No. 19-707

In The
Supreme Court Of The United States

IRMA ROSAS

Petitioner,

v.

SAN ANTONIO HOUSING AUTHORITY, also known as SAHA; NRP GROUP, L.L.C.; UNION PACIFIC RAILROAD; TEXAS RIOGRANDE LEGAL AID, INCORPORATED; BEXAR COUNTY, TEXAS; CITY OF SAN ANTONIO,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) WHETHER THE LOWER COURT ERRED IN APPLYING THIS COURT'S HOLDING IN *BELL ATLANTIC CORP. V. TWOMBLY*, 550 U.S. 544 (2007) TO *PRO SE* PLAINTIFF-APPELLANT'S COMPLAINT WHEN THIS COURT'S HOLDING IN *ERICKSON V. PARDUS*, 551 U.S. 89 (2007) CONTROLLED,

(2) WHETHER THE LOWER COURT ERRED WHEN IT DENIED PLAINTIFF-APPELLANT THE OPPORTUNITY TO PROVIDE SUPPORTING EVIDENCE THAT HER MENTAL ILLNESS ENTITLED HER TO EQUITABLE TOLLING, IN CONFLICT WITH THIS COURT'S HOLDING IN *HAINES V. KERNER*, 404 U.S. 520 (1972),

(3) WHETHER THE LOWER COURT'S RULING CONFLICTS WITH THE MAJORITY OF RULINGS BY FEDERAL CIRCUIT COURTS PERTAINING TO CLAIMS OF MENTAL ILLNESS, AND

(4) WHETHER THE LOWER COURT ERRED IN TRANSFERRING PETITIONER'S CASE TO A MAGISTRATE JUDGE WITHOUT HER CONSENT, CONTRARY TO 28 U.S.C. § 636(c)(1).

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PETITION FOR WRIT OF CERTIORARI

Irma Rosas ("Ms. Rosas"), respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals affirming the district court's opinion, No. 18-50766, is not published and is attached as App. 1-2. The opinion of the district court denying the motion to toll statutes of limitations and dismissing claims with prejudice as barred by limitations and for failure to state a claim, No. 5:18-CV-537, is not published, and is attached as App. 2-17. The opinion of the Court of Appeals denying the petition for rehearing en banc, No. 18-50766, is not reported and is attached as App. 17-20.

JURISDICTION

The opinion of the court of appeals, affirming the district court's judgment for the reasons

explained by that court, was entered on August 2, 2019. App. 1-2. The Court of Appeals denied the petition for rehearing en banc on August 30, 2019. *See* Appendix 17-20. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

(1) FED. R. CIV. P. 8(a)(2) provides that "[a] pleading that states a claim for relief must contain: ... a short and plain statement of the claim showing that the pleader is entitled to relief".

(2) FED R. CIV. P. 8(e) provides that "[p]leadings must be construed so as to do justice."

(3) 28 U.S.C. § 636(c)(1) provides,

> [u]pon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in a case, when specially designated to exercise such

> jurisdiction by the district court or courts he [or she] serves.

(4) Western District of Texas Rule CV-72 provides,

> [t]he magistrate judges of this court are authorized to perform all the duties allowed to magistrate judges under the Federal Magistrates Act as amended in 28 United States Code § 636. The magistrate judges of this court are designated to exercise civil jurisdiction under section 636(c)(1) upon consent of the parties. Whenever applicable, the "Local Rules of the Assignment of Duties to United States Magistrate Judges" found at Appendix C shall apply to proceedings before the magistrate judges.

STATEMENT OF THE CASE

On May 31, 2018, Petitioner Irma Rosas ("Ms. Rosas") filed an "Appearance Form for *Pro Se* Litigants" (Doc. 3; ROA.18-50766.30), a "*Pro Se* Motion to Proceed *In Forma Pauperis*" (Doc. 1; ROA.18-50766.4), and a "*Pro Se* Motion to Appoint Counsel" (Doc. 2; ROA.18-50766.23-29). The Motion

In Forma Pauperis was granted and the Motion for Counsel was held in abeyance. (Doc. 4 at 1; ROA.18-50766.31).

Ms. Rosas alleged that San Antonio Housing Authority ("SAHA") and the NRP Group, LLC ("NRP") retaliated against her for meeting with other tenants and bringing awareness of their fair housing rights. (Doc. 1-1[1] at 1; ROA.18-50766.36). Ms. Rosas alleged that she signed her second lease with SAHA and NRP under duress, when she had no source of income. (Doc. 1-1 at ¶¶46-47; ROA.18-50766.43). NRP began eviction proceedings in June 2013 for non-payment of rent. (Doc. 1-1 at 8; ROA.18-50766.43). Ms. Rosas alleged that Texas RioGrande Legal Aid Inc. told her that they could not assist her with the eviction. (Doc. 1-1 at ¶53; ROA.18-50766.44).

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[1] It must be noted that the Original Civil Complaint was labeled as *Doc. 5* in the Civil Docket but according to the Record on Appeal, *the same Original Civil Complaint* was stamped as Doc. 1-1 (dated May 31, 2018) and Doc. 5 (dated June 08, 2018). Petitioner ***never*** filed the Original Civil Complaint twice, a fact that can be corroborated with the signature sheet. Here, Doc. 1-1 is used to refer to the Original Complaint.

