No. 25-6461

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Tyler Allen Lofall,

Plaintiff-Appellant,

v.

County of Clackamas at El
(1) 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

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Pro-se Plaintiff-Appellant

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Q1. Whether repeated, multi-case withholding of critical evidence (including body-camera footage and related records) by Clackamas County and other defendants—after specific requests from the inception of the litigation—requires terminating sanctions under this Court's "Tire-co" authority on cumulative discovery abuse, and voids reliance on any state-court dismissal obtained while that evidence was concealed. 10

Q2. Whether the state-court "want of prosecution" dismissal of Clackamas County in 22CV39627 can be honored for abstention or preclusion purposes where, at the same time, County (a) repeatedly withheld core evidence across the criminal and civil cases, (b) evaded or ignored service, and (c) benefitted from defective UTCR 7 / ORS 18.078 notices that did not identify the affected parties or judgment information. 10

Q3. Whether systematic, cross-case suppression of evidence (body-cam video, jail logs, DHS materials) by the same defendants in related criminal and civil matters requires this Court to treat all later defenses—including abstention, limitations, and "failure to prosecute"—as tainted by that misconduct and to impose terminating sanctions. 10

Q4. Whether defendants forfeit, or may be sanctioned for asserting, absolute and qualified immunity defenses where they knowingly mischaracterize those doctrines to the court—for example, by presenting investigative and administrative misconduct (fabricated reports, COVID lies to cancel trial, jail spoliation) as protected "advocacy" or discretionary acts.. 11

Q5. Whether a party's deliberate use of immunity doctrines to shield bad-faith acts—such as fabrication of probable cause, fraud on the court, and evidence destruction—constitutes an abuse of process that warrants sanctions or forfeiture of immunity defenses. 11

Q6. Whether defendants' intentional or reckless creation of financial and procedural barriers (inflated transcript and records fees, denial of fee waivers, refusal to provide accessible formats or accept accessible filings from a blind litigant) and then using those very barriers to invoke statutes of limitation, "failure to prosecute," or abstention justifies terminating sanctions. 11

Q7. Whether the deliberate maintenance of those financial barriers, while evidence and deadlines ran, equitably tolls any limitations period the defendants now assert, and whether reliance on those time bars after creating the barriers is sanctionable. 11

Q8. Whether the district court abused its discretion by failing to impose terminating or issue-preclusion sanctions where jail staff intentionally deleted sixty-two of Appellant's legal files during lockdown, and where that spoliation directly affected his ability to prosecute both state and federal claims. 11

Q9. Whether the district court erred by declining to draw adverse inferences, or to impose terminating sanctions, from defendants' failure to produce body-camera footage and other core evidence requested since the start of the criminal case and carried through into the civil rights actions. 12

Q10. Whether the seven-day over-detention past a signed court release order, under a fabricated "awaiting DA clearance" excuse, in combination with other misconduct (COVID misrepresentations, file deletions, evidence suppression), required terminating sanctions against the responsible entities rather than dismissal of Appellant's claims. 12

Q11. Whether the coordinated COVID misrepresentations to the trial court (used to cancel jury trials and block Appellant from his AOB civil trial),

combined with ex parte communications and concealment of those communications for nearly two years, constitute fraud on the court requiring vacatur of any rulings that relied on that misconduct and imposition of sanctions. 12

Q12. Whether the pattern of report fabrication, COVID lies to judges, destruction of legal work product, evasion of service, and consent-then-flip tactics satisfies the standard for fraud on the court under Hazel-Atlas and Pumphrey, such that defendants' later procedural defenses (abstention, immunity, time bar) should be disregarded or sanctioned. 12

Q13. Whether defendants' conduct in creating and exploiting financial and evidentiary barriers deprived Appellant of his right of access to the courts, and whether that constitutional violation itself supports terminating sanctions or, at minimum, reversal of the dismissal. 12

Q14. Whether, once such fraud on the court and cumulative discovery abuse are established, this Court should (a) vacate the federal dismissal, (b) direct the district court to impose terminating sanctions against the offending defendants, and (c) prohibit those defendants from asserting abstention, immunity, or limitations defenses that depend on the tainted state-court dismissals. 13

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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

I. STATEMENT OF JURISDICTION

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.

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.

II. CONSTITUTIONAL PROVISIONS INVOLVED

a. **First Amendment violated:** **Removed from courtroom, pro se trials, 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 fabricated probable cause (March 6, 2022), Deprivation of Property, AOB Interference, for an Art III, and Art X Intrusion.**

c. **Sixth Amendment violated:** Court-appointed advisor coordinated with DDA to give false COVID information, canceling trial (June 10, 2022). Legal files deleted, law library denied, corrective lenses withheld, undermined by an advisor, Held with an Asterisk as an Wild Card, Leveraging Witnesses, and had his own court appointed attorney withhold evidence, and make decisions on Appellant's behalf with explicit contradictory instructions, While deleting Court Documents after large stents of No Law Library. As well as demial of evidence from Criminal Case spanning two addition civil cases. And 3 and a half years and counting.

d. **Seventh Amendment violated:** AOB civil trial proceeded without Plaintiff, while unlawfully detained (March 23 & June 8, 2022). State civil rights case never reached trial, —County never appeared, Complete lack of respect to rights, fraud upon the court gets completely ignored in Clackamas County, causing more fraud to get the Federal case dismissed without trial. By insinuating that County showed up and West linn didn't give written permission (but they did).

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 no jurisdictional argument for lack of jurisdiction, and Cruel and Unusual Punishment, with Seeding Appellant with covid.

f. **Ninth Amendment violated:** Every procedural doctrine—immunity, abstention, time-bar, forum shopping—has been weaponized to crush Plaintiff's substantive Right to the protection of the Ninth Amendment:, (See Argument III).

"The 'Enumeration'(The Act Of Listing One Ahead Of Another) Of [Certain ("Guaranteed") Rights] HAS BEEN "Construed To [Deny &] Disparage" Other[s] [Rights] Retained By The People."

Collectively, the violations of the 'Fourth', 'Sixth', 'Seventh', 'Ninth', and 'Fourteenth' Amendments produced extreme hardship: prolonged and unlawful detention, destruction and loss of substantial property and livelihood, denial of a civil jury, and the practical extinguishment of any

neutral forum to hear his federal claims. These ongoing consequences ensure 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 period.

If this appeal goes unheard additional violations of the 'first' and 'fifth Amendments' will have been Violated... In denial of grievance to the government, and unfair housing act by falsifying an arrest fabricating evidence and interfering with federal housing rights. However, Plaintiff alleges there is far less people in these court houses than the public would believe.... And this autonomous system is really good at "the image of fairness" if after five-years, the complete denial of court without trial occurs... despite hundreds of Motions and undeniable constitutional rights trampled. Its understood... ... that if Appellant can't have his day in court, no pro-se Constitutional Rights Plaintiff Ever will. This is to this Honorable Court; unlike every single agent and agency I've been trampled by*... I plan on keeping keep my Promises...I*

ISSUES PRESENTED

Below is 14 issues that are really only several worded differently for the court to select the most appropriate:

Q1. Whether repeated, multi-case withholding of critical evidence (including body-camera footage and related records) by Clackamas County and other defendants—after specific requests from the inception of the litigation—requires terminating sanctions under this Court's "Tire-co" authority on cumulative discovery abuse, and voids reliance on any state-court dismissal obtained while that evidence was concealed.

