No. 20-5307

In the Supreme Court of the United States

DR. REBECCA H. GALLOGLY, PETITIONER

v.

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA; UNITED STATES ATTORNEY'S OFFICE, WESTERN DISTRICT OF TEXAS; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; THE STATE OF TEXAS; TRAVIS COUNTY CRIMINAL COURT; THE CITY OF AUSTIN; CAPITAL AREA PRIVATE DEFENDER SERVICE; 2013 TRAVIS OAK CREEK L.P.; EUREKA MULTIFAMILY GROUP; DOMINIUM APARTMENTS; ATTORNEY MICHAEL BURKE; TRAVIS COUNTY DISTRICT ATTORNEY'S OFFICE

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Non-Attorney *Pro Se* Indigent Litigant and Petitioner

QUESTIONS PRESENTED

1. Is it a Constitutional deprivation to put a person found not guilty on community supervision or probation for the charge; or, to permit states to abrogate expungement for served or dismissed community supervision or probation terms?

2. If agencies fail to regulate and enforce pervasive safety, peace, privacy, and accessibility issues at multifamily residential properties, are they responsible for Constitutional property, domestic tranquility, implied, and liberty deprivations?

3. Is it a Fifth Amendment deprivation (a) to deny counsel to an indigent in a complex civil case for which there is no other reasonable remedy available; or (b) to deny a non-attorney indigent litigant liberal treatment?

LIST OF ALL PROCEEDINGS DIRECTLY RELATED

- *Texas v. Gallogly*, No. C-1-CR-15-211649, Travis County Criminal Court, Judgment entered January 20, 2017.
- *Gallogly v. U.S., et al.*, No. A18CV0571-RP-ML, U.S. District Court for the Western District of Texas. Judgment entered December 21, 2018.
- *Gallogly v. U.S., et al.*, No. 19-50044, U.S. Court of Appeals for the Fifth Circuit. Judgment entered March 2, 2020.

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INTRODUCTION

Petitioner Rebecca Gallogly respectfully requests the Court to issue a writ of certiorari, to review the orders and judgments of courts below. This petition is presented because, among other things, the Fifth Circuit sanctioned The Western District of Texas' far departure from accepted, usual, and any rational or reasonable course of judicial proceedings, so as to call for an exercise of the power of this Court. Gallogly has liberty limitations and meets precedential standards for counsel appointment, yet has been denied it eight times from courts below. There is no reasonable articulation for most orders. Opinions promulgated in district court by the magistrate judge were overwhelmingly erroneous and contained affronts to Gallogly's dignity, courtliness, sex, and non-attorney status. The Fifth Circuit failed to opine on Gallogly's last pleading for counsel appointment, and denied both her appellant brief and timely rehearing petition without opinion. In affirmance of the lower court's dismissal, the Fifth Circuit remained silent despite lower court error, violating its local rule for opinions. Gallogly and her case remain lacking in repose due to due process deprivations for issues possessing widespread nationwide import, and critical to law enforcement and government agencies. Gallogly's case merits review to afford her fundamental due process; to cure nationwide defects, and to avert manifest injustice.

OPINIONS BELOW

The opinion of the Fifth Circuit went unpublished and was deemed non-precedential except under the limited circumstances under the doctrine of res

judicata, collateral estoppel, or law of the case, or similarly to show double jeopardy, notice, sanctionable conduct, entitlement to attorney's fees, or the like. Matters of res judicata, collateral estoppel, and law of the case are at issue because the case has not yet been heard as a result of both lower courts' serious and pervasive sanctionable conduct.

Opinions below are in The United States Court of Appeals for the Fifth Circuit, Case No. 19-50044, (App. 1a–6a) and The Western District of Texas, Case No. A18CV0571–RP-ML, (App. 27a–62a). It is Gallogly's limited, non-attorney understanding that the district court opinion is unpublished. Both circuit court affirmances following sufficient brief and sufficient petition for panel rehearing, respectively, were unpublished.

JURISDICTION

The Fifth Circuit entered its judgment on December 11, 2019. The court denied a timely rehearing petition on February 21, 2020. On March, 19, 2020, The Supreme Court of the United States submitted a COVID-19 order extending the deadline to file any petition for a writ of certiorari to 150 days from the date of the order denying a timely petition for rehearing, establishing July 20, 2020 as the deadline for this petition. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2101(c) provides in relevant part:

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review

shall be taken or applied for within ninety days after the entry of such judgment or decree.

28 U.S.C. § 1331 provides: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1915(e)(1) provides: The court may request an attorney to represent any person unable to afford counsel.

42 U.S.C. § 1983 provides:

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

The Fourth Amendment to the United States Constitution provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause.

The Fifth Amendment to the United States Constitution states in relevant part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

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

The Ninth Amendment to the United States Constitution provides: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Preamble to the United States Constitution provides:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

STATEMENT

In 2015 and 2016, Gallogly's Fourth Amendment rights and virtually all of her Sixth Amendment rights were violated during court proceedings in Travis County Criminal Court. The proceedings involved her illegal arrest for criminal trespass, a Class A Misdemeanor, while she was peaceably attempting make an appointment in the Office of the President at The University of Texas at Austin ("UT-Austin"). Gallogly's goals in establishing an appointment with the President of UT-Austin included: 1) to seek redress for her Fifth Amendment violation and sex discrimination complaints in science and academia, having formerly worked and received education as a postdoctoral fellow there; and 2) to advocate for placement of a postdoctoral office there, commensurate with University of Texas System

recommendations. During the last three months of the criminal trespass proceedings, Gallogly was semi-homeless due to work limitations imposed by UT-Austin's pervasive violations of her rights. At the onset of Gallogly's homelessness, she applied for subsidized housing at Lucero Apartments in Austin, Texas.