Ms. Rosas alleged that Union Pacific Railroad ("UPR") would continually hang on their horn as they passed by day and night and that the noise prevented her from the peaceful enjoyment of the apartment. (Doc. 1-1 at 41; ROA. 18-50766.41).

Ms. Rosas did not attend her court date at Bexar County Justice of the Peace, Precinct 1 ("Precinct 1") on August 10, 2013. (Doc. 1-1 at ¶36; ROA.18-50766.44). She alleged she had been at University Hospital's Emergency Room because she had contemplated suicide. (Doc. 1-1 at ¶54; ROA.18-50766.44).

Ms. Rosas alleged that she asked for jury trial at Precinct 1 but she did not receive it. (Doc. 1-1 at ¶¶52, 55; ROA. 18-50766.44).

On December 12, 2013, Ms. Rosas attended court at Bexar County Court ("BCC") and she alleged that she did not receive a jury trial either. (Doc. 1-1 at ¶58; ROA. 18-50766.44). That day, Ms. Rosas represented herself *pro se* and she alleged that BCC prevented her from saying anything. (Doc. 1-1 at ¶59; ROA.18-50766.44-5). Ms. Rosas alleged that BCC stated that it would order the

Writ of Possession after the holidays. (Doc. 1-1 at ¶60; ROA. 18-50766.45).

The Writ of Possession, however, was never posted (Doc. 1-1 at ¶65; ROA.18-50766.46) or legally served onto Ms. Rosas. On January 22, 2014, a "Notice of Surrendered/Seized Property" document was posted on her door notifying her that all her property had been placed outside the housing complex. (Doc. 1-1 at ¶65; ROA.18-50766.46). By the time that she returned home around 6 p.m. that night, all of her property was gone (Doc. 1-1 ¶65; ROA. 18-50766.46), including her doctoral dissertation research. Ms. Rosas' dog was taken to the City of San Antonio's Animal Care Services ("ACS"). (Doc. 1-1 at ¶66; ROA.18.50766.46).

Ms. Rosas filed the Complaint on May 31, 2018. (Doc. 1-1; ROA.18.50766.1-2). The causes of action against SAHA and NRP were for providing a sub-standard housing unit that she could not peacefully enjoy, adding to her electric and water costs, and forcing her to sign a second-year lease. (Doc. 1-1 at ¶79; ROA.18.50766.19). The causes of

action against UPR were for affecting the peaceful enjoyment of her unit, and disrupting her daily life and affecting her physical and mental health. (Doc. 1-1 at ¶79; ROA.18.50766.19).

The cause of action against Texas RioGrande Legal Aid, Inc. was for denying her an immediate remedy to signing a contract under duress. (Doc. 1-1 at ¶79; ROA.18.50766.19). The causes of action against Bexar County, Texas was for denying her access to procedural due process, affecting her mental health, and unexpectedly evicting her, whereby she lost all of her property. (Doc. 1-1 at ¶79; ROA.18.50766.19). The causes of action against the City of San Antonio were for mutilating her dog (property) and affecting her mental health. (Doc. 1-1 at ¶79; ROA.18.50766.19).

On June 08, 2018, United States Magistrate Judge Henry J. Bemporad issued a Show Cause Order in the case, requiring Ms. Rosas to show why her case should not be dismissed for a number of reasons, including that various statutes of limitation barred her claims. (Doc. 4; ROA.18.50766.31-35).

Ms. Rosas responded to the Show Cause Order by filing a Motion to Toll Statutes of Limitation. (Doc. 6; ROA.18.50766.52-53). In the Motion, she explained that she had sought legal representation from Texas RioGrande Legal Aid, Inc. to no avail. (Doc. 6 at ¶2; ROA.18-50766.52). On September 15, 2017, she had erroneously filed her claims in the United States District Court for the Northern District of Illinois, where she resides, and that the court had dismissed the case without prejudice for lack of proper venue. (Doc. 6 at ¶3; ROA.18.50766.52). In her motion, Ms. Rosas also explained that she had mental health issues that "stood in her way and prevented timely filing after she was evicted" in 2014. (Doc. 6 at ¶4; ROA.18.50766.52). She also claimed that she had received mental health treatment for depression prior to the eviction, that she had contemplated suicide on three separate occasions prior to the eviction, that when she continued to live in Texas from 2011-2014, she did not have medical insurance to continue therapy, that she was diagnosed with severe anemia in 2017, and that

she had isolated herself in her mother's house and did not work from January 2014-November 2017. (Doc. 6 at ¶¶5-10; ROA.18.50766.53). On these grounds, Ms. Rosas requested that the court "equitable toll" the statute of limitations as applied to her claims. (Doc. 6 at ¶12; ROA.18.50766.53).

Magistrate Judge Bemporad recommended that Ms. Rosas's Motion to Toll Statute of Limitations be denied, and her case be dismissed as barred by limitations. (Doc. 8; ROA.18.50766.55-62).

On August 22, 2018, Ms. Rosas filed a timely objection to the Report and Recommendation. (Doc. 10; ROA.18.50766.64-106). First, she objected to the conclusion that her claims were barred by limitations. (Doc. 10 at 2; ROA.18-50766.65). She argued,

> Plaintiff objects to the case law cited to substantiate the conclusion...The litigants in these cases did not suffer from disabilities similar to those suffered by the Plaintiff before, during, and after her eviction. (Doc. 10 at 3; ROA. 18-50766.66).

