J.)). See further, William W. Schwarzer, et al., *The Elements of Case Management*, Federal Judicial Center, at pg. 3 (3rd Ed. 2017) (instructing that a joint Case Management Plan "requires lawyers to prepare for the conference, to think about the case, and to reach agreements[, and eliminate] meritless claims or defenses").

[2] See *Segal v. Wright Medical Group*, 17-CV-355 (D. Ariz., Oct. 18, 2017). See also, *Blast Deflectors v. Duran*, 17-CV-387, at p. 3 (D. Ariz., Oct. 10, 2017).

[3] See further, *Owens v. Seals Easter*, 17-CV-519, Doc. 10 at pg. 3, n. 8 & 12 (D. Ariz., October 30, 2017) ("explaining that 'Judges should focus attention on cognizable damages' [...and...] a judge's questions [about settlement] offer a graceful opening") (quoting Schwarzer, *The Elements of Case Management*).

[4] See *Nova Vulgata Bibliorum Sacrorum Editio*, Actus Apostolorum, Ch. 9, Ln. 3 ("*Et cum iter faceret, contigit ut appropinquaret Damasco; et subito circumfulsit eum lux de caelo*").

[5] See further, *Henderson v. Duncan*, 779 F.2d 1421, 1425 (9th Cir. 1986) (affirming the inherent power of a district court to manage its docket).

Artzi v. Greenbriar Equity Group

Case №. 18-CV-73

In THIS otherwise forgotten case: the Court reminded everyone to comply with the Mandatory Initial Discovery Pilot (MIDP) and ordered a joint Case Management Report. See Doc. 6. The litigants jointly requested an extension to the Court's pretrial deadline, but, lacking compelling reasons, the request was denied. See Doc. 10. Next, the litigants jointly filed for a stipulated protective order, which the Court adopted, but also alerted counsel—as public officers—to stay vigilant and "alert the Court of anything designated 'confidential' from 'public disclose' that may violate public policy." See Doc. 12.[1]

Disconcertedly, the litigant's subsequent joint report: (1) "*separately* listed 41 factual and legal 'questions'"; (2) proposed a discovery deadline beyond four months without any providing any "explanation showing why a lengthier

period for discovery [was] necessary"; and (3) failed to propose a date for the Pretrial Scheduling Conference. See Doc. 17.[2]

The Court ordered a report that complied with the Rules and nudged the parties towards "settlement discussions." *Id.* (citing *Don v. Omni Hotels*, 16-CV-599 (D. Ariz. 2016-17). The parties then met, settled, and stipulated to dismiss the case. See Docs. 20, 21, & 22.

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[1] See also, *Hurd v. Hodge*, 334 U.S. 24, 34–35 (1948) (Vinson, CJ) ("The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents.").

[2] See also, *Vail v. The Hartford*, 17-CV-273 (D. Ariz., Sept. 6, 2017) (holding that a joint Case Management Report that "failed to provide any joint facts, or even agree on the legal and factual issues genuinely in dispute"—deficient).

Donnelly v. Arizona

Case №. 17-CV-461

DONNELLY ALLEGED the State of Arizona and the Hartford Insurance Co. committed statutory violations. See Doc. 1 (claiming each Defendant violated the Employee Retirement Income Security Act). After two judges recused from the matter, see Docs. 5 & 6;[1] the Court ordered the U.S. Marshals help effectuate service. See Doc. 7 (filed pursuant to F.R.C.P. 4 and 28 U.S.C. §1915).

Once notified, the Hartford waived service of the summons and assured Plaintiff that the State was not liable in any way. See Doc. 8 (Waiver of Service of Summons) and Doc. 9 (Plaintiff's motion to dismiss the State of Arizona). Thankfully, everyone quickly settled the entire matter without much judicial entanglement. See Doc. 13. Leaving no active case or controversy ∿ the matter was closed. Doc. 15[2]

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[1] Citing 28 U.S.C. § 455 and the Code of Conduct for United States Judges.

[2] Citing Transamerica Life Insurance v. Quarm, 16-CV-239 (D. Ariz., July 7, 2016) (citing *Anthony Noel v. Crane Medical Transportation*, 16-CV-47 (D. Ariz., June 17, 2016)).

