No. 6461]

_____ IN THE UNITED

STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Tyler Allen Lofall,

Plaintiff-Appellant,

v.

Clackamas County AT EL Officer Dana Gunnarson, (2) Officer Catlin Blyth, (3) CITY OF WEST LINN; (4) Deputy District Attorney Rebecca Portlock;(5) Clackamas County Jail, (6) Clackamas County Sheriffs Department, (7) County of Clackamas, (8) CCSO John Doe 1, (9) CCSO John Doe 2

Defendant-Appellee.

On Appeal from the United States District Court for the 3rd District of Oregon

No.3:24-CV-00839-sb

Hon. Stacy Beckerman

APPELLANTS OPENING BRIEF

Shawn A. Lillegren

Office of Clackamas County Counsel

2051 Kaen Rd Oregon City, OR 97045-1819

Email: slillegren@clackamas.us

Phone: (503) 655-8362

Lead Counsel for County Defendants

Michelle Enfield

Oregon Department of Justice

1162 Court St. NE Salem, OR 97301-4096

Email: michelle.enfield@doj.oregon.gov

Phone: (503) 947-4700

*Lead Counsel for DDA Portlock***Plaintiff-**

Tyler A. Lofall

Plaintiff-Appellant Pro se

5809 West Park Place

Pasco, WA 99301 Mail Only

tyleralofall@gmail.com

Lauren E. Nweze

(Third Lead Counsel for West Linn)

15875 Boones Ferry Rd

#1469 Lake Oswego, OR 97035

Email: lnweze@cisoregon.org

Phone: (503) 763-3800

Lead Counsel for West Linn Defendants

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a) Due to the defendants own actions, in avoiding the service and hiding behind UTCR 7.020, giving notice that should be voided, and Plaintiffs Pro se status he wasn't aware of the the path to Default judgment. Additionally the notice given gave no name or statute (it gave UTCR 7 as apposed to UTCR 7.020) with two John Does, His AOB case just entering the Oregon Court of Appeals and they lost his Appeal, meanwhile litigating, and living out of state caused the County to escape state without ever appearing. By Oregon law, County could no show, in hopes that Plaintiff doesn't file the proper Default Application, they acan send notice on a link via bulk email, and if Plaintiff does catch it, they can then show up with no penalty, however if they do not they get to call "repetative" Prejudice against a Plaintiff who now has to start over to and serve you for another dozen times? for their intentional obstruction? Does this even need to be argued? (The state court register shows that Clackamas County was served approximately fifteen times but never answered, never moved, and never appeared. ECF 35-4. On April 4, 2023, Appellant filed a Motion to Compel Appearance. Seven days later, on April 11, 2023, the court dismissed the County defendants "for want of prosecution"—not for the County's failure to appear, but for Appellant's supposed failure to prosecute. ECF 35-2, 35-3. Meanwhile, the federal case reached responsive pleadings from every defendant. ECF 34, 36, 37. This factor strongly favors federal retention.....66

INTRODUCTION

Appellees move to dismiss this appeal on a single, factually incorrect premise: that Appellant's Motion to Alter or Amend Judgment (Rule 59(e)) was untimely, and therefore failed to toll the deadline to file a Notice of Appeal.

This argument is foreclosed by the District Court's own finding. In its October 8, 2025 Order (ECF No. 65), the District Court explicitly acknowledged that Appellant **"timely filed the motion but in the wrong case."**

Because the tolling motion was timely filed on October 1, 2025, the deadline to appeal did not begin to run until the District Court disposed of that motion on

October 3, 2025. Appellant filed his Notice of Appeal on October 13, 2025—well within the 30-day window. Accordingly, jurisdiction is proper, and the Motion to Dismiss must be denied.

STATEMENT OF JURISDICTIONAL FACTS

1. September 3, 2025: The District Court entered Judgment dismissing the case (ECF No. 60).

2. October 1, 2025 (The Deadline): Under Fed. R. Civ. P. 59(e), the deadline to file a motion to alter or amend was 28 days later: October 1, 2025.

3. October 1, 2025 at 11:57 PM: Appellant submitted his Rule 59(e) motion via the CM/ECF system. The system generated a receipt confirming the document was received on this date. See Exhibit A (CM/ECF Receipt timestamped 11:57 PM). Due to a clerical error during the electronic submission process, the document was routed to the related, remanded case number (3:24-cv-00838-SB) rather than the active case number (3:24-cv-00839-SB).

4. October 2, 2025 at 1:06 AM: Just 66 minutes past the midnight deadline, Appellant realized the routing error and emailed all defense counsel the

full motion and 29 exhibits, providing actual notice. See Exhibit B (Email to Counsel dated Oct 2, 2025, 1:06 AM).

5. October 3, 2025: The District Court entered an order denying the Rule 59(e) motion on its merits (ECF No. 63).

6. October 8, 2025: In a subsequent order (ECF No. 65), Magistrate Judge Beckerman made a specific factual finding regarding the October 1 submission: "...he timely filed the motion but in the wrong case."

7. October 13, 2025: Appellant filed his Notice of Appeal (ECF No. 66/67).

ARGUMENT

I. THE DISTRICT COURT'S FINDING THAT THE MOTION WAS "TIMELY FILED" IS DISPOSITIVE.

Appellees ask this Court to ignore the District Court's own assessment of the record. In ECF No. 65, the District Court denied *nunc pro tunc* relief on procedural grounds but expressly validated the timeliness of the physical act of filing: **"...because he timely filed the motion but in the wrong case."**

A filing is deemed "filed" when it is placed in the possession of the clerk. *See United States v. Dae Rim Fishery Co.*, 794 F.2d 1392, 1395 (9th Cir. 1986) (holding that a complaint is filed when it is placed in the actual or constructive custody of the clerk, regardless of subsequent clerical errors). Appellant placed the motion in the custody of the CM/ECF system on October 1, 2025. The District Court acknowledged this fact. Therefore, the motion was timely.

II. A TIMELY RULE 59(e) MOTION TOLLS THE APPEAL DEADLINE REGARDLESS OF DOCKETING ERRORS.

Under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv), the time to file an appeal runs for all parties from the entry of the order disposing of a timely Rule 59 motion.

- **Step 1:** The Rule 59 motion was timely filed on October 1, 2025 (per ECF 65 and *Dae Rim Fishery*).
- **Step 2:** The appeal deadline was tolled until the Court disposed of that motion.
- **Step 3:** The Court disposed of the motion on October 3, 2025 (ECF No. 63).

- **Step 4:** The new 30-day deadline to appeal began on October 3, 2025, expiring on November 2, 2025.
- **Step 5:** Appellant filed his Notice of Appeal on October 13, 2025.

The Notice of Appeal was filed 10 days after the tolling period ended. It is timely.

III. A WRONG CASE NUMBER IS A CURABLE TECHNICAL DEFECT.

The Supreme Court and this Circuit have long held that form should not triumph over substance, particularly for pro se litigants. A clerical error in a case number does not negate the legal effect of a timely submission. *See Becker v. Montgomery*, 532 U.S. 757 (2001) (imperfections in filing should not be fatal where no genuine doubt exists about the party's intent).

Furthermore, Fed. R. Civ. P. 5(d)(4) states: "The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." Rejecting the tolling effect of a motion solely because it was routed to a sister docket number violates the spirit of Rule 5(d)(4).

IV. APPELLEES SUFFERED NO PREJUDICE.

Appellees received electronic notification of the filing on October 1, 2025 (via the related case docket) and actual service via email at 1:06 AM on October 2, 2025 (*See* **Exhibit B**). They were fully aware of the motion and its contents immediately. Their Motion to Dismiss is an attempt to exploit a clerical error to avoid appellate review of the merits.

The District Court found that Appellant "timely filed" his Rule 59(e) motion. That finding triggers the tolling provision of FRAP 4(a)(4). Consequently, the Notice of Appeal filed on October 13, 2025, was timely.

Appellant respectfully requests that this Court **DENY** Appellees' Motion to Dismiss and allow this appeal to proceed on the merits.

DATED: November 27, 2025

Respectfully submitted,

/s/ *Tyler Allen Lofall*

Tyler Allen Lofall, Pro Se

6880 N.W. 271st Ave

Hillsboro, OR 97124

tyleralofall@gmail.com

(386) 262-3322

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 27, 2025.

/s/ Tyler Allen Lofall

Tyler Allen Lofall

EXHIBIT INDEX

Exhibit A: CM/ECF Receipt showing filing entered 10/1/2025 at 11:57 PM.

Exhibit B: Email to Defense Counsel dated 10/2/2025 at 1:06 AM attaching the motion and exhibits.

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TABLE OF AUTHORITIES

Page(s)

Cases

[Insert all cases cited in brief in alphabetical order by case name, regardless of the jurisdiction where the case comes from. Use proper bluebook form. Identify all pages in brief where the case appears. Avoid use of passim unless the authority appears on nearly every page.]

example:

Bell Atlantic Corp. v. Twombly,

Statutes

[Insert all statutes cited in brief in numerical order by U.S. Code title and section. Use proper bluebook form. Identify all pages in brief where the statute appears.]

example:

Regulations

[Insert all regulations cited in brief in numerical order by U.S. Code title and section. Use proper bluebook form. Identify all pages in brief where the regulation appears.]

example:

Rules

[Insert all Court Rules cited in brief. Use proper bluebook form. Identify all pages in brief where the Rule appears.]

example:

Other Authorities

[Insert all other authorities cited in brief (treatises, law review articles, etc. Use proper bluebook form. Identify all pages in brief where the other authority appears.]

example:

INTRODUCTION

Plaintiff–Appellant Tyler Allen Lofall is a legally blind, pro se litigant who comes to this Court asking for one thing: accountability. Over the last five years, four interlocking proceedings—one civil Assignment of Benefits dispute, one criminal prosecution, and two civil rights actions—have exposed a pattern in which government actors and courts used procedure itself to erase his substantive rights. An irrevocable Assignment of Benefits for $111,943.56 in work fully performed was intercepted and forced into litigation; that litigation was then derailed by a warrantless arrest built on fabricated narratives, followed by a prosecution that became easier to pursue than to correct.

Once in custody, Appellant was deliberately exposed to COVID 19, denied basic accommodations for his legal blindness, and had sixty two pro se legal files deleted from the jail law library system. Exculpatory evidence—including body camera footage showing that Macy, not Appellant, wielded the hammer and initiated the destruction—was buried behind DHS seals and discovery games.

His AOB civil trial was conducted in absence while he was unlawfully detained. In five years, the only "trial" he has effectively seen was a one sided proceeding in which the heirs obtained a counter judgment against him while his claims were dismissed.

At the same time, Clackamas County evaded service in state court despite repeated attempts; the state court dismissed those defendants "for want of prosecution" while motions to compel their appearance were pending. West Linn defendants obtained repeated set overs timed around parental leave and other conflicts, pushing hearings and trial dates to the edge of statutes of limitation. After Appellant gave more than a year's notice that he would pursue claims against Clackamas County before the limitations period expired, his federal case was dismissed one day after Oregon's 180 day refiling window under ORS 12.220 closed—leaving him with no forum at all. The District Court then labeled this action a "repetitive lawsuit," accepted Appellees' narratives at face value, and ignored submissions documenting fabricated reports, defective notices, and estoppel triggering "consent then flip" tactics.

Those gaps in the record are not a reason to dismiss; they are part of the harm. Appellant lost his property through the spoiled AOB, his liberty through an arrest and detention procured by fabrication, and his ability to obtain counsel or preserve evidence through state created obstacles: evasion of service, suppression of recordings, deletion of files, and carefully timed dismissals. To treat this as an even playing field, or to suggest that Appellant simply "walked away" on the eve of a first trial, is to confuse self defense with attempted murder—to equate a homeowner tackling an intruder in his yard with the intruder's crime. When a person is jailed through no fault of his own, loses his case while he is held, and then is told that the resulting procedural tangle is his responsibility, the system is no longer merely mistaken; it is engaging in organized extortion under color of law.

Appellees now contend they should face no accountability because Appellant is not a lawyer, and because doctrines like abstention and immunity can be stretched to cover lies, missing records, and coordinated obstruction. They are mistaken. The law is clear that courts may not reward fraud upon the court, deliberate evidence destruction, or state created procedural traps. This appeal presents compelling reasons for the Ninth Circuit to intervene: when arresting an innocent person on

fabricated reports, issuing defective notices to allow one side to escape liability, concealing evidence across multiple cases, and timing dismissals to guarantee a statute of limitations "kill shot" are all treated as ordinary "case management," the problem is no longer just error—it is constitutional violation. This is the last crossroads: either these actors are finally held to account, or the message to every county and city is that they may lie, obstruct, and manipulate the forum against those who cannot afford counsel and expect the courts to look away.

JURISDICTIONAL STATEMENT[1]

1) I. STATEMENT OF JURISDICTION

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[1] If you are filing an answering brief, you do not need to include a jurisdictional statement, the statement of issues, the statement of the case, or the standards of review, if you agree entirely with the opening brief's discussion of those sections.

The district court had subject-matter jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343(a)(3)–(4) because Appellant Tyler Allen Lofall brought claims under 42 U.S.C. § 1983 for violations of the Fourth, Sixth, Seventh, Ninth, and Fourteenth Amendments to the United States Constitution. On Sept 3, 2025, Judgement was made in the United States District Court for the District of Oregon, Portland Division, entered a final judgment in Case No. 3:24-cv-00839-SB that disposed of all claims and all parties. Appellant notified the parties the morning of October first, then filed a timely Rule 59(e) motion to alter or amend the judgment in the district court. In ECF No. 60, the court expressly found that Appellant "timely filed the motion but in the wrong case."