Violation of Gallogly's Sixth Amendment rights in criminal court – including but not limited to ineffective assistance of counsel -- oddly dovetailed with poorly timed illegal actions from Eureka Multifamily, then the company managing Lucero Apartments. Due to the confluence of these illegal pressures from Travis County Criminal Court and Eureka Multifamily, Gallogly was forced to choose between a plea bargain with probation, or loss of her recently approved subsidized unit at Lucero Apartments. Thus, despite her innocence and that her arrest at UT-Austin was a federal crime under color of law, Gallogly was coerced into probation as stated on record during the criminal proceedings in Travis County Criminal Court on July 20, 2016. Strangely, the judge stated on record that she found Gallogly not guilty, and then issued Gallogly community supervision immediately thereafter for the charge. Because probationary terms are not expungable in Texas. The probationary term resulted in exacerbated work limitations for Gallogly. Lack of a federal expungement provision for a served term from public record is a violation of Gallogly's Fourth, Fifth, and Sixth Amendment rights. As such, it is a blight for both Gallogly specifically, and for the nation's constituents at large, constituting the first prong for the widespread societal import of this petition.

Gallogly filed her complaint for this suit in district court on July 9, 2018 because her work liberties were severely restricted and her property rights were recurrently violated, causing her extreme, chronic stress that adversely affected her health. Since then, Gallogly continues to experience severe and pervasive property rights violations at her residential multifamily property subsidized by The Department of Housing and Urban Development ("HUD"), serving as a second prong for widespread societal and government agency significance. Finally, in attempting to seek relief in federal court for the aforementioned violations, Gallogly has suffered severe and pervasive abuse of process from courts below, serving as the third prong for widespread societal and government significance for this petition.

I. EXPUNGEMENT AND THE "NOT GUILTY" PROBATIONARY TERM

Federal statute is silent about Gallogly's ineligibility for expungement of her not guilty probationary term from public record, which is viewable yet does not say anything about the judge's not guilty ruling in a background check. Gallogly is only permitted to pursue an order of nondisclosure. Gallogly's training is in psychology. Clinical employers in her field can view her probationary term during a background check. Franchises working with vulnerable populations are permitted view of nondisclosed records in Texas. Gallogly already experienced at least one known hire failure due to the probationary term on her record. Thus, Gallogly's seizure and work liberties are limited, seemingly in perpetuity by, among other things, the convergence of two main factors. Specifically, Gallogly's work liberties are almost completely limited by both the pervasive illegal actions against her as a woman in

science and academia addressed in a separate suit in The United States Court of Federal Claims, Case No. 20-cv-261C; and, then further by her probationary record in this case, which is currently viewable by the public in perpetuity, by law:

> According to Texas law, you do NOT qualify for an expunction if ...[y]ou were placed on PROBATION, COMMUNITY SUPERVISION, or DEFERRED ADJUDICATION for any felony or Class A or B misdemeanor you want expunged, even if your case was later dismissed (Class C deferred adjudication is the only exception). https://www.traviscountytx.gov/district-clerk/expunction-expo (2020). (Emphasis added).

In addition to work liberty limitations, which possess unreasonable seizure elements, Gallogly believes the lack of expungement provision for her illegal, not guilty, dismissed charge confers violations of Gallogly's Fourth Amendment right to freedom from search without cause. Specifically, Gallogly has reason to believe based on many of her day-to-day experiences, that she is subject to heightened monitoring by various methods from law enforcement and / or investigative bodies, pursuant to customs to which she is not entirely privy as to their nature.

II. SEVERE AND PERVASIVE HOUSING RIGHTS DEPRIVATIONS

Gallogly's housing rights violations at Lucero Apartments were and are significant and pervasive, and persist to date. Gallogly has experienced overwhelming financial stress due to landlord abuse, with impinged coercion into a criminal record and illegal taking of 60-70% of her income for rent; and, overwhelming paperwork burden due to outdated HUD regulations for extremely low income residents, among other things. Gallogly experienced and continues to experience persistent harassment by management, including but not limited to excessive and illegal paperwork demands; threats to ongoing property occupancy;

complex-wide water bill harassment; inspections and last-minute demands for apartment entry requiring cleaning on weekends and / or holidays; persistent landlord intimidation, about which to Gallogly's knowledge HUD remains silent in its regulation; and regular entrapment attempts into leasing office violations. Leasing violations can lead to eviction. Such occurrences inferring potential threat of eviction by both action and signage are periodic and regular.

There is regular performance of unnecessary work on the property, which creates unnecessary noise, machinery exhaust, and revolving "rando" personnel intrusions. The 104 dB alarm in the bedroom / office of apartments is periodically triggered without warning. Many of these problems are owed to excessive changes in management companies and / or personnel, combined with understaffing, and a resulting lack of continuity of awareness of property issues among staff. Gallogly suspects the pervasive violations are intentional, but without appointed counsel, does not know how to investigate or articulate the matter. The inability to escape daily stressors where Gallogly lives is a violation of her domestic tranquility and welfare. Property personnel refuse to seek property tax exemptions, despite Gallogly having suggested it. Property taxes are now hovering at about $0.5M a year. Even half of that money could be used for shoring up property deficiencies, including adequate staffing and hard infrastructure violation remedies.

