No. 20-1067

In The Supreme Court Of The United States

MARIA M. ROSAS,

Petitioner,

v.

CHICAGO POLICE DEPARTMENT, an agency of the CITY OF CHICAGO; MADDEN MENTAL HEALTH CENTER, a State of Illinois Hospital; ADVOCATE HEALTH AND HOSPITALS CORPORATION, doing business as ADVOCATE CHRIST MEDICAL CENTER; and MACNEAL HOSPITAL, now known as VHS of Illinois, Inc.

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

MARIA M. ROSAS, *pro se*
6333 South Lavergne Avenue
Chicago, Illinois 60638
Telephone: (773) 884-2140
E-mail: irmarosaswebsite@gmail.com

QUESTION PRESENTED

(1) WHETHER THE STATUTE OF LIMITATIONS, UPON A § 1983 CLAIM SEEKING DAMAGES UNDER THE FOURTH AMENDMMENT FOR DEPRIVATION OF LIBERTY, CAN BE EQUITABLY TOLLED WHEN CLAIMANT IS DISABLED AFTER BEING RELEASED.

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PETITION FOR WRIT OF CERTIORARI

María M. Rosas ("Ms. Rosas"), respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit in Case No. 19-1434 filed on May 4, 2020. *Rosas v. Advocate Med. Ctr.*, 803 F. App'x 952 (7th Cir. 2020).

OPINIONS BELOW

The opinion of the court of appeals upholding the district court's dismissal is a published opinion, and is reported at 803 F. App'x 952 (7th Cir. 2020). App'x. 1-9. The opinion of district court dismissing Ms. Rosas' claims with prejudice is unpublished but is available at 2019 WL 8356762. App'x 10-15.

JURISDICTION

The judgment of the Seventh Circuit was entered on May 4, 2020, affirming the dismissal,

finding that Ms. Rosas' claims were time-barred. App'x 7-9. On September 10, 2020, the Seventh Circuit denied petition for rehearing and rehearing *en banc*. This Court, on March 19, 2020, issued Order 589 to extend the deadline to file any petition for a writ of certiorari due on or after that date to 150 days from the date of an order denying a timely petition for rehearing. The deadline to file this petition is February 8, 2021. This petition is therefore timely filed. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) 42 U.S.C. § 1983 provides, in pertinent part, that "[e]very 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". 42 U.S.C. . § 1983.

(2) The Fourth Amendment to the United States Constitution provides that "[t]he 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 to be seized." U.S. Const. amend. IV.

STATEMENT OF THE CASE

Ms. Rosas originally brought this lawsuit pursuit to 42 U.S.C. § 1983, 1985, 1986 for discrimination by the Chicago Police Department,

Madden Mental Health Center, Advocate Christ Medical Center, and MacNeal Hospital. SAC 1-2.

Ms. Rosas' husband died in 2008. She lived alone until 2014, when her daughter returned to Illinois to live with her. SAC ¶ 3. On May 7, 2014, Ms. Rosas and her daughter filed a police report against Mark Zoller ("Zoller"), owner of Airport Auto Rebuilders Inc. SAC ¶ 84. A few days earlier, they were walking past the business when Zoller came out and began yelling at Ms. Rosas. *Id.* When he began to follow her, they crossed the street in fear of receiving a battery. *Id.* ¶¶ 84, 85. The Chicago Police Department ("CPD") dismissed the complaint. *Id.* ¶ 86.

On December 27, 2016, Ms. Rosas, with assistance of her daughter filed a Civil No Contact Order against James O'Connell[1] ("O'Connell), one of her next-door neighbors. SAC ¶¶ 4, 24-33).

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[1] At the time, O'Connell was brother to Donald O'Connell, the 13th Ward/13th Precinct Captain and Commissioner with the Illinois Liquor Control Commission. SAC ¶ 24. O'Connell was also an acquaintance of Zoller. SAC ¶ 87.