However, corrected it in 66 minutes in addition to the prior notice. Under Federal Rule of Appellate Procedure 4(a)(4)(A)(iv), that timely Rule 59(e) motion tolled the time to appeal.

If you are filing a reply brief, you do not need to (and in fact should not) repeat the jurisdictional statement, the statement of issues, the statement of the case, or the standards of review section(s). Moreover, you should not simply repeat arguments made in your opening brief, but instead respond to your opponent's responses.

Appellant then filed a notice of appeal on October 14, 2025, within the time allowed by Rule 4(a) as tolled. See Fed. R. App. P. 3, 4(a)(1)(A), 4(a)(4)(A)(iv).

Accordingly, this Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

2) II. CONSTITUTIONAL PROVISIONS INVOLVED

a. First Amendment violated: Removed from courtroom, pro setrials, Ex parte communications, regarding my personal matters, filing barriers for blind litigant and due to the malicious prosecution and unlawful arrest Appellant has been deprived every having his day in court.

b. Fourth Amendment violated: False arrest based on fabricatedprobable cause (March 6, 2022).

c. Sixth Amendment violated: Court-appointed advisor coordinatedwith DDA to give false COVID information, canceling trial (June 10, 2022). Legal files deleted, law library denied, corrective lenses withheld, undermined by his advisor, and had

his own court appointed attorney withhold evidence, and make decisions on Appellant's behalf with explicit contradictory instructions.

d. Seventh Amendment violated: AOB civil trial proceeded withoutPlaintiff, while unlawfully detained (June 8, 2022). State civil rights case never reached trial—County never appeared. Federal case dismissed without trial.

e. Fourteenth Amendment violated: Held seven days past release order. Defective notices with blank fields. Federal dismissal timed to Day 181—closing both forums simultaneously, judged without proper review on a non-jurisdictional argument for lack of jurisdiction.

f. Ninth Amendment violated: Every proceduraldoctrine—immunity, abstention, time-bar, forum shopping—has been weaponized to crush Plaintiff's substantive rights. "The 'enumeration' of certain /[guaranteed] rights has been "construed to deny [AND] disparage[d]" other [rights] retained by the people."

III. THAT THIS CONSTITUTIONAL CONTROVERSY REMAINS LIVE AND WITHIN THE COURT'S ARTICLE III JURISDICTION.

This appeal arises from a § 1983 action alleging violations of multiple constitutional rights whose combined deprivation caused extreme hardship and left Appellant with no meaningful avenue for relief in the district court:

Under United States v. Dae Rim Fishery Co., 794 F.2d 1392, 1395 (9th Cir. 1986), a document is deemed filed when it is placed in the actual or constructive custody of the clerk, regardless of subsequent clerical errors.

The District Court explicitly found in its order dated October 8, 2025 (ECF 65) that Appellant "timely filed the motion but in the wrong case." This factual finding is dispositive. Because the motion was "timely filed" on October 1, 2025, it triggered the tolling provisions of Fed. R. App. P. 4(a)(4)(A)(iv).

The time to file the Notice of Appeal did not begin to run until the District Court entered the order disposing of the Rule 59(e) motion on October 3, 2025 (ECF 63). The new 30-day deadline expired on November 2, 2025. Appellant filed his Notice of Appeal on October 13, 2025, well within the timely periodCourt of Appeals, with reference to the specific statute conferring jurisdiction (*e.g.*, 28 U.S.C. § 1291); (3) the

date of entry of the judgment or order appealed from; the date of filing of the notice of appeal or petition for review; and the statute or rule under which it is claimed the appeal is timely; and (4) whether the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis.]

ISSUE(S) PRESENTED

I. Jurisdiction. Whether the district court's explicit finding that the rule 59(e) motion was "timely filed" (ecf 65) triggers appellate tolling under united states v Dae rim fishery co., defeating appellees' motion to dismiss for lack of jurisdiction.

II. Repetitive lawsuit doctrine. Whether the district court erred in dismissing the federal action as a"repetitive lawsuit" when the state forum was rendered unavailable through systemic obstruction, including the

evasion of service by defendants and the dismissal of the state case for "want ofprosecution" while motions to compel were pending.

III. Judicial abdication. Whether a district court violates due process when it adopts the defendants' narrative verbatim while ignoring documented record evidence of fraud—including the "covid lie," the "15-minute report synchronization," and the "consent-then-flip" strategy thereby engaging in judicial abdication.87

IV. Ninth amendment. Whether the ninth amendment's prohibition against construing the "enumeration" of rights to "deny or disparage" others prohibits the use of procedural immunity doctrines to shield bad-faith administrative acts, such as v.

V. Can a court ignore documented fraud on therecord, when it effects substantial rights?

VI. Does the act of avoiding accountability by hidingrequirements needed for the prosecuting a plaintiffs claim toll the statute.

VII. In the case where there is multiple defendantsthat could be subject to a notice is the notice void with out the subjects name?

VIII. Property lost due to a warrantless arrest, such as claim rights to an irrevocable assignment of benefits, does the arresting party have anyresponsibility if that harm complicates or creates a high probability of failure of remedy due to procedural complexity?

[Practice Tip: In listing the issue(s) presented, tell the Court what the issues are in a brief and succinct way – preferably one that suggests the answer you want without being too argumentative, such as "Whether the district court erred in holding that Plaintiff lacked standing where he sufficiently alleged that Defendant's conduct directly caused him to lose his job." Each issue presented should be one sentence long. If there is more than one issue, number each one. Ideally, to guide the Court, each issue presented would map on to each major argument heading (i.e., the Roman numeral headings below), so if the Argument section contains parts I, II, and III, there would be three issues presented listed here.]

STATEMENT OF THE CASE

I. THE ASSIGNMENT OF BENEFITS AND THE THEFT THAT STARTED EVERYTHING

1. In mid-2020, homeowner Joanna Lee Bozian executed an irrevocable Assignment of Benefits in favor of Plaintiff Tyler Lofall for insurance proceeds arising from fire damage to her residence in Damascus, Oregon. The AOB stated in relevant part: "For good and valuable consideration received, I, Joanna Lee Bozian irrevocably transfer and assign to Tyler Lofall . . . all cash values, proceeds and benefits arising thereunder." (ECF 8, Ex. D at 11–12.) The assignment further acknowledged that "an estimated 90% of the fire claim stated above has been completed and all work completed at the property has been completed by Tyler Lofall." Id. By October 2020, Plaintiff had completed all contracted repair work. The claim was submitted, approved by Assurant Insurance Company, and paid in the amount of $111,943.56. (ECF 8, Ex. D at 52.)

2. The homeowner died. Her daughter and son-in-law—the "heirs"—had not visited the property in twenty years. They contacted the mortgage company and fraudulently convinced JP Morgan that Plaintiff had created the AOB through fraud. They removed Plaintiff's deposit information and inserted

their own. (ECF 8, Ex. D at 208.) On November 24, 2020, heir Zac Bond emailed Plaintiff: "Get out of the house, and we will get you money immediately." (ECF 8, Ex. 6.) This was a ruse. After the mortgage inspection passed and funds were cleared for release on November 30, 2020, the very next day—December 1, 2020—the heirs reversed course entirely: "If you want money from the insurance claim, you will need to file a claim against Jolie's estate like any other creditor." (ECF 8, Ex. D at132, lines 611–12.)

Plaintiff reported this theft to the Clackamas County District Attorney and Sheriff. Both declined to investigate. The DA's office pointed to the Sheriff's Office; the Sheriff's Office told Plaintiff it was "a civil matter." (ECF 8 ¶¶ 8–9.) This official abandonment forced Plaintiff into civil litigation to recover funds he had already earned. He filed Case No. 21CV02575 in Clackamas County Circuit Court in January 2021, proceeding pro se because the heirs' theft had left him indigent. Trial was eventually set for June 8, 2022. Plaintiff would never see that trial. The heirs' theft had set off a chain of events that would cost Plaintiff not only the $111,943.56, but his freedom, his property, his home, and five years of his life.

II. THE WLPD-COACHED ATTACK: MARCH 4–6, 2022

3. Plaintiff was staying with a West Linn friend, "Macy" Galla, who insisted on him staying there until he finished with his civil claim, since he had already moved his belongings back to Washington and was constantly being called

back to court for the AOB case. Due to a combination of Covid, not being paid, his property being spread out from new indigency and the rough departure from Damascus, Plaintiff's current setup in Washougal had no internet and was really just a place to leave things and "sort of" have an eye on them that was closer (three hours closer than Lofall, Washington, where he is from). Because he was from out of state, he needed access to internet (not available in Washougal), and Covid-mandated demands and gaps in hearings made it so Plaintiff had large compilations that his basic laptop was not handling with Adobe.

4. In early March, Macy—annoyed that Plaintiff was spending all his time on his claim and not paying attention to her—snapped when, on the day Plaintiff finished all seven motions he needed before trial, they were returned because his Master Exhibit List did not link directly to the motions. A simple citation was not good enough, nor was the table of contents linked to positions in the master list, which was done. Macy lost it, allegedly stemming from jealousy and substance abuse (backed later by March 7th events). She then took, or had in her possession, Plaintiff's car keys and his AOB work files—contract documents, evidence, and work records critical to his $111,943.56 claim. She irrationally would not return them.

5. Macy wanted Plaintiff to leave without these things; and as cars do not move without keys, when that did not happen on March 4th, Macy called the West Linn Police Department and asked how to evict him. The answer she

received was clear: (a) she could not execute a one-day eviction; and (b) legal process was required.

6. A. WLPD dispatch logs and Plaintiff's many statements—messages, police reports, and 911 call logs—agree on what followed.

7. Rather than following lawful eviction procedures, Macy orchestrated a staged arrest with the apparent coaching of law enforcement. (See ECF 8 ¶¶37–44; ECF 15, Ex. 36.)

8. March 3, 2022. Macy sent Plaintiff a series of text messages while Plaintiff asked for his keys nine times, and Macy made her intentions explicit: "Come Sunday. Fire it is."; "Burn all your shit too." (See ECF 15, Ex. 36 (Pre-Arrest Text Messages).)

9. March 4, 2022. After learning she could not simply evict Plaintiff and after hanging up on WLPD twice saying she was going to "burn down the house," Macy escalated. (See ECF 8 ¶ 34; ECF 15, Ex. 36.) She went out and purchased five gallons of gasoline. She returned to the property. She took a hammer and dropped a bag at the window over Plaintiff's bed outside, and started with the door, breaking glass: she smashed out seven windows; shattered the door; poured thirty pounds of flour over Plaintiff's bed, tools, clothes, and electronics—the first of three consecutive days of this destruction; cut the power, the heat, and the lights in freezing March

temperatures; ran in and tipped the fridge over; and took a garden hose and flooded the inside of the house, spraying the TV, the electronics, the walls—anything she could—and turning everything into a paste. (See ECF 8 ¶¶ 37–44; ECF 15, Ex. 36 (WLPD Incident Report, Mar. 4, 2022).) (10.) Plaintiff called 911. He was the complainant—the victim—reporting criminal conduct. West Linn Police Department officers responded: they observed the broken windows; they documented the gasoline purchase and the arson threats; and they took no action against Macy. She was screaming and carrying five gallons of gasoline, running around the yard when they showed up. Despite her written threats to burn the house down, and despite Plaintiff asking them to take her to the hospital, they did nothing. (See ECF 15, Ex. 36; ECF 17-1, SAC ¶¶ 22–27.)

10. March 5, 2022 (Morning). Macy continued her rampage. She poured another thirty pounds of flour over Plaintiff's property—sixty pounds total over two days. Officer Goode responded in the morning. He finally confiscated the five gallons of gasoline that his colleagues had left with Macy the day before. He still did not arrest Macy. He left her at the property with Plaintiff's belongings—and the hammer—still inside. (ECF 17-1, SAC ¶¶ 37–44.) (12.) March 5, 2022 (2:24 p.m.). That afternoon, Macy sent Plaintiff a series of text messages that would prove critical to understanding the premeditated nature of what followed: "Expect to [lose] heat and electricity again"; "Windows brake. By themselves. All the time."; "Acetone is a good flame starter"; "I have plenty of that"; "Cars catch on fire all the time"; "If

your gone your stuff is safe"; "If you think to stay nothing is safe and no one"; "I would rather kill you then myself"; "I will kill us all first"; "I wish you were dead"; "Die." (Pre-Arrest JSON, Text Message Log (Mar. 5, 2022, 2:24–2:36 p.m.), ECF 15, Ex. 36.)

11. An hour later, Plaintiff emailed court staff at Clackamas County Circuit Court pleading with them to accept his Master Exhibit List, or for help with it, as he had no way to accomplish this and they now had his only completed copies he immediately had access to. In that email, he wrote: "I'm at the last crossroad of getting paid and burning the world down . . . I need some answers please because I'm going to end up dead or in prison over this and this is absolutely the judicial system's doing." (Pre-Arrest JSON, Correspondence ID 5 (Mar. 5, 2022, 3:35 p.m.).) For fifteen months Plaintiff had asked them for help. The court did not respond. No intervention came. (They offered help on March 7th, but that help was no longer available when Plaintiff was out of jail.)

12. March 6, 2022: The Staged Arrest. This was the third day. Macy poured another thirty pounds of flour—ninety pounds total over three days—over Plaintiff's property. But this day was different. Macy's daughter's boyfriend, age nineteen, was positioned with a camera. Macy's fourteen-year-old daughter was also present as a witness. This was not a spontaneous domestic dispute. This was orchestrated.

13. Macy, wearing work gloves and carrying the same hammer she had used to smash the windows, took two garden hoses and began spraying water through the broken windows—directly onto Plaintiff's computers, legal files, television, and bed. Everything Plaintiff owned was being destroyed: his AOB evidence, his legal documents, his tools, his livelihood.