Q2. Whether the state-court "want of prosecution" dismissal of Clackamas County in 22CV39627 can be honored for abstention or preclusion purposes where, at the same time, County (a) repeatedly withheld core evidence across the criminal and civil cases, (b) evaded or ignored service, and (c) benefitted from defective UTCR 7 / ORS 18.078 notices that did not identify the affected parties or judgment information.

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Q6. Whether defendants' intentional or reckless creation of financial and procedural barriers (inflated transcript and records fees, denial of fee waivers, refusal to provide accessible formats or accept accessible filings from a blind litigant) and then using those very barriers to invoke statutes of limitation, "failure to prosecute," or abstention justifies terminating sanctions.

Q7. Whether the deliberate maintenance of those financial barriers, while evidence and deadlines ran, equitably tolls any limitations period the defendants now assert, and whether reliance on those time bars after creating the barriers is sanctionable.

Q8. Whether the district court abused its discretion by failing to impose terminating or issue-preclusion sanctions where jail staff intentionally deleted sixty-two of Appellant's legal files during lockdown, and where that spoliation directly affected his ability to prosecute both state and federal claims.

Q9. Whether the district court erred by declining to draw adverse inferences, or to impose terminating sanctions, from defendants' failure to produce body-camera footage and other core evidence requested since the start of the criminal case and carried through into the civil rights actions.

Q10. Whether the seven-day over-detention past a signed court release order, under a fabricated "awaiting DA clearance" excuse, in combination with other misconduct (COVID misrepresentations, file deletions, evidence suppression), required terminating sanctions against the responsible entities rather than dismissal of Appellant's claims.

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Q13. Whether defendants' conduct in creating and exploiting financial and evidentiary barriers deprived Appellant of his right of access to the courts, and whether that constitutional violation itself supports terminating sanctions or, at minimum, reversal of the dismissal.

Q14. Whether, once such fraud on the court and cumulative discovery abuse are established, this Court should (a) vacate the federal dismissal, (b) direct the district court to impose terminating sanctions against the offending defendants, and (c) prohibit those defendants from asserting abstention, immunity, or limitations defenses that depend on the tainted state-court dismissals.

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 your 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 at 132, lines 611–12.)
3. 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.

4. 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.

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

5. 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.

6. 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.
7. 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.
8. WLPD dispatch logs and Plaintiff's many statements—messages, police reports, and 911 call logs—agree on what followed.

9. 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.)

10. On 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).)

11. On 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.)

12. She went out and purchased five gallons of gasoline. She returned to the property. She took a hammer and started with the door: she smashed out window after window; shattered the door; poured thirty pounds of flour over Plaintiff's bed, tools, clothes, and electronics—the first of three consecutive days; 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.)

13. 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.)

14. On the morning of March 5, 2022, 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.)

15. That afternoon, at 2:24 p.m., Macy sent Plaintiff a series of text messages that would prove critical to understanding the premeditated nature of what followed:

- "Don't expect to 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 you're gone your stuff is safe";
- "If you think to stay nothing is safe and no one";
- "I would rather kill you than myself";
- "I will kill us all first";
- "I wish you were dead";
- "Die."

(Text Message Log (Mar. 5, 2022, 2:24–2:36 p.m.), ECF 15, Ex. 36.)[1] [2]

16. Plaintiff had no problem leaving; however, he needed his files and car keys to do it, as can be seen from the nine times he asked her for them in the same messages.[3]

MARCH 6, 2022: THE STAGED ARREST

17. 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, and her oldest daughter who lived three hours away, 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.

18. Macy, wearing work gloves and carrying the same hammer she had used to smash the windows, smashed out the sole remaining window, shoved the first hose through it, took another garden hose and began spraying water through the broken windows—directly onto Plaintiff and his property. Everything Plaintiff had in West Linn was being destroyed with West Linn doing nothing on day one and two. Plaintiff said enough is enough.

19. 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.[4]

20. The nineteen-year-old boyfriend took photographs—but the photographs were selective. They captured Plaintiff grabbing the hose; however, they also captured Macy swinging the hammer recklessly as Plaintiff reached for it.[5]

21. Officers Catlin Blyth and Dana Gunnarson then responded to the residence. They had been privy to the events leading to this event (admitted in discovery);

22. and there were officers in and out of the property every day, stopping by to check on progress. (ECF 17-1, SAC ¶¶ 22–27.)

23. They had already reviewed the photographs at the station. They arrived with pre-formed intent. Dispatch logs show that within eight minutes from arrival, Plaintiff was inside the patrol car—without conducting any investigation, without reviewing dispatch logs. When Plaintiff tried to explain, Dana used pre-rehearsed (or well-practiced) word spin with the words "at" and "only"; saying he heard the daughter yell and he let go of the hose, to "only" let her go because he heard her daughter... and then again sprayed water "at" the windows.[6]

24. 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.)

25. 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.

26. 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.)

27. 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.

28. 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."

29. Self-defense defeats probable cause. If the officers acknowledged that Plaintiff was defending his property from destruction, there was no lawful basis for arrest.

30. 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.

31. 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.

OFFICERS EDIT REPORTS IN SYNC

32. 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).)

33. 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.) The police reports told a different story than reality. The hammer disappeared from the narrative. The seven broken windows were omitted. The prior 911 calls where Plaintiff was the 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.

II. ARREST TO DISMISSAL: MARCH 6 TO JULY 13, 2022

THE ARRAIGNMENT: MARCH 7, 2022

34. 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; ECF 35-7 at 3.)

35. 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 was on the DA and DHS's blocked list for false reports about her ex being a pedophile; a woman who would later text Plaintiff: "You were right. They took the girls. And my alimony . . . Wish we got along better." (Text Message Log (Aug. 25, 2022).)

36. According to Macy, as stated in text messages to Plaintiff's mother, the District Attorney's office used Macy's coerced cooperation—threatening the custody of her children—to keep Plaintiff detained. (ECF 15, page ___.) This was also implied in the June 24, 2022 hearing when she said the DDA's statements were "fabricated" and "manipulated," testifying that "she took my children."

37. At the arraignment, DDA Rebecca Portlock told the court that Plaintiff was "high risk," an "override release," with "two or more felonies," a "violent history," and multiple flags labeling him. This was all 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. (See ECF 15, page ___.)

38. Based on these fabricated representations, Plaintiff was denied release on recognizance. The "override release" flag triggered overriding release.

39. Plaintiff's court-appointed attorney made it clear she was there to make a deal. Meanwhile, his filings were getting destroyed undefended, and he was denied law library nine days in a row. Moreover, he was blocked from civil matters by Sergeant Heidi Wooster, in charge of the law library, and had his work deleted intentionally (assumedly because his civil claim was five of their annual salaries).

40. His keys, his evidence for the AOB case, everything he needed to prosecute his AOB civil claim was now floating in tubs of water—held by the State's "hostile" witness; completely avoidable had WLPD and Clackamas County not trampled his rights.

FIRST DETENTION: MARCH 6–APRIL 12, 2022 (DAYS 1–37)

41. 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.

42. On March 23, 2022, the AOB claim was stuck, and the contract, unjust enrichment, intentional interference, and intentional infliction of emotional distress claims were undefended. Before trial, only a countersuit would remain—one Plaintiff believed he could resurrect.