These property violations and problems interweave with poor Environmental Protection Agency (EPA) regulation and / or enforcement, and inadequate waste management policies from the City of Austin. Trash and recycling must be

contracted privately for multifamily properties in Austin, Texas, rather than through the City of Austin. Trash and recycling regularly overflow. Due to a lack of federal requirements for appropriate recycling protocols, residents fill the recycling dumpsters with trash.

Due to declining-to-absent apartment-wide maintenance scheduling and monitoring, combined with absent EPA regulation for landscape machinery noise and emissions, the concrete echo chamber complex continues to be regularly rife with mechanical noise and unreasonably noxious exhaust, even during Thanksgiving weekend 2019, through to date. These EPA concerns are Constitutional violations of Gallogly's and other multifamily residents' domestic tranquility and welfare pursuant to the Preamble.

The hard infrastructure of Lucero Apartments is severely lacking due to HUD's silence in a number of areas, including failures to: consider neighborhood building *in situ*; require building codes that limit noise reverberation throughout the complex; regulate placement of recreational facilities outside of echo corridors that directly impinge upon residential properties; and, require the highest international floor insulation standard for multifamily properties. Disagreements among residents due to floor reverberations abound. Gallogly was incessantly tormented for at least two years from noise above her in the middle of the night, contributing to chronic stress and sleep deprivation.

An attempt by the Lucero owner or management to increase security by installing gates since Gallogly filed suit, and which Gallogly wanted, was an abject

failure, and has increased in number the disability violations around the property. Some unnecessary gates were installed adjacent to residential units housing people with major physical disabilities. The gates are not maintained and break regularly, despite being less than two years old. The gates are not easily opened by a person with extreme motor disabilities, due to their weight. An installed gate at the surface parking lot possesses a raised rather than a recessed track, making traversing over the track with wheelchairs and strollers difficult. Combined with the adjacent heavy and broken gate for foot traffic, the complex feels like a haunted obstacle course. Sloped curb cutouts from all exits to streets are absent. The public sidewalk adjoining a main entrance on Wilson Street remains in disrepair and difficult or impossible to traverse with a wheelchair, apparently since before construction in 2015. Elevators break regularly and often go for months without being fixed. The complex is six floors high and possesses 173 units, with many disabled residents, making working elevators imperative. Gallogly assisted a woman with a walker with her groceries, as she precariously climbed stairs when elevators were broken.

III. PERVASIVE PROCESS ABUSE IN COURTS BELOW

In July 2018, Gallogly filed her complaint in district court. On November 19, 2018, Magistrate Judge Mark Lane ruled on all motions except that to electronically file (App. 55a). Lane recommended dismissal in his Report and Recommendation, raising several erroneous arguments about Gallogly not making viable claims (App. 27a–56a). Lane denied Gallogly counsel appointment on the basis that she "...has shown herself able to sufficiently articulate her claims and represent herself in this

lawsuit." (App. 53a). Gallogly remains unanswered by both courts as to how she can fail to make viable claims yet be sufficiently articulate to represent herself.

Gallogly submitted timely objections to Lane's report. (ROA.274-303). On December 21, 2018, District Judge Robert Pitman submitted an order claiming *de novo* review of Lane's report. (App. 57a–58a). Pitman failed to articulate anything specific about his *de novo* review of Lane's report. Pitman also failed to issue any articulation or opinion on any of Gallogly's new objections, thereby failing to opine on her Sixth Amendment argument (App. 21a-22a). Pitman adopted Lane's recommendations and dismissed the case. (App. 59a–60a).

On January 15, 2019, Gallogly submitted a notice of appeal to the Fifth Circuit. On February 26, 2019, Gallogly submitted a Motion to Appoint Counsel to the Fifth Circuit, asking for counsel appointment to write her opening brief. On March 8, 2019, a Fifth Circuit clerk stated Gallogly's motion to appoint counsel would await appellant briefing, thereby requiring Gallogly to submit her own appellant brief, in opposition of her motion to appoint counsel specifically for the purpose of briefing. On April 12, 2019, Gallogly sent the Fifth Circuit a motion to modify its action to hold off on submitting her motion to appoint counsel for review by a judge until after briefing. On April 15, 2019, the Clerk of Court suspended Gallogly's appeal schedule due to her "re-urged request for appointment of counsel," and told Gallogly by phone her motion would be reviewed by a judge.

On May 14, 2019 and in opposition to what Gallogly was told by a previous clerk by phone, Deputy Clerk Michael Schneider (not a judge) denied Gallogly counsel

appointment, stating there is no general right to counsel in civil actions, citing *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987) and *Ulmer v. Chancellor,* 691 F.2d 209, 213 (5th Cir.1982). Scheider stated Gallogly's claims were meritless without articulation. On May 30, 2019, Gallogly submitted a reasonable and cogent motion to reconsider counsel appointment denial based on precedential counsel appointment criteria. (5TH CIR. Dct. 00514977054). On June 18, 2019, Judge James Dennis denied Gallogly's counsel request without articulating any opinion for her new counsel appointment arguments.