Second, Ms. Rosas objected to the conclusion and reasoning that she did not meet Texas' definition of "legal disability," specifically where the person is "of unsound mind". (Doc. 10 at 3; ROA.50766.66). She cited § 603(b) of the Texas Probate Code (2013) to argue that she "was mentally and physically incompetent, which—along with 'unsound mind'—is defined in § 603(b) as being 'incapacitated.'" (Doc. 10 at 4; ROA.18-50766.67).

Ms. Rosas further argued that "§ 3(p)(2) of the Texas Probate Code (2013) an 'incapacitated person' is defined as

> an adult who, because of a physical or mental condition, is substantially unable to: (1) provide food, clothing, or shelter for himself or herself; (2) to care for the person's own physical health; or (3) to manage the individual's own financial affairs[.] (Doc. 10 at 4; ROA. 18-50766.67).

She discussed how her physical and mental conditions prevented her from working from January 2014 to November 2017, which made her wholly dependent on her mother for all basic needs.

(Doc. 10 at 4-5; ROA.18-50766.67-68). She also argued that the vagueness of Section 603(b) of the Texas Probate Code (2013), by not defining "other law," allowed for an interpretation that it included the Texas Civil Practice and Remedies Code. (Doc. 10 at 5; ROA.18-50766.68). In keeping with Texas definitions, it sufficed to be incapacitated to equitably toll the statutes of limitations. (Doc. 10 at 5; ROA.18-50766.68).

Ms. Rosas also noted that different definitions for "incompetency," "of unsound mind," and "incapacity" within various Texas Codes violated the Equal Protection Clause of the 14th Amendment. (Doc. 10 at 5-6; ROA.18-50766.68-69). She agreed with the magistrate judge when he wrote, "there is no specific statute of limitations for § 1983 claims." (Doc. 10 at 6; ROA.18-50766.69).

Third, Ms. Rosas objected to the magistrate judge's conclusion that her motion was insufficient to show that she was of "unsound mind". (Doc. 10 at 6; ROA.18-50766.69). She discussed the definition of 'disability' under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* and Congress'

findings of how people with physical and mental disabilities have been discriminated.

(Doc. 10 at 6; ROA.18-50766.69). Ms. Rosas explained that she had medical records of her disabilities. (Doc. 10 at 6; ROA.18-50766.69). That she was unable to tend to her medical needs from 2011-2014 [was] due to the State of Texas playing partisan politics with the Affordable Care Act and ultimately with people's well-being. (Doc. 10 at 6; ROA.18.50766.69).

Fourth, Ms. Rosas objected to the magistrate judge's causal inference that if she was psychologically traumatized then she could not write. (Doc. 10 at 7; ROA.18-50766.70). She explained that her writing was an outlet of her pain and suffering and nothing else. (Doc. 10 at 7; ROA.18-50766.70). She also explained how after she began to feel better, she was "getting nowhere with lawyers" in Chicago, she began "learning how to file a federal complaint", and that the "task [was] overwhelming." (Doc. 10 at 7; ROA.18-50766.70).

However instead of the district court requesting Ms. Rosas's medical records of her

disabilities, the court used the lack thereof against her (when on August 28, 2018, the court accepted Magistrate Judge Bemporad's recommendations to deny Ms. Rosas's motion to toll the statute of limitations and dismissed her claims with prejudice as barred by limitations and for failure to state a claim. (Doc. 12; ROA.18.50766.108-115).

Based on Ms. Rosas' "complaint and response to the show cause order," the district court held,

> Plaintiff's only objection to the Magistrate Judge's finding that her claims are time-barred is that he litigants in the cases cited [ ] did not suffer from disabilities similar to those from which she allegedly suffers. This argument, however, *is relevant* to the question of equitable tolling. Thus the [district court] finds that Plaintiff's claims against SAHA, NRP, Union Pacific Railroad, Bexar County, and the City of San Antonio are time-barred. (Doc. 12 at 5; ROA.18-50766.112) (emphasis added).

First, the district court wrote,

> Plaintiff argues the applicable statute of limitations should be tolled during the pendency of her case in the Northern District of Illinois. (Doc. 12

at 6; ROA.18-50766.113.)

Second, it wrote,

> Although Plaintiff argues for equitable tolling, the basis for her tolling argument due to her mental health is grounded in Texas law. (Doc. 12 at 7; ROA.18-50766.114).

The district court further wrote,

> Plaintiff has provided no further evidence beyond the statements that she isolated herself in her mother's house and did not work to demonstrate that she was of unsound mind such that she is entitled to tolling. (Doc. 12 at 8; ROA.18-50766.115).

Third, the district court wrote,

> Plaintiff did not respond to the show cause order on this claim, and the [district court] now finds that Plaintiff fails to state a valid claims for relief against Texas RioGrande Legal Aid, Inc. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

The notice of appeal was timely filed on September 13, 2018. (ROA.18-50766.117).

On April 29, 2019, the Office of the Clerk confirmed that it had notified Ms. Rosas that her brief and record excerpts were deficient on March 12, 2019 (App. 20-24) and March 26, 2019, and that she had 14 additional days to return a sufficient brief and record excerpts. (Doc. 00514933937).

Ms. Rosas mailed her brief and record excerpts on May 11, 2019 via U.S.P.S. On August 2, 2019, Circuit Judges Reavley, Jones, and Graves affirmed the lower court's holding in one sentence: "We affirm the district court's judgment for the reasons explained by that court." App. 1-2.