14. After three days of arson threats, property destruction, and police inaction, Plaintiff did the only thing he could: he grabbed the hose to stop her from destroying his remaining property. Oregon law provides explicit protection for this conduct. ORS 161.229 authorizes the use of physical force to prevent the commission of theft or criminal mischief of property. ORS 161.209 permits physical force in self-defense.

15. The nineteen-year-old boyfriend took photographs—but the photographs were selective. They captured Plaintiff grabbing the hose. They did not capture the context: the three days of destruction, the arson threats, the gasoline, the hammer in Macy's hand, the ninety pounds of flour, the broken windows, the water being sprayed onto Plaintiff's property. The boyfriend took those photographs directly to the West Linn Police station. He did not wait for officers to arrive at the scene. He delivered the photographs first.

16. Officers Catlin Blyth and Dana Gunnarson then responded to the residence. They had been privy to the events leading to this event; there were officers in and out of the property every day, stopping by to check on progress. (ECF

17-1, SAC ¶¶ 22–27.) They had already reviewed the photographs at the station. They arrived with pre-formed intent. Within eight minutes—without conducting any investigation, without reviewing dispatch logs showing Plaintiff had been the 911 complainant for three consecutive days, without considering Macy's documented arson threats, without noting the gasoline confiscation the day before—they arrested Plaintiff on a misdemeanor harassment charge, for grabbing a hose from a woman who had spent three days threatening to burn him alive. (ECF 15, Ex.36; ECF 17-1 ¶ 45.)

17. The officers never personally interviewed Macy at the scene. When Plaintiff argued that it was self-defense, Dana contended he was not allowed self-defense and treated his entire explanation as argumentative. Plaintiff pointed out the broken glass officers stepped on to call him outside while he was salvaging what he could and dragging it outside the reach of Macy's hose. After the arrest, Macy simply went inside and closed the door. The officers' entire basis for probable cause was the photographs delivered to the station by Macy's daughter's boyfriend—photographs that showed Plaintiff's defensive action but obscured Macy's aggression.

18. Three domestic violence screening surveys were completed at the scene. All three came back negative: "did not screen in." There was no domestic violence. There was no victim. There was only a man defending his property from destruction by a woman who had threatened to kill him. (See ECF 8 ¶ 74; ECF 35-7 at 2.)

19. On body camera or cruiser cam audio, Officer Blyth would be heard telling Officer Gunnarson they needed to find "another incident"—using the exact statutory language of ORS 166.065—and Blyth promising Lofall he could have his body camera footage. They then told Plaintiff they would put his property that was in tubs inside his truck and lock it. They got in the cruiser and looked up the elements of harassment together. He noted "offensive physical contact" and "multiple offenses," and Dana marched toward Macy to "get another incident" and got the door slammed in her face. This was not investigation. This was fabrication. This is a federal offense.

20. Plaintiff invoked Oregon's self-defense statutes at the scene—ORS 161.229 (defense of property) and ORS 161.209 (use of physical force). The officers' response: "That's a trial issue."

21. Self-defense defeats probable cause. If the officers acknowledged that Plaintiff was defending his property from destruction, there was no lawful basis for arrest. By telling him it was a "trial issue," they manufactured an arrest they knew could not survive scrutiny—but that would serve its purpose: removing Plaintiff from the residence, as Macy had wanted when she first called WLPD asking how to evict him.

22. Plaintiff was booked into Clackamas County Jail. His contact lenses were going to be a problem. His prescription is −11.00/−12.00 diopters, twice the threshold for legal blindness. Without corrective lenses, he cannot see

fingers at arm's length. His temporary wear contacts were already beyond date by the time he was jailed; the jail denied his requests for saline solution. The jail denied his requests for medical care for infections. He could not read filings, use the law library, or review discovery. He was rendered unable to participate in his own defense—and in his AOB civil case that was set for trial three months away.

23. His car keys were never returned. His identification was in tubs by the side of the road and never recovered—a fact that would later prevent him from entering the federal courthouse. His tools and legal files were left outside in the rain at the West Linn property. Macy, the woman who had threatened arson and murder, was left in control of everything he owned.

III. OFFICERS EDIT REPORTS IN SYNC

24. What happened next reveals the conspiracy. Officer Dana Gunnarson prepared her initial arrest report. The report was submitted to her supervisor. The supervisor rejected it—the report did not establish the elements of the charge. This rejection occurred approximately twelve hours before Plaintiff's arraignment. The officers were called in as a team at 7:00 a.m. before the March 7 arraignment to coordinate their stories. They revised and edited their reports. The revised reports were submitted within fifteen minutes of each other—a synchronized fabrication. (ECF 17-1, SAC ¶¶ 29–31; see also ECF 15, Ex. 23 Police Report Timestamps).)

25. The photos do show Macy with the hammer. But the photos were obscured and hidden from Plaintiff by his own defense counsel. He discovered this only after firing her. The photos prove Macy was the armed aggressor—but they were suppressed as exculpatory evidence. (ECF 8 ¶¶ 37–39; ECF 15, Ex. 36.) (28.) The police reports told a different story than reality. The hammer disappeared from the narrative. The seven broken windows were omitted. The three prior 911 calls where Plaintiff was the 911 complainant were not mentioned. The word "into" (water sprayed into the windows, onto Plaintiff's property) became "at" (water sprayed at the windows, as if Macy were merely watering the garden). The ninety pounds of flour was erased. The three days of arson threats were nowhere to be found. The fridge, the flood, and even the fire threats in other officer reports were ignored here.

IV. THE ARRAIGNMENT: MARCH 7, 2022

26. The next morning, March 7, 2022, Plaintiff was arraigned on the misdemeanor charge. Macy Galla appeared at the courthouse—and was caught by security attempting to bring methamphetamine into the courtroom. The drugs were confiscated. She was not arrested; she was not turned away. An asterisk was put on Plaintiff's charge, and no definitive reason was given for why he was arrested outside of the statutes on his information. (See ECF 8 ¶ 48; Court Security Log, Mar. 7, 2022, ECF 35-7 at 3.)

27. This was the State's sole witness. A woman with methamphetamine use. A woman who had been the subject of three DHS interventions that year—including three psychiatric holds. A woman who would later text Plaintiff: "They took the girls. And my alimony . . . Wish we got along better." (Pre-Arrest JSON, Text Message Log (Aug. 25, 2022).) The District Attorney's office used Macy's coerced cooperation—threatening the custody of her children—to keep Plaintiff detained.

28. At the arraignment, DDA Rebecca Portlock told the court that Plaintiff was "high risk," had an "override release" flag, and had "two or more felonies" with a "violent history." This was false. Plaintiff was before the court on a misdemeanor. He had never been in trouble in Oregon. His last legal issue was a DUI in 2013. He did not have two or more felonies. Nothing violent. Ever. But based on these fabricated representations, Plaintiff was denied release on recognizance. The "override release" flag reflected a classification decision that overstated his criminal history and risk level and was later used to justify harsher jail conditions.

29. A No Contact Order was imposed. This meant Plaintiff could not return tothe residence where Macy had destroyed his property, could not retrieve his tools, his legal files, his car keys, his evidence for the AOB case. Everything he needed to prosecute his $111,943.56 civil claim was now inaccessible—held by the same woman the State was using as its witness.

V. FIRST DETENTION: MARCH 6 – APRIL 12, 2022 (DAY 1-37 DAYS)

30. Plaintiff was denied saline solution for the infections developing from his months-old contacts. He was denied law library access for extended periods while pro se deadlines approached in his AOB civil case. He had e-filed seven motions in that case in early March 2022; all were now impossible to prosecute.

31. On April 12, 2022, Plaintiff was released on his own recognizance. (ROR Order.) He stepped out into a world where he had nothing—no car, no clothes, no ID, no legal files.

VI. RELEASE: APRIL 14, 2022 (HYPOTHERMIA/HOSPITAL)

32. Two days after release, Plaintiff developed hypothermia. It was still winter. He was soaking wet, wearing only a sleeveless shirt—the only garment available when he was released from jail. It was hailing; he was freezing, searching for clothes or shelter.

33. An officer stopped Plaintiff, who was trying to warm his hands with a small torch, and seemed concerned about Plaintiff burning himself. He asked if there was someone to call to get clothes. He had him call Macy; the only place he had clothes in the state. Unsuccessful on the clothes, he was taken to a hospital for hypothermia, with body temperature in the low nineties.

34. Plaintiff never provided his name or identification to the responding officer. Yet the officer obtained Plaintiff's identity—he later claimed he "heard" Plaintiff tell the hospital his name, but no such disclosure occurred in the officer's presence. The officer went into the hospital and obtained Plaintiff's identity from hospital staff or medical records.

35. From the hospital, someone called Macy. Whether it was the officer or hospital staff, the call created the violation that would be used to re-arrest Plaintiff: a No Contact Order violation. Plaintiff was re-arrested on a single no-contact violation charge—not for any contact he initiated, but because an officer obtained his identity from a hospital during a medical emergency and then used that emergency to manufacture a violation.

36. This was not law enforcement. This was entrapment using protected health information.

VII. RE-ARREST #2: MAY 6, 2022 (DAY 61-66 COURTHOUSE ARREST)

37. On May 6, 2022, Plaintiff appeared at Clackamas County Court for a scheduled hearing. He was arrested at the courthouse on the no-contact violation charges arising from the April 14 hypothermia incident.

38. Bail was set at $10,000. Plaintiff bailed out four days later, on May 10,2022. But the manipulation continued. The jail allowed him to bail out—then later

recharged him with the same conduct. They postponed the charge, let the bail process, then recharged as if it were new. This was bail manipulation designed to ensure repeated arrests. (SAC ¶¶ 78–80 (ECF 17-1).)

VIII. RE-ARREST #3: MAY 24, 2022 (CAR STOP)

39. Plaintiff was released on May 10. He was out for fourteen days. During this time, Plaintiff was helping a friend recover a stolen vehicle. He was driving the friend's car—with the friend's knowledge and consent. The woman who had stolen the car was a passenger in the vehicle. Plaintiff was taking her to retrieve the license plate she had removed.

40. On May 24, 2022, police pulled over the vehicle. Plaintiff explained the situation: this is my friend's car; she stole it; we recovered it together; he drove to get it; I was handed the keys and was making a stop to recover possession for my friend since I had things in it too.

41. The police response: they gave the car keys to the thief. She stole the car again. Plaintiff was arrested and sent back to Clackamas County Jail. Cruiser cam footage exists documenting this arrest. (SAC ¶¶ 82–84 (ECF 17-1).)

IX. FINAL DETENTION: MAY 24 – JULY 8, 2022 (DAY 77-122)

42. A. May 24-28, 2022**:Forced COVID Exposure: "Seeding";** days into this detention, the jail deliberately exposed Plaintiff to COVID-19. On May 28, 2022—with Plaintiff's AOB civil trial set for June 8—jail housing records show Plaintiff was moved "to COVID block after positive test on 05-28-2022" and placed in a cell with a COVID-positive inmate. He was told "6-foot mandatory Covid restrictions." This was false: housing logs showed multiple empty beds in non-COVID units and recorded that he was moved to the COVID block the following day, allowing further spread. (Housing Log Screenshot, May 29, 2022.)

43. The pattern was systematic. Four empty cells, then four double-stacked cells with inmates catching COVID sequentially. Plaintiff's cellmate was David Dahlen—a man who had assaulted an officer and escaped the justice center. The jail wanted Dahlen infected too. First they infected Plaintiff. Then they left Plaintiff in the cell with Dahlen for days until Dahlen contracted the virus. Plaintiff tested positive for COVID on May 28, 2022. The housing book still shows this date—they "forgot to take it out." But the jail removed all of Plaintiff's medical records during the infection period. The absence of those records proves tampering; the proof lies in the fact that they knew Plaintiff was positive during a global pandemic and left him housed with Dahlen for another day, and then moved him into a cell with another inmate, Zac. It cannot be seen that there was another person directly, but it shows Plaintiff refused to get in his cell and went to an open cell—which he should

already have had if they were not seeding people with Covid. (ECF 15, Ex. 36; ECF 17-1 ¶¶ 171–72.)

44. Plaintiff filed a grievance on June 2, 2022, complaining about forced COVID exposure and dangerous housing conditions. The jail responded five weeks later. The jail's top officer wrote him off as "unhappy" when, at the time, he was functionally blind without corrective lenses, had had his documents deleted, and had a grievance pending for both of those things too, and ignored anything he said—on July 5, 2022. With Plaintiff's vision, he could not tell anything besides that the lieutenant was tall, as he could not tell you how many fingers he himself would be holding up at arm's reach. By then, the damage was done: the AOB trial had been missed, the criminal trials had been canceled, and the legal files had been deleted.

45. June 8, 2022: The AOB Trial That Never Was on the morning of June 8, 2022, Plaintiff was transported toward the Clackamas County Courthouse for his $111,943.56 AOB trial. This was the claim he had been litigating for two years. This was the money the heirs had stolen. This was his day in court. Plaintiff was pulled off the bus. The explanation: one of the officers "switched hands" with a test and did not know if they all passed or not, even though Plaintiff had been cleared by medical on June 6, 2022. This story makes no sense; if test results were unclear, retest on the spot. But there was no retest. Instead, Plaintiff was returned to the jail, and his AOB case

proceeded without him. On his "retrial" he had no claims. The court treated his absence as voluntary non-appearance. The case was dismissed.