On June 24, 2019, Gallogly submitted her opening brief. Pitman rejected Gallogly's district motion to electronically file in the district court shortly thereafter. Despite being cogent and properly formatted, Gallogly's first brief was found "deficient". Her brief revisions were found "deficient" four times, due to overly proscribing technicalities, constituting Orwellian psychological abuse and discrimination based on education level and computer literacy. On August 12, 2019, Gallogly's fifth brief revision was accepted. More abuse of process ensued from the Fifth Circuit toward Gallogly, until Gallogly's receipt of the Fifth Circuit's affirmance of the district court's dismissal on December 11, 2019 with no articulated opinion. The decision was issued on the same day at a time after Gallogly communicated with a confidant via cellular text that she was traveling out of state for vacation, thereby eusuring almost a week of down time during her 45-day allotment to prepare her petition for panel rehearing as a non-attorney. That same day, counsel appointment request with her brief was denied without opinion.

Thereafter, Gallogly timely filed a Notice of Indirect Appeal to this Court (App. 8a–21a) for review of the Fifth Circuit's opinions and, therefore also for indirect review of the lowest court's opinions pursuant to 28 U.S.C. § 2101(c). In so doing, Gallogly followed the general lower-higher court procedure, given appellate rules do not expressly elucidate procedure for this type of appeal. Specifically, Gallogly followed Federal Rule of Appelate Procedure 3(a)(1): "An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk..."

Specifically, whereas the district court is the lower court for this rule, and the circuit court is the higher court, Gallogly followed this procedure in substituing the lower and higher courts with the Fifth Circuit and this Court respectively, thereby filing Notice of Indirect Appeal to the higher Supreme Court in the lower, circuit court.

A Fifth Circuit clerk refused to docket the Notice of Indirect Appeal. (5TH CIR. Dkt.05-01-2020, Dkt. Summary). Gallogly submitted a Motion to Reconsider the clerk's refusal (App. 22a–26a), with the intent that the motion be reviewed by a judge. The Fifth Circuit clerk refused to docket Gallogly's subsequent Motion to Reconsider. (5TH CIR. Dct. 00515413188). The case currently stands as dismissed without opinion in and from the Fifth Circuit.

REASONS FOR GRANTING THE WRIT

Gallogly remains pervasively deprived of due process in the courts below for this case. Gallogly needs her due process rights upheld. It is important for the sake of

the nation as well as Gallogly, conferring widespread implications for criminal justice rights, housing and safety rights, and equal protection under the law for indigent and non-attorney litigants.

I. A FEDERAL EXPUNGEMENT REQUIREMENT IS NECESSARY

Gallogly seeks relief in this case in the form of the Court's declaration on records expungement federal statutory reform, for the betterment of society. Texas' failure to provide for expungement of records from view by any person not acting in an official judicial or law enforcement capacity for viewing purposes once the term is served or dismissed, is a violation of Gallogly's Fourth and Fifth Amendment rights. Furthermore, it is an equal protection matter pursuant to The United Nations Declaration of Human Rights (UNDHR). Specifically, New Jersey permits record expungement for felonies, misdemeanors, and petty offenses that are not violent or serious. Misdemeanors are less egregious than felonies, yet more frequently charged. Society lacks the federal relief of required expungement of such records from public view and from view of powerful scrutinizers, such as employers and housing entities, once plea bargain terms are met. It is difficult to imagine lack of such expungement provisions *not* having pervasive social and economic costs in the realm of work and housing freedoms.

Gallogly also seeks relief in this case in the realm of declaration of the need for federal public defense requirements, and declaration of the need for provision of federal mechanisms of enforcement of Sixth Amendment rights, wherein any court or litigator pervasively violates them.

Finally, Gallogly seeks relief in the form a declaration that Congress must prevent charges from issuing or appearing on a person's record for a criminal charge for which the person is found not guilty.

II. HEIGHTENED HOUSING REGULATION IS NECESSARY

Every year, Gallogly's required HUD annual recertification process to remain in her subsidized apartment feels like a difficult and stressful mortgage qualification procedure, lasting 3-6 months – not to buy a different residence, but simply to stay in Gallogly's current residence. This is a violation of Gallogly's right to domestic tranquility and welfare pursuant to the Preamble. Just as a few examples for Gallogly's 2020 annual recertification difficulties, she was initially told her lease would not be renewed. She was given 52 pages of paperwork to fill out, many of which did not apply to her yet incurred for Gallogly a paperwork burden for assessing their applicability. Some forms constituted privacy intrusions and were not pursuant to HUD rule. Some papers had expired OMB numbers on them, which occurred previous years. When this was raised in person with a manager and Gallogly asserted her right to not fill it out without incurring negative consequences, she was told she must anyway. HUD needs to update its paperwork standards to very clearly and expressly only allow HUD paperwork to be filled out for subsidized housing eligibility.

Most HUD calculations are based on percentages of annual Area Median Income and therefore inflation. As such, the calculations adjust every year. By contrast, the cut-off income level at which a resident is not required to report income is an

amount rather than a percentage, and appears to have not changed since 2007, remaining at $5,000.00. Gallogly was not provided the option to not report income for the first three years of her residence at Lucero, when her income was at or below $5,000.00. She was only provided this option once her income exceeded the $5,000.00 threshold. This amount needs to be changed to a percentage backdated to 2007 in the poorest area, updated to reflect current percentage standards given inflation, and adjusted based on Area Median Income. HUD should require this form be provided to relevant residents. Residents with extremely low income have serious stressors, and as such should be exempt from rigorous income assessments and any rental payments. A standard annual recertification packet needs to be sent to residents via electronic or postal mail by a federal organization, so that residents receive all the forms applicable to them, and no more.

HUD annual recertification procedures need to be revamped so that the process is quick, painless and not requiring weekly, daily, or recurring bursts of time burdens for months on end.