43. Plaintiff was denied law library, and after the public defender made it clear that she would only make a deal for him, he was forced to go pro se. He was denied law library nine days in a row and told he could not use the law library for civil claims by Law Library Sergeant Heidi Wooster on March 23, 2022.

44. 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.

RELEASE: APRIL 14, 2022 (HYPOTHERMIA/HOSPITAL)

45. 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.

46. 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.

47. 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.

48. 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.

ARREST #2: MAY 6, 2022 (DAYS 61–66, COURTHOUSE ARREST)

49. 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.

50. 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. (SAC ¶¶ 78–80 (ECF 17-1).)

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

51. Plaintiff was released on May 10. *HE* was out for fourteen days. During this time, Plaintiff was helping a friend recover a stolen vehicle. The friend's ex-roommate had stolen it while Plaintiff had used it to drive her somewhere—she got out of the car and took off. Plaintiff's phone was tracked and they found the car. Plaintiff was back in possession of the car and was driving it back; 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.

52. On May 24, 2022, Plaintiff explained the situation: this is my friend's car; she stole it; we recovered it together; she was with someone who appeared unaware; the owner had driven to get it; I was handed the keys and was making a stop to recover possessions and the license plate. I dropped the first person at WinCo, pulled over in the parking lot, and

told the officer the story. The arrest he had just bailed out from was now processed.

53. Another warrant for the same contact from the previous arrest—no new events—was alleged. (The reasoning for this arrest was later backdated to June 6, 2022; however, Plaintiff has personal knowledge and a chain of events that will demonstrate that was false and was pursued by the DDA after the June 10, 2022 COVID lie to fabricate a reason for the time already unlawfully held.)

54. The police response: they gave the car keys to the thief. While Plaintiff is on cruiser camera footage telling the officers not to, they did it anyway—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).)

FINAL DETENTION: MAY 24–JULY 8, 2022 (DAYS 77–122)

Seeded ***WITH COVID***

55. Days into this detention, the jail deliberately exposed Plaintiff to COVID-19 by packing inmates in an overcrowded tank for days with people with COVID (Tank "B").

56. On May 26–27, 2022, Plaintiff was moved to a quarantine tank, where the time restarted as he changed cellmates.

57. 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"—but the move was on the 29th, after spending all day in the cell making sure that the next inmate, David Dahlen, caught COVID first (the same thing they did to Plaintiff). This was during "6-foot mandatory COVID restrictions." This was not followed, but the image of it being followed was attempted:

- The jail recorded that he was moved to the COVID block the following day, allowing further spread. (Housing Log Screenshot, May 29, 2022.)
- 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.)

58. 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.[7]

Missed ***CIVIL TRIAL FOR AOB***

59. 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: JUNE 10, 2022—THE COVID LIE***

60. 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.

61. 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."

62. "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.

63. 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 record and said, "Because of that I called the jury off."

64. Consequently, the trial was postponed. The day before—June 9—Macy had dropped off a letter at the court. She said the situation "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.

65. 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

66. At exactly 5:10 p.m. on June 20, 2022—during mandatory dinner lockdown (after being denied law library six 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—AND DESTROYS THE STATE'S CASE

67. 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.

68. Macy testified, and after the DDA announced the history of the case, Macy stated: "Yes, half of that was untrue, fabricated, and manipulated.... [Plaintiff] has committed no crimes." (June 24, 2022, Tr. at 7–8, ECF 15, Ex. 2.) 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.

69. 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

70. 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.

71. By July 8, 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

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

73. WHEN HE WALKED OUT, HE HAD NOTHING. HIS AOB CASE WAS DISMISSED. HIS PROPERTY WAS PILLAGED AND DESTROYED. HE WAS HOMELESS.

JULY 14, 2022: CHARGES DISMISSED THE NIGHT BEFORE TRIAL

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

STATE COURT: NOVEMBER 2022–MAY 2024

75. On November 18, 2022, Plaintiff filed Case No. 22CV39627 in Clackamas County Circuit Court—a civil rights action. All defendants were served by November 28, 2022.

76. Clackamas County and its related entities were served thirteen 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.

77. 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 of (thinking it was his fault they did not 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.

78. 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.)

79. Plaintiff exhausted his 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.)

80. 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. 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. 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.

DEFECTIVE NOTICES AND VOID DISMISSALS

81. 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.

82. On March 9, 2023, the court mailed a form "Notice of Intent to Dismiss – 63 Day" under UTCR 7, stating only that Appellant "has not provided the court with proof of service for at least one defendant in this case," 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. (ECF 67, Ex. 18 & Ex. 20.) The notice never identified which defendant was supposedly unserved. There were two John Doe officers for Clackamas County, and everyone was served over ten times each. (See ECF 35-4.) John Doe officers, who by definition could not be named until discovery against the County/Jail occurred, and no reference to the actual register entries, is not "reasonably calculated" to tell a pro se litigant what needs to be cured. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950). Moreover, it was sent via bulk email, almost identical to the received filing receipt sent on a link hours after Plaintiff filed a motion, and that motion was accepted six days later—furthering the difficulty to discover the deficiencies.

83. On March 15, 2023, Appellant received a notice that "a case event that includes a signed document has been added to the Register of Actions... For further information, log into OECI or go to a public access kiosk." It gave no substance and was unusable for a legally blind litigant. (ECF 67, Ex. 19; SAC ¶ 62; 59(e) Motion at 22-24 (ECF 67 at 58-60).)

84. On April 4, 2023, Appellant filed his Second Amended Complaint in state court, a Motion for Summary Judgment, and a Motion to Compel appearance of Clackamas County/Jail. While that motion was

pending, on April 11, the court entered a "Digitized Judgment – Limited Dismissal" dismissing "Clackamas County Police Department, John Doe 1, John Doe 2" for "want of prosecution," and issued a Rule-7 91-day entry. (State Register (ECF 35-4 at 3-4); Limited Judgment, Ex. 22 (ECF 67, Ex. 22); SAC ¶ 63 (ECF 17-1 at 38); 59(e) Motion at 9-11, 22-24 (ECF 67 at 41-43, 58-60).)

85. On May 11, 2023, the court mailed a notice that literally read: "The court entered a _____ in the court register on _____." Both the judgment type and entry date were blank, even though ORS 18.078(2) requires both. (Ex. 23 (statute) & Ex. 24 (actual notice) (ECF 67, Exs. 23–24); 59(e) Motion at 22-24 (ECF 67 at 58-60).)

86. While Appellant was actively serving defendants and pressing a Motion to Compel, County/Jail defendants were dismissed on anonymous, defective notices for "want of prosecution." Those dismissals later became the lynchpin for ECF 60's statement that County was "dismissed for failure to prosecute."

WEST LINN–DRIVEN DELAY AND TRIAL CANCELLATION

87. Between August 2023 and May 2024, West Linn defendants systematically delayed the state case through strategic unavailability and last-minute motions.

88. On August 2–22, 2023, Appellant filed an "Emergency Motion for Interim Relief," a "Motion – Show Cause," a supporting memorandum, and a "Motion for Expedited Hearing," explaining that statutes of limitation were approaching and he needed interim relief and discovery. (State register entries 8/02/23, 8/12/23, 8/22/23 (ECF 35-4 at 4-5); 59(e) Motion at 10-11, 24-26 (ECF 67 at 42-43, 60-62).)