In her appeal, Ms. Rosas had argued that,

> the [d]istrict [c]ourt erred when it denied her equitable tolling of herclaims. The court stated, "Plaintiff did not suffer from an inability to participate in, control, or understand the progression of her lawsuit" because she was "able enough to pursue her case by filing the first action in...September 2017". (ROA. 18-50766.114). The court, however, made this assessment in absence of medical documentation. The court also erred when it failed to interpret case law pertaining to pro se litigants. It

> held Ms. Rosas to a stringent standard and treated every technical defect of her complaint as grounds for dismissing her Complaint. (App. Br. at 12).

Specifically, Ms. Rosas explained how tolling due to her mental health was grounded in Texas law,

> [u]nder § 16.001, the Texas limitations period for personal injuries is tolled when the claimant is under a 'legal disability'—a concept that includes being of 'unsound mind.' *Id.* § 16.001(a)(2). Although the Texas Civil Practice and Remedies Code does not define 'unsound mind', the Texas courts have relied on Tex. Prob. Code Ann. § 3(y) which defined persons of unsound mind as 'persons non composmentis, mentally disabled persons, insane persons, and other persons who are mentally incompetent to care for themselves or manager their property and financial affairs." *See, e.g., Jones v. Miller*, 964 S.W.2d 159, 164 (Tex. App.—Houston [14 Dist.] 1998, no pet.) (citing Tex. Prob. Code Ann. § 3(y) (Vernon 1980) (repealed by Act of May 27, 1995, 74th Leg., R.S., ch. 1039, § 73, 1995 Tex. Gen. Laws 5145, 5170)); *Hargraves v.*

> *Armco Foods, Inc.*, 894 S.W.2d 546, 548 (Tex. App.—Austin 1995, no writ)(same); accord, *Nelson v. Reddy*, 898 F. Supp. 409, 411 (N.D. Tex. 1995) (same). (quoting *Orlando v. Sakaguchi*, et al., No.4:14-CV-951-O (N.D. Tex. 2015)). (App. Br. at 15).

Furthermore, Ms. Rosas argued that she had drawn on a similar argument of Texas legal definitions in her objections. (App. Br. at 15).

Ms. Rosas explained that

> [a]fter the psychological trauma of suddenly being—for the first time in her life—homeless in January, 2014, [her] depression worsened and she sank into deeper isolation from family and friends. At the age of 40, [she] became her mother's dependant again similar to when she was 10-years-old. Ms. Rosas did not work until November, 2017. Ms. Rosas was a person *non compos mentis*, a mentally disabled person, an insane person, and mentally incompetent to care for herself or manage her property and financial affairs from January, 2014 to late 2016. (App. Br. at 16).

Ms. Rosas continued to explain that she

> [w]as unable to manage her property and financial affairs. She had left her vehicle in San Antonio in January 2014 until she could return to purchase new tires and insurance for it. Because she could not work, it was eventually deemed "abandoned" and junked. All of Ms. Rosas' bills went into collections. Her student loans went into default. Ms. Rosas was *non compos mentis*. (App. Br. at 16).

Ms. Rosas also argued that Texas courts

> toll the limitations period for persons of unsound mind to protect persons without access to the courts and to protect persons who are unable 'to participate in, control, or even understand the progression and disposition of their lawsuit.['] See *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 755 (Tex. 1993); accord, *Hargraves*, 894 S.W.2d at 548. Being of unsound mind is generally the same as being insane. *See Hargraves*, 894 S.W.2d at 548. Although the phrase 'unsound mind' refers to a legal disability, it is not limited to persons who are adjudicated incompetent. *Casu v. CBI Na-Con, Inc.*, 881 S.W.2d 32, 34 (Tex. App.—Houston [14th Dist.] 1994, no writ). (quoting *Orlando v. Sakaguchi, et al.*,

> No.4:14-CV-951-O (N.D. Tex. 2015)). (App. Br. at 16).

Ms. Rosas explained that she suffered a period of being of unsound mind from January, 2014 to late 2016, a segment of insanity in her life. (App. Br. at 17). And that she did not have to be adjudicated as such. *Casu v. CBI Na-Con, Inc.*, 881 S.W.2d 32,34 (Tex. App.—Houston [14th Dist.] 1994, no writ). (App. Br. at 17). It was during that segment, she continued, when "she was unable to *participate in, control, or even understand the progression and disposition of* ***any*** *lawsuit.*" (App. Br. at 17). (emphases in original).

> Ms. Rosas clarified that although she
>
> began to discover all the information needed to corroborate the events of her eviction [in] 2017, did not translate to [her] suddenly being "cured." It just meant that [she] was not as mentally incapacitated as she was between 2014-late 2016. (App. Br. 17).

> On August 28, 2018, the district court wrote,
>
> Plaintiff allegedly received mental health treatment for depression and contemplated suicide, but these claims

> do not entitle her to tolling because they took place from 2004 to 2011 and 2011 and 2013, respectively, and the cause of action did not accrue until 2014. (Doc. 12 at 7; ROA.18-50766.114; App. Br. at 17).

To this, Ms. Rosas argued that while

> they may not entitle Ms. Rosas to tolling *per se*, the treatment and contemplation of suicide point to the fact that at the time of the eviction, Ms. Rosas already had a disability, as defined by the Americans with Disabilities Act of 1990. (App. Br. at 17).

