[ORAL ARGUMENT NOT REQUESTED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13-1025

MICHAEL LEON,

Petitioner

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Respondent

ON PETITION FOR REVIEW FROM THE DISABILITY RIGHTS SECTION, CIVIL RIGHTS DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

THE UNITED STATES DEPARTMENT OF JUSTICE'S MOTION TO DISMISS THE PETITION FOR REVIEW FOR LACK OF SUBJECT MATTER JURISDICTION AND RESPONSE TO PETITIONER'S MOTION TO SET BRIEFING SCHEDULE AND TO EXPEDITE APPEAL

Petitioner Michael Leon, proceeding *pro se*, has petitioned this Court for review of the discretionary decision of January 18, 2013, of the United States Department of Justice's (Department) Civil Rights Division, Disability Rights Section (DRS). The DRS's January 18, 2013, letter to petitioner stated that the DRS would not initiate an investigation based on petitioner's letter alleging a

possible violation of the Americans with Disabilities Act (ADA). See January 18, 2013, letter (Attachment B). On February 7, 2013, petitioner Leon filed a petition for review with this Court, asking the Court to review the DRS's January 18 decision. Leon subsequently filed a motion to set a briefing schedule and to expedite his appeal. This Court informed the Department that a response, if any, was due by May 3, 2013.

The Department respectfully moves this Court to dismiss Leon's petition for review for lack of jurisdiction. He does not have the right to seek review of the DRS's January 18 decision not to initiate an investigation. This Court should dismiss as moot Leon's motion to set a briefing schedule and to expedite his appeal.

1. Michael Leon, a *pro se* litigant, sent a letter to the Department's Civil Rights Division, Disability Rights Section, in July 2012. The letter alleged that the actions of the Superior Court of Pima County, Arizona, relating to a lawsuit he filed in that court, may have violated Title II of the ADA (Title II). See Opp'n to Defs.' Mot. for J. on the Mandate 2-3 (Attachment C). Title II prohibits a public entity from discriminating against an individual with disabilities, or denying such an individual the benefits of its services, programs, or activities. 42 U.S.C. 12132. In its January 18, 2013, response to Leon, the DRS stated that it "has carefully reviewed [Leon's] allegations" and "determined that [it] shall not initiate an

investigation into [Leon's] complaint because, absent exceptional circumstances, this office does not intervene in litigation in state or local courts and does not review judicial decisions of such courts in individual matters." January 18, 2013, letter.

On February 7, 2013, Leon petitioned this Court for review of the DRS's response. It is not clear from Leon's petition for review what relief he is requesting from this Court.

2. "Federal courts are courts of limited subject-matter jurisdiction. A federal court created by Congress pursuant to Article III of the Constitution has the power to decide only those cases over which Congress grants jurisdiction." *Al-Zahrani* v. *Rodriguez*, 669 F.3d 315, 317 (D.C. Cir. 2012) (citing *Micei Int'l* v. *Department of Commerce*, 613 F.3d 1147, 1151 (D.C. Cir. 2010)). The party claiming federal subject matter jurisdiction has the burden of proving it exists. *Khadr* v. *United States*, 529 F.3d 1112, 1115 (D.C. Cir. 2008). "'[O]nly when a direct-review statute specifically gives the court of appeals subject-matter jurisdiction to directly review agency action' may a party seek initial review in an appellate court." *Micei Int'l*, 613 F.3d at 1151 (quoting *Watts* v. *SEC*, 482 F.3d 501, 505 (D.C. Cir. 2007)).

3. A. This Court should dismiss the petition for review for lack of jurisdiction. Petitioner has cited no authority that authorizes direct review by a

court of appeals of the DRS's decision not to initiate an investigation based on a complaint of discrimination. As demonstrated below, no such authority exists.

First, the ADA contains no provision authorizing review by any court of the DRS's decision not to initiate an investigation into a specific complaint.

The Administrative Procedure Act (APA), which authorizes judicial review of final agency action, does not provide such jurisdiction. See 5 U.S.C. 704. It is well-established that "the APA is not to be interpreted as an implied grant of subject-matter jurisdiction to review agency actions." *Califano* v. *Sanders*, 430 U.S. 99, 105 (1977). Even if the DRS's action was reviewable under the APA, it would be in district court, not this Court. The district courts have jurisdiction to review APA claims in the first instance, 28 U.S.C. 1331. See *Trudeau* v. *FTC*, 456 F.3d 178, 185 & n.10 (D.C. Cir. 2006).