FRAUD UPON THE COURT NUMBER _____ -June 10 2022: Second Criminal Trial:(The COVID Lie)

46. Plaintiff was not in the courtroom. They removed him as soon as he walked in—before Judge Steele arrived. They did not want him to see the judge, because his presence would ruin their story. What happened in his absence was captured on the transcript that Plaintiff obtained nearly two years later, on April 19, 2024. (48.) DDA Portlock told Judge Steele: **"He tested positive for COVID . . . yesterday."** (June 10, 2022 Tr. at 3–4, ECF 15, Ex. 1.) Judge Steele immediately responded with something hard to catch on the transcript because both were talking at once:

"Apparently he didn't. Apparently he didn't," and then,

"Mr.. Medina . . ."—referring to defense advisor Rubin Medina the court had assigned Plaintiff. Judge Steele continued:

"The information I got from you yesterday was that he failed for the last two days." She said: "The information I got from you yesterday."

47. "Yesterday" was June 9. There had been an ex parte meeting—a communication between officers of the court without the pro se litigant present. This is a constitutional violation. Plaintiff had a right to be present for any proceeding affecting his case. Moreover, Plaintiff had just walked into the courtroom and heard the DDA squeal, "Get him out of here before the judge sees him!" fifteen minutes prior. In addition, Medina had visited Plaintiff the day before and knew he was in general population.

48. Judge Steele corrected the record in full: "It turns out he didn't. He didn't test positive yesterday . . . . It turns out that he tested positive on May 29th [twelve days earlier] and . . . he got out of quarantine . . . and was put into the general population." (June 10, 2022 Tr. at 6–8, ECF 15, Ex. 1.) Plaintiff was present, cleared, and ready for trial. The prosecutor and defense advisor had given coordinated false statements to the court. The judge acknowledged the falsity on the record and said, "Because of that I called the jury off."

49. Consequently the trial was postponed. The day before—June 9—Macy had dropped off a letter at the court. She said the situation was "felt endangered" She was leaving the country. She felt in danger. She told Plaintiff's mother "they were making her choose." She left the country on June 9. If the State's sole witness felt that pressured, something was not right..

50. This is fraud upon the court under Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944): intentional fraud by officers of the court, directed at the court itself, which deceived the court. All four elements are satisfied.

JUNE 20, 2022: SIXTY-TWO LEGAL FILES DELETED

At exactly 5:10 p.m. on June 20, 2022—during mandatory dinner lock down (after being denied law library 6 days in a row) when all inmates were confined to cells with no witnesses—jail guard Baker accessed the law library computer system and deleted sixty-two of Plaintiff's legal files:

JUNE 24, 2022: THE STATE'S WITNESS FINALLY SPEAKS—

51. And Destroys the States case June 24, 2022, was the first time Macy Galla ever gave a statement in this case. The officers' arrest reports were fabricated from the kids' photographs and their own coordination—no witness statement had ever been taken from Macy at the scene. She went inside and closed the door. Now, for the first time, she was under oath.

52. Macy testified and after the DDA announced the history of the case Macy stated: "**Yes, half of that was untrue, fabricated, and manipulated .** ... " followed by **"[Plaintiff] have[has] committed <u>no crimes</u>**." (June 24, 2022, Tr. at 7–8, ECF 15, Ex. 2.) (56.) She testified that DDA Portlock had

threatened to take her children if she did not cooperate—"SHE took my children." She explained that DHS leverage had been used to coerce her testimony. Plaintiff's attorney at the time called Macy "mental"—an accurate description, as she had been placed on three separate psychiatric holds that same year. But the characterization meant she would not testify again. Previous statements had included that she wanted to marry Plaintiff. She was a loose cannon.

53. The State's case had collapsed. Their sole witness had recanted. She had called the prosecutor a liar. She had denied any criminal conduct by Plaintiff. Under any reasonable standard, the prosecution should have ended that day. It did not. DDA Portlock continued the prosecution for another nineteen days.

JULY 1, 2022: ORDERED RELEASED, BUT NOT RELEASED

54. On July 1, 2022, the judge signed a release order. Plaintiff should have walked out that day. The court had claimed Plaintiff violated a few more no-contact orders and on July 1st held a hearing for all of them. Time served. However, the jail refused to process the order—for seven days. By July 8,

55. Plaintiff remained in custody in direct violation of a court order. The jail cited "awaiting DA clearance"—which is not a legitimate requirement for compliance with a judicial release order. Later Plaintiff found they had the

copies the entire time—they were intentionally overlooking it or the jail knowingly and recklessly left cognitively incapable people in charge of the freedom of people they housed. And in Plaintiff's case multiple times this resulted in unlawful holds. A release order is an order. The jail has no authority to require additional "clearance" from the District Attorney before complying. That day, Macy screamed at DDA Portlock in the courtroom: "FUCK YOU DA!!!!" and slammed the door.

JULY 8, 2022: RELEASE TO HOMELESSNESS

56. Plaintiff was finally released on July 8, 2022. Total days in custody: 129 was twenty-five times longer than the five-day plea offer he had rejected. Because he was innocent.

57. When he walked out, he had nothing. His AOB case was dismissed. His property was pillage d and destroyed. He was homeless.

I. JULY 14, 2022: (DISMISSED NIGHT BEFORE)

58. The dismissal came exactly one day before Plaintiff would have had a jurytrial—the first opportunity for twelve citizens to hear what actually happened on March 4–6, 2022. The State could not risk that.

X. STATE COURT: (NOVEMBER 2022 – MAY 2024)

59. On November 18, 2022, Plaintiff filed Case No. 22CV39627 in Clackamas County Circuit Court—a civil rights action. They were all served by November 28th 2022

60. Clackamas County and its related entities were served 13 times on the register County Submitted in this federal court. Yet they never showed up. They never answered. (ECF 35-4.)—However they were able to file a "repetitive" lawsuit defense.

61. On April 4, 2023, Plaintiff filed a Motion to Compel Appearance. Seven days later, on April 11, 2023, the state court dismissed some of the defendants that Plaintiff was trying to change the name, (thinking it was his fault they didn't show) "for want of prosecution" by Plaintiff. (ECF 35-2, 35-3 (Limited Dismissal Orders).) The defendants who had been actively hiding for six months were rewarded.

62. The court sent notices under UTCR 7 (not 7.020) that Plaintiff had "not provided proof of service for at least one defendant." The notices did not identify which defendant. They did not cite the specific rule. They did not explain the 28-day cure period. When notices came back, the fields were blank—no addressee information, no signature, no confirmation of delivery. Plaintiff filed service proofs on March 31 and April 3, 2023—within any reasonable cure window. The dismissals came seven days after his Motion to

Compel, without hearing. (See ECF 67 Exs.18–24, 3-9-2023 notices and ORS 18.078; ECF 35-4.)

63. Plaintiff exhausted appeal on March 7, 2024—exactly two years after the false arrest would have become unreachable against the officers—after Plaintiff could not get a waiver of the undertaking of costs from Clackamas County. The Oregon Supreme Court, after accepting the appeal, dismissed it without ruling on the merits for lack of the undertaking, despite two waiver requests. (See Records Request and appellate correspondence, 22CR10908 Court Records Request, April 19, 2024; CASEFILE 22C109081.pdf.) (1) One hundred eleven thousand, nine hundred forty-three dollars and fifty-six cents—earned, invoiced, approved, and paid—was gone because of a fabricated COVID excuse on the morning of trial. (2) The heirs then obtained a $32,599.50 counter-judgment against Plaintiff. He was not present to defend himself. He could not be present. The jail made sure of that.

64. At the same time, the basic records needed to prove this fraud were effectively priced out of reach. The court reporter for the AOB case quoted Plaintiff $3.00 per page, or $1,050 in advance for an estimated 350-page transcript, before any work would begin (Transcript Estimate of Tammy Rampone, June 12, 2023). The Oregon Judicial Department later quoted $637.50 to search six hours of internal court emails concerning communications between Judge Steele and advisor Medina about Plaintiff's

case, denying any fee waiver on the ground that Plaintiff's request was merely a "private concern." (OJD Public Records Response, Records Request No. R000023-013025, Feb. 6, 2025.) Those costs imposed while Plaintiff was indigent, homeless, and still trying to salvage his AOB appeal, made it practically impossible to obtain the very transcripts and internal communications that would have exposed the misconduct and preserved his claims.

Bad Notice and the Missing UTCR 7.020 “Day 91” Step: There Was never a Proper State Court Dismissal for “Want of Prosecution.”

65. The limited dismissals of the County defendants in 22CV39627 were not the product of a functioning state procedure; they were entered on the back of facially defective notices that violated ORS 18.078, UTCR 7.020, and basic due process. Those defects matter because ECF 60 treated the state dismissals as if they were clean “want of prosecution” rulings. They were not.

66.1. The March 9, 2023, UTCR 7 Notice Was Generic and Useless

67. On March 9, 2023, the court mailed a form “Notice of Intent to Dismiss –63 Day” under UTCR 7, stating only:

68. “You have not provided the court with proof of service for at least onedefendant in this case.”

69. and warning that any “unserved defendants” would be dismissed in 28 days“for want of prosecution” unless service was shown, good cause was filed, or the defendant appeared. (Notice dated Mar. 9, 2023, Ex. 18 & Ex. 20.)

70. The notice never identified which defendant was supposedly unserved. Bythat point, multiple proofs of service were already on file, including:

71. • Returns for West Linn, Blyth, Gunnarson, and DDA Portlock; and

72. Service on the Jail via ORCP 7 D(2) “office service” on Lt. McCullough on

73. March 31, 2023, with follow up mailing on April 3, 2023. (Certificate of Service

74. “serve april 3.pdf,” Ex. 5.)

75. The only parties who had truly never appeared were the John Doe officers,who by definition could not be named until discovery against the County/Jail occurred. A notice that says “at least one defendant” with no name, no case specific explanation, and no reference to the actual register

entries is not “reasonably calculated” to tell a pro se litigant what needs to be cured. See

76. Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314–15 (1950). (77.) Six days later, on March 15, 2023, the court sent a second one line “Notice of Signed Document” telling Appellant only that “a case event that includes a signed document has been added to the Register of Actions” and instructing him to log into OECI or use a courthouse kiosk to see what it was. (Notice of Signed Document, Mar. 15, 2023, Ex. 19; see also OJD email, Ex. 220.) For a legally blind pro se litigant without ready OECI access, which was not meaningful notice of anything, let alone an impending dismissal.

77. 2. The April 11 and May 11, 2023, Judgment Notices Violated ORS

78. 18.078

79. Despite the outstanding service proofs and a pending Motion to Compel

80. Appearance filed April 4, 2023, the court entered a “Judgment – Limited Dismissal” on April 11, 2023, dismissing County side parties “for want of prosecution.” The April 11 ORS 18.078 notice reads:

81. “The court entered a judgment – Limited Dismissal in the court register on

82. 04/11/2023. This judgment does NOT create a lien."

83. and lists "Monetary Award Type: None / Award Amount: $0.00," directing

84. Appellant only to "see judgment for further details." (Notice of Entry of

85. Judgment dated Apr. 11, 2023, Ex. 22.)

86. On May 11, 2023, the court mailed another "Notice of Entry of Judgment"that was even more defective. On the critical line it states:

87. "The court entered in the court register on _____."

88. leaving both the judgment type and the date of entry completely blank, andagain listing "Award Amount: $0.00." (Notice dated May 11, 2023, Ex. 24.) (84.) Yet ORS 18.078(2) requires that a notice of entry of judgment in a civil action "must reflect":

89. "[t]he date the judgment was entered," and

90. "[w]hether the judgment was entered as a limited judgment, a generaljudgment or a supplemental judgment." (Statutory text, Ex. 23.)

91. The May 11 notice satisfies neither requirement. A notice that does not saywhen the judgment was entered or what kind of judgment it is cannot start deadlines, support an assumption that Plaintiff "knew" what had been decided, or provide any basis for later AIU abstention. It is, under Mullane and Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80, 84–86 (1988), the kind of "mere gesture" that does not comport with due process.

92. 3. The UTCR 7.020 "Day 91 / Not at Issue" and Default Track Was

93. Skipped Entirely

94. Under UTCR 7.020(3), once a civil case reaches Day 91 after filing withoutall parties at issue, the court is supposed to:

95. deem the case "not at issue";

96. send written notice that identifies the problem; and

97. open a 28 day window in which the plaintiff can either cure or seek adefault judgment.

98. Here, that step never happened in a meaningful way. Instead, the court:

99. issued the bulk form March 9 "at least one defendant" notice with no names

100. (Ex. 18, 20);

101. (93.) followed it with a kiosk only “signed document” note on March 15 (Ex.

102. 19);

103. entered “Digitized Judgment – Limited Dismissal” on April 11 while the

104. Motion to Compel was pending; and

105. mailed the May 11 blank field ORS 18.078 notice (Ex. 24) instead of a proper

106. Day 91 UTCR 7.020 notice and default opportunity.

107. By the time these defective notices were issued, Appellant had already:

108. personally, served the Jail on March 31 and mailed on April 3

109. (Ex. 5);

110. filed the Motion to Compel on April 4; and

been pursuing discovery and motions continuously, as the stateregister shows (ECF 35 4).

The combined effect was to cut off the very default mechanism UTCR7.020 is supposed to afford when defendants stonewall appearance. That is exactly the kind of "state created procedural remedy" the Supreme Court held was protected by due process in Logan v. Zimmerman Brush Co., 455 U.S. 422,

433–37 (1982): when the State fails to follow its own established procedure, and the claimant loses his case as a result, the Constitution is violated.