89. On August 25, 2023, West Linn's lawyer, William Stabler, filed a notice saying he would be "out of the office and unavailable" from August 28 through September 15 and requested that no motions, hearings, or depositions be set during that time, plus a two-week response buffer after return. This effectively froze Appellant's emergency motion for more than a month. (Ex. 10 (ECF 67, Ex. 10 – "Counsel's Notice of Unavailability"); state register 8/25/23 (ECF 35-4 at 5); Sur-Reply § IV.C (ECF 42-1 / 67 at 60-63).)

90. On October 11–20, 2023, Judge Wetzel denied Appellant's show-cause/interim-relief motion (order docketed October 12). The October

23 hearing was "CANCELED… Continued," and on October 20, the court issued a new notice resetting the motion hearing to November 20, 2023, due to a judge conflict. (State register entries 10/11/23, 10/12/23, 10/20/23 (ECF 35-4 at 5-6); 11/20/23 notice (ECF 67 at 131).)

91. On October 24–26, 2023, Appellant emailed Stabler stating he had flown in for what he thought was an emergency setting; he stated "statutes of limitations [are] coming up within a few months," that the court would not schedule his emergency motion, and "I am going to be in Ex-Parte TOMORROW… I really need it to go through or I'm going to lose about everything." Stabler responded that the hearing was already set for November 20 and that he objected to any ex parte contact. Appellant replied that he was "being encroached by statutes of limitations… personal relationships and my wellness," and waiting to November 20 after Stabler's unavailability was "unfair." (Email thread, Ex. 4 (ECF 67, Ex. 4 / Screenshot 2025-10-01 033842); Sur-Reply § IV.C (ECF 42-1 / 67 at 60-63); 59(e) Motion at 24-26 (ECF 67 at 60-62).)

92. On November 2–14, 2023, West Linn moved to set over the January 9, 2024 trial and settlement conference, certifying under UTCR 6.030 that its clients agreed, and stating that Officer Blyth would be on FMLA leave until January 31, 2024, for the birth of a child. Appellant opposed.

On November 14, Judge Wetzel signed the Order – Postponement (Granted). (Motion & Order, Ex. 6 (ECF 67, Ex. 6 – Set-Over order & certificate of readiness); state register entries 11/2/23, 11/13/23, 11/14/23 (ECF 35-4 at 6).)

93. On December 13–15, 2023, the January 9 trial was vacated and a May 21, 2024 trial was set. The court issued a new "Notice of Scheduled Court Appearance" setting a 12-person jury trial for May 21, 2024, indicating it was "Reset from 1/9/24." On December 15, the court denied Appellant's Motion for Interim Relief and West Linn's fee motion. Appellant had already purchased two plane tickets and repeatedly objected to delay. (Dec. 13, 2023 trial notice, Ex. 12 (ECF 67, Ex. 12 – "Notice of Scheduled Court Appearance"); state register entries 12/12/23, 12/15/23, 1/9/24 (ECF 35-4 at 6-7); SAC ¶ 70; 59(e) Motion at 10-11, 24-26 (ECF 67 at 42-43, 60-62).)

THE ATTEMPT TO MOVE TO FEDERAL COURT

94. On May 7, 2024, Appellant gave written notice of his intent to file a federal suit. He emailed Stabler: "I'm going to be filing in Federal Court this afternoon or tomorrow... against the Jail... Clackamas County... my two Appointed Attorneys.... I am filing a notice of removal and would

like to get your position on it... this case has been pushed back so far that I'm going to pass the statute of limitations." (Email, Ex. 9 (ECF 67, Ex. 9 – "WILLIAM GOING TO FEDERAL COURT.pdf"); Sur-Reply § IV.C (ECF 42-1 / 67 at 60-63).)

95. On May 13–22, 2024, the federal clerk rejected accessible filings. Clerk Eric Oss told Appellant on May 13 that "our Local Rules do not authorize us to take a complaint by email from a pro se party... please mail a paper complaint," and on May 22 that the court "will not pull or sort documents from thumb drives or loose envelopes... No action can be taken on your submissions received by mail today." As a legally blind litigant without ID (lost during the arrest), Appellant was effectively barred from in-person e-filing. (Oss emails, Ex. H (ECF 67, Ex. H 5-13-2024 & 5-22-2024 emails); SAC ¶¶ 5-8, 56-57 (ECF 17-1 at 8-10, 31-32); 59(e) Motion at 29-31 (ECF 67 at 65-67).)

96. On May 18, 2024, a docket entry noted: "per atty Lewis, pet filed motion to remove to fed court on 5.18." Appellant never spoke to the state judge; this entry simply records Lewis's statement to the clerk. (State register 05/18/24 (ECF 35-4 at 7); 59(e) Motion at 17-20 (ECF 67 at 53-56).)

97. On May 20, 2024, the eve of trial, Lewis filed a lengthy pre-trial motion in state court. That morning, the calendaring clerk emailed 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." The clerk placed primary blame on the defense's late motion, not on Appellant. (Email, Ex. 3 (ECF 67, Ex. 3 – "email before trial.pdf"); Sur-Reply § IV.C (ECF 42-1 / 67 at 60-63); 59(e) Motion at 17-20 (ECF 67 at 53-56).)

98. On May 23, 2024, after email and thumb-drive efforts were rejected, Appellant's Complaint and IFP application were finally docketed in 3:24-cv-00839-SB. For County-based injury from the May 24, 2022 arrest and property loss, this was essentially the last day of the two-year limitations period. (Complaint & IFP (ECF 1–2; reproduced in ECF 67 at 125-129); 59(e) Motion at 32-33 (ECF 67 at 68-69).)

99. By the time any federal case number existed, the May 21, 2024 state trial was already canceled due to Lewis's pre-trial motion and the clerk's internal decision; Appellant never spoke to the state court about removal.

FEDERAL COURT: MAY 2024–SEPTEMBER 2025

100. In June–July 2024, the magistrate issued an F&R (ECF 9) raising AIU/Rooker-Feldman and directing Appellant to show cause. On July 9, Appellant filed a 22-page Declaration (ECF 8) providing detailed facts about the AOB theft, false arrest, jail conditions, and systemic obstruction that later appeared in the SAC and 59(e) timeline. (ECF 8–9; 59(e) Motion, Declaration & Timeline (ECF 67 at 71-86).)

101. On August 7, 2024, Judge Hernández issued a limited leave to amend order (ECF 12), dismissing the State of Oregon with prejudice but granting leave to amend claims "against Clackamas County, the Clackamas County Police Department, and John Doe Officers 1–2 within 30 days." (Order (ECF 12 at 1-3).)

102. On September 9 and 12, 2024, Appellant filed a First Amended Complaint and nearly 2,000 pages of Master Exhibits (ECF 13, 15), consolidating all defendants (County, Jail, West Linn, officers, Portlock). On September 12, Appellant filed a "NOTICE OF AMENDED COMPLAINT, REQUEST FOR TOLLING OF STATUTE OF LIMITATIONS, AND CONSOLIDATION OF CLAIMS" (ECF 14), asking the Court to take jurisdiction over all related claims, apply equitable tolling for blindness, file deletions, and clerk barriers, and

treat the obstructed state forum as inadequate. (ECF 13–15; ECF 14 at 1-4; Sur-Reply § IV.A, IV.C (ECF 42-1 / 67 at 52-54, 60-63).)