B. In any event, judicial review of the DRS's action is not available in *any* court, under the APA or any other statute. The DRS's decision not to initiate an investigation into the complaint made in Leon's letter, after the DRS reviewed its allegations, is "agency action * * * committed to agency discretion by law" and thus unreviewable. 5 U.S.C. 701(a)(2). In *Heckler* v. *Chaney*, 470 U.S. 821 (1985), the Supreme Court held that "an agency's decision not to take enforcement action should be presumed immune from judicial review under § 701(a)(2)," unless the "substantive statute has provided guidelines for the agency to follow in

exercising its enforcement powers." *Id.* at 832-833. The same holds true for an agency's decision not to investigate, which is the precursor to enforcement. In a decision this Court summarily affirmed on appeal, a D.C. district court stated that "[d]eciding which claims are facially without merit, which claims merit investigation, and the level of investigation desirable, are all enforcement-related decisions" that are "the type of agency decision[s] which *Chaney* holds [are] not for a court to second guess[] [a]bsent law constraining an agency's discretion in making these decisions." *Giacobbi* v. *Biermann*, 780 F. Supp. 33, 37 (D.D.C. 1992), aff'd, No. 92-5095, 1992 WL 309042 (D.C. Cir. Oct. 06, 1992) (per curiam). See also *Greer* v. *Chao*, 492 F.3d 962, 965-966 (8th Cir. 2007) (O'Connor, J.) (no judicial review under the APA for the manner in which the Department of Labor conducted investigation of veteran's administrative complaint, because "the 'level of investigation desirable' is fundamentally an 'enforcement-related decision[ ]'" that is unreviewable under the APA) (quoting *Giacobbi*, 780 F. Supp. at 39).

The DRS's discretionary decision not to investigate allegations is an "enforcement-related decision" that a court may not review. See, *e.g.*, *Sierra Club* v. *Jackson*, 648 F.3d 848, 852, 855-857 (D.C. Cir. 2011) (EPA Administrator's decision not to act to prevent construction of proposed pollution emitting facilities was committed to agency discretion by Clean Air Act's enforcement statute and

unreviewable under the APA); *Drake* v. *FAA*, 291 F.3d 59, 70-72 (D.C. Cir. 2002) (FAA's decision to dismiss flight attendant's complaint without a hearing because facts stated in complaint "were insufficient to warrant further action" was committed to agency discretion by law and unreviewable under the APA), cert. denied, 537 U.S. 1193 (2003); *Baltimore Gas & Elec. Co.* v. *FERC*, 252 F.3d 456, 460-461 (D.C. Cir. 2001) (FERC's decision to settle enforcement action against natural-gas vendor was within its nonreviewable discretion under the APA). The relevant Title II regulation provides that "[t]he designated agency shall investigate complaints for which it is responsible under [Section] 35.171." 28 C.F.R. 35.172(a). This Court has stated that although "shall is usually interpreted as the language of command," it "cannot * * * consider [that] word[] in isolation," but "must also consider the language and structure of the [relevant source of law] to determine whether the [agency] retained discretion in [its legal] duty so as to render [its] decision unreviewable." *Sierra Club*, 648 F.3d at 856 (internal quotation marks and citation omitted).

The language and structure of the relevant Title II regulation grant the DRS the unreviewable discretion to determine which ADA complaints warrant investigation. The 2010 amendments to the regulation implementing Title II, effective March 15, 2011, see 75 Fed. Reg 56,164, 56,184 (Sept. 15, 2010), changed the wording of 28 C.F.R. 35.172(a) from "[t]he designated agency shall

investigate each complete complaint" alleging a violation of Title II to "[t]he designated agency shall investigate complaints for which it is responsible under [Section] 35.171." See 73 Fed. Reg. 34,466, 34,499 (June 17, 2008); 28 C.F.R. 35.172 (2010). In its notice of proposed rulemaking for this regulation, the Department stated that the deletion of the word "each" would "clarify * * * that designated agencies may exercise discretion in selecting [T]itle II complaints for resolution." 73 Fed. Reg. at 34,499. See also 69 Fed. Reg. 58,768, 58,778 (Sept. 30, 2004) (observing in advanced notice of proposed rulemaking that "[a]s revised, the Department's Title II regulation will make clear that the Department may, within its discretion, dispose of complaints with inadequate legal or factual bases quickly, and, thus, dedicate more of its enforcement resources to complaints with stronger allegations"). Because the Department's interpretation of its own regulation to allow disposal of a complaint without investigation is neither "plainly erroneous [n]or inconsistent with the regulation," it warrants "substantial deference" from this Court. *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512 (1994).