O'Connell had been terrorizing Ms. Rosas when she was on her property and doing things that he did not like, to the point that she feared for her safety. SAC ¶ 4. The Circuit Court of Cook County dismissed the Order on April 14, 2017. SAC ¶ 32.

In December 2016, Ms. Rosas' daughter asked her if O'Connell had anything to do with her committals to Madden Mental Health Center ("Madden"). P-App. Br. 16. Ms. Rosas did not know. *Id.* Medical staff and personnel insisted that she had to be there *and was led to believe that she was there legitimately*. SAC ¶ 9. Emphasis added. Ms. Rosas, with assistance from her daughter, began requesting records. P-App. Br. 16.

In January of 2009, David J. Striegel[2] ("Striegel"), a white police officer with CPD, and Ms. Rosas' other next-door neighbor, called 911 to make a complaint against Ms. Rosas. P-App. Br. 9. When police officers arrived, Striegel informed his fellow officers that Ms. Rosas had been "taking garbage to

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[2] O'Connell assisted Striegel with getting into the police academy. SAC ¶ 33.

[the] can in the alley, and then bringing it back in" and that she had been "throwing rocks at houses and parked cars". *Id.* Ms. Rosas, still warming-up her car, did not respond to officer's verbal commands, and since Striegel had already fabricated probable cause under color of state law, police officers smashed a window and forcefully pulled her out. *Id.*

The police report did not include Ms. Rosas' statement of the facts. *Id.* It also did not list the cars or houses that allegedly had been damaged nor was the damage corroborated with their owners. *Id.* No one ever filed civil lawsuits for damage to their houses and/or cars. *Id.* 10. Furthermore, Ms. Rosas was not cited for disturbing the peace for revving her car or for vandalism. *Id.* 9.

Ms. Rosas was transported to Advocate Christ Medical Center ("Advocate"). P-App. Br. 8. A Licensed Clinical Professional Counselor ("LCPC"), an employee of Advocate, issued an incomplete "Petition for Involuntary/Judicial Admission". *Id.* Advocate fabricated that Plaintiff "agreed" to an inpatient psychiatric admission at Madden Mental

Health Center. *Id.* It required Ms. Rosas, someone allegedly exhibiting "delusional behavior", to decide her medical care. *Id.* It then transferred her to Madden Mental Health Center with no valid medical certificate and no court order. *Id.* 8-9.

Madden Mental Health Center ("Madden") admitted Ms. Rosas with no petition or medical certificate from Advocate nor did it issue them once she was admitted. *Id.* at 9. It, furthermore, did not seek a court order for an involuntary admission. *Id.* Ms. Rosas continually stated that she did not want to be there, which personnel documented in her records. *Id.* Madden requested she sign paperwork primarily in English, a language that she did not master, and as someone who was allegedly of "unsound mind" and with no medical power of attorney or a public guardian. *Id.*

The discriminatory practices repeated in 2010. In June of that year, Mark Zoller ("Zoller"), the white owner of Airport Auto Rebuilders Inc., alleged that Ms. Rosas had walked by a "parked vehicle and scratched it on [the] right side quarter panel and

rear trunk[]lid with her keys". SAC ¶ 65. The next day, as she walked by, Zoller stopped her and held her for CPD. *Id.* Police officers advised Zoller to obtain a warrant and to pursue civil litigation. *Id.*

Again, police officers failed to incorporate Ms. Rosas' statement of facts in the police report. P-App. Br. 10. They also deliberately added that she had advised them that she had "mental problems" in order to establish probable cause under color of state law. *Id.* Zoller never obtained a warrant nor did he file a civil lawsuit against Ms. Rosas for the alleged damage caused to the parked vehicle. *Id.*

This time, Ms. Rosas was transported to MacNeal Hospital. P-App. Br. 10. There, a nurse, an employee of MacNeal, signed on Ms. Rosas' behalf agreeing to be transferred to Madden. *Id.* Drs. Henry and Garb signed incomplete medical certificates. *Id.* An LCPC and social worker, employees of MacNeal, signed an incomplete "Petition for Involuntary/Judicial Admission". *Id.* MacNeal transferred Ms. Rosas to Madden with no

valid medical certificate and no court order required for an involuntary admission. *Id.*