Ms. Rosas then invoked Section 16.001(b) of the Texas Civil Practice and Remedy Code by stating that

> [i]f a person entitled to bring a personal action is under a legal disability when the cause of action accrues, the time of the disability is not included in the limitations period. (App. Br. at 17-18).

And then argued that she

> was "under a legal disability when the cause of action accrue[d]" and that was documented by behavioral health

> professionals. The eviction greatly affected [her] already fragile psychological state of mind. (App. Br. at 18).

Ms. Rosas listed a dozen or so significant life events that contributed to her depression before the eviction. (App. Br. at 18-19).

Ms. Rosas concluded that it stood to follow that "the time of disability is not included in the limitations period" and that she was entitled to have the equitable tolling of the statutes of limitations due to mental illness. (App. Br. at 19).

The lower court denied the petition for rehearing en banc on August 30, 2019. App. 18-20. Ms. Rosas is now seeking review of that opinion by this Court.

In her petition for rehearing, Ms. Rosas argued that the panel's decision conflicted with decisions by this Court in *Erickson v. Pardus*, 551 U.S. 89 (2007) and *Haines v. Kerner*, 404, U.S. 520, 521 (1972) and that the district court had referred her complaint to a magistrate judge without her consent in conflict with 28 U.S.C. § 636(c)(1).

(Pet. App. at 11-16).

This writ of certiorari followed.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER THE LOWER COURT ERRED IN APPLYING THIS COURT'S HOLDING IN *TWOMBLY* TO *PRO SE* PLAINTIFF-APPELLANT'S COMPLAINT WHEN THIS COURT'S HOLDING IN *ERICKSON* CONTROLLED.

Similar to the petitioner in *Erickson*, Ms. Rosas has also been proceeding, from the litigation's outset, without counsel. Her documents were not "liberally construed" and her complaint was *not* "held to less stringent standards than formal pleading drafted by lawyers". Moreover "[a]ll pleadings [were not] construed as to do substantial justice."

A. This Court's Holding in *Erickson* Did Not Create A Heightened Pleading Standard For *Pro Se* Litigants

In *Erickson v. Pardus*, 551 U.S. 89 (2007),

this Court stated,

> [a] document filed *pro se* is "to be liberally construed," *Estelle*, 429 U.S., at 106, and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *ibid.* (internal quotation marks omitted). Cf. Fed. Rule Civ. Proc. 8(f) ("All pleadings shall be construed as to do substantial justice"). 551 at 89. (internal citations in original).

This Court's opinion in *Erickson* was both concise and straightforward. *Erickson*, 127 S.Ct. 2197 (2007). With little to no in-depth analysis, this Court reversed the Tenth Circuit's decision as a harsh departure from the "pleading standard mandated by the Federal Rules of Civil Procedure." *Id.* at 2198. This Court then particularly cited *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and, contrary to that holding, stated that "[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what the claim is and the grounds upon which it rests." *Id.* at 2200 (internal quotation omitted). After noting

that Erickson's *pro se* complaint stated that the prison doctor's decision to remove Erickson from his treatment endangered his life, and that Erickson was taken off the treatment while he still had a need for it, this Court simply held that "[t]his alone was enough to satisfy Rule 8(a)(2)." *Id.* Eventually, and without ever deciding whether Erickson's complaint was sufficient in all respects, this Court stated that the "case cannot...be dismissed on the ground that petitioner's allegations of harm were too conclusory to put these matters at issue." *Id.* This Court's clear-cut affirmation of a simple notice pleading standard in *Erickson* assures the legal world that Rule 8(a)(2) truly requires *no more* than "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2).

Unfortunately the district court erred when it held Ms. Rosas, *pro se*, to a heightened pleading standard of costly antitrust litigation held by this Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) when *Erickson* controlled. The district court's judgments cited *Twombly* and suppressed

Erickson. Then the lower court affirmed the judgment in one sentence: "We affirm the district court's judgment for the reasons explained by that court." App. 2.

As just stated, *Erickson* assures the legal world that Rule 8(a)(2) truly requires *no more* than "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Ms. Rosas' original *pro se* complaint (Doc. 1-1; ROA.18-50766.36-49) was fourteen (14) pages long minus the signature page and the civil cover sheet. She alleged,

> The Plaintiff missed her next court date on August 10, 2013; she was at University Hospital's Emergency Room since late evening. She had contemplated suicide. One of the resident doctors called the court on the Plaintiff's behalf to inform them that she would not be attending her hearing. (Doc. 1-1 at 54; ROA.18-50766.15; App. Br. at 8; Pet. App. at 7).

Prior to this event, Ms. Rosas *already* had a history of mental illness.

Ms. Rosas responded to the magistrate judge's show cause order with a motion to toll the statutes of limitations. In the motion, she explained that she had mental health issues that stood in her way and prevented timely filing after she was evicted in 2014. (Doc. 6; ROA.18-50766.52-53; App. Br. at 11; Pet. App. at 9). She also claimed that she had received mental health treatment for depression prior to the eviction, that she had contemplated suicide on three occasions prior to the actual eviction, that when she continued to live in Texas from 2011-2014, she did not have medical insurance to continue therapy, that she was diagnosed with severe anemia in 2017, and that she had isolated herself in her mother's house and did not work from January 2014 - November 2017. (*Id.*). On these grounds, Ms. Rosas requested that the court equitably toll the statutes of limitations of her claims. (*Id.*).