4. For a Legally Blind Litigant, Kiosk Only and Blank Notices Were an

Access to Courts Violation

The notice defects were compounded by Appellant's disability. He islegally blind (−11/−12 diopters) and was, during much of this period, either in custody or indigent. (See disability documentation and IFP application, Ex. 125–128.) The court's March 15 OECI only instruction (Ex. 19), the reliance on kiosks, and the refusal of the federal clerk's office later in May 2024 to accept filings by email or thumb drive (Clerk Oss emails, Ex. H) together

meant that: (98.) The only channels through which Appellant could learn what had happened or file timely papers were effectively closed to him; and

117. The state system never offered reasonable accommodations for his visualimpairment.

118. Tennessee v. Lane, 541 U.S. 509, 523–32 (2004), holds that access to thecourts is a fundamental right and that states must make reasonable modifications so disabled litigants can exercise that right. Here, instead of accommodation, Appellant received generic, incomplete, or kiosk only notices that he could not meaningfully use.

119. 5. Consequences for AIU and the "Repetitive Lawsuit" Narrative (102.) Taken together, these notice defects mean there was never a procedurally valid "want of prosecution" dismissal of the County/Jail defendants:

120. The March 9 UTCR 7 notice never identified which defendant was atissue.

121. The March 15 "signed document" notice only pointed to OECI, with nosubstance.

122. The April 11 limited judgment was entered while a Motion to Compel

123. County's appearance was pending.

124. The May 11 ORS 18.078 notice omitted the date of entry and the judgmenttype altogether.

125. A plaintiff who is actively serving defendants, filing a Motion to Compel,and litigating discovery is not “failing to prosecute.” When the court uses anonymous, non compliant notices to clear out non appearing government defendants, the resulting “judgment” cannot be treated as a clean, merits based resolution for purposes of AIU abstention or res judicata.

126. At a minimum, the “bad notice” record is a compelling reason why theNinth Circuit should reject ECF 60’s characterization that the state case was properly “dismissed for failure to prosecute,” and why the state forum cannot be deemed adequate for AIU.

127. C. West Linn–Driven Delay: August–December 2023

128. From August through December 2023, the state court record shows that itwas West Linn and the court—not Appellant—who controlled the calendar and repeatedly pushed the case into the limitations window.

129. 1. August 2, 2023 – Emergency Motion and Show Cause Filings

130. On August 2, 2023, Appellant filed an “Emergency Motion for InterimRelief” and a “Motion – Show Cause (Interim Relief)”, followed on

August 12 by a “Memorandum – At Law (Emergency Motion for Interim Relief)”, and on

131. August 22 by a “Motion for Expedited Hearing”. (State register entries dated

132. 08/02/2023 and 08/12/2023; 08/22/2023 motion for expedited hearing.)

August 25, 2023 – Counsel’s Notice of Unavailability Freezes the Calendar

133. On August 25, 2023, West Linn’s trial attorney, William Stabler, filed a“Counsel’s Notice of Unavailability” stating that he “will be out of the office and unavailable from Monday, August 28, 2023 to Friday, September 15, 2023,” and further “requested that no motions, hearings, or depositions be set during this period, and that a minimum of two weeks be allowed to respond or reply to any matters following the undersigned’s return.” (Counsel’s Notice of Unavailability and Certificate of Service.)

134. The state register for 22CV39627 reflects on that same date: “Counsel’sNotice of Unavailability.”

135. 3. October 12 & 20, 2023 – Show Cause Denied; Hearing Reset from October 23 to November 20

136. On October 11, 2023, Judge Wetzel entered an “Order – Denial (showcause – Denied)” with respect to Appellant’s emergency motion; the order was docketed October 12, 2023.

137. Shortly thereafter, the October 23, 2023, hearing on “M/Relief” beforeJudge Schroer was “CANCELED… Continued” on the register.

138. On October 20, 2023, the court issued a Notice of Scheduled CourtAppearance setting a “Hearing – Motion” for November 20, 2023, at 9:00 AM, and expressly noting that it was “M/Relief reset from 10/23/23 due to conflict for

139. Judge Schroer.”

140. 4. October 24–26, 2023 – Appellant Warns of Looming Limitations;

141. West Linn Opposes Any Ex Parte Relief

142. On October 24, 2023, Appellant emailed Stabler explaining that he hadalready flown in for what he understood to be an emergency setting—“They waited too long for my [hearing] I was already committed on my flight”—and that he would be going to ex parte because of statutes of limitation and the failure to schedule his emergency motion.

143. In follow up messages the same day, Appellant told Stabler that “statutesof limitations [are] coming up within a few months,” that the court would not schedule a timely emergency motion, and that “I am going to be in Ex Partee TOMORROW… I really need it to go through or I’m going to lose about everything.”

144. Stabler responded on October 24 and 26, 2023 that “the hearing for yourmotion is set for November 20 and I object to you having any ex parte contact with the court on any issue in this case.”

145. Appellant replied that he was “being encroached by statutes of limitations,the inability to comply with Undertakings of cost, and personal relationships and my wellness,” and that having to wait until November 20 after counsel’s unavailability would be “unfair.”

146. 5. November 2–14, 2023 – West Linn Moves to Setover Trial and

147. Settlement Conference; Postponement Granted

148. On November 2, 2023, West Linn filed “Defendants West Linn PoliceDepartment, Dana Gunnarson and Catlin Blyth’s Motion to Setover Trial Date and Settlement Conference.” The motion certified under UTCR 6.030(2) that counsel had advised his clients and that they agreed to the

postponement, stating that the January 9, 2024 trial date should be moved because “Defendant Catlin

149. Blyth will be on leave pursuant to the Family Medical Leave Act (‘FMLA’) until

150. January 31, 2024, due to the expected birth of a child.”

151. The motion asked that trial be reset to “March 19, 2024; April 2, 2024;May 14, 2024; or May 21, 2024” and noted that “Plaintiff objects to the requested postponement.”

152. That same day, Stabler lodged an Order on Motion to Setover Trial Dateand Settlement Conference, and a Certificate of Readiness stating that the proposed order was “ready for judicial signature” and that service/objection requirements had been met.

153. On November 14, 2023, Judge Wetzel entered an “Order – Postponement

154. (Granted)” granting the continuance.

155. 6. December 13–15, 2023 – Trial Moved from January 9, 2024, to

156. May 21, 2024; Interim Relief Finally Denied

157. On December 13, 2023, the court issued a Notice of Scheduled Court

158. Appearance to West Linn’s counsel setting “Trial – Twelve Person Jury” for May

159. 21, 2024, at 9:00 AM, with the additional note: “Reset from 1/9/24; Mo/Co

160. MCW.” The state register likewise reflects “CANCELED Trial – Twelve Person

161. Jury (9:00 AM) … Continued,” for January 9, 2024, and a new trial setting on May 21, 2024.

162. On December 15, 2023, the court entered an “Order Denying Plaintiff’sMotion for Interim Relief and Defendants’ Cross Motion for Attorney Fees”, with a signed date of December 13, 2023.

163. Trial was set for January 9, 2024. On November 2, 2023, the court granted

164. West Linn's Motion to Setover Trial. The reason: Officer Blyth's paternity leave.

165. The trial was reset to May 21, 2024. (ECF 35-1, Ex. 6 (Order on Motion to

166. Setover Trial Date and Settlement Conference); Ex. 12 (Notice of Scheduled Jury Trial, Dec. 13, 2023).) Plaintiff opposed the setover.. He purchased two plane tickets to attend hearings. He wanted this case tried. The reset was granted anyway. This was the last document Plaintiff Filed in Clackamas County Court case for this case until the dismissal. Besides two telephone calls, and the email when they canceled trial again. Here William scheduled this trial in December and that means he knew he was having a baby and did it anyways… then dumped the case on Lewis. (West Linns Partners)

167. The May 21, 2024, trial was then reset again due to defense counselStabler's scheduling conflicts. Trial slid further. Each time, the delay was attributed to Plaintiff. But the record shows otherwise. (ECF 35-4.)

168. IN SUMM:

169. The Opinion states that Plaintiff "only began attempting to remove his case to federal court the day Clackamas was dismissed. The Opinion states that Plaintiff "only began attempting to remove his case to federal court the day before the state court's first trial setting," and that his attempted removal "resulted in the cancelation of his state court trial." (ECF 60 at 11.) The actual record tells a different story, but it’s very likely Judge Beckerman didn’t read any of it…

170. May 7, 2024: Plaintiff emailed defense counsel: "I'm going to be filing in

171. Federal Court this afternoon or tomorrow . . ." and asked for their position. (ECF 67, Ex. 9 ("WILLIAM GOING TO FEDERAL COURT.pdf").) Defendants were

172. on notice sixteen days before any filing.

173. May 13, 2024: Federal clerk Eric Oss rejected Plaintiff's attempt to file byemail: "Our Local Rules do not authorize us to take a complaint by email from a pro se party." (ECF 67, Ex. H, 5-13-2024 email.)

174. May 18, 2024: The state register records: "per atty Lewis, pet filed motionto remove to fed court on 5.18." (ECF 35-4.) Plaintiff never spoke to the court; defense counsel did. That notation is Lewis's statement, not Plaintiff's filing.

175. May 20, 2024: Lewis filed a lengthy pretrial motion in state court—the daybefore trial—then the calendaring clerk emailed all counsel: "Due to the length of the defense's pre-trial motion in addition to the motion over this past weekend by plaintiff to move the case to federal court, it has been determined that this case is not ready for trial tomorrow and is being re-set." (ECF 67, Ex. 3.) The clerk put the primary blame where it belonged: on the defense's last-minute motion.

176. May 22, 2024: Plaintiff tried again to file federally, this time delivering a thumbdrive and paper to the clerk's office. Oss responded: "We received what you sent, but it cannot be accepted for filing . . .. The Clerk's Office will not pull or sort documents from thumb drives or loose envelopes . . .. No action can be taken on your submissions received by mail today." (ECF 67, Ex. H, 5-22-2024 email.) • May 23, 2024: Only after all of that did the federal complaint finally hit the docket.

177. Thus, trial was already canceled by a combination of Lewis's pretrial motion and the clerk's internal decisions before any federal case number existed. ECF 60 simply repeated defense counsel's story and wrote Plaintiff out of his own timeline.

178. lackamas was dismissed..," and that his attempted removal "resulted in the cancelation of his state court trial." (ECF 60 at 11.) The actual record tells a different story.

SUMMARY OF THE ARGUMENT

This appeal presents a single question: Can the government stack procedural doctrines—immunity, abstention, and limitations—so high that a citizen loses

access to every forum, even when the record proves fraud upon the court at every level?

OUTLINE OF ARGUMENT:

I. JURISDICTION – DAE RIM FISHERY: "TIMELY FILED" MEANS

TIMELY FILED

II. ECF 60 / AIU ABSTENTION – BECKERMAN'S 7 REASONS (ANDWHY EACH FAILS)

A. AIU Presupposes a Functioning Forum – This one was a trap

B. Consent-Then-Flip – Lewis consented Feb 12, then called it

"repetitive"

C. Day 181 Trap – Both doors closed the same day

RIGHTS

V. RELIEF REQUESTED – VACATE, REMAND, SANCTIONS,REFERRAL

The District Court dismissed this case as a "repetitive lawsuit" under AIU, giving seven reasons. Every one of them fails:

1. "Repetitive lawsuit" – The state forum was obstructed.

Clackamas County was served 15 times and never appeared. Plaintiff filed a Motion to Compel on April 4, 2023; the County was dismissed seven days later. That's not a parallel forum—that's a trap.

2. "Circumvent removal statute" – Defendants CONSENTED. OnFebruary 12, 2025, defense counsel Dave Lewis emailed: "I have no objection to your Motion to Dismiss." You cannot consent to a dismissal then call it circumvention.

3. "No compelling reasons" – The June 10, 2022 transcript provescoordinated false COVID statements by the DDA and defense

advisor. Sixty-two legal files were deleted during lockdown. The witness told the court "We have committed no crimes." Body camera footage remains sealed. Seven days past a release order.

These aren't "reasons"?

4. "Advanced stage of litigation" – WHO caused the delays?

Stabler's unavailability (Aug-Sept 2023). Blyth's paternity leave (Nov 2023-Jan 2024). Lewis's pretrial motion filed the day before trial (May 20, 2024). DEFENDANTS advanced the stage.

5. "Waste of judicial resources" – Ironic. Defendants evadedservice for three years. The County never appeared once. The real waste is a 14-page opinion that never engaged with 2,000 pages of evidence.

6. "Prejudice to Defendants" – WHAT prejudice? The Countynever appeared, never filed an answer, never prepared for trial.

The only "prejudice" is being held accountable.

7. "Time-barred" – Concealment tolls limitations. Defendantscannot hide evidence (14 discovery denials, sealed body camera) then claim time ran out.

The fraud flows downhill: Officer Gunnarson fabricates the arrest → DDA

Portlock lies to the judge → Guard Baker deletes 62 files → Defense counsel Lewis consents then flips → Judge Beckerman ignores all of it. From badge to bench, every link chose to lie, cheat, or look away.

The Ninth Amendment forbids construing procedural doctrines to "deny or disparage" the people's retained rights. When immunity shields fabricated arrests, abstention rewards forum manipulation, and limitations bar claims concealed by the wrongdoers themselves—the government has built exactly what the Framers prohibited.

This Court should vacate the judgment, remand to a different judge, and hold that fraud upon the court dissolves all procedural defenses.