Again, Madden admitted Ms. Rosas with no petitions or medical certificates from MacNeal nor did it issue them once she was admitted. *Id.* 9. It, furthermore, did not seek a court order for an involuntary admission. *Id.* Ms. Rosas continually stated that she did not want to be there, which personnel documented in her records. *Id.* Madden requested she sign paperwork primarily in English, a language that she did not master, and as someone who was allegedly of "unsound mind" and with no medical power of attorney or a public guardian. *Id.*

Ms. Rosas' SAC clearly stated that "Madden did not alleviate her depression, but exacerbated it" and "[a]fter having been committed [she] also alleges that she was left with a heightened fear of doctors, which has prevented her from seeking the medical attention she needs". P-App. Br. 15-16. This fact was also included in the original complaint filed on August 06, 2018. Orig. Comp. ¶ 81.

The district court granted defendants' motions to dismiss "because the limitations bars (which apply with equal force to the claims against Madden) could not be cured with repleading." App'x 15. The panel affirmed the district court's judgment. App'x 1-9. Then it denied the petition for rehearing and rehearing *en banc*. App'x 16-17. Ms. Rosas now seeks review of the Seventh Circuit's opinion by this Court.

REASONS FOR GRANTING THE WRIT

Ms. Rosas was released from Madden in 2009 and 2010 and she continues to be disabled. The district court and Seventh Circuit denied her motions to appoint counsel. The motion at the Seventh Circuit included a Treatment Summary Update from her doctor, a clinical psychologist. The motion was denied. Just as with the district court, the Seventh Circuit explained that Ms. Rosas did not demonstrate that she could not afford counsel yet fell short to address how she could litigate her

claims being disabled. Instead, Ms. Rosas was left to rely on her daughter to draft and prepare her court documents at the outset of her litigation when her daughter is neither a paralegal nor a lawyer. The Seventh Circuit failed to address the arguments in Ms. Rosas' brief and then denied her petition for rehearing.

I. THIS COURT SHOULD RESOLVE THE QUESTION WHETHER THE STATUTE OF LIMITATIONS, UPON A § 1983 CLAIM SEEKING DAMAGES UNDER THE FOURTH AMENDMENT FOR DEPRIVATION OF LIBERTY, CAN BE EQUITABLY TOLLED WHEN CLAIMANT IS DISABLED.

A. Ms. Rosas Continues To Be A Diabled Person As Defined By The Americans With Disabilities Act of 1990.

Throughout her litigation, Ms. Rosas emphasized her state of mind after being released from Madden the second time in 2010. P. App. Br. 28. Ms. Rosas filed the original complaint on August

6, 2018. She alleged that "Defendant Madden did not alleviate her depression, but exacerbated it." *Id.* Ms. Rosas also alleged that, "[a]fter having been committed Plaintiff also alleges that she was left with a heightened fear of doctors, which has prevented her from seeking the medical attention she needs." *Id.* 28-29. The FAC and SAC were no different. Ms. Rosas was clear that she was still disabled.

Under Illinois law, a "person under a legal disability" is defined as,

> a person with mental illness or is a person with developmental disabilities and who because of his or [her] mental illness or developmental disability is not fully able to manage his or her person or estate. 5 ILCS 70/1.06(b).

P. App. Br. 29. Ms. Rosas has been unable to manage her finances and has to rely on her older son to manage them for her.[3] *Id.* He pays her property taxes and all her other bills, and provides her with a

[3] Bank records confirm this fact.

monthly allowance. *Id.* He hires contractors to repair her house. *Id.* He purchases her groceries. *Id.* Due to her mental illness, Ms. Rosas has been unable to manage her person and estate. *Id.*