The magistrate judge recommended that Ms. Rosas' motion to toll the statutes of limitation be denied, and her case be dismissed as barred by limitations. (ROA.18-50766.55; App. Br. at 11; Pet.

App. at 10.

On August 22, 2018, Ms. Rosas filed a timely objection to the report and recommendation. (ROA.18.50766.64-106; App. Br. at 11-12; Pet. App. at 10). First, she stated,

> Plaintiff objects to the case law cited to substantiate the conclusion that her claims are barred by limitations. The litigants in these cases did not suffer from disabilities similar to those suffered by the Plaintiff before, during, and after the eviction. (Doc. 10 at 3; ROA.18-50766.66; App. Br. at 22).

Not only was the case law irrelevant, almost all of it did not involve *pro se* plaintiffs. Cited was *Twombly* (Doc. 8 at 4; ROA.18-50766.58).

The Fifth Circuit has been down the same road of holding litigants to heightened pleading standards in the past. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993) (holding that "[a] federal court may not apply a 'heightened pleading standard' more stringent than the usual pleading requirements of Federal Rule of Civil Procedure

8(a)-in civil rights cases alleging municipal liability under §1983.").

In *Estelle v. Gamble*, 429 U.S. 97 (1976), this Court considered,

> [w]hether respondent's complaint states a cognizable §1983 claim. The handwritten *pro se* document is to be liberally construed. As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519 (1972), a *pro se* complaint, "however inartfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "*beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.*" *Id.* at 520-521, quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). (429 at 106).(internal citations in original). (emphasis added).

Certiorari to the United States Court of Appeals for the Fifth Circuit was granted by this Court in *Leatherman*, *Estelle*, and, as quoted above, *Conley*. The magistrate judge silenced *Estelle* and, relevant to this instant matter, he also silenced *Erickson*.

The order adopting the report and recommendations by the court was no different. (Doc. 12; ROA.18-50766.2). *Twombly* was cited (Doc. 12 at 8; ROA. 18-50766.115) and *Erickson* was silenced.

Ms. Rosas' objection also stated,

> Plaintiff has medical records of her disabilities. That she was unable to tend to her medical needs from 2011-2014 [was] due to the State of Texas playing partisan politics with the Affordable Care Act and ultimately with people's well-being. (*Id.*).

The lower court never requested a more definite statement from Ms. Rosas, even after informing it that she had records.

II. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER THE LOWER COURT ERRED WHEN IT DENIED PLANTIFF-APPELLANT TO PROVIDE SUPPORTING EVIDENCE THAT HER MENTAL ILLNESS ENTITLED HER TO EQUITABLE TOLLING, IN CONFLICT WITH THIS COURT'S HOLDING IN *HAINES V. KERNER*, 404 U.S. 520 (1972).

It was "beyond doubt" that Ms. Rosas

"[could] prove no set of facts in support of [her] claims which would entitle [her] to relief."

A. This Court's Holding In *Haines* Did Not Disqualify A *Pro Se* Litigant From The Opportunity To Provide Supporting Evidence Of His Inartfully Pleaded Allegations

This Court's opinion in *Haines* was even more concise and straightforward. *Haines*, 404 U.S. 519 (1972). Also with little to no in-depth analysis, this Court reversed the Seventh Circuit's decision that "prison officials are vested with 'wide discretion' in disciplinary matters." *Id.* at 520. This Court then particularly cited *Conley v. Gibson*, 355 U.S. 41, 355 U.S. 45-46 (1957) and stated,

> [w]e cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claims which would entitle him to relief.' (*Id.* at 520, 521).

After noting that Haines' *pro se* complaint alleged

that the prison officials placed him in solitary confinement as a disciplinary measure after he assaulted another inmate, and that he "claimed physical suffering was aggravation of a preexisting foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets", this Court held that "allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence." (*Id.*) Without intimating no view whatever on the merits of *Haines*' allegations, this Court concluded, "that he is entitled to an opportunity to offer proof." (*Id.* at 521).

Again, Ms. Rosas offered to provide records *in district court*. The court continued to hold her to heightened pleading standards in conflict with *Erickson,* and in conflict with *Haines.* Ms. Rosas also included copies of records with the first version of appellate brief but the office of the clerk notified her to remove them. (App. 23).

By affirming, the lower court silenced *Haines.*

III. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER THE LOWER COURT'S RULING CONFLICTS WITH THE MAJORITY OF RULINGS BY FEDERAL CIRCUIT COURTS PERTAINING TO CLAIMS OF MENTAL ILLNESS.

A. Most Circuits Have Ruled That Equitable Tolling Based on Mental Incapacitation Is Allowed

Several circuits have allowed equitable tolling based on mental illness. The First Circuit has established that mental incapacity is a suitable basis upon which to equitably toll a statute of limitations. *See Melendez-Arroyo v. Cutler-Hammer de P.R., Co.*, 273 F.3d 30, 39 (1st Cir. 2001) (remanding for factual inquiry into whether plaintiff's mental state warranted equitable tolling); *Nunnally v. MacClausland*, 996 F.2d 5 (1st Cir. 1993) (holding that 5 U.S.C. §7703(b)(2) can be tolled due to mental incapacity); *Oropallo v. United States*, 994 F.2d 25, 28 n. 2 (1st Cir. 1993) (holding that 26 U.S.C. §6511 may not be equitably tolled, but that mental incapacity is a grounds for tolling when available).