Relatedly, during previous years Gallogly was given forms regarding her rights and responsibilities that were generated from a non-profit housing corporation. The non-profit gave the appearance of legal authority, and provided both legal code and its own invented code on the same paper, yet represented them as synonymously valid and applicable. The invented code provided for stressful terms and conditions above and beyond HUD regulations. HUD needs to update its paperwork standards to only allow for a restricted set of HUD-approved housing standards in subsidized

housing. HUD would do well to develop these for all rental residential properties nationwide.

HUD standards need to be established for number of entries permitted by property-related personnel in rental properties, and thorough, comprehensive timing structures for entry types. Most of Lucero's housing entries are last-minute. Gallogly has also had periodic signs of intrusions to her property without notice or permission, when she is not there, such as the turning on of a speaker while she was away, and the deposit of what appear to be white plastic gloves used for hair dye in her bathroom drawer. Gallogly had her lock changed once, and intrusion signs persisted. It is Gallogly's understanding that only maintenance workers have a copy of her key. Gallogly had similar signs at a previous rental property where she lived. Some solution needs to be established for providing for safety, security, and privacy in rental residences. For many reasons, all residential maintenance workers must be required by HUD to be certified and vetted, or directly supervised by such at all times.

Gallogly incurred more than an hour-long time burden negotiating her water bill payment for June 2020, because unlike residents' electric bills, which are administered through the City of Austin, Lucero periodically changes its water contracting company, with metering gaps. Currently, water is contracted through a utility company in California. HUD should require normal and local water and electric utility contracting that is not tied to the property management company at rental residences, wherein the resident is responsible for paying for utilities.

It appears the Lucero owner may be attempting to shirk its obligations to serve low-income residents by violating HUD standards so egregiously as to become exempt from implementing HUD provisions, thereby putting the units on the free market and charging almost double the rent, making serious profits. In the past year, Gallogly's reported one-bedroom unit value from Lucero increased from over $1,400.00 to over $1,700.00 a month. By contrast, HUD's one-bedroom Fair Market Rent for the county in which Lucero is situated, is listed at $1,134.00 a month for Fiscal Year 2020. Such machinations are bad for the country, and psychologically distressing for low-income residents fearing impending occupancy ineligibility with nowhere else to go. They are also fraudulent, given municipal funds went toward building the property with the specific intent of providing low-income housing.

EPA regulation and enforcement are needed for landscape and infrastructure machinery for noise and exhaust emissions. Whereas this is important for residential properties, it must be implemented for all properties. If a car can drive 70+ mph without generating noise or noticeable exhaust, then so too must all landscaping and building repair / maintenance equipment operate with low or no noise or exahust, both for the health and safety of residents, as well as the workers operating the machinery. Our capitalist society created a flat-screen television and then prompted virtually every TV-owning household in the nation to switch to owning one – when they cost hundreds, if not thousands of dollars. Imbued in this conversion was the requirement of a transition to high-definition reception, causing a nationwide switch with a significant financial cost in less than a year. So, too,

then, can our society create quiet, low-exhaust / exhaust free landscape and building construction and maintenance machinery, and require retrofitting (better for the conservation of resources) or new machinery therefor, in less than a year, along with readily available enforcement requirements in the event some people fail to comply. To do otherwise is a violation of our nation's constituents' Constitutional right to domestic tranquility and general welfare pursuant to the Preamble.

Nationwide standards need to be created and implemented for trash and recycling for this purpose as well. Urban metropolitan areas with a population at or greater than an established size need to be required to implement trash and recycling by the municipality, regardless of residence type. Standards for all residential properties in terms of frequency and type of trash and recycling pickup, as well as number of waste receptacles per capita on multifamily properties must be established, and need to meet the same requirements as the most comprehensive provision in the city. For example, multifamily properties in the City of Austin currently must contract with private organizations for trash management. Standards are often less rigorous or failed more by private organizations. Renters comprise approximately 55% of the City's constituents, and most of them are in multifamily housing. As such, multifamily renters do not enjoy the benefits of periodic bulk pickup as do single family housing residents. Trash and recycling are often overflowing in some bins on the Lucero property.

Urban areas of a certain size need to have a recycling and waste plan with minimum standards set by the EPA and enforcement protocols in place in the event

those minimum standards are not met. The City of Austin currently has a zero waste goal for 2040, but the City is notorious for putting plans in place and failing to implement them (e.g., Shoal Creek Park Master Plan; other park plans; CodeNEXT; McMansion ordinance). Recycling standards must be put in place with major reform so that cities actually recycle waste, and it does not go the dump.

The EPA needs to craft standards for implementation and enforcement of proper recycling procedures for all residential types, and mandate that the nation must comply with implementing fines to residents who fail to comply with recycling requirements. It is Gallogly's understanding that other countries have implemented such regulations with great success, providing the EPA sources to model. The EPA needs to craft standards for minimum numbers of smaller trash and recycling bins per capita in and around entrances and / or common areas of multifamily properties, and a requirement for their management per unit time and filling.

The EPA and / or HUD needs to craft minimum standards for fire alarms so that yearly checks do not contribute to pervasive domestic tranquility violations.

HUD needs to develop building requirements that pave the way for recreational facilities on properties to be a certain distance from multifamily residential properties, not allowing for structurally induced noise amplification, and preferably requiring or encouraging recreational facilities to be installed on the roofs of such properties, with failsafe safety measures in place. HUD must require the highest international level of flooring insulation standards to be installed in all new properties, and retrofitted for all properties wherein there are complaints. For HUD

multifamily housing over a certain number of units and / or buildings and / or floors, HUD must require on-foot, on-site property oversight and security at all times, to (1) facilitate first-responder access to the premises on an as-needed basis; (2) coordinate with maintenance and the City for emergency issues such as deployed fire alarms, water and electricity outages, busted main water pipes, broken elevators and gates, and biohazards and trash; and (3) handle security issues. HUD should strongly consider the requirement of a separate security guard and gate at the entrance to garages of multifamily housing.