[**Practice Tip**: "Every assertion in the briefs regarding matters in the record, except for undisputed facts offered only for general background, shall be supported by a citation to the Excerpts of Records, unless the filer is exempt from the excerpts requirement." *See* Ninth Cir. R. 28-2.8. In Social Security Appeals, the parties should cite to the certified administrative record as well as the excerpts of record. See Ninth Cir. R. 30-1.6 and 301.4(e). In immigration cases, the parties should cite to the certified administrative record and addendum containing the relevant orders. *See* Ninth Cir. R. 28-2.7. Citations should be in the form [volume number (if more than one)]-[ER (or SER or FER for supplemental and further excerpts of record)]-[page number(s)]—for example, 2-ER-345, or ER-67 (for a single-volume ER), or 1-SER-234 (for the first volume of a multivolume SER). *See* Ninth Cir. R. 30-1.6. These should be *specific* citations to particular pages of the excerpts of record to which the Court can refer (e.g., "1-ER-234–36"), not large page ranges. Best practice is to include a specific record citation after every sentence in the Statement. Failure to adequately cite to the record may result the Court striking your brief.

The statement of the case is your first real opportunity to draw the reader in, explain what the case is about, and convince the reader to care about it. It should read like a story of what happened, not a minute order summarizing the proceedings below. Tell a story that is interesting, compelling, and makes the reader want to side with your client.

Generally, the statement of the case should include the facts relied upon in your argument section. However, you need not include every detail in the statement of facts. You can elaborate further in the argument section when doing so will make it easier for the reader to digest the additional detail.

Don't avoid inconvenient facts. If you leave out an important fact that seems to benefit your opponent, the judges will notice the omission, and they will start to wonder if you are omitting other relevant information as well. If the judges start doubting your credibility as they read your statement of the case, you will be in trouble by the time they get to your legal argument.]

SUMMARY OF THE ARGUMENT

[Insert a summary of the argument(s), which must (1) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and

(2) not merely repeat the argument headings.]

[**Practice Tip**: To guide the reader, the summary of argument should generally follow the same organization as the Argument section. It can be effective to begin

each paragraph in the Summary with the Roman numeral (e.g., "II.") of the Argument section summarized by the paragraph.]

STANDARD OF REVIEW

[Concisely state the applicable standard of review for each issue presented, including a citation of the relevant statute or Ninth Circuit decision setting forth the standard. In addition, if you are the party disputing a ruling on appeal, and the ruling is one to which a party must have objected at trial to preserve a right of review, *e.g.*, a failure to admit or to exclude evidence, or the giving of or refusal to give a jury instruction, state where in the record on appeal the objection and ruling are set forth.]

ARGUMENT

I. THE DISTRICT COURT ERRED IN DISMISSING THIS ACTION AS "REPETITIVE" BECAUSE NO ABSTENTION DOCTRINE APPLIES AND THE STATE FORUM WAS RENDERED UNAVAILABLE BY DEFENDANTS' OWN MISCONDUCT

Federal courts possess a "virtually unflagging obligation" to exercise jurisdiction conferred by Congress. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). The doctrines of abstention—whether styled as AIU repetitive-lawsuit dismissal, Younger comity, or Colorado River—are "extraordinary and narrow exception[s]" to this mandate. *Id.* at 813. None applies here because the state proceedings had terminated, the state forum proved structurally inadequate, and defendants themselves induced the procedural posture they now exploit.

A. No Parallel Proceedings

The AIU repetitive-lawsuit doctrine and Colorado River abstention both presuppose "the contemporaneous exercise of concurrent jurisdictions." Am. Int'l Underwriters (Phil.), Inc. v. Cont'l Ins. Co., 843 F.2d 1253, 1258 (9th Cir. 1988).

When a parallel state case terminates, the foundation for abstention collapses. Seneca Ins. Co. v. Strange Land, Inc., 862 F.3d 835, 842–43 (9th Cir. 2017).

B. The Civil Track Was Closed.

The state civil-rights action, Case No. 22CV39627, was dismissed by General Judgment on March 6, 2025. ECF 35-4 at 5–6. That judgment closed the state register six months before the federal dismissal on September 3, 2025. ECF 60. A case that no longer exists cannot be "parallel," and abstention in favor of a non-existent proceeding is legal error. *See Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 28 (1983) (abstention improper where state litigation has concluded).

C. The Criminal Track Was Closed.

The criminal track likewise affords no basis for abstention. All misdemeanor charges in Case No. 22CR10908 were dismissed "in the interest of justice" on July 13, 2022—the night before the third scheduled trial. This dismissal came after Macy Galla, the State's sole witness, gave testimony for the first time under oath on June 24, 2022, in which she stated: "Yes, half of that was untrue, fabricated, and

manipulated.... We have committed no crimes." June 24, 2022 Tr. at 7–8, ECF 15, Ex. 2. This was not a change of heart. This was the first time Macy ever gave a statement in this case—officers had fabricated their reports from photographs delivered by Macy's daughter's boyfriend without ever taking a witness statement from Macy herself. ECF 17-1, SAC ¶¶ 29–31. When Macy finally spoke under oath, she told the truth: no crime occurred.

Younger abstention presupposes an "ongoing state judicial proceeding." *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). Once criminal charges terminate, Younger's rationale evaporates. *Branson v. City of Los Angeles*, 993 F.3d 1110, 1116 (9th Cir. 2021). Because neither the civil nor criminal track remained open, the District Court lacked any legitimate basis for abstention.

D. <u>The Colorado River 8 Factors Weighed Decisively Against Abstention.</u>

Even during the brief period when the state civil case remained nominally open, the six Colorado River factors ran uniformly in favor of federal retention.

1) FACTOR ONE: CONTROL OF PROPERTY.

a) Neither court exercised jurisdiction over any res.

2) Factor Two: Inconvenience of Forum.

a) The federal courthouse in Portland sits fifteen miles from the Clackamas County Courthouse.

3) Factor Three: Avoidance of Piecemeal Litigation.

a) Only the federal action unites all defendants—West Linn, Officers Blyth, and Gunnarson would have gone to trial with a ghost to blame things on,

b) Clackamas County evaded 13 services, this would have rewarded them for intentional evasion and lack of accountability... something history shows as routine in Clackamas,

c) DDA Portlock Also would have been seperated because Plaintiff didn't have the fraud evidence at the time, and who knew evidence would still be blocked through DDA.

d) The state court had already fragmented the litigation by dismissing the County defendants on April 11, 2023, and May 11, 2022 while allowing the West Linn defendants to remain. ECF 35-2, 35-3.

e) Federal abstention would not avoid piecemeal litigation; it would guarantee it. This factor favors federal retention.

4) Factor Four: Order in Which Jurisdiction Was Obtained and Progress of Litigation.

a) Due to the defendants own actions, in avoiding the service and hiding behind UTCR 7.020, giving notice that should be voided, and Plaintiffs Pro se status he wasn't aware of the the path to Default judgment. Additionally the notice given gave no name or statute (it gave UTCR 7 as apposed to UTCR 7.020) with two John Does, His AOB case just entering the Oregon Court of Appeals and they lost his Appeal, meanwhile litigating, and living out of state caused the County to escape state without ever appearing. By Oregon law, County could no show, in hopes that Plaintiff doesn't file the proper Default Application, they acan send notice on a link via bulk email, and if Plaintiff does catch it, they can then show up with no penalty, however if they do not they get to call "repetative" Prejudice against a Plaintiff who now has to start over to and serve you for another dozen times? for their intentional obstruction? Does this even need to be argued? (The state court register shows that Clackamas County was served approximately fifteen times but never answered, never moved, and never appeared. ECF 35-4. On April 4, 2023, Appellant filed a Motion to Compel Appearance. Seven days later, on April 11, 2023, the court dismissed the County defendants "for want of prosecution"—not for the County's failure to appear, but for Appellant's supposed failure to prosecute. ECF 35-2, 35-3. Meanwhile, the federal case reached responsive pleadings from every defendant. ECF 34, 36, 37. This factor strongly favors federal retention.

5) 5. FACTOR FIVE: ADEQUACY OF STATE FORUM.

The state forum was structurally unavailable. On March 9, 2023, the court mailed a UTCR 7.020 notice stating only that Appellant had "not provided the court with proof of service for at least one defendant"—without identifying which defendant supposedly lacked proof of service. Ex. 18, Ex. 20. On May 11, 2023, the court mailed an ORS 18.078 notice of judgment that left the judgment-date and judgment-type fields entirely blank—fields the statute expressly requires be completed. Ex. 24; ORS 18.078(2). These facially defective notices could not support a valid dismissal under *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950), which requires notice "reasonably calculated" to inform parties of proceedings. A state forum that dismisses claims through void notices is not an adequate alternative forum. This factor strongly favors federal retention.

6) 6. FACTOR SIX: FORUM SHOPPING.

Defendants—not Appellant—manipulated the forum. Defense counsel Dave Lewis emailed Appellant on February 12, 2025: "I have no objection to your Proposed Order or to your Motion to Dismiss. I agree to the waiver of costs and attorney fees in exchange for the dismissal." ECF 35-15 at 5. Relying on this written consent,

Appellant dismissed the state case on February 13, 2025. Days later, the same defendants filed federal motions to dismiss arguing that Appellant's lawsuit was "repetitive" because he had dismissed the state case. ECF 34, 36, 37. Inducing a dismissal and then weaponizing it is the quintessential "forum shopping" Colorado River condemns. This factor strongly favors federal retention.

Moses H. Cone holds that abstention is proper only when the factors "heavily" favor it. 460 U.S. at 16. Here, not a single factor favors abstention. The District Court's dismissal was therefore contrary to law.

7) C. AIU's "Compelling Reason" Exception Applies.

Even where parallel proceedings exist, AIU recognizes that federal jurisdiction must be exercised when "compelling reasons" counsel against abstention. 843 F.2d at 1261. The consent-then-flip documented above constitutes precisely such a compelling reason. Defense counsel cannot induce a procedural act by giving written consent, then cite that induced act as evidence of litigation abuse. That is fraud upon the court under *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991), not a legitimate ground for abstention.

8) D. THE TIMING OF THE FEDERAL DISMISSAL CONFIRMS TACTICAL ABUSE.

The state case was dismissed without prejudice on March 6, 2025. Under ORS 12.220, Oregon's savings statute, Appellant had 180 days—until September 2, 2025—to refile in state court. The federal dismissal issued on September 3, 2025—Day 181. ECF 60. This was not coincidence. The Opinion was held until the very day the state-court door closed, ensuring that Appellant could not return to any forum.

Abstention doctrines exist to promote efficiency and comity, not to spring limitations traps. "Abstention cannot be used by a federal court as a means of terminating a plaintiff's right to a federal forum on the merits of his claim." *Moses H. Cone*, 460 U.S. at 28. When a court times its ruling to synchronize with a limitations bar, it converts abstention from a prudential tool into a weapon. That conversion is structural error requiring reversal.

9) E. DISMISSAL RATHER THAN STAY WAS INDEPENDENT STRUCTURAL ERROR.

Colorado River abstention, even when proper, authorizes only a stay—not a dismissal. *Attwood v. Mendocino County Resource Conservation District*, 886 F.2d 241, 243 n.1 (9th Cir. 1989). A stay preserves the federal forum should the state case falter.

Dismissal extinguishes it. By dismissing rather than staying, the District Court foreclosed any possibility of federal review and violated the "virtually unflagging obligation" to exercise jurisdiction. *Colorado River*, 424 U.S. at 817.

10)

11) II. FRAUD ON THE COURT BY DEFENDANTS AND THEIR COUNSEL VOIDS THE UNDERLYING PROCEEDINGS AND STRIPS ALL IMMUNITY DEFENSES

"Fraud upon the court" is "that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). The Supreme Court has identified four elements: (1) an intentional falsehood; (2) uttered by an officer of the court; (3) directed at the court itself; (4) that in fact influenced a judicial decision. *Id.* All four elements are satisfied multiple times on this record.

12)A. THE COORDINATED COVID FABRICATION CANCELED A JURY TRIAL.

On June 9, 2022, defense advisor Rubin Medina—an officer of the court assigned to represent Appellant—telephoned Judge Steele outside Appellant's presence and reported that Appellant "had tested positive for COVID the last two days." June 10, 2022 Tr. at 3–4, ECF 15, Ex. 1. Medina knew this was false. He had visited Appellant in the jail's general population the day before and saw that Appellant was cleared from quarantine and ready for trial.

The next day, June 10, 2022, DDA Rebecca Portlock repeated the identical lie in open court: "He tested positive for COVID… yesterday." *Id.* Judge Steele responded: "Because of the information we received from you yesterday… I called the jury off." *Id.* at 6–8.

Judge Steele then corrected the record: "It turns out he didn't. He didn't test positive yesterday…. It turns out that he tested positive on May 29th [twelve days earlier] and… he got out of quarantine… and was put into the general population." *Id.* But the correction came too late. The jury had already been dismissed. The trial was postponed. Appellant—who had walked into the courtroom ready to proceed—was removed before the judge even arrived after DDA Portlock ordered: "Get him out of here before the judge sees him!" ECF 17-1, SAC ¶ 47.

The elements of fraud on the court are unmistakable. The falsehood was intentional: Medina knew Appellant was cleared because he had personally visited him in general population the day before. Both speakers were officers of the court: Medina as defense advisor, Portlock as prosecutor. The deception was directed at the court: Judge Steele explicitly relied on "the information we received from you yesterday" to cancel the jury. And the fraud influenced the outcome: a scheduled jury trial was vacated based on statements the court acknowledged were false.

13) B. The Deletion of Sixty-Two Legal Files Was Deliberate Spoliation.

At exactly 5:10 p.m. on June 20, 2022—during mandatory dinner lockdown when all inmates were confined to cells—jail guard Baker accessed the law library computer system and deleted sixty-two of Appellant's legal files. ECF 8, Ex. 6. The jail's own computer logs recorded the timestamp, the user ID, and the action: "DELETE (62 items)." *Id.* Those files contained motions, witness lists, evidence summaries, and research materials prepared for both the criminal defense and the AOB civil trial.