The Second Circuit has held the same in a variety of circumstances. *See Zerilli-Edelglass v. New York City Transit Auth.*, 333 F.3d 74, 80 (2nd Cir. 2003) ("Equitable tolling is generally considered appropriate where a plaintiff's medical condition or mental impairment prevented her from proceeding in a timely fashion.") (citations omitted); *Chapman v. ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 514 (2nd Cir. 2002) (recognizing mental incapacity as a basis for equitable tolling under ERISA); *Brown v. Parkchester S. Condos.*, 287 F.3d 58, 60 (2nd Cir. 2002) (Title VII case finding that plaintiff proffered sufficient evidence to warrant a hearing on whether her mental incapacity required tolling); *Boos v. Runyon*, 201 F.3d 178, 184 (2nd Cir. 2000) holding that 29 C.F.R. §1614.105(a)(1) is subject to equitable tolling based on mental illness); and *Canales v. Sullivan*, 936 F.2d 755, 756 (2nd Cir. 1991) (holding that 42 U.S.C. §405(g) may be equitably tolled based on a plaintiff's mental impairment).

The Sixth, Seventh, Ninth, and D.C. Circuits

have held the same in a variety of circumstances. *Cantrell v. Knoxville Cmty. Dev. Corp.*, 60 F.3d 1177, 1180 (6th Cir. 1995) (holding that attorney's mental illness may justify equitable tolling); *Miller v. Runyon*, 77 F.3d 189, 191 (7th Cir. 1996) (finding that 29 U.S.C. §791 may be tolled "if the plaintiff because of a disability, irremediable lack of information, or other circumstances beyond his control just cannot reasonable be expected to sue in time"); *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (holding that mental incapacity is an extraordinary circumstances that may warrant equitable tolling); *Smith-Haynie v. Dist. of Columbia*, 155 F.3d 575, 579 (D.C. Cir. 1998) (holding that the doctrine of equitable tolling "can fairly be read to encompass cases where a plaintiff has been unable to [timely file] because of disability").

Moreover, the First, Seventh, and D.C. Circuits, relying on "state standards from determining incompetence," have developed generalized criteria for the circumstances under which mental illness may justify equitable tolling.

Nunnally, 996 F.2d at 5; *See Miller*, 77 F.3d at 191; *Smith-Haynie*, 155 F.3d at 579. But cf. *Boos*, 201 F.3d at 184 (noting that the Second Circuit evaluates the availability of equitable tolling based on mental illness on a case-by-case basis). In the First Circuit, the mental illness must have been "so severe that the plaintiff was '[un]able to engage in rational thought and deliberate decision making sufficient to pursue [her] claim alone or through counsel.'" *Melendez-Arroyo*, 273 F.3d at 37. The burden is increased if the plaintiff was represented by counsel. In that case, the First Circuit will "assume that the mental illness was not of a sort that makes it equitable to toll the statute-at lease absent a strong reason for believing the contrary." *Lopez v. Citibank, N.A.*, 808 F.2d 905, 907 (1st Cir. 1987).

The Seventh Circuit has a similar rule that mental illness tolls a statute of limitations "only if the illness in fact prevents the sufferer from managing his affairs and thus from understanding his legal rights and acting upon them." *Miller*, 77 F.3d at 191. Likewise, the D.C. Circuit determined

that equitable tolling for mental illness is appropriate only if the plaintiff is "incapable of handling her own affairs or unable to function [in] society." *Smith-Haynie*, 155 F.3d at 580 (internal quotes omitted). These courts have emphasized that even a severe diagnosis standing alone will not warrant tolling. *See Melendez-Arroyo*, 273 F.3d at 38 ("It is clear that merely to establish a diagnosis such as severe depression is not enough.").

The Third and Tenth Circuits, however, have not unconditionally endorsed tolling a statute of limitations because of mental illness. The Third Circuit has allowed equitable tolling based on mental illness, but has limited its application. In *Lake v. Arnold*, 232 F.3d 360, 364 (3rd Cir. 2000), a mentally retarded woman sued her family and physicians for having sterilized her without her consent. She filed her 42 U.S.C. §1982 and 1985 claims outside applicable two-year statute of limitations. *Id.* The court determined that the where it has "permitted equitable tolling for mental disability in the past, the plaintiff's mental incompetence motivated, to some degree, the injury

that [s]he sought to remedy." *Id.* at 371.

In *Ebrahimi v. E.F. Hutton & Co.*, 852 F.2d 516, 521 (10th Cir. 1988), the Tenth Circuit stated,

> [u]nder the doctrine of federal equitable tolling, courts generally have not permitted mental illness, even where rising to the level of insanity, to delay the statute of limitations from running. See e.g., *Casias v. United States*, 532 F.2d 1339, 1342 (10th Cir. 1976); *Accardi v. United States*, 435 F.2d 1239, 1241 n.2 (3rd Cir. 1970); *Williams v. United States*, 228 F.2d 129, 132 (4th Cir. 1955), cert. denied, 351 U.S. 986, 76 S.Ct. 1054, 100 F. Ed. 1499 (1956). (citations in original).