103. On October 9, 2024, Appellant filed a Motion for Leave to File Second Amended Complaint (ECF 17), asking that the SAC relate back to May 23, 2024, and again requesting equitable tolling; the SAC (ECF 17-1), a 100+ page pleading detailing twelve causes of action; and Causes-of-Action Exhibits Summary (ECF 17-2), linking each claim to evidence. The Court never expressly ruled on the Rule 15 motion but later ordered service on the SAC, effectively treating it as operative while ignoring the relation-back and tolling request. (ECF 17, 17-1, 17-2; 59(e) Motion at 13-16 (ECF 67 at 49-52).)

104. On February 3 and 7, 2025, the court directed the clerk to issue "Notice of Lawsuit and Request for Waiver of Service" for all defendants, based on the SAC (ECF 19–20). On February 7, Appellant filed a Motion for Guidance / Stay Pending State Court Proceedings (ECF 21), explaining that state case 22CV39627 was still open, that County had never appeared despite service and a Motion to Compel, and that Appellant intended to dismiss or stay the state case once the federal court clearly committed to exercising jurisdiction. (ECF 19–21; 59(e) Motion at 3-4, 15-16 (ECF 67 at 37-38, 51-52).)

THE CONSENT-THEN-FLIP

105. On February 12, 2025, West Linn's 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." Relying on that written consent, Appellant moved to dismiss 22CV39627 without prejudice "to pursue claims in federal court." The Clackamas court entered a General Judgment of Dismissal on March 6, 2025, closing the case. (Lewis email, Ex. 13 (ECF 67, Ex. 13); State General Judgment (ECF 35-4 at 5-6; reproduced as Ex. B in 59(e) Motion, ECF 67 at 40-41); 59(e) Motion at 3-4, 18-21 (ECF 67 at 37-38, 54-57).)

106. On March 24, 2025, the federal court denied Appellant's Motion for Guidance as moot because Appellant had already dismissed the state case (ECF 29). At this point, there was no parallel state action.

MOTIONS TO DISMISS AND THE AIU OPINION

107. On May 1–2, 2025, defendants moved to dismiss the SAC. County Defendants (ECF 34), West Linn Defendants (ECF 36), and DDA Portlock (ECF 37) argued statute of limitations, AIU/improper "re-filing" of state case, OTCA notice, absolute/qualified immunity, Monell

insufficiency, and that Appellant's SAC violated the August 7 leave-to-amend order by adding new parties. (MTDs reproduced in ECF 67 at 106-124.)

108. On June 10 and 17, 2025, Appellant rebutted every objection, including AIU and SOL. On June 10, Appellant filed ECF 50-2, a chart that lined up each defense argument with his specific rebuttal and citations to the Opposition, SAC, and exhibits. On June 17, with leave of court, Appellant filed a 43-page Sur-Reply (ECF 42-1) that explained why AIU is prudential and inapplicable without a parallel case; detailed the defective notices and County dismissals; demonstrated equitable tolling and fraudulent concealment; explained why Portlock's COVID lie, witness coercion, and DHS "hold" are investigative/administrative acts outside absolute immunity; and showed West Linn's fabrication and policy violations defeat qualified immunity and support Monell liability. (ECF 42-1 / 67 at 1-38; SAC (ECF 17-1); 59(e) Motion's "Executive Summary" (ECF 67 at 38-40).)

109. On September 3, 2025, Judge Beckerman dismissed 3:24-cv-00839-SB for lack of subject-matter jurisdiction under Rule 12(b)(1), applying AIU to label Appellant's action a forbidden "repetitive lawsuit." The Opinion asserted Appellant "only began attempting to

remove [his] case to federal court the day before the state court's first trial setting" and that his removal "resulted in the cancelation" of the state trial (ECF 60 at 11); noted in dicta that Appellant's claims were likely time-barred (id. at 12 n.5); did not address Appellant's earlier Rule 15 motion (ECF 17), tolling/consolidation notice (ECF 14), or Motion for Guidance (ECF 21); and treated County's April–May 2023 dismissals as proper "failure to prosecute," without discussing Appellant's service proofs and Motion to Compel.

THE TIMING: DAY 181

110. 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. 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.

FOOTNOTES

[1] 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.).)

[2] 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.)

[3] Appellant had begun to move some of his things to a friend's house (a friend whose car was given away May 24, 2022).

[4] 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.

[5] 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. All of which West Linn was privy to. The boyfriend took those photographs directly to the West Linn Police station.

[6] When more clearly stated: She took a hammer, pounded out seven windows, took two garden hoses spraying where those windows USED TO BE, all over everything inside, took 30 pounds of flour, dumped it all over Plaintiff's property, continued to spray water INTO THE BROKEN-OUT WINDOW, broke the door, tipped the fridge over, bought 5 gallons of gasoline and threatened to burn down the house—while 2 kids were literally inside. The police heard it; it's on the police reports from March 4th. The gas was taken March 5th. She was screaming at Plaintiff to leave (for not entertaining her desires) while she held his car keys and work files hostage; none of which is in Dana Gunnarson's report. However, the pictures of the back of her head where she said she "looked uncomfortable"—matching in both reports—but not a single picture of a broken-out window, of the glass they stepped on to call Plaintiff outside. Instead of including Plaintiff's explanation, the report said that he was "argumentative," and had a team meeting to get the other officers to edit their reports from the other days to add in their fabrications to cover up that Plaintiff had been the 911 complainant, without considering Macy's documented arson threats, without noting the gasoline confiscation the day before.

[7] 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.

SUMMARY OF ARGUMENTS

This appeal asks whether government actors may stack procedural doctrines—immunity, abstention, and statutes of limitation—so high that one citizen is denied any forum at all, even where the record shows fraud upon the court at every level. Taking the record as true, that is what happened here.

I. Jurisdiction and Abstention (AIU / Colorado River / Appellatenger). The district court dismissed under AIU as a "repetitive lawsuit," but no abstention doctrine applies. By the time of dismissal, there were no parallel state proceedings: the state civil case (22CV39627) had been terminated by general judgment, and the criminal case (22CR10908) had been dismissed "in the interest of justice" after the State's only witness admitted under oath that "half of that was untrue, fabricated, and manipulated…we have committed no crimes." Without an ongoing state case, Appellatenger and AIU abstention collapse, and Colorado

River's "extraordinary" exception to the "virtually unflagging obligation" to exercise jurisdiction cannot apply.

a. Even when the state civil case was nominally open, every Colorado River factor favored federal retention. No court had control over a res; the federal and state courthouses were equally convenient; only the federal action unified all defendants; Clackamas County was served approximately fifteen times and never appeared; the state court dismissed the County based on defective UTCR 7.020 and ORS 18.078 notices; and defendants—not appellant—engaged in forum manipulation by evading service, inducing a state-court dismissal via written consent, then using that induced dismissal to argue the federal case was "repetitive." The federal court compounded this by dismissing on day 181, immediately after the Oregon savings statute period expired, ensuring that no forum remained. Finally, even if abstention were otherwise proper, Colorado River authorizes only a stay, not the outright dismissal that occurred here.