Guarantee Company v. Falcone Bros.

Case №. 18-CV-157

THE GUARANTEE COMPANY issued the Falcone Bros., *et. al.*, an indemnified construction bond. SoMetHiNg 🤷‍♀️ went wrong on the Flacone Bros.' construction project, and Guarantee Co. received a demand for payment

against the bond from a 3rd-party. After the Flacone Bros. failed to respond to repeated demands to satisfy a state court judgment, Guarantee Co. filed suit in federal court to shield itself from liability. See Doc. 1.

But the state court judgment was not final within the state court system.[1] And a Federal Court cannot adjudicate an unripe claim.[2] Further, the Complaint didn't properly specify the citizenship of relevant entities for jurisdictional purposes. See Doc. 1 at pg. 2 (naming Defendants "Montedoro, LLC" and "Naduri, LLC).[3]

So the Court dismissed the Complaint with leave to amend. See Doc. 8. When the Court received an amended complaint, it was quickly followed by a motion to dismiss—or in the alternative, stay the proceedings—because the state court judgment was still not final. See Docs. 9 & 13.

The litigants then informed the Court that they had jointly stipulated to extend the deadlines for filing a response and reply to the motion to dismiss. See Doc. 16. That stipulation, tho, violated the Mandatory Initial Discovery Pilot (MIDP) because under that adjudicative framework "only the Court can change pretrial deadlines."[4] Still, in the spirit of equity and judicial economy, the Court granted the litigants extended deadlines. See Doc. 17. And sure enough, by the time Guarantee Co. filed their response, the Arizona Supreme Court had denied the Falcone Bros.' petition for certiorari to appeal the state court judgment. See Doc. 23.

And altho the Arizona Court of Appeals' mandate—finalizing the judgment against the Falcone Bros.[5]—had not yet issued; the Court denied the Falcone Bros.' motion to dismiss after they failed to file a reply because adjudicating the matter didn't threaten to create any duplicative work or interfere with the state court proceedings. See Doc. 24 (reasoning that adjudicating the matter wouldn't have interfered with the state court proceedings or created any duplicative work).[6] The litigants were then ordered to file a joint case management report. Id.

When the Falcone Bros. failed to formally answer the Amended Complaint, Guarantee Co. requested the Clerk of the Court enter a default. See Doc. 25. The Clerk is authorized to enter a default when a litigant fails to "plead or otherwise defend" against a request for affirmative relief.[7] Here, the Falcone Bros.' had manifested intent to defend the action by filing a motion to dismiss and by participating in a joint case management report.[8]

That case management report did reveal that the Falcone Bros. had failed their duties under the MIDP. *But* since the case had "very limited, if any, genuine factual or legal disputes," *and* everyone agreed a case settlement conference should be set, *so* the Court DENIED Guarantee Co.'s motion to enter default and REFERRED the matter to Magistrate Judge Eric J. Markovich for a

settlement conference. See Doc. 27 (citing LRCiv 83.10). The parties did not settle. See Doc. 33.

The Court ordered a new case management report. See Doc. 34. Instead, Plaintiff filed a premature motion for summary judgment which was perfunctorily denied because Plaintiff had failed to first comply with the Court's MIDP procedures. See Doc. 39. In the parties' next attempt at a case management report, Plaintiff stated "there are no factual or legal issues genuinely in dispute," while Defendants claimed that "some factual or legal issues exist," but failed to specify them. See Doc. 43. The parties did agree on one thing: "the dispositive motions deadline should be extended." Id.

A little over a month later, Plaintiff again notified the Court it intended to seek summary judgment. See Doc. 47 (setting a "a pre-motion conference to narrow issues for briefing"). To prepare for the conference, the Court ordered the parties to "meet in-person and discuss" certain areas of factual tension. Id. On the preordained day: the parties telephonically convened in the Court's antechamber; continued to talk past each other; but ultimately agreed to another (final) extension to the dispositive motions deadline. See Doc. 48. The Court now waits, with bated breath. To be continued . . .

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[1] See *CEMEX Construction v. Falcone*, CV-17-0347-PR (Ariz. Supreme Court) (listing the current case status as "Pending" on March 30, 2018).