In addition, HUD must require HUD multifamily housing to install and maintain recessed, state-of-the-art hospital-quality, lightweight, automatic disability gating with separate power backups, and attractive fencing that surrounds the property for the safety of residents, children, pets, and the infirm.

III. Reform for Indigents and Non-Attorney Litigants is Paramount

Critical to this case is the need for widespread reform for indigent and non-attorney litigation in civil courts. Bradlow, Julie M., *Procedural Due Process Rights of Pro Se Civil Litigants*, University of Chicago Law Review, 55 (1988). Indigents and non-attorney litigants deserve to have their due process rights upheld the same as any paying litigant capable of retaining an attorney, period.

A. Gallogly Had a Right to Appointed Counsel

The matter of appointing counsel to indigents in civil cases is not straightforward. Congressional statute paves the way for the possibility of counsel appointment in civil cases by way of 28 U.S.C. § 1915(e)(1), providing courts "may"

appoint counsel to any person. Use of the word "may" is ambiguous, connoting either discretion or permission. In *Turner v. Rogers*, 564 U.S. 431 (2011) this Court ruled counsel appointment in civil cases is not required in a straightforward civil case wherein other state remedies must be in place for relief.

By contrast, counsel appointment in complex civil cases has a long and involved history with a great deal precedential support with review standards, as argued by Gallogly in a May 30, 2019 Fifth Circuit docketed pleading that went substantively unanswered. (5TH CIR. Dct. 00514977054). Cornell Law considers counsel appointment for indigent litigants in civil cases "far from settled". *Legal Information Institute of Cornell Law School*, PROCEDURAL DUE PROCESS: CIVIL, U.S. Constitution webpage (2020). 42 U.S.C. § 1983 cases, of which Gallogly's is one, are notoriously complex. *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981). Briefly, Gallogly met several criteria for counsel appointment in civil cases pursuant to *Ulmer v. Chancellor*, yet was denied it without articulated opinion.

Two additional precedential elements for counsel appointment in civil indigent cases warranted indigent counsel appointment for Gallogly: (1) the interests of private citizens for this case were and are incalcuably strong; and (2) governmental interests were and are significant. *Mathews v. Eldridge*, 424 U.S. 319 (1976). High probability for viable class action – which this case possesses – also begged counsel appointment, given Gallogly can only represent herself as a non-attorney. In the absence of both counsel appointment and class action, Gallogly's naivete of

courtroom procedure has thus far resulted in manifest injustice. Given the Fifth Circuit has a *pro bono* program in place, absent concrete current data aggregation showing a dearth of *pro bono* attorneys there, its failure to appoint counsel to Gallogly was an abuse of process. It was similarly process abuse in the lowest court, given case complexity.

Moreover, whereas this case is a civil case, it is past time for our country to view liberties and their limits on a continuim, rather than as a binary variable based on imprisonment or lack thereof. When contrasted with fiscal solvency, impoverishment certainly limits freedoms and imposes increasing freedom limitations forward in time. As such, whereas *Powell v. Alabama*, 287 US 45 (1932) was intended for criminals alone, its content is readily and equally applicable to indigent civil litigants almost a century later, especially in complex cases:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. . . . He lacks both the skill and knowledge adequately to prepare his...[case], even though he have [sic] a perfect one. He [or she] requires the guiding hand of counsel at every step in [his or her] proceedings.... (Emphasis added.)

The law is far and away more complicated now than when *Powell. v. Alabama* was decided. Gallogly's inadequate legal knowledge, connections, and investigative capabilities to ascertain whether expungement was actually available, was a death knell for her case thus far. Whether expungement was possible for Gallogly was an issue of which any judge in the federal district court absolutely should have at least a vague awareness, and about which he would have been able to quickly ascertain with an aim towards societal justice, with his requisite knowledge, powers, and connections. Gallogly recently defiinitively discovered expungement is not possible.

In this light, and combined with the inherent bias a litigant has towards and against facts and laws, all we non-attorney litigants could be said to have a particular set of bias and competencies, which will in some situations hinder justice, and in other situations enhance it.

Importantly, this Court's *Turner v. Rogers* decision on indigent counsel appointment for a civil case hinged on whether there was another reasonable remedy provided by the state. Here, it is unlikely that complex cases will have reasonable remedies, due to the voluminous rights violations inherent in complexity. Reasonable remedies include yet are not limited to: not requiring the indigent to complain all day every day to the same and different entities about the same as well as related accruing problems for years without definitively resolved relief; and, the assurance that matters about which they complained, will not recur.

The idea that any judge could ascertain whether a non-attorney indigent litigant is able to represent themselves in a complex case is somewhat absurd, in that it would require a wealth of knowledge not in the judge's possession upon the preliminary opening of the case, when counsel appointment is typically sought. Judges are not standardized test administrators, educators, or mental health professionals, nor do they have such tools at their disposal at the typical timing of motion for indigent civil counsel appointment. Alternatively, if the judge does possess knowledge about the indigent beyond simple finances and writing capabilities, they are required to recuse themselves on the basis of potential bias.