The DRS acted well within the discretion afforded it by case law and the applicable regulation in declining to initiate an investigation into Leon's complaint. In the January 18, 2013, letter, the DRS stated that it "has carefully reviewed [the] allegations" in Leon's administrative complaint, and "determined that [it] shall not

initiate an investigation into [the] complaint because, absent exceptional circumstances, this office does not intervene in litigation in state or local courts and does not review judicial decisions of such courts in individual matters." January 18, 2013, letter. The DRS's reliance upon its enforcement priorities as a basis for its decision was appropriate and unreviewable. See 75 Fed. Reg. at 56,228 (justifying agency discretion not to investigate on ground that "[a]n agency's decision to conduct a full investigation requires a complicated balancing of a number of factors that are particularly within its expertise," such as "whether agency resources are best spent on this complaint or another, * * * and whether the particular enforcement action requested best fits the agency's overall policies"); *Heckler*, 470 U.S. at 831 (citing same "complicated balancing" of factors within agency's expertise as one reason for "the general unsuitability for judicial review of agency decisions to refuse enforcement"). Because the DRS's decision not to investigate Leon's complaint is "committed to agency discretion by law," it is not reviewable under the APA. 5 U.S.C. 701(a)(2).

WHEREFORE, the Department respectfully requests this Court dismiss the petition for review for lack of jurisdiction. This Court should also dismiss as moot Leon's pending motions, including his motion to set a briefing schedule and to expedite his appeal.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General

s/ Christopher C. Wang
MARK L. GROSS
CHRISTOPHER C. WANG
Attorneys
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 514-9115

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2013, I electronically filed the foregoing THE UNITED STATES DEPARTMENT OF JUSTICE'S MOTION TO DISMISS THE PETITION FOR REVIEW FOR LACK OF SUBJECT MATTER JURISDICTION AND RESPONSE TO PETITIONER'S MOTION TO SET BRIEFING SCHEDULE AND TO EXPEDITE APPEAL with the Clerk of the Court using the appellate CM/ECF system. All participants in this case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

I further certify that, within two business days of May 1, 2013, I will cause to be hand-delivered four paper copies of the foregoing motion to the United States Court of Appeals for the District of Columbia Circuit.

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Attachment A: Certificate of Parties, Rulings, and Related Cases

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The United States Department of Justice, as respondent, certifies that:

1. Parties

The *pro se* petitioner is Michael Leon. The respondent is the United States Department of Justice. There are no intervenors or *amici*.

2. Rulings Under Review

Petitioner seeks review of a discretionary decision of the United States Department of Justice, Civil Rights Division, Disability Rights Section, declining to initiate an investigation into his complaint alleging a possible ADA violation. There were no prior proceedings in district court.

3. Related Cases

To the best of our knowledge, this case was not previously before this Court or any other court, and we are aware of no related cases currently pending in this Court or in any other court within the meaning of Circuit Rule 28(a)(1)(C).

s/ Christopher C. Wang
CHRISTOPHER C. WANG
Attorney

Attachment B: January 18, 2013, letter

U.S. Department of Justice

Civil Rights Division

Disability Rights Section - NYA
950 Pennsylvania Avenue N.W.
Washington, DC 20530

JAN 1 8 2013

204-08-0

Mr. Michael Leon
444 West Orange Grove Road, #1136
Tucson, AZ 85704

Re: Superior Court of Pima County

Dear Mr. Leon:

This letter is in response to your complaint filed with this office alleging a possible violation of the Americans with Disabilities Act (ADA).

Our office has carefully reviewed your allegations. We have determined that we shall not initiate an investigation into your complaint because, absent exceptional circumstances, this office does not intervene in litigation in state or local courts and does not review judicial decisions of such courts in individual matters. You may wish to retain private counsel to assist you in assessing what courses of action may be open to you.

If you have questions about titles II or III of the ADA, you may call the Department of Justice's ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TTY). If you have questions about title I, you may call the EEOC at (800) 669-4000 (voice) or (800) 669-6820 (TTY).

We regret that we are unable to be of further assistance in this matter.