Appellant filed a grievance. The jail's response: "Unsustained. Insufficient evidence"—this despite computer logs proving exactly what happened, when, and by whom. *Id.*

Deliberate destruction of an adversary's litigation files during live proceedings constitutes fraud on the court. *See Chambers*, 501 U.S. at 44 (courts possess inherent power to address "conduct which abuses the judicial process"). Spoliation deprives the tribunal of evidence essential to its truth-finding function and is per se intentional deception aimed at the court.

14) C. THE SEVEN-DAY DEFIANCE OF A RELEASE ORDER WAS ADMINISTRATIVE FRAUD.

On July 1, 2022, Judge signed a release order. ECF 8 ¶¶ 81–82. The jail received it but refused to comply for seven days, recording only "awaiting DA clearance"—a requirement that does not exist in law. *Id.*; Ex. 12. Appellant remained in custody until July 8, 2022, in direct violation of a judicial mandate.

A jailer's conscious refusal to obey a court order, combined with a fabricated excuse, constitutes fraud directed at the court's authority. It falsely represents to

the judiciary that its mandate has been carried out while the prisoner continues to be held. Those seven additional days compounded the constitutional injury.

15) D. The Synchronized Fabrication of Arrest Reports Deceived the Arraignment Judge.

Officers Blyth and Gunnarson submitted initial arrest reports on March 6, 2022. A supervisor rejected those reports—they did not establish the elements of harassment. At 7:00 a.m. on March 7, 2022, before Appellant's arraignment, the officers met and revised their reports. The revised versions were submitted within fifteen minutes of each other. ECF 17-1, SAC ¶¶ 29–31; ECF 15, Ex. 23.

The edited reports omitted critical facts: the gasoline Macy had purchased, the seven broken windows she had smashed, the three days of 911 calls in which Appellant was the complainant, and the arson and death threats Macy had texted. ECF 8 ¶¶ 37–44. The narrative transformed water sprayed "into" windows and "onto" Appellant's property into water sprayed "at" windows—as though Macy were merely gardening.

Filing a doctored narrative to justify a warrantless arrest is an intentional misrepresentation whose purpose is to deceive the arraignment court into finding

probable cause. *See Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc) (officers who "deliberately or recklessly" omit material exculpatory information destroy probable cause).

16) E. Defense Counsel's Consent-Then-Flip Extended the Fraud to the Federal Forum.

On February 12, 2025, West Linn counsel Dave Lewis emailed: "I have no objection to your Proposed Order or to your Motion to Dismiss. I agree to the waiver of costs and attorney fees in exchange for the dismissal." ECF 35-15 at 5. Appellant relied on this consent and dismissed the state case. One month later, Lewis and co-defendants filed motions arguing the federal case was a barred "repetitive lawsuit" because Appellant had dismissed the state case. ECF 34, 36, 37.

Inducing an adversary to take a procedural step by consent, then weaponizing that step against him, is litigation fraud. Model Rule of Professional Conduct 3.3; *Chambers*, 501 U.S. at 44–46. When officers of the court invite the judiciary to rely on an induced procedural act, they perpetrate fraud upon the court itself.

F. Legal Consequences of Fraud on the Court.

The legal consequences of proven fraud upon the court are categorical.

1. Judgments Obtained by Fraud Are Void.

A judgment obtained by fraud is void, not merely voidable. *Hazel-Atlas*, 322 U.S. at 246. The judgment here rests on proceedings tainted at every level—the arrest, the arraignment, the trial cancellation, the detention, the state dismissal, and the federal dismissal.

2. Immunities Dissolve Where Officials Fabricate Evidence or Mislead the Court.

Buckley v. Fitzsimmons, 509 U.S. 259, 274–76 (1993). Prosecutorial immunity protects advocacy; it does not protect administrative acts such as coordinating false COVID information to manipulate the calendar. Qualified immunity protects reasonable mistakes; it does not protect deliberate report fabrication.

3. Statutes of Limitation Are Tolled.

A wrongdoer "is not permitted to profit from his own wrong." *Appling v. State Farm Mutual Automobile Insurance Co.*, 340 F.3d 769, 777 (9th Cir. 2003). Defendants cannot invoke time-bars when their own concealment prevented Appellant from discovering the fraud until he obtained the June 10, 2022 transcript on April 19, 2024.

22) **4. TERMINATING SANCTIONS ARE REQUIRED WHERE LESSER SANCTIONS CANNOT CORRECT THE PREJUDICE.**

Anheuser-Busch, Inc. v. Natural Beverage Distributors, 69 F.3d 337, 348 (9th Cir. 1995). The deleted files cannot be recovered. The missed AOB trial cannot be re-run. The 129 days of custody cannot be returned. The body-camera footage remains sealed. As *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184–85 (1988), teaches, once the harm has occurred, everything that flows from that harm is tainted. The evidence is gone. The DHS seal remains in place. Appellant was made homeless. There is no reconstructing five years of hundreds of court documents. Terminating sanctions are the only proportionate remedy.

23) _____

24) III. THE NINTH AMENDMENT PROHIBITS THE GOVERNMENT FROM CONSTRUCTING PROCEDURAL DOCTRINES THAT DESTROY THE PEOPLE'S GUARANTEED RIGHTS

The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX. Every word of this provision carries precise meaning. Understanding those meanings reveals that defendants have committed the precise constitutional violation the Framers sought to prevent.

25) A. THE ETYMOLOGY OF "DISPARAGE" REVEALS THE AMENDMENT'S CORE COMMAND.

E. 1. The French Origin: Marriage Beneath One's Station.

The word "disparage" derives from the Old French desparager, a compound of des- (expressing negation or reversal) and parage (equality of rank, lineage, or station). Johnson's Dictionary (1755) defined "to disparage" as "to match unequally; to injure by union with something inferior; to treat with contempt." The Oxford English Dictionary (2d ed.) traces the term to feudal marriage law, where desparager meant "to marry to one of inferior rank"—an act that degraded the higher-born spouse by forcing association with someone beneath their station.

F. 2. Application to Rights: Degradation by Rank.

When applied to constitutional rights, "disparage" means to degrade those rights by subordinating them to something of inferior rank—such as a procedural convenience, an immunity doctrine, or an abstention rule. The Ninth Amendment forbids "construing" the constitutional structure in any way that places the people's guaranteed rights beneath procedural mechanisms designed to serve administrative efficiency.

26) B. The Influence of French and English Legal Thought at the Founding Requires This Interpretation.

The Framers drafted the Bill of Rights in 1789, immediately after ratification of the Constitution. Their legal vocabulary drew heavily from English common law and French jurisprudential concepts. The term "disparage" was not chosen casually—it carried centuries of meaning in both legal traditions concerning the improper subordination of persons or rights to inferior positions.

Moreover, the Bill of Rights emerged precisely because local governments and newly empowered officials were already attempting to assert authority over the people's fundamental liberties. Madison's speech of June 8, 1789, warned against

"violent mis-construction" that would "lessen the latitude of future rights." The Ninth Amendment was inserted as a structural safeguard against precisely what has occurred here: the accumulation of procedural doctrines—immunity, abstention, limitations—stacked upon one another to crush substantive rights.

27) C. The Word "Enumeration" Is the Key to the Amendment's Meaning.

28) 1. "Enumeration" Is Present Tense: The Act of Listing in Rank Order.

The Amendment does not say "the enumerated rights" (past tense, already written down). It says "the enumeration... of certain rights"—using the present-tense gerund form with the suffix "-tion" indicating ongoing action. "Enumeration" means the act of listing, ranking, or ordering. This is something only the government does—the people do not enumerate constitutional provisions; the government constructs and applies them.

29) 2. The Amendment Therefore Addresses Government Action.

The subject of the Amendment is governmental construction. It prohibits the government from engaging in the act of ranking or listing constitutional provisions

in a way that subordinates the people's rights. When the government stacks qualified immunity atop absolute immunity atop AIU abstention atop statute-of-limitations bars—all to defeat one citizen's claims—the government is "enumerating" procedural doctrines in a manner that "disparages" the people's retained rights.

30) **D. THE MEANING OF "CERTAIN RIGHTS": SPECIFIC, IDENTIFIABLE, AND GUARANTEED.**

The word "certain" in eighteenth-century usage meant "specific, fixed, identifiable, and guaranteed." *See* Johnson's Dictionary (1755) ("certain: sure; undoubted; unquestionable; that which is past doubt"). The Amendment thus addresses specific, identifiable, guaranteed rights—not some hypothetical category of unstated rights.

31) **APPELLANT'S RIGHTS ARE SPECIFIC AND GUARANTEED:**

32) **(A) FIRST AMENDMENT: THE RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.**

33) (B) FOURTH AMENDMENT: THE RIGHT TO BE FREE FROM ARREST WITHOUT PROBABLE CAUSE.

34) (C) FIFTH AMENDMENT: THE RIGHT TO DUE PROCESS BEFORE THE FEDERAL GOVERNMENT.

35) (D) SIXTH AMENDMENT: THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND ACCESS TO COURTS.

36) (E) SEVENTH AMENDMENT: THE RIGHT TO A CIVIL JURY TRIAL.

37) (F) NINTH AMENDMENT: THE RIGHT TO HAVE THE FOREGOING RIGHTS REMAIN UNDIMINISHED.

38) (G) FOURTEENTH AMENDMENT: THE RIGHT TO DUE PROCESS BEFORE STATE GOVERNMENTS.

Every one of these guaranteed rights was violated. The question is not whether Appellant possesses rights—he does, and they are enumerated. The question is whether the government may construct procedural barriers that extinguish those rights.

39) E. RIGHTS CANNOT BE DIMINISHED: THE INDIVISIBILITY PRINCIPLE.

40) 1. A RIGHT IS WHOLE OR IT IS NOTHING.

A constitutional right is not divisible. One cannot possess "half" a right to due process, or "sort of" a right to a jury trial. Consider property rights by analogy: if two siblings inherit a house, each possesses a complete right to their half—not half of a right to the whole house. Each sibling's right is complete unto itself. If one sibling purchases the other's interest, the buyer does not obtain "more" of a right—the buyer simply now possesses the other sibling's complete right to that portion.

41) 2. CONSTITUTIONAL RIGHTS WORK THE SAME WAY.

A constitutional right is either protected or it is not. Defendants cannot invoke immunity for the arrest while claiming abstention bars the detention claim while arguing limitations defeats the prosecution claim—as though each doctrine shaves away a portion of Appellant's rights until nothing remains. The rights are whole. The doctrines cannot be accumulated to make them disappear.

42) F. THE RELATIONSHIP BETWEEN RIGHTS AND DUTIES.

43) 1. EVERY RIGHT HAS A CORRESPONDING DUTY.

Constitutional rights do not exist in isolation. For every right possessed by the people, there exists a corresponding duty on the part of the government to ensure that right is protected. The Fourth Amendment right to be free from unreasonable seizure creates a duty upon law enforcement to establish probable cause before arrest. The Sixth Amendment right to effective counsel creates a duty upon the court to ensure appointed counsel does not sabotage the defense. The Fourteenth Amendment right to due process creates a duty upon the state to follow its own procedures.

44) 2. THE FEDERAL GOVERNMENT ENFORCES WHEN THE STATE FAILS.

When state actors breach their duties, federal law provides the remedy. 42 U.S.C. § 1983 exists precisely because "state remedies [may be] inadequate." *Monroe v. Pape*, 365 U.S. 167, 174 (1961). A constitutional violation is simultaneously a federal law violation. The state has a duty to prevent such violations. When the state fails—or worse, when state actors themselves commit the violations—federal jurisdiction exists to enforce the duty the state has shirked.

45) 3. CONSTITUTIONAL VIOLATIONS CANNOT BE SHIELDED BY PROCEDURE.

The moment a constitutional right is violated, a federal law has been broken. Immunity cannot retroactively un-break that law. Consider the sequence:

46) (A) THE STATE HAS A DUTY TO RESPECT CONSTITUTIONAL RIGHTS.

47) (B) STATE ACTORS BREACH THAT DUTY—BY FABRICATING ARREST REPORTS, BY LYING TO CANCEL TRIALS, BY DELETING LEGAL FILES, BY IGNORING RELEASE ORDERS.

48) (C) FEDERAL LAW IS VIOLATED AT THE MOMENT OF BREACH—NOT AT THE MOMENT OF LAWSUIT, NOT AT THE MOMENT OF JUDGMENT, BUT AT THE MOMENT OF THE UNCONSTITUTIONAL ACT.

49) (D) IMMUNITY DOCTRINES CANNOT RETROACTIVELY ERASE A BREACH THAT HAS ALREADY OCCURRED.

The DDA cannot claim immunity for lying about COVID status because the moment she uttered the lie, she breached her duty to the court. The officers cannot claim immunity for fabricating reports because the moment they omitted the broken windows and arson threats, they breached their duty to establish truthful probable cause. The jail cannot claim immunity for ignoring the release order

because the moment it refused to comply, it breached its duty to obey judicial mandates.

50) **G. THE AMENDMENT PROHIBITS CONSTRUCTING PROCEDURAL DOCTRINES TO EVADE ACCOUNTABILITY.**

51) **1. "SHALL NOT BE CONSTRUED" ADDRESSES INTERPRETATION.**

The operative command is "shall not be construed." This is an interpretive directive to courts. It prohibits courts from interpreting or applying constitutional provisions and procedural rules in a manner that destroys the people's rights. When defendants pile immunity upon abstention upon limitations upon forum-manipulation—and when courts accept that pile as a valid defense—the courts have "construed" those doctrines to "deny and disparage" the rights Appellant retains.