The nature of counsel appointment in these matters requires reformation. In support of civil indigent litigants' Fifth Amendment due process rights, the word "may" in 28 U.S.C. § 1915(e)(1) should be declared a permissory requirement and not a permissory discretion for complex cases. Consideration of whether an indigent non-attorney can represent themselves must be removed from the decisionmaking process for indigent civil counsel appointment, unless the indigent successfully self-represented themselves before in a similar case.

Every litigant is different. Gallogly has significant social interests, a moral compass, quality vision for a better societal future, above-average writing capabilities, and decent native and trained analytical skills. As such, Gallogly would have benefitted immensely from co-counsel appointment, wherein she could submit pleadings for the case, and serve other functions as may be required. Gallogly would have benefitted from co-counsel appointment by way of indirect access to facilitative legal scheduling and decision-tree software, and direct access to the legal acumen of co-counsel. The creation of a provision requiring co-counsel appointment to an indigient on request in both civil and appellate procedure would preserve both justice and judicial efficiency. A litigant serving a role in the judicial process will likely have stronger motivations for success, which can help hone argument, whereas their deficiencies due to bias and lack of procedural knwoledge would be shored up by their co-couselperson's alternative vantage point.

Confrontation is precedential for non-criminal cases. *Greene v. McElroy*, 360 U.S. 474 (1959). Due to actions from courts below, Gallogly remains deprived from

confronting adverse witnesses in a venue in which so doing will not jeopardize her property rights. This is a crucial element with respect to counsel appointment, given that all the defendants either have legal representation or are actually lawyers themselves, and have already directly contributed to Gallogly's freedom limitations, with some continuing to regularly threaten Gallogly's property interests. Gallogly's potential property loss concerns are therefore quite real, and both reified and magnified by her period of actual homelessness in 2016. Thus, it was in violation of Gallogly's Fifth Amendment rights to fail to appoint Gallogly counsel with the goal of reducing the likelihood of reprisals from property defendants, so as to uphold and protect her liberty and property rights prior to serving defendants.

B. Gallogly Had a Right to Liberal Treatment

Pro se complaints are to be liberally construed in favor of the plaintiff. *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *Coleman v. Lincoln Parish Det. Ctr.*, 858 F.3d 307, 309 (5th Cir. 2017). Federal Rule of Civil Procedure 56 makes way for liberal treatment for any party that "...fails to properly support an assertion of fact or fails to properly address another party's assertion..." in the pleadings leading up to summary judgment. Within these two boundary-demarcating sets of pleadings is a veritable sea of instances wherein a pro se litigant ought to receive liberal treatment by way of *Haines v. Kerner* interpolation.

Gallogly did receive liberal treatment, either during complaint review or thereafter and often received worse treatment than a represented litigant would receive. Gallogly is not Ginger Rogers, and is not appealing to courts to receive legal

pedagogy by way of intellectual flogging. Gallogly already has three advanced degrees in another field, and appealed and is appealing to the courts for relief. Gallogly suspects discrimination based on her sex and education level played a role in this judicial maltreatment, and urges for this type of treatment to never negatively affect an indigent or non-attorney litigant again. Therefore, hereafter she demonstrates the ways in which she was not treated liberally, and the ways indigent and / or non-attorney litigants ought to be treated in the future, for widespread betterment of societal justice.

1. Gallogly Had a Right to Be Heard on Pleadings

The lowest court abused process when it stated in a footnote of a lengthy order that Gallogly's reported facts were not evidentiary and were therefore questionable. (App. 30a–31a). By contrast, when dismissing a case upon failure to state a legitimate claim, it is precedential for courts to "...accept as true all factual allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff...," *Evancho v. Fisher*, 423 F.3d 347 (2005). Moreover, courts should not dismiss a complaint for failure to state a claim if it "...contain[s] either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Montville v. Woodmont*, 244 Fed. Appx. 514, 517 (3d Cir. 2007). (Emphasis added). Therefore, simple allegations without evidence are sufficient at the complaint stage. Importantly, courts may also consider public records. *Miller v. Redwood Toxicology*, 688 F.3d 928 (2012). The evidence Gallogly "failed to provide"

was readily available for the court to view on public record in Travis County Criminal Court, Case No. C-1-CR-15-211649.

Thus, lowest court abused process when it issued a Report and Recommendation at the complaint stage stating Gallogly failed to produce evidence in support of the fact that she wrote her own Motion for Early Termination of her criminal trespass probation term. It continued to do so when it went on to promulgate a lengthy report chock full of further faulty legal analysis and citation, and then dismissed the case based on that report to Gallogly's detriment without articulated answer to her *de novo* objections. These due process violations interfered with Gallogly's ability to be appropriately heard in her complaint, her objections, and for further evidence by way denying her access to the process of discovery.

2. Gallogly Deserved to Have Notice Provided to Defendants

Federal district courts are obliged to serve defendants when an indigent litigant files a pro se case pursuant to Federal Rule of Appellate Procedure 3(d):

> The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record...[and]...[t]he clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

The docket indicates no service of Gallogly's initial Notice of Appeal to The Fifth Circuit by the lowest court to parties, in violation of Gallogly's Fifth Amendment right to due process. Here, it appears Gallogly was actually treated *less* liberally than a represented litigant. Gallogly believes the Fifth Circuit may have affirmed the lowest court's dismissal on the basis that parties were not served, but cannot know this unequivocally because she was provided no articulated opinion for

affirmance. Gallogly was and is fearful of serving property parties due to fear of reprisals. If the lower courts had served the pleadings, Gallogly would at least feel she had the official backing of the court as a minimal measure to dissuade said parties from further violating her rights.