Sincerely,

J. Bentley
Director
Complaint Intake & Adjudication
Disability Rights Section

401385

Attachment C: Opposition to Defendants'
Motion for Judgment on the Mandate

MICHAEL A. LEON
444 W. Orange Grove Road, #1136
Tucson, Arizona 85704
(520) 256-8457
Email: Michael1Lion@yahoo.com
Plaintiff Pro Se

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

MICHAEL A. LEON;

Plaintiff,

vs.

SECURAPLANE TECHNOLOGIES, INC., JANICE WILLIAMS, LORRIE GUZEMAN, BLANE BOYINGTON, DR. MICHAEL BOOST,

Defendants.

Case No. CV 20091791
2 CA-CV 2011-0154

1. **OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE MANDATE/VACATE STAY MANDATE**
2. **MOTION FOR CHANGE OF JUDGE**
3. **REQUEST FOR HEARING MOTION/PETITION FOR REHEARING**

(Jan Kearney)

Plaintiff believed and was misled that this matter was closed. This matter having been reopened, plaintiff seeks change of judge. Jan Kearney is the subject of federal complaints, Department of Justice action and it is therefore inappropriate for this individual to be issuing orders in this matter. Judge Harrington, Judge Lee and Judge Gordon are also inappropriate. Judges Harrington, Gordon have recused themselves from matters due to conflict of interest with defense counsel. Judge Lee is part of federal complaint, appeal matters. I seek rehearing to stay mandate and resurrect matter. This judge has inflicted emotional distress on plaintiff and abdicated court responsibility of neutrality by allowing defense counsel to harass Plaintiff. Plaintiff does seek rehearing. Plaintiff has objected to this judge over and over. A motion for reconsideration was filed in this matter and timely filed contrary to the Court of Appeals

mandate and revealed by the Court docket in this case. Defendants are aware that plaintiff is judgment proof due to sole social security disability income financial resources, however, Defendants continue to impose emotional distress on terminally ill Plaintiff. You cannot get blood from a stone. I want this to go on the record if there are any future investigations. This judge is the basis for many investigations into judicial bias, corruption. I thought that this matter was closed but this filing resurrects matter. I am a pro se litigant terminally ill and my understanding is that this resurrects the entire case again. As for defense counsel making a federal case out of petition for writ of certiorari rejected, this is not unusual as the U.S. Court only hears a small percentage of cases. The Supreme Court does not track the number of pro se cases granted but more than half of the appeals filed at the federal appeals court level are without a lawyer. In 2010, 28,931 pro se appeals were filed in the federal appeals courts in 2010. http://www.sfgate.com/news/article/Court-grants-appeals-from-2-people-without-lawyers-3893258.php. The U.S. Supreme Court grants appeals from 2 people without lawyers. Read more: http://www.sfgate.com/news/article/Court-grants-appeals-from-2-people-without-lawyers-3893258.php#ixzz2CUzD59qr. I am currently preparing petition for writ of certiorari in Arizona Supreme Court Case No. CV 12-0252 PR. If I can write well enough petition, the U.S. Court will grant amicus curiae attorney on my behalf. *Obadiah 1:4 Though thou exalt thyself as the eagle, and though thou set thy nest among the stars, thence will I bring thee down, saith the LORD.*

DISPARATE TREATMENT

Plaintiff has been advised by clerks of the Court that only "privileged" law firms are entitled to e-file in this Court. This is highly discriminatory to other non-privileged law firms and disabled pro se litigants. Michael Leon v. State of Arizona, United States District Court No. 12-556 is currently pending involving civil rights and ADA violations. Leon v. State of Arizona Ninth Circuit Court of Appeals Case No. 12-17407 is pending and briefing schedule assigned. Appellant Opening Brief due February 4, 2013. Department of Justice Disability Section Civil Rights Violation Case No. 401385 is

investigating the conduct of Arizona Court violation of constitutional rights, reasonable accommodations for the handicapped.

OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE MANDATE

Maricopa County Superior Court Case No. CV2012-009159 chronicles the harassment of plaintiff, by defense counsel Ogletree Deakins against an impoverished disabled minority pro se litigant. Defendants are aware that plaintiff has no other funds other than social security benefits. Defendants are aware that pursuits of judgments, threats triggers anxiety, "heart issues" with terminally ill, congestive heart failure plaintiff.

On March 20, 2012 Tibor Nagy threatened plaintiff with a lawsuit if he did not withdraw complaint no. c20120876, Leon v. Danaher, et al. Pima County Superior Court. Mr. Nagy works out of both Phoenix and Tucson offices. It is believed that this event occurred in Maricopa County office. Mr. Leon is a disabled veteran that receives social security disability benefits. This is Mr. Leon's only source of income.