When "[Ms. Rosas'] daughter returned to [Illinois to] live with her in 2014", Ms. Rosas has visited her doctors with much cajoling from her daughter. *Id.* For the first time in her life, Ms. Rosas began out-patient mental health treatment in May 2017. *Id.* By September 19, 2017, her clinical psychologist had diagnosed her with "[m]ajor depressive disorder, recurrent, severe with psychotic symptoms"[4] and "[p]ersistent Depressive Disorder." *Id.* 4, 29. *See* App. Doc. 44. Her doctor strongly recommended that Ms. Rosas seek a psychiatric consultation. Ms. Rosas began taking anti-depressant medication on November 21, 2017. P. App. Br. 29. Her daughter filled her anti-depressant

[4] Ms. Rosas was never diagnosed as "psychotic" before her committals to Madden.

and other medications, and administered them as prescribed.[5] *Id.*

In 2018, however, Ms. Rosas' fear[6] of doctors set-in again. When her daughter could no longer accompany her to her appointments, Ms. Rosas stopped seeing her psychologist. *Id.* 30. She also refused to seek a psychiatric consultation. *Id.* Today, she is not seeing her psychologist, a psychiatrist or taking any medication for her psychotic symptoms. Due to her mental illness, Ms. Rosas has been unable to manage her person.

The Seventh Circuit has held 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 v. Runyon*, 77 F.3d 189, 191 (7th Cir. 1996), cert. denied, 117 S.Ct. 316 (1996) (collecting cases: *Langner v. Simpson*, 533

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[5] Ms. Rosas' daughter still does this today.

[6] Records from her primary care physician ("PCP") confirm this fact.

N.W.2d 511, 523 (Iowa 1995); *Lawson v. Glover*, 957 F.2d 801, 805 (11th Cir. 1987); *Helton v. Clements*, 832 F.2d 332, 336 (5th Cir. 1987); *Dautremont v. Broadlawns Hospital*, 827 F.2d 291, 296 (8th Cir. 1987); *Lopez v. Citibank*, N.A., 808 F.2d 905, 906-907 (1st Cir. 1987)) (emphasis in original). *Id.* 30; *See also* P-App. Pet. Rhrng 4-6. Therefore, Ms. Rosas' mental illness tolls the statute of limitations.

The *Miller* court also opined that,

> [m]ost mental illnesses today are treatable by drugs that restore the patient to at least a reasonable approximation of normal mentation and behavior. When his illness is controlled he can work and attend to his affairs, including the pursuit of any legal remedies that he may have. *Miller* at 192.

P.-App. Br. 30. After Ms. Rosas was released from Madden the second time in 2010, she did not receive any therapy or medication for her mental illness. She lived alone from 2010 to 2014, the year her daughter returned to Illinois to live with her. The

panel opined that "the two-year limitations period ended by 2012." App'x 8. In 2012 Ms. Rosas' mental illness was uncontrolled, which prevented her from managing her affairs and thus from understanding her legal rights and acting upon them. P. App. Br. 30.

Ms. Rosas' daughter continued to live with her. Then in 2016 – while O'Connell continued to harass Ms. Rosas to the point that she feared for her safety – her daughter asked whether he had had anything to do with her committals to Madden. *Id.* *See also* P.-App. Rply Br. 4. She replied that she did not know. *Id.* It was on Ms. Rosas' daughter's behest – and not Ms. Rosas' herself – that she began "sleuthing" through her mother's records. *Id.* And it was O'Connell's harassment that had triggered the sleuthing. P.-App. Rply Br. 4.

Then in 2017, Ms. Rosas began medical treatment for her mental health. Under Illinois law,

> [if] the person entitled to bring an action, specified in Sections 13-201 through 13-210 of this Code, at the time the cause of action accrued, is under

> the age of 18 years or is under a legal disability, then he or she may bring the actions within 2 years after the person attains the age of 18, or the disability is removed. 735 ILCS 5/13-211.