II. Fraud Upon the Court and Its Consequences. The record describes multiple, independent episodes of fraud upon the court by officers, prosecutors, jail staff, and defense counsel, all meeting Hazel-Atlas's elements: intentional falsehoods by officers of the court, directed to the court itself, that in fact influenced judicial decisions.

a. First, a coordinated COVID fabrication canceled a jury trial. Defense advisor Medina falsely told the judge ex parte that appellant had "tested positive for COVID the last two days," despite personally seeing him cleared from quarantine in general population. The next day, the DDA repeated the same lie in open court, causing the judge to dismiss the jury—only later acknowledging appellant had not tested positive the prior day.

b. Second, jail guard Baker deliberately deleted sixty-two of appellant's legal files during lockdown, as shown by the jail's own computer logs. Those files contained motions, witness lists, and trial preparation materials.

c. Third, the jail knowingly defied a signed judicial release order for seven days under a fabricated "awaiting DA clearance" excuse, unlawfully prolonging custody.

d. Fourth, officers Blyth and Gunnarson, after their initial arrest reports were rejected, coordinated revisions before arraignment that omitted key exculpatory facts (gasoline purchase, broken windows, prior 911 calls, arson threats) and re-framed the conduct to manufacture probable cause.

e. Fifth, in the civil track, defense counsel Lewis induced appellant to dismiss the state case by expressly consenting in writing, then used that dismissal as a weapon in federal court to brand the action "repetitive."

f. These acts defiled the judicial process itself. Under Hazel-Atlas and Chambers, judgments procured through such fraud are void, not merely voidable. Immunity doctrines do not protect fabricated evidence or administrative manipulation of court calendars; limitations are tolled when defendants conceal their

wrongdoing; and terminating sanctions are appropriate where the prejudice (lost files, missed jury trials, extended custody) cannot be undone.

III. The Ninth Amendment Forbids Stacking Procedural Doctrines to Extinguish Guaranteed Rights. The Ninth Amendment declares that "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The historical meaning of "disparage"—to degrade by union with something of lower rank—combined with the present-tense "enumeration" and "certain" (specific, guaranteed) confirms that courts may not interpret the Constitution or procedural rules in ways that subordinate the people's concrete rights to lower-ranked procedural devices.

a. Here, appellant's specific, enumerated rights were violated: his First Amendment right to petition; Fourth Amendment right against arrest without probable cause; Fifth and Fourteenth Amendment rights to due process; Sixth Amendment right to effective counsel and access to courts; Seventh Amendment right to a civil jury trial; and Ninth Amendment right to have those

rights remain undiminished. Constitutional rights are indivisible and carry corresponding duties on state actors; once those duties are breached—through fabricated reports, lies to cancel trials, destruction of defense files, and defiance of release orders—the violation of federal law is complete. Immunity, abstention, and limitations cannot be "constructed" after the fact to erase those breaches or to ensure that no forum ever hears the merits.

b. By accepting defendants' stacked defenses—absolute and qualified immunity, AIU/Colorado River abstention, and limitations triggered by defendants' own concealment—the district court "construed" the enumeration of procedural doctrines to "deny or disparage" appellant's retained rights. The Ninth Amendment forbids that construction.

c. Relief. Because the abstention ruling lacked any legal foundation, because fraud upon the court taints the underlying proceedings and dissolves procedural defenses, and because the Ninth Amendment bars the use of stacked doctrines to erase guaranteed rights, this Court should vacate the September 3, 2025 judgment,

remand to a different district judge, strike or sanction all defenses premised on fraud, order production of the concealed evidence (including body-camera footage and jail audit logs), and refer the matter to the United States Attorney for potential prosecution under 18 U.S.C. §§ 241, 242, and 1001. Anything less would ratify the very disparagement the Ninth Amendment was written to prevent.

STANDARD OF REVIEW

This Court reviews de novo a district court's dismissal for lack of subject matter jurisdiction under Rule 12(b)(1). *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th Cir. 2011). On a facial attack, the court "must accept as true all material allegations in the complaint and construe them in favor of the complaining party." *Id.* On a factual attack, the court must "leave the resolution of material factual disputes to the trier of fact." *Bowen v. Energizer Holdings* (9th Cir. 2024).

The district court did neither. It adopted Defendants' narrative verbatim while ignoring 2,000 pages of documented evidence. That is

reversible error. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002–03 (9th Cir. 2018) (reversing dismissal where court let defendants present "their own version of the facts," making it "nearly impossible for even the most aggrieved plaintiff" to state a claim).

Pro se pleadings are "to be liberally construed," and this liberal construction is "of particular importance in pro se cases." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). The Ninth Circuit has an "obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt." *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc).

The district court applied none of these standards. It treated a pro se, legally blind litigant's detailed allegations as uncredible while crediting Defendants' unsupported assertions. That compounded the jurisdictional error.

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, Appellatenger comity, or Colorado River—are "extraordinary and narrow exception[s]" to this mandate. *Id.* at 813. The balance is "heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). If there is "any substantial doubt" that state proceedings are adequate, dismissal is "a serious abuse of discretion." *Id.* at 28.

None of these doctrines 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 EXISTED AT THE TIME OF DISMISSAL

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).

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).

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.

*A*bstention 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, *Appellant*s claims 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.

THE COLORADO RIVER FACTORS RAN UNIFORMLY AGAINST ABSTENTION

Even during the brief period when the state civil case remained nominally open, every Colorado River factor favored federal retention. *R.R. Street & Co. v. Transport Ins. Co.*, 656 F.3d 966, 978–79 (9th Cir. 2011).

- Factor One: Control of Property. Neither court exercised jurisdiction over any res. This factor is neutral.

- Factor Two: Inconvenience of Forum. The federal courthouse in Portland sits fifteen miles from the Clackamas County courthouse. This factor is neutral.

- Factor Three: Avoidance of Piecemeal Litigation. Only the federal action united all defendants. West Linn, Officers Blyth, and Gunnarson would have gone to trial in state court with a ghost to blame—Clackamas County had evaded thirteen service attempts. DDA Portlock would have remained separated because Appellant did not have the fraud evidence at the time of state court litigation. The state court had already fragmented the litigation

by dismissing the County defendants on April 11, 2023, while allowing the West Linn defendants to remain. ECF 35-2, 35-3. Federal abstention would not avoid piecemeal litigation; it would guarantee it. This factor strongly favors federal retention.

- Factor Four: Progress of Litigation. The state court register shows 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, every federal defendant filed responsive pleadings. ECF 34, 36, 37. This factor strongly favors federal retention.

- 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. ECF ____. 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. ECF ____; 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.

- 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 Appellant's Proposed Order or to Appellant's 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 arguing the

lawsuit was "repetitive" because Appellant 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.

Inducing a dismissal by express consent, then weaponizing that induced dismissal, is judicial estoppel in reverse. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001), bars parties from "deliberately changing positions according to the exigencies of the moment" to obtain unfair advantage. That is precisely what occurred. 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.

AIU'S "COMPELLING REASONS" 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.

THE TIMING OF THE FEDERAL DISMISSAL CONFIRMS TACTICAL MANIPULATION

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. This was not coincidence. The opinion was held until the precise day the state-court door closed, ensuring no forum remained. "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.

DISMISSAL RATHER THAN STAY WAS INDEPENDENT STRUCTURAL ERROR

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.

Even when Colorado River abstention is proper, it authorizes only a stay—not dismissal. *Mendocino County Resource Conservation Dist.*,The Ninth Circuit "generally requires stay rather than dismissal" precisely to preserve federal jurisdiction if state proceedings falter. *R.R. Street*, 656 F.3d at 978 n.8.