Mr. Nagy threatened Mr. Leon for exercising his constitutional right of filing lawsuit. Mr. Nagy threatened to take away social security benefits as Mr. Nagy has known for some time that this is the only source of income and asset that Mr. Leon, a terminally ill plaintiff possesses.

Mr. Nagy refused service for defendants that he represents and has represented in other matters in c20120876, Leon v. Danaher, et al. Pima County Superior Court. Mr. Leon, a handicapped individual that suffers from congestive heart failure had to travel to the Pima County Sheriff Civil Enforcement Division in April 2012, incur a balance of $1,100 to achieve service of process. Mr. Nagy now claims that he is representing defendants which demonstrates the intentional harassment of a terminally ill individual causing him to jump through various hoops to achieve service of known clients that he has represented for years in other matters.

In 2012, Plaintiff learned that a client of OGLETREE, DEAKINS, NASH, SMOAK & STEWART P .C., Maricopa County terminated OGLETREE, DEAKINS, NASH, SMOAK & STEWART P .C., for unreasonable conduct and possible criminal conduct.

Plaintiff also learned that OGLETREE, DEAKINS, NASH, SMOAK & STEWART P .C., had been sanctioned by Maricopa County Superior Court judges for this conduct. Plaintiff, as a disabled individual, encountered some of this very same, unreasonable and unethical conduct including failure to produce files and failure to produce deponents at depositions. OGLETREE, DEAKINS, NASH, SMOAK & STEWART P .C., filed a defamation complaint against Maricopa County for defamation, case number CV 2011-017664.

During the past several years in litigation proceedings involving Tibor Nagy and F. David Harlow, plaintiff has endured unspeakable abuses by defense counsel OGLETREE, DEAKINS, NASH, SMOAK & STEWART P .C. These abuses occurred in C20091791 Pima County Superior Court case and FAA proceedings wherein defense counsel interfered with subpoena process in federal action wherein they were not counsel of record and had no business interfering in same. Plaintiff brought these abuses to the attention of the state bar of Arizona, various Pima County Superior Court judges through a motion to compel and various hearings.

The most heinous form of harassment came during a video deposition of plaintiff. Defense counsel scheduled terminally ill plaintiff for deposition on his birthday which lasted a span of two days. Plaintiff had scheduled depositions for various defendants at this particular court reporter location because Plaintiff is not an attorney and does not possess conference room premises with which to conduct deposition. Defense counsel, members of a law firm which possesses conference rooms elected to schedule Plaintiff's deposition through his court reporter offices which he had selected for upcoming depositions of defendants.

Plaintiff Leon, a terminally ill individual was so distressed by video deposition as he was worried more slander and libel would occur with video deposition all over the internet that he filed motion for protective order to prevent. Plaintiff's physician noted that Mr. Leon was suffering anxiety due to lawsuit and increased prescription for nitro glycerin. The motion to compel chronicles these abuses. Plaintiff a disabled person endured

numerous insults from defense counsel regarding his handicppaed situation "even you can understand this" Defense counsel invited former managers which are the subject of the lawsuit for harassment to an intimate gathering in close proximity to Plaintiff to intimidate and posture for video raising his blood pressure. Defense counsel allowed Plaintiff's son to attend for plaintiff's deposition; then for deponent Michael Boost deposition, defense counsel stated that Plaintiff's EMT son was too frightening to the Judge, talking out of both sides of the mouth. Defense counsel has attempted to gaslight me during these entire proceedings. Defense counsel has not produced files, not produced deponents, instructed deponents not to answer, interrogated deponents on Plaintiff's dime, walked out of depositions, threatened that he would waste the entire deposition if the deposition was not canceled.

Technically, an appellate decision is directed to the lower court from which the appeal arose so that the court can effectuate the appellate judgment. The mandate, therefore, transfers jurisdiction to the lower court to take that action. For instance, if a district court's decision is affirmed on appeal, the mandate returns the case for entry of judgment to the prevailing party. The mandate terminates the appellate court's jurisdiction, and that court cannot be asked for further relief.