P.-App. Rply Br. 2. Emphases omitted. It appears that Ms. Rosas' disability was removed when she began therapy and anti-depressant medication in 2017. She filed her action in August 2018. Ms. Rosas, however, ceased therapy that same month, did not follow-through with seeking a psychiatric consultation, and was not on any medication for her psychotic symptoms. *Supra* 14. Thus, it follows that Ms. Rosas was and still is disabled. *Miller v. Runyon*, 77 F.3d 189, 192 (7th Cir. 1996). Under Illinois law, Ms. Rosas qualified for equitable tolling of the statute of limitations. P.-App. Br. 30.

The panel opined that Ms. Rosas "did not raise this argument in the district court, so she has forfeited the contention." App'x 7. The panel's opinion, however, is misplaced. Ms. Rosas did not argue for the first time on appeal that she was and still is mentally incapacitated. She stated that

"Madden did not alleviate her depression, but exacerbated it" and "[a]fter having been committed [she] also alleges that she was left with a heightened fear of doctors, which has prevented[7] her from seeking the medical attention she needs". SAC ¶¶ 13, 89; *See also* ¶¶ 14, 88. Ms. Rosas is still disabled. Yet neither the district court or the Seventh Circuit appointed counsel.

B. Ms Rosas Warranted Appointment Of Counsel Because She Was And Is Disabled And Unable To Secure Representation.

On August 6, 2018, Ms. Rosas' daughter wrote the original complaint and also filed a motion for attorney representation. Doc. 5. Aside from her continual mental disability, Ms. Rosas' motion indicated that her highest level of education was "Grammar school" (6th grade) and that her ability to speak, write, and/or read English was limited because English was not her primary language. P-

[7] Ms. Rosas used the *present* perfect tense.

App. Br. 23-24. Ms. Rosas' cost of living in was beyond her means. *Id.* 21.

On August 8, 2018, the district court denied the motion and held, "Plaintiff has not shown that she has made sufficient efforts to find counsel on her own [and] she has not demonstrated that she is unable to afford counsel ...". *Id.* 21. The district court offered no further details.

On March 25, 2019, Ms. Rosas filed another motion for attorney representation. The district court again denied the motion. *Id.* This time, the court held that Ms. Rosas had not demonstrated that she was unable to afford counsel. *Id.* Ms. Rosas was living on the cusp of her income. *Id.* 22. Again, the district court offered no further details.

The denial of counsel, argued Ms. Rosas, conflicted with the Seventh Circuit's holdings in *Pruitt v. Mote*, 503 F.3d 647 (7th Cir. 2007) (en banc) and *Navejar v. Iyiola*, 718 F.3d 692 (7th Cir. 2013). *Id.* 19-28. The panel failed to address this argument and instead honed-in on the "twenty-six (26) attorneys, law firms, and organizations that her

daughter contacted to retain counsel to no avail." P-App. Br. 20.

The panel opined, "[a]t the outset of the suit, Rosas asked the district court to recruit counsel. She listed 26 calls that she made to lawyers, and their responses. Her submission showed that she did not follow-up on the responses." App'x 4, 6-7. The court only discussed *three entities*. App'x 4. This discussion, however, was not detailed by the district court. P-App. Br. 24.

For the sake of argument, if those three entities referenced by the panel were removed from the list, it would leave twenty-three (23) entities that Ms. Rosas' daughter contacted. It therefore follows that the Seventh Circuit concluded that contacting 23 entities still was not "reasonable effort".[8] App'x 5.

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[8] Ms. Rosas' effort differs from a plaintiff who had contacted only two law firms. *Rumple v. DeJoy*, No. 20-cv-02907, *1-2, 2021 WL 37699 (S.D. Ind. Jan. 4, 2021). The *Rumple* court cited this instant matter by emphasizing that the Seventh Circuit affirmed the district court's finding because "the plaintiff, who had made 26 calls to lawyers, failed to show that

At the district court, Ms. Rosas' daughter included one or two sentences informing the court that she was drafting and preparing court documents on her mother's behalf on each document. Ms. Rosas' appellate brief was no exception. P. App. Br. 2. Ms. Rosas also argued that it was beyond apparent that her daughter was having difficulty litigating her mother's claims. P. App. Br. 24-25. The panel did not consider these facts especially when 28 U.S.C. § 1654 does not provide for it.