A stay would have preserved federal review. Dismissal extinguished it. The district court violated the "virtually unflagging obligation" by choosing the remedy that guaranteed no forum would ever hear the merits.

II. FRAUD UPON THE COURT VOIDS THE UNDERLYING PROCEEDINGS, STRIPS IMMUNITY, TOLLS LIMITATIONS, AND DISSOLVES ALL PROCEDURAL 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 CourtNinth Circuit has identified four elements: (1) an intentional falsehood or "unconscionable plan or scheme"; (2) by an officer of the court or conduct subverting the court's integrity; (3) directed at the court itself; (4) which in fact influenced or was designed to influence a judicial decision. *Id.* All four elements are satisfied multiple times on this record..; *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995).

A. EVERY ELEMENT IS SATISFIED MULTIPLE TIMES ON THIS RECORD.

1. 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 at 3–4. 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 [Medina] 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 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 Appellate 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.

2. 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.

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" and "defile[s] the temple of justice"). Spoliation deprives the tribunal

of evidence essential to its truth-finding function and is per se intentional deception aimed at the court.

3. 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.*; ECF ____. 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 that the judiciary's mandate has been carried out while the prisoner continues to be held. Those seven additional days compounded the constitutional injury.

4. 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 them—they did not establish 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: 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 intentional misrepresentation designed 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.2001) (en banc). The right not to be subjected to charges based on "false evidence deliberately fabricated by the government" has been "clearly established" since at least 2001. *Id.*

5. Defense Counsel's Consent-Then-Flip Extended the Fraud to Federal Court

On February 12, 2025, West Linn counsel Dave Lewis emailed: "I have no objection to Appellant's Proposed Order or to Appellant's 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.

6. Fraud in One Proceeding Taints All Others

The district court treated each case as if it stood alone. But fraud on the court is not contained by case captions. When officers, prosecutors, and jail staff use lies (COVID), spoliation (deleted files), and defiance of orders (release) to block the criminal case, the effects necessarily spill into the civil

cases. The COVID lie prevented Appellant from attending his AOB civil trial.—the same fraud that blocked the criminal trial blocked the civil remedy. The unlawful detention prevented him from prosecuting the civil rights action. The deleted files destroyed preparation for both. The fraud was systemic, not isolated.

When government conduct "renders any available remedy ineffective," it violates the right of access to the courts. *Christopher v. Harbury*, 536 U.S. 403, 414–15 (2002). Here, the fraud did more than affect one case; it destroyed Appellant's ability to pursue his AOB action, to fully litigate the criminal case, and to obtain a merits decision in state civil court. When the judicial machinery is corrupted—by lies that cancel juries, by ex parte manipulation, by destroyed filings and void notices—later procedural decisions (such as "want of prosecution," "advanced stage of litigation," "time barred," or "no compelling reasons") are not independent judgments. They are fruits of the poisoned process.

LEGAL CONSEQUENCES OF FRAUD UPON THE COURT

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

1. Judgments Obtained by Fraud Are Void, Not Merely Voidable.

Hazel-Atlas, 322 U.S. at 246. Courts must "undo what fraud has done." *Id.* No time limit applies. Fed. R. Civ. P. 60(d)(3) confirms courts' inherent power to set aside judgments for fraud on the court "at any time." 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.
No Showing Of Prejudice Is Required.

Fraud upon the court harms "the integrity of the judicial process, regardless of whether the opposing party is prejudiced." *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989). Defendants cannot escape by arguing Appellant was not harmed. The harm is to the court itself.

3. Immunities Dissolve Where Officials Fabricate or Mislead.

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 or to manipulate the calendar. Qualified immunity protects reasonable mistakes; it does not protect

deliberate report fabrication. Prosecutors who fabricate evidence during investigation "cannot shield investigative work with the aegis of absolute immunity." *Id.* at 276.

Qualified immunity protects reasonable mistakes; it does not protect deliberate falsification. "There are no circumstances that would permit government officials to bear false witness." *Hardwick v. Vreeken*, 844 F.3d 1112, 1120 (9th Cir. 2017). "Government perjury and the knowing use of false evidence" are "absolutely and obviously irreconcilable with the Fourteenth Amendment." *Id.*

4. Statutes of Limitation Are Tolled When Defendants Conceal the Fraud.

A wrongdoer "is not permitted to profit from his own wrong." *Appling v. State Farm Mut. Auto. Ins. Co.*, 340 F.3d 769, 777 (9th Cir. 2003). Defendants cannot invoke time-bars when their. When a defendant uses "misleading, deceptive or contrived action designed to mask the existence of a cause of action," the statute is tolled. *Oracle Am., Inc. v. Hewlett Packard Enter. Co.*, 971 F.3d 1042, 1048 (9th Cir. 2020). Courts refuse to permit a defendant "who by his own deception has caused the claim to become stale" to benefit from that deception. *Id.*

Appellant could not discover the June 10, 2022 COVID fraud until he obtained the June 10, 2022 transcript on April 19, 2024. Defendants cannot conceal evidence (fourteen discovery denials, sealed body camera footage, sealed DHS records since March 16, 2022) and then claim time ran out.

5. Terminating Sanctions Are Required Where Lesser Remedies Cannot Correct the Harm.

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 unlawful 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." *v. Miller*, 486 U.S. 174, 184–85 (1988). 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.

III. THE NINTH AMENDMENT PROHIBITS THE GOVERNMENT FROM STACKING PROCEDURAL DOCTRINES TO EXTINGUISH 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.

A. THE ETYMOLOGY OF "DISPARAGE" REVEALS THE AMENDMENT'S CORE PROHIBITION

The word "disparage" derives from the Old French "*disparager*", 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 "*disparager*" meant "to marry to one of inferior rank"—an act that degraded the higher-born spouse by forcing association with someone beneath their station.

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.

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.

1. Madison's Design Confirms This Interpretation

The Bill of Rights emerged because local governments and newly empowered officials were already attempting to assert authority over fundamental liberties. Madison's June 8, 1789 speech warned against "violent mis-construction" that would "lessen the latitude of future rights." He drafted the Ninth Amendment specifically to prevent "enumerating particular

exceptions" from being "construed as to diminish the just importance of other rights retained by the people."

The 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 extinguish substantive rights. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579–80 n.15 (1980) (the Ninth Amendment is a "constitutional 'saving clause'" that "forecloses application of the maxim that the affirmation of particular rights implies a negation of those not expressly defined").

To ignore the Ninth Amendment "is to give it no effect whatsoever." *Griswold v. Connecticut*, 381 U.S. 479, 491 (1965) (Goldberg, J., concurring).

2. THE WORD "ENUMERATION" IS THE KEY TO THE AMENDMENT'S MEANING

The Word "Enumeration" is Present Tense: The Act of Listing in Rank Order Addresses Governmental Action

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.

3. 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.

4. "Certain Rights" Means Specific, Guaranteed Rights

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

Appellant's Rights Are Specific and guaranteed:

- First Amendment: The right to petition the government for redress of grievances.
- Fourth Amendment: The right to be free from arrest without probable cause.
- Fifth Amendment: The right to due process before the federal government.
- Sixth Amendment: The right to effective assistance of counsel and access to courts.
- Seventh Amendment: The right to a civil jury trial.
- Ninth Amendment: The right to have the foregoing rights remain undiminished.
- 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.