Huffman v. Saul Holdings Ltd P'ship, 262 F.3d 1128, 1132 (10th Cir. 2001); see also, e.g., United States v. Rivera-Martinez, 931 F.2d 148, 150 (1st Cir. 1991) ("When a case is appealed and remanded, the decision of the appellate court establishes the law of the case and it must be followed by the trial court on remand." (emphasis in original)). Relatedly, the parties generally cannot raise issues on remand that were not raised in the initial appeal. See, e.g., Engel Indus., Inc. v. Lockformer Co., 166 F.3d 1379, 1383 (Fed. Cir. 1999) ("An issue that falls within the scope of the judgment appealed from but is not raised by the appellant in its opening brief on appeal is necessarily waived.").

The mandate rule is a form of law of the case—distinguished largely by its (almost-always) mandatory nature. Law of the case, a judge-made doctrine, generally refers to

lower-court decisions that the court, in its discretion, may later change in subsequent rulings, although as "law of the case," such decisions generally are adhered to throughout the district-court proceedings. The mandate rule is more exacting. As its name suggests, it is "mandatory" that the district court follow the appellate court's rulings. The district court cannot take actions that are contrary to the mandate or revisit the appellate court's conclusions. Thus, the issues decided by the appellate court and within the scope of the judgment are deemed incorporated within the mandate and precluded from further adjudication unless specifically remanded to the district court to address. Engel Indus., 166 F.3d at 1382–84. The district court, however, has discretion to take actions consistent with or not covered by the mandate.

But as is often the case, even the "mandatory" nature of the mandate rule has exceptions. In certain narrow circumstances, the district court may revisit issues decided on appeal or covered

by the mandate. For instance, the mandate may not preclude a district court's reconsideration where there are subsequent factual discoveries or changes in the law. Invention Submission Corp.

v. Dudas, 413 F.3d 411, 414–15 (4th Cir. 2005) (finding reconsideration of an appellate determination appropriate if there is a dramatic change in law, significant new evidence, or blatant error that would result in serious injustice); EEOC v. Sears, Roebuck & Co., 417 F.3d 789, 796 (7th Cir. 2005) (finding reconsideration of an appellate determination appropriate where there has been an intervening change in law). Thus, the judge-made mandate rule is not wholly inflexible. United States v. Bell, 988 F.2d 247, 251 (1st Cir. 1993) ("After all, the socalled 'mandate rule' . . . is simply a specific application of the law of the case doctrine and, as such, is a discretion-guiding rule subject to an occasional exception in the interests of justice.").

For the vast majority of cases, however, the mandate rule limits the scope of what the district court may do on remand. "Unless the court directs that a formal mandate issue,

the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs." Fed. R. App. P. 41(a). To make clear that the re-issued documents are the mandate, the court may stamp them as "mandate" or "issued as a mandate." See, e.g., United States v. Rivera, 844 F.2d 916, 920 (2d Cir. 1988) (citations omitted) (explaining that "the clerk of the court signs her name on a copy of the judgment or order that is stamped 'MANDATE' at the top of the first page and 'true copy' at the bottom of the last page"). Unless extraordinary circumstances warrant judicial involvement, the clerk's office, rather than a judge, prepares and issues the mandate.

MOTION FOR CHANGE OF JUDGE

This assignment of this judge is highly inappropriate as stated earlier. Jan Kearney inappropriateness was the subject of the appeal in this matter.

REQUEST FOR HEARING

This matter has been reopened/resurrected and Plaintiff requests hearing on motion for judgment on the mandate to defend position.

Dated this19th day of November, 2012.

/S/
MICHAEL A. LEON

Original and one copy filed this 19th day of November, 2012,
with: Superior Court of Pima County
110 W. Congress Street
Tucson, AZ 85701

Copy of the foregoing mailed this19th day of November, 2012,
to:
Jan Kearney
Superior Court of Pima County
110 W. Congress Street
Tucson, AZ 85701

COPY of the foregoing e- mailed this19th day of November, 2012, to:

Eric Holder, Attorney General
Thomas Perez, Assistant Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530
Re: Michael Leon v. State of Arizona, et al.
Department of Justice Disability/Civil Rights Section Case No. 401385

COPY of the foregoing mailed this19th day of November, 2012, to:

Tibor Nagy, Jr.
F. David Harlow
Ogletree Deakins
Esplanade Center III
2415 East Camelback Road
Suite 800
Phoenix, AZ 85016

Tibor Nagy, Jr.
F. David Harlow
Ogletree Deakins
3430 E. Sunrise Drive
Suite 220
Tucson, AZ 85718

/s/
MICHAEL A. LEON