52) **2. DEFENDANTS CANNOT BUILD THEIR PROCEDURAL DEFENSES UPON THEIR OWN WRONGDOING.**

53) **WHAT DEFENDANTS ASK THIS COURT TO SANCTION IS A SYSTEM WHERE GOVERNMENT ACTORS MAY:**

54) (A) FABRICATE AN ARREST AND REMOVE A CITIZEN FROM HIS PROPERTY.

55) (B) LIE TO CANCEL JURY TRIALS.

56) (C) DELETE DEFENSE FILES DURING LOCKDOWN.

57) (D) IGNORE RELEASE ORDERS.

58) (E) EVADE SERVICE FOR FIFTEEN ATTEMPTS.

59) (F) ISSUE DEFECTIVE NOTICES TO TRIGGER DISMISSAL.

60) (G) CONSENT TO DISMISSAL THEN FLIP TO CALL THE LAWSUIT "REPETITIVE."

61)(H) TIME THE FEDERAL DISMISSAL FOR DAY 181 TO CLOSE EVERY FORUM.

And then invoke immunity, abstention, and limitations to escape all accountability. That is not law. That is the construction of a procedural fortress designed to crush constitutional rights. The Ninth Amendment forbids it.

62) H. The Judiciary Cannot Remove This Amendment From the Constitutional Structure.

63) 1. This Is Not a Question for Judicial Determination.

With all due respect to this Court and every court that has considered the Ninth Amendment, the Amendment's application is not a matter of judicial discretion. The Amendment is part of the Constitution. It binds the judiciary as surely as it binds the executive and legislative branches. If any branch wishes to diminish the Ninth Amendment's force, that branch must seek a constitutional amendment through Article V—ratified by the people and the states.

64) 2. The Judiciary Cannot Vote Away the People's Rights.

No court possesses the authority to nullify a constitutional provision by interpretation. If courts could "construe" the Ninth Amendment into irrelevance—by treating it as merely hortatory, or by allowing unlimited stacking of procedural doctrines—then the judiciary would have accomplished by interpretation what only the people may accomplish by amendment. That is not the judiciary's role. The Ninth Amendment is the people's right, retained against the government. The

judiciary is part of the government. The judiciary cannot take from the people what the people have retained.

65) 3. THE CONSEQUENCE OF JUDICIAL ABDICATION IS CARELESS HARM.

When courts refuse to enforce the Ninth Amendment—when they allow procedural manipulations to extinguish constitutional rights—they invite precisely the careless harm that occurred here. Officers feel free to fabricate because immunity will protect them. Prosecutors feel free to lie because absolute immunity will shield them. Jails feel free to ignore release orders because no one will hold them accountable. Defense counsel feels free to induce-then-flip because courts will reward the tactic.

This harm would be "tamed the fuck down"—to use Appellant's phrase—if courts enforced consequences. When bad actors know their procedural fortresses will be dismantled, they stop building them.

66) I. CRIMINAL SANCTIONS PROVIDE AN ALTERNATIVE WHEN CIVIL REMEDIES ARE EVADED.

67) 1. THE CRIMINAL STATUTES HAVE LONGER LIMITATIONS PERIODS.

If defendants escape civil liability through procedural manipulation, they do not escape criminal accountability. 18 U.S.C. § 241 (conspiracy against rights) and 18 U.S.C. § 242 (deprivation of rights under color of law) carry limitations periods of five years—or longer where bodily injury occurs. 18 U.S.C. § 3282; 18 U.S.C. § 3281. The coordinated fabrications, the evidence destruction, the defiance of court orders documented in this record may well constitute federal crimes. Civil limitations cannot be manipulated to foreclose criminal prosecution.

68) **2. Referral to the United States Attorney Is Appropriate.**

This Court possesses the authority to refer matters for criminal investigation. The record before the Court documents potential violations of 18 U.S.C. § 241 (the coordinated COVID lie, the synchronized report fabrication), 18 U.S.C. § 242 (the warrantless arrest, the seven-day hold, the file deletion), and 18 U.S.C. § 1001 (false statements to the court). Whether to prosecute is the United States Attorney's decision. Whether to refer is this Court's prerogative.

69) **J. Application to This Case: Every Guaranteed Right Was Violated, and Procedure Cannot Excuse It.**

Appellant does not need to prove that the District Court erred. He knows the District Court erred. ECF 60 does not contain a single accurate finding on any disputed fact in this case. It adopted defendants' narrative verbatim. It ignored the June 10, 2022 transcript proving the COVID lie. It ignored the computer logs proving the file deletion. It ignored the release order proving the seven-day hold. It ignored the consent email proving the forum manipulation.

70) THE ONLY QUESTION REMAINING IS WHETHER THE NINTH AMENDMENT WILL ENFORCE THE CORRECTION.

The rights are guaranteed. The duties were breached. The procedural doctrines cannot be stacked to make the breaches disappear. This Court should hold that:

71) 1. IMMUNITY DOES NOT SHIELD FRAUD.

Qualified immunity fails where officers fabricate reports. *Devereaux*, 263 F.3d at 1076. Absolute immunity fails where prosecutors engage in administrative acts rather than advocacy. *Buckley*, 509 U.S. at 274–76.

72) **2. Abstention Does Not Apply Where Defendants Caused the State Forum's Failure.**

73) **AIU and Colorado River cannot reward the consent-then-flip. *Chambers*, 501 U.S. at 44.**

74) **3. Limitations Do Not Bar Claims Where Defendants' Concealment Prevented Discovery.**

75) **Equitable tolling applies. *Appling*, 340 F.3d at 777.**

76) **4. The Ninth Amendment Commands This Result.**

The "enumeration" of immunity, abstention, and limitations "shall not be construed to deny or disparage" Appellant's retained rights to liberty, property, due process, jury trial, and access to courts. Any other construction rewards the very conduct the Constitution forbids.

77) ---

78) **CONCLUSION AND REQUESTED RELIEF**

Five years. Four proceedings. Zero jury trials. Sixty-two deleted files. Two ex parte communications. Seven days held past a release order. A dismissal timed for Day 181.

The record before this Court documents fraud upon the court by officers, prosecutors, defense counsel, and jail officials—all directed at preventing one pro se litigant from ever having his day before a jury. The District Court's Opinion (ECF 60) adopted defendants' narrative verbatim while ignoring documented evidence of coordinated false statements, evidence destruction, defective notices, and strategic timing.

The Ninth Amendment does not ask whether courts find this convenient. It commands that the "enumeration" of procedural doctrines "shall not be construed to deny or disparage" the people's retained rights. Every construction defendants urge—immunity for fabrication, abstention despite forum-manipulation, limitations despite concealment—constitutes exactly the disparagement the Amendment forbids.

79) THIS COURT SHOULD:

1. VACATE THE SEPTEMBER 3, 2025 JUDGMENT DISMISSING THIS ACTION.

2. REMAND TO A DIFFERENT DISTRICT JUDGE WITH INSTRUCTIONS TO EXERCISE JURISDICTION AND PROCEED TO THE MERITS.

3. STRIKE ALL IMMUNITY, ABSTENTION, AND LIMITATIONS DEFENSES PREDICATED ON THE IDENTIFIED FRAUD, OR ALTERNATIVELY ENTER TERMINATING SANCTIONS AGAINST DEFENDANTS WHO PARTICIPATED IN EVIDENCE DESTRUCTION OR MATERIAL MISREPRESENTATION.

4. ORDER IMMEDIATE PRODUCTION OF BODY-CAMERA FOOTAGE AND THE COMPLETE JAIL COMPUTER AUDIT TRAIL.

5. REFER THE MATTER TO THE UNITED STATES ATTORNEY FOR INVESTIGATION OF POTENTIAL VIOLATIONS OF 18 U.S.C. §§ 241, 242, AND 1001.

80) ANYTHING LESS WOULD RATIFY THE VERY DISPARAGEMENT THE NINTH AMENDMENT WAS WRITTEN TO PREVENT.

81) RESPECTFULLY SUBMITTED,

82) /S/ TYLER ALLEN LOFALL
TYLER ALLEN LOFALL
PLAINTIFF-APPELLANT, PRO SE
DECEMBER 3, 202

83)]

[There are several acceptable ways to use capitalization in your argument headings. Some attorneys prefer to use sentence case (capitalizing only the first letter of the first word, as above) for all headings because it tends to be easiest to read. Other attorneys prefer to use all uppercase for major headings, title case (capitalizing the first letter of every word) for subheadings, and sentence case for the remaining headings. The choice is yours.]

[Insert your first argument: this must include an identification of your contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies]

[**Practice Tip**: Begin the argument section of your brief with your strongest argument. Omit implausible or weak arguments. Be straightforward about the case's strengths and weaknesses and address weaknesses head on. If you are the appellant, don't just argue why you are right, explain why the district court got it wrong. Address case or statutory authority relied on by the lower court. Don't

waste time arguing obvious or undisputed points. Don't use boilerplate, especially regarding well-established standards, but if there is a controlling standard, include it.]

[**Practice Tip**: There are two acceptable ways to address the standard of review. *See* FRAP 28(a)(8)(B). You can include a standalone "Standard of Review" section before your "Argument" section, as illustrated above. *See* FRAP 28(a)(8)(B). Or you can begin each major section of your argument with a subsection that addresses the standard of review for that particular issue. This option may be particularly appropriate when your brief presents numerous issues with different applicable standards or if the standard of review is disputed, complex, or dispositive.]

[**Practice Tip**: The Ninth Circuit's website includes an outline of standards of review, which can be a useful starting point for your research. http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000368]

G. B. [Insert appropriate subheading for the subargument on the first issue]

[Using subheadings within major arguments can help guide the reader through the progression of your argument. For clarity, try to avoid including more than three levels of subheadings (e.g., I/A/1). Two levels should generally suffice. Make your arguments here. Do not incorporate by reference briefs or pleadings filed before the district court, or before this Court in a prior appeal.] [Text]

1. [Insert appropriate subheading for the sub-subargument on issue #1.B.1, if this level of headings is necessary]

[Text]

2. [Insert appropriate subheading for the sub-subargument on issue #1.B.2]

[Text]

84) **II. [INSERT APPROPRIATE HEADING FOR THE ARGUMENT ON ISSUE #2]**

[Insert your second argument (if applicable). Repeat for each additional argument.]

CONCLUSION

[Insert a short conclusion stating the precise relief sought from the Court, such as "For the foregoing reasons, the judgment of the district court should be reversed, and the case remanded for trial [or for an evidentiary hearing, for consideration of Plaintiff's claims on the merits, etc.]."]

[**Practice Tip**: Generally, the conclusion should contain *one sentence* that tells the Court *specifically* what you want it to do and what directions it should give the district court.]

Date: [insert date]

[Insert Counsel's name or firm name]

/s/ [insert name of counsel filing brief]

[insert name(s) of Counsel]

Attorneys for Appellant [insert name of client]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT Form 17. Statement of Related Cases Pursuant to Circuit Rule 28-2.6

Instructions for this form: http://www.ca9.uscourts.gov/forms/form17instructions.pdf

9th Cir. Case Number(s) _____

The undersigned attorney or self-represented party states the following:

[ ] I am unaware of any related cases currently pending in this court.

[ ] I am unaware of any related cases currently pending in this court other than the case(s) identified in the initial brief(s) filed by the other party or parties.

[ ] I am aware of one or more related cases currently pending in this court. The case number and name of each related case and its relationship to this case are:

Signature _____ **Date** _____

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[**Practice Tip**: Under Ninth Circuit Rule 28-2.6, each party must identify in a statement on the last page of its initial brief any known related case pending in the Ninth Circuit. Cases are deemed "related" if they: (a) arise out of the same or consolidated cases in the district court or agency; (b) raise the same or closely related issues; or (c) involve the same transaction or event. The statement should include the name and appellate docket number of the related case and describe its relationship to the case being briefed. The purpose of this rule is to alert the parties and the Court to other known cases pending in this Court that might affect how the instant case is managed or decided. This rule does not require counsel to list all known cases raising the same or closely related issues if the list would be lengthy and counsel in good faith believes that listing the cases would not assist the Court or other parties. If you don't know of any other related cases in this Court, no statement is required. If you are the appellee, you don't need to include any related cases identified by the appellant.]

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I am the attorney or self-represented party.

This brief contains _____ words, including _____ words manually counted in any visual images, and excluding the items exempted by FRAP

32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

☐ complies with the word limit of Cir. R. 32-1.

☐ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

☐ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

☐ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:

☐ it is a joint brief submitted by separately represented parties.

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(Ninth Cir. R. 32-1 to 32-4 (standard briefs and death penalty appeals); FRAP 29(a)(4) (amicus briefs); Ninth Cir. R. 28.1-1 (cross appeals)).]

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[**Note**: Refer to Ninth Circuit Rule 25-5 for information about electronic filing and whether a certificate of service is required.]

Most filings submitted through the Appellate Electronic Filing System that are served electronically do not require a certificate of service. *See* Ninth Circuit Rule 25-5(f)(1).

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ADDENDUM

[**Note / Practice Tip**: Under Ninth Circuit Rule 28-2.7, pertinent constitutional provisions, treaties, statutes, ordinances, regulations or rules must be set forth verbatim and with appropriate citation either (1) following the statement of issues presented for review or (2) in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case, a statement must appear referencing the addendum after the statement of issues. If this material is included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctively colored page. A party need not resubmit material included with a previous brief or addendum; if it is not repeated, a statement must appear under this heading as follows: [e]xcept for the following, all applicable statutes, etc., are contained in the brief or addendum of _____.

All opening briefs filed in counseled petitions for review of immigration cases must include an addendum comprised of the orders being challenged, including any orders of the immigration court and Board of Immigration Appeals. The addendum shall be bound with the brief but separated from the brief by a distinctively colored page.]