[2] See Erwin Chemerinsky, *Federal Jurisdiction*, Part I: Constitutional and Statutory Limits on Federal Court Jurisdiction, CH. 2: JUSTICIABILITY: CONSTITUTIONAL AND PRUDENTIAL LIMITS ON FEDERAL JUDICIAL POWER, § 2.4.1 Ripeness, at pg. 119 (6th ed. 2012) ("Specifically, the ripeness doctrine seeks to separate matters that are premature for review because the injury is speculative and may never occur from those cases that are appropriate for federal court action.") (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967).

[3] See *Johnson v. Columbia Properties Anchorage*, 437 F.3d 894, 899 (9th Cir. 2006) (for purposes of establishing diversity jurisdiction, an LLC is considered "a citizen of every state of which its owners/members are citizens"). See also, 28 U.S.C. § 1332(a).

[4] *Blast Defectors v. Duran*, 17-CV-387 (D. Ariz., Jan. 24, 2018). See also, *RCT v. Eli Lilly*, 16-CV-191 (D. Ariz., Nov. 18, 2016) (requiring that "any future request for an extension of a Court deadline must be filed as a 'Motion'; and the motion must include legitimate, persuasive reasons for granting the request").

[5] See ALR: Double Duty // Double Columns, *Martinez v. Ryan*, 15-CV-566, pgs. 6–7, n. 1 (quoting *Celaya v. Stewart*, 691 F. Supp. 2d 1046, 1054 (D. Ariz. 2010) ("a decision of the Arizona Court of Appeals is final upon the issuance of the mandate")).

[6] See also, *Contractors Bonding and Insurance v. Lundgren Homes*, 16-CV-297 (D. Ariz. June 20, 2016) (explaining that: comity and reducing duplicative work dictate how a U.S. District Court should exercise discretion to dismiss or stay a matter that has related paralell state court proceedings). See further, *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

[7] Fed. R. Civ. Pro 55(a).

[8] See, e.g., *Wendt v. Pratt*, 154 F.R.D. 229, 230 (D. Minn. 1994) ("Where a defendant appears and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default, in accordance with the policy of allowing cases to be tried on the merits.") (citing *Lee v. Brotherhood of Maintenance of Way Employees*, 139

F.R.D. 376 (D. Minn. 1991), citing 10 Charles A. Wright, *et. al.*, FEDERAL PRACTICE and PROCEDURE § 2682, at pg. 411 (2nd ed. 1983)).

Light v. Cochise County Superior Court

Case №. 17-CV-381

PLAINTIFF SOUGHT—*only*—a Writ of Mandamus. See Doc. 1 (alleging a Fourteenth Amendment violation). *Ratiō dēcidendī*: District Courts cannot entertain an original petition for a writ of mandamus.[1] Even if the petition alleges deprivation of a constitutional right, district courts lack the power to issue the writ as an original matter.[2] *Iūdicō*: dismiss the petition for lack of jurisdiction. See Docs. 5 & 6.[3]

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[1] *Barber v. Hetfield*, 4 F.2d 245, 246 (9th Cir. 1925) (stating that it is "settled beyond all controversy that a District Court of the United States has no jurisdiction of an original action in mandamus, unless the writ is issued in aid of its jurisdiction in a case already pending, wherein jurisdiction was acquired by other means and by other process"). See also, Fed.R.Civ.P. 81(b) (abolishing the writ of mandamus in Federal District Courts).

[2] *Covington & C. Bridge Co. v. Hager*, 203 U.S. 109, 111 (1906) (holding that "courts of the United States have no power to issue a writ of mandamus in an original action brought for the purpose of securing relief by the writ, and this result is not changed because the relief sought concerns an alleged right secured by the Constitution of the United States")

[3] See further, 15 *Cyc. of Federal Proc.* § 84:45 (3d ed.) ("Where mandamus is the only relief sought, and no other basis for jurisdiction is alleged, no jurisdiction is conferred, and there is no judicial power to issue orders in the nature of mandamus.").

. . . PLUS . . .