RIGHTS CANNOT BE DIMINISHED:

1. A Right is Whole or Without Remedy Is Disparaged

The very essence of civil liberty consists in the right of every individual to claim the protection of the laws.... The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

When immunity shields fabricated arrests, when abstention rewards forum manipulation, and when limitations bar claims concealed by the wrongdoers themselves—when these doctrines stack so high that no forum remains—the government has built exactly what the Framers prohibited. The people's rights have been subordinated to procedural mechanisms of inferior rank. They have been disparaged.

Scholarship confirms the practical reality: when immunity and procedural restrictions stack, "plaintiffs cannot fully vindicate constitutional rights and often cannot vindicate them at all." 55 U. Rich. L. Rev. 1 (2021).

That complete deprivation is the "disparagement" the Ninth Amendment forbids.

2. Constitutional Rights Are Indivisible and Carry Corresponding Duties

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.

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 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.

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:

- (A) The State has a duty to respect constitutional rights.
- (B) State actors breach that duty—by fabricating arrest reports, by lying to cancel trials, by deleting legal files, by ignoring release orders.
- (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.
- (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.

- "Shall Not Be Construed" Addresses Interpretation
- When state actors commit the violations, federal jurisdiction exists to enforce the duty the state has shirked.

THE AMENDMENT PROHIBITS CONSTRUCTING PROCEDURAL FORTRESSES

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.

What Defendants ask this Court to for is a system where government actors may:

- Fabricate an arrest and remove a citizen from his property.
- Lie to cancel jury trials.
- Delete defense files during lockdown.
- Ignore release orders.
- Evade service for fifteen attempts.
- Issue defective notices to trigger dismissal.
- Consent to dismissal then flip to call the lawsuit "repetitive."
- 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.

The Judiciary Cannot Remove This Amendment from the Constitutional Structure

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. TheThe Ninth 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 its force, that branch must seek a constitutional amendment through Article V—ratified by the people and the states.

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.

CRIMINAL SANCTIONS PROVIDE AN ALTERNATIVE WHEN CIVIL REMEDIES ARE EVADED

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, and the defiance of court orders documented in this record may well constitute federal crimes. Civil limitations cannot be manipulated to foreclose criminal prosecution.

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.

CONCLUSION

Five years. Four proceedings. Zero jury trials. Sixty-two deleted files. Two ex parte communications. Seven days held passed 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.

Appellant doesn't ask if The district court erred. He knows the District Court Errored... That is not a question.

What remains unknown is whether this Court will honor the Constitution and correct the error—or whether the Ninth Amendment's command that the people's rights "shall not be construed to deny or disparage" will be construed into silence.

From badge to bench, every link in this chain chose to lie, cheat, or look away. West Linn officers manufactured a charge. Officer Gunnarson fabricated the arrest. DDA Portlock lied to the judge. Clackamas County "seeded" Appellant with covid. Defense Attorneys actively covered-up Constitutional violations. Guard Baker deleted sixty-two files. The State

allowed Evidence to be unreachable. The Courts gave void notice. Defense counsel Lewis consented then flipped. Judge Beckerman ignored all of it. The District Court blessed it.

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.. As Marbury *warned, "[a government] will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." 5 U.S. 137, 163 (1803).*

Every construction Defendants urge—immunity for fabrication, abstention despite forum-manipulation, limitations despite concealment—constitutes exactly the disparagement the Amendment forbids.

REQUESTED RELIEF

For the reasons stated above, Appellant respectfully requests that this Court:

1. VACATE the September 3, 2025 Judgment dismissing this action.

2. REVERSE the District Court's finding that this action is a "repetitive lawsuit" under AIU.

3. REMAND this case to a different District Court to preserve the appearance of justice.

4. ORDER the District Court to strike all immunity and abstention defenses predicated on the identified fraud.

5. ORDER terminating sanctions or adverse inference instructions regarding the deleted files and concealed evidence.

6. REFER the matter to the United States Attorney for investigation of potential violations of 18 U.S.C. §§ 241, 242, and 1001.

Respectfully Submitted,

December 10, 2025

/s/ Tyler Allen Lofall
TYLER ALLEN LOFALL
Plaintiff-Appellant, Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g) and Ninth Circuit Rule 32-1, the undersigned certifies as follows:

1. This brief complies with the type-volume limitation of Circuit Rule 32-1(a), as modified by the Court's grant of Appellant's Motion for Leave to File Overlength Brief. Excluding the portions exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 32-1(c), this brief contains approximately 18,900 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: December 10, 2025

/s/ Tyler Allen Lofall
TYLER ALLEN LOFALL
Plaintiff-Appellant, Pro Se

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellant states that he is not aware of any related cases currently pending in this Court.

The underlying matter involves related proceedings in Oregon state courts (Case Nos. 21CV2502575, 22CV37627, and 22CR10908) and the United States District Court for the District of Oregon (Case No. 3:24-cv-00838-sb, which was remanded to state court). None of these matters are currently on appeal to this Court.

Dated: December 10, 2025

/s/ Tyler Allen Lofall
TYLER ALLEN LOFALL
Plaintiff-Appellant, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2025, I electronically filed the foregoing Appellant's Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Case Management System (ACMS).

Participants in the case who are registered ACMS users will be served by the ACMS system.

Dated: December 10, 2025

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ADDENDUM

to

APPELLANT'S OPENING BRIEF

Tyler Allen Lofall v. County of Clackamas, et al.

Case No. 25-6461

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CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. IV

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

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const. amend. IX

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. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

42 U.S.C. § 1983 – Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

28 U.S.C. § 1331 – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1367 – Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1441 – Removal of civil actions

(a) Generally.—Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

DICTIONARY DEFINITIONS

The following dictionary definitions demonstrate that the word "generally," as used in 28 U.S.C. § 1441(a), inherently contemplates exceptions:

Dictionary.com

> *generally (adv.): "without reference to or disregarding particular persons, things, situations, etc., that may be an exception."*

Collins English Dictionary

> *generally (adv.): "without reference to or disregarding particular persons, things, situations, etc., that may be an exception."*

Vocabulary.com

> *generally (adv.): "If something is right generally, then it's right most of the time, though perhaps not in every case."*

Merriam-Webster Dictionary

> *generally (adv.): "as a rule: usually"*

The use of "usually" and "as a rule" likewise implies the existence of exceptions to that rule.

KEY CASE EXCERPT

AIU Insurance Co. v. Superior Court, 843 F.2d 1253 (9th Cir. 1988)

The Ninth Circuit held that while plaintiffs are generally bound by their choice of forum, exceptions exist for "compelling reasons":

> *"Having elected state court, plaintiff should be bound by its choice absent compelling reasons to seek relief in another forum."*
>
> AIU, 843 F.2d at 1261.

The District Court in this case acknowledged that "[t]he parties have not identified, nor has the Court found, any case defining or analyzing 'compelling reasons' that would justify allowing a repetitive lawsuit to proceed." (ECF 60 at 8.) This concession confirms that the "compelling reasons" exception remains an open question of law that this Court may address on appeal.

DISTRICT COURT OPINION AND ORDER

(ECF No. 60, filed September 3, 2025)

[The District Court's Opinion and Order follows this page]