The practicality of *Ebrahimi* is questionable, however, because it pre-dated *Irwin v. Department of Veteran's Affairs*, 498 U.S. 89, 111 S.Ct. 453, 112 L.Ed.2d 435 (1990), and because the later opinion in *Biester v. Midwest Health Services, Inc.*, 77 F.3d 1264, 1268 (10th Cir. 1996), takes a less certain stance on the issue.

Like the Third and Tenth Circuits, the *Fifth Circuit* is no exception. In *Hood v. Sears Roebuck*

and Co., 168 F.3d 231, 233 (5th Cir. 1999), a Title VII case, the Fifth Circuit held that the facts did not warrant tolling it would forego deciding the larger issue of whether such tolling was ever available.

Notwithstanding the unconditional endorsement of the tolling of statutes of limitations because of mental illness by the Third, Fifth, and Tenth Circuits, the First, Second, Sixth, Seventh, Ninth, and D.C. Circuits have allowed such tolling. A clear split exists in the lower courts.

Moreover, this Court has yet to address whether mental illness can justify equitable tolling. In *Irwin v. Department of Veteran's Affairs*, 498 U.S. 89, 111 S.Ct. 453, 122 L.Ed.2d 435 (1990), this Court held that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." *Id.* at 95-96. (internal citations omitted). While it recognized that equitable tolling applied in suits against the government, it did not discuss the availability of tolling based on mental illness. Subsequently, in

United States v. Brockamp, 519 U.S. 347, 117 S.Ct. 849, 136 L.Ed.2d 818 (1997), this Court concluded that section 6511 should not be subject to equitable tolling because the *Irwin* presumption had been rebutted, it said that "[mental disability], we assume, would permit a court to toll the statutory limitations period." *Id.* at 348. Therefore, this Court has only intimated that tolling based on mental incapacity is allowed.

IV. THIS COURT SHOULD RESOLVE THE QUESTION OF WHETHER THE LOWER COURT ERRED IN TRANSFERRING MS. ROSAS' CASE TO A MAGISTRATE JUDGE WITHOUT HER CONSENT, CONTRARY TO 28 UNITED STATES CODE § 636(c)(1).

Western District of Texas Rule CV-72 reads, in part, "[t]he magistrate judges of this court are designated to exercise civil jurisdiction under [28 U.S. Code] section 636(c)(1) *upon consent of the parties*." (emphasis added). (App. Br. at 13). Ms. Rosas, however, *never* consented for her claims to be transferred to a magistrate judge. (*Id.*). There are no records to that effect. The lower court never

addressed any of Ms. Rosas' arguments on appeal, it merely affirmed the judgment by the district court "for the reasons explained by that court."

V. THIS CASE PRESENTS QUESTIONS OF EXCEPTIONAL IMPORTANCE WARRANTING THIS COURT'S IMMEDIATE RESOLUTION.

By affirming the district court's judgment in one sentence, the lower court held Ms. Rosas to heightened pleading standards in contradiction to this Court's holdings. It also contradicted itself when it held that equitable tolling based on mental illness was grounded in Texas law but yet when Ms. Rosas argued just that, it mattered none. In doing so, it also contradicted itself to the majority of rulings that equitable tolling based on mental illness is allowed by other federal circuit courts. This Court has yet to address whether mental illness can justify equitable tolling.

Most, if not all, complaints filed by *pro se* litigants are transferred to magistrate judges in the United States District Court for the Western District of Texas *without their consent*. Such was

what happened to the three complaints filed by Ms. Rosas in that court. She will be seeking a Writ of Certiorari for *Rosas v. Austin Independent School District, et al.*, No. 19-50202 (5th Cir. 2019). The fate of *Rosas v. University of Texas San Antonio, et al.*, No.50515 (5th Cir.) is yet to be known. These two cases are related to this instant matter.

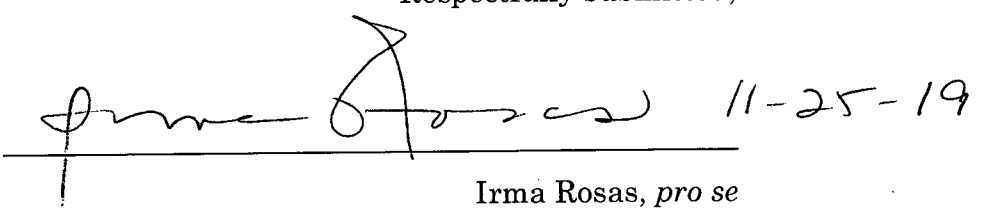
CONCLUSION

> It is inconceivable that someone such as Ms. Rosas, who at the age of 14 became financially semi-independent from her parents, would in her 40s suddenly desire to be dependent on her mother again—an elderly woman [who] also suffers from depression and is on a fixed-income. Moreover, it is inconceivable that Ms. Rosas, an individual with a B.A., a M.A., a M.Ed.[ ] and an A.B.D.[,] and certified to teach bilingual education—a high-need field—would *choose* not to work after the eviction in 2014, 2015, 2016, and 2017 in Illinois. Ms. Rosas has copies of form 13873-T from the Department of the Treasury—Internal Revenue Service to prove it. Also it is inconceivable that a person such as her would *prefer* to be unemployed

> and be on public assistance—for the first time in her life too. Clearly, Ms. Rosas did not choose it nor did she prefer it. Ms. Rosas was incapacitated and as such unable to file her Complaint on time. (App. Br. at 22-23). (emphasis in original).

For all the foregoing reasons, petitioner Ms. Rosas respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,



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