10 ACTS OF JUSTICE

Act 1. THE COURT did the "*Iqbal* 2-step" and dismissed a Complaint against the U.S. Postmaster General, *et. al.*, because it failed to satisfy Rule 8(a). *Gourdin v. Brennan*, 19-CV-271, Doc. 6 (June 5, 2019) (holding: the Complaint "does not state a plausible claim for relief").[*]

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* Quoting *Webb v. Pima County*, 18-CV-268 (D. Ariz. June 6, 2018) ("although pro se pleadings are liberally construed ... conclusory and vague allegations do not support a cause of action").

Act 2. THE COURT explained it couldn't adjudicate a facial challenge to the Controlled Substances Act because Plaintiff lacked constitutional standing. *Harris v. U.S.*, 19-CV-299, Doc. 7 (June 7, 2019) (holding: "the Court lacks jurisdiction to adjudicate the Complaint").[*]

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* Citing U.S. Const. Art. III; *Whitmore v. Arkansas*, 495 U.S. 149, 154–55 (1990); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992); *Allen v. Wright*, 468 U.S. 737, 750–51 (1984); *Liverpool, N.Y. & P.S.S. Co. v. Emigration Comm'rs*, 113 U.S. 33, 39 (1885); and *Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923).

Act 3. THE COURT offered Defendant redemption and bestowed a sentence of three years probation for having possessed marijuana "with Intent to Distribute." *USA v. Martinez*, 18-CR-2579, Doc. 42 ("Judgement in a Criminal Case") (August 9, 2019) (varying downard over the objection of the government, while simultaneously disproving Defendant's tattoo which read: "Only God Can Judge Me").[*]

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* But see, Tupac Shakur, *All Eyez on Me*, Only God Can Judge Me (1996) ("Recollect your thoughts don't get caught up in the mix").

Act 4. THE COURT expedited the sentencing date of a Defendant who had pled guilty to Illegal Reentry and had been in federal custody over 100 days; the pronouncement: Time Served + 12 months of Supervised Release. *USA v. Colin-Pizano*, 19-CR-1364, Doc. 20 (August 7, 2019) (granting Defendant's Motion to Expedite);[*] and Doc. 23 (August 12, 2019) (upholding 8 U.S.C. § 1326(a)).

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* See generally, Max Radin, *Law as Logic and Experience*, at pg. 141 (1940) (translating: *ius est ars boni et æqui*" as: "law [is] the art of achieving justice") (quoting Domitius Ulpianus, citing Publius Juventius Celsus Titus Aufidius Hoenius Severianus, in *The Digest Of Justinian*, Vol. I, Bk. I, CH. 1: JUSTICE AND LAW) (reiterating: justice is the art of equity).

Act 5. THE COURT granted Plaintiff a chance to amend a legally deficient complaint of general discrimination ൹ everyone settled. *Stowe v. Arizona Workforce Connection*, 16-CV-533, Doc. 7 (August 11, 2016) (necessitating: 42 U.S.C. § 1983 requires a plaintiff specify which civil right has been allegedly abridged);[*] and Doc. 17 (February 23, 2017) (ORDER DISMISSING CASE).

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* Quoting *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2321 (2016) (Thomas, J., dissenting) (decrying "the Court's habit of applying different rules to different constitutional rights").

Act 6. THE COURT sanctioned Plaintiff's pro se request to file electronically, denied a motion for default judgement, and dismissed the case when Plaintiff never responded to the government's claim that the Court lacked jurisdiction. *Kushel v. Marana Health Center*, 17-CV-43, Doc. 8 (February 10, 2017) (publicizing that e-filing by pro se parties "is generally disfavored in this Jurisdiction," but granting an exception because Plaintiff attested to possess the requisite "technical equipment and knowhow"); Doc. 19 (April 10, 2017) (recognizing the U.S. government as an intervenor);[*] and Doc. 23 (May 22, 2017) (holding Plaintiff failed to administratively exhaust their tort claim).

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* Citing Fed. R. Civ. P. 24(c); *United States v. Kirn*, 76 F. App'x 102, 104 (7th Cir. 2003); and *Schotz v. Apker*, 13-CV-2395 (D. Ariz., February 10, 2017) ("The judicial preference for adjudication on the merits goes to the fundamental fairness of the adjudicatory process.") (quoting *Oberstar v. F.D.I.C.*, 987 F.2d 494 (8th Cir. 1993)).