Ms. Rosas also filed a motion for attorney representation with the Seventh Circuit on April 10, 2020. App. Doc. 45. She motioned that she could not secure counsel. Attached was also a copy of the "Treatment Summary Update" from her clinical psychologist dated September 19, 2017. *Id.* The Seventh Circuit denied the motion on April 14, 2020 and cited *Pruitt v. Mote*, 503 F.3d 647, 653 (7th Cir. 2007). App. Doc. 46. Ms. Rosas' appellate brief was filed on April 21, 2020. Ms. Rosas was left to rely on

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she made a reasonable effort '*because she did not follow up on any of her calls*'". *Id.* Emphasis added.

her daughter, who is neither a paralegal nor an attorney, to litigate her claims. The panel, however, solely focused on the first motion for attorney representation. App'x 4.

Apparently Ms. Rosas did not qualify for the appointment of counsel based on her income, however, the Seventh Circuit offered no alternative for when a disabled individual cannot secure counsel in federal court and if Title II of the Americans with Disabilities act of 1990 applied.

C. *Ms. Rosas' Constitutional Rights Under the Fourth Amendment Were Violated*

The district court opined,

> [a] claim under Sections [1983, 1985, and 1986] "accrues 'when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief.'" *Amin Ijbara Equity Corp. v. Vill. of Oak Lawn*, 860 F.3d 489, 493 (7th Cir. 2017) (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007)).

App'x 12-13. Ms. Rosas argued that the district court relied on precedent that was also inapposite to this instant matter. The litigants did not proceed *pro se* and the cases did not center on mental illness. *Id.* The panel did not address this argument.

The panel opined that "a claim accrues 'when a plaintiff knows the fact and the cause of injury'" and that Ms. Rosas argued "for the first time, that she was in fact still disabled until 2017, but she forfeited that point by failing to raise it earlier." App'x 8-9. It, however, can be inferred from the complaint that Ms. Rosas was still disabled when she filed the original complaint and SAC in 2018.

Ms. Rosas argued that her claims could be cured with repleading. P. App. Br. 6, 17, 28-31. The panel did not address this argument.

Ms. Rosas also argued that district courts within the Seventh Circuit were split on whether the discovery rule applied to accrual of Section 1983 claims alleging Fourth Amendment violations. App. Pet. Rhrng 9-10. She also argued that this Court's holding in *Wallace v. Kato*, 549 U.S. 384 (2007) was

inapposite to the instant matter. App. Pet. Rhrng 10. In particular, Ms. Rosas argued that she was not detained pursuant to legal process. *Id.* The Seventh Circuit denied the petition for rehearing and rehearing *en banc*. App'x 16-17.

The panel's opinion contradicts this Court's holding in *Zinermon v. Burch*, 494 U.S. 113 (1990). This Court held that plaintiff properly stated a procedural due process claim when he alleged that employees at a Florida state-owned hospital had failed to afford him pre-deprivation safeguards in admitting him to the hospital as a "voluntary" mental patient when he was actually incompetent to give informed consent to his admission. 494 U.S. 115, 139.

The allegations in this instant matter run parallel to *Burch*, with two relevant exceptions. One, had Ms. Rosas been appointed counsel, she would have named the director(s) and other employees at Madden for her Section 1983 claims. She would have also named Striegel and other police officers, and Zoller. Two, *Burch* did not sue private entities as Ms.

Rosas did. But it would appear that *Burch* would extend to Advocate and MacNeal. She would then sue the individuals responsible for transferring her to Madden. All deprived Ms. Rosas of her liberty *on two separate occasions*, violating the protections afforded by the Fourth Amendment of the U.S. Constitution.

CONCLUSION

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

Respectfully submitted,

Maria M. Rosas 1-29-21

MARIA M. ROSAS, *pro se*
6333 SOUTH LAVERGNE AVENUE
CHICAGO, ILLINOIS 60638
TEL. (773) 884-2140
E-MAIL: irmarosaswebsite@gmail.com