Act 7. THE COURT asked if an interpleader action should be transferred to the Western District of Texas, ironically,[*] citing *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*; so Plaintiff voluntarily withdrew the complaint. Transamerica v. Quarm, 16-CV-239, Doc. 12 (June 23, 2016) (calling for a response to Defendant's motion to transfer venue pursuant to 28 U.S.C. § 1404(a)); and Doc. 14 (July 7, 2016) (acknowledging: "the Court is without jurisdiction in this interpleader matter, as no Defendants reside within the judicial district").

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* Cf. Neil M. Gorsuch, *Law's Irony*, Harvard Journal of Law & Public Policy, Vol. 37, No. 3 (2014) (observing the irony that, despite postmodern cynicism, rule of law permeates our life like life-giving water does David Foster Wallace's fish).

Act 8. THE COURT, after 108 months + 25 days, reduced a Defendant's sentence from "180 months of imprisonment" to "Time Already Served." *Cota-Valenzuela v. USA*, 04-CR-677-02, Doc. 193 (June 21, 2017) (granting a motion to reduce sentence based on a retroactive amendment to the Sentencing Guidelines).[*]

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* See 18 U.S.C. § 3582(c). See further, Cassius Dio, *The Roman History: The Reign of Augustus*, Bk. LV, Ch. 14–21 (trans. Ian Scott-Kilvert, 1987) (describing how Imperator Caesar Divi Filius Augustus, after following Livia Drusilla's advice to show forgiveness and to "educate citizens by means of laws," released Gnaeus Cornelius Cinna Magnus from custody and adlected him consul); and Robert Graves, *I, Claudius*, Ch. 7, at pgs. 106–07 (1934) (providing a literary recount of *A Pillow Debate on Force and Gentleness* in which Livia tells Augustus: "forgiveness will melt the most arrogant heart, as punishment will harden even the humblest").

Act 9. THE COURT extended comity to the Tax Court of Canada and ordered an Arizona resident be deposed within the State borders to provide relevant evidence in a matter before the foreign court. *In Re: Cameco Corporation v. Her Majesty The Queen*, 16-MC-8, Doc. 3 (October 19, 2016) (ordering Her Majesty to prove proper service on the material witness); and Doc. 5 (November 21, 2016) (providing assistance to a foreign tribunal and to litigants before the tribunal pursuant to federal law).[*]

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* See generally, Stephen Gerald Breyer, *The Court and the World: American Law and the New Global Realities* (2015).

Act 10. THE COURT scrutinized a petition that alleged the State of Arizona violated the Fifth Amendment. Upon due diligence, no reasonable jurist could determine the state court erred when it previously adjudicated the same claim and determined no violation occurred. *Cooney v. Arizona*, 16-CV-635, Doc. 5 (September 26, 2016) (allowing the case to proceed on only one ground raised in the petition);[*] Doc. 11 (October 7, 2016) (granting Petitioner IFP status); Doc. 33 (February 28, 2017) (requesting further clarification from the State on linguistic patterns in state jurisprudence); and Doc. 36 (March 29, 2017) (concluding: "the State of Arizona did not "subject Petitioner for the same offence to be twice put in jeopardy of life or limb"; nor [had] Petitioner shown that the State Supreme Court issued a decision upholding Petitioner's current incarceration that "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States").

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* Citing, *inter alia*, *Ex parte Merryman*, 17 F. Cas. 144 (C.C.D. Md. 1861); *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (Thomas, J.); *Moore v. State of Missouri*, 159 U.S. 673, 677 (1895) (Fuller, J.); and *Almendarez-Torres v. United States*, 523 U.S. 224, 271 (1998) (Scalia, J., dissenting).

THE END.

Postscriptum

Requiēscat in pāce, Albert L. Brinkman, an unforgettable jurisprudential force. See *Brinkman v. Ryan*, 16-CV-2093, Doc. 331, at pg. 2 (noting: "Brinkman's death ... occurred after the Court entered Judgment ... but before it became aware of [Brinkman's] death"). See also, ALR, *Metaconstitutionalism's Impact On The Fœderal Courts: A Statical Finding*, at pg. 6 (announcing: "Metaconstitutionalism entered American jurisprudence in *Brinkman v. Ryan*," 16-CV-2093 (D. Ariz., December 2, 2016)).