Because of due process failures, Gallogly has not been evidentiarily heard. Even though both courts stated they heard Gallogly, they failed to demonstrate having heard Gallogly in many of her pivotal pleadings. This equates not being heard. Affirming the lower court's decision without opinion by the Fifth Circuit leaves Gallogly with the belief that the panel did not read her opening brief, given she was provided no evidence by the court therefor. This is both a due process and national security concern. How does Gallogly know the electronic affirmation is from the court or judges from which it claims to be, if no rational reason is offered for adverse dispositive determination? That Forbes published an article stating The City of New Orleans – where the Fifth Circuit resides – gained knowledge of its own digital ransom beginning December 13, 2019, only two days after said affirmation issued, heavily magnifies national security concerns.

Because Gallogly received no opinion on the document of record, she remains unheard on the following pleadings to date: (1) objections to the district court; (2) opening brief argument that international law is both federally and individually actionable, Kathryn Burke, et al., *Application of International Human Rights Law in State and Federal Courts*, 18 Tex. Int'l L. J. 291 (1983); (3) opening brief argument that § 1983 does not require state officials to be actionable in opposition

to the lowest court's assertion (App. 37a), because it uses the language "every person"; (4) opening brief argument that the district court's interpretation of equal protection, in its presented form, was absurdly illegal, possessing Holocaustian allusions (App. 21a); and (5) counsel appointment arguments responding to Deputy Clerk Schnieder's denial. Other fundamental, constitutional arguments remain unanswered for pleadings.

3. Gallogly Had a Right to Present Evidence Supporting Her Case

Gallogly's case was dismissed outright twice without valid answer. Therefore, Gallogly remains deprived from providing evidence in support of her claims. Actions from courts below barred Gallogly from the process of discovery. Evidence provision is crucial to support her due process right to be heard in a legally viable manner.

Importantly, failure to afford non-attorney litigants eletronic filing privileges in today's day and age can too interfere with their right to present evidence, conferring both lack of liberal treatment, and lack of equal protection. The requirement for indigents and / or non-attorneys to file only hard copy documents was historically for the benefit of the filer. However, it is not always easier for such litigants to make paper filings. If a filer is computer literate, electronic filing possesses more pragmatic ease and fewer costs, particularly in urban settings with public libraries hosting internet access. Poor people are more likely to lack personal transportation, making it difficult to first obtain copies and then go to a second postal location for mailing. These pragmatic concerns also constrain the time non-attorney litigants have to craft pleadings, further magnifying their disadvantage.

Public library internet access is free. Paper copies and postal mailings are not. Gallogly was denied efiling privileges and then chastised by the lowest court in a small-print footnote of a lengthy report for not providing voluminous papers showing she litigated her own early commutation (App. 30a), when her annual gross income was $3,598.00. Lack of efling privileges also prevented Gallogly from submitting an amended complaint to the lowest court for this reason.

Problems with crafting subsequent pleadings can ensue wherein a non-attorney litigant is provided paper copies of orders not searchable or copy-and-pasteable on a computer, because it is an imaged PDF. If courts wish to continue to afford indigent and non-attorney litigants reasonable and equal access to the courts, electronic filing must be mandatorily included as an option for them in all courts.

Court answers must be based on facts and evidence. Gallogly's lack of opportunity to provide evidence through the process of discovery, which courts needed to ascertain veridicality, prevented courts from issuing valid opinions.

4. Gallogly Had a Right to Reasons for Record Decisions

The current standard for court opinions is that they mustn't be thorough or complete, however, "...the decisionmaker should state the reasons for his determination and indicate the evidence he relied on." *Goldberg v. Kelly*, 397 U.S. 254 (1970). As a quick aside, why should they not be thorough or complete? Still, the local rules of the Fifth Circuit violate this most basic precedential standard:

> 5TH CIR. R. 47.6 Affirmance Without Opinion. The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision: (1)

> that a judgment of the district court is based on findings of fact that are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant; and (5) no reversible error of law appears. In such case, the court may, in its discretion, enter either of the following orders: "AFFIRMED. See 5TH CIR. R. 47.6." or "ENFORCED. See 5TH CIR. R. 47.6."

Human error is possible in every realm. Gallogly has a Ph.D. in psychology, postdoctoral training in neuroscience, and as such is an expert witness to this fact, regardless of a person's pedigree. This local rule paralyzes litigants from pursuing further argument in the event of judicial mistake, national security breach, a tired judge panel that refrained from reading key or any documents, or judicial incompetence. In following 5TH CIR. R. 47.6, panel judges deprived Gallogly of due process. Both "what" and "why" are substantively necessary. Yet, Gallogly received no clarification. The terms under which 5TH CIR. R. 47.6 permits judges to refrain from opining are constitution-violatingly broad.

Circuit judges' and judge panel's severe and pervasive willingness to violate substantive due process by way of permitting the existence of, and also following 5TH CIR. R. 47.6 to order or affirm without opinion calls into question their impartiality. Judicial bias involves how personal bias observed in previous determinations may impact future behavior, such as "...a significant, personal involvement...in a critical decision regarding the defendant's case." Williams v. Pennsylvania, 579 U.S. ___ (2016). Gallogly contends two prongs of significant, personal involvement. The first prong involves court personnel's blinders to unconstitutional court procedure due to historical court enforcement imbued in a

staunch hierarchical power structure, combined with the various personal investments that come with social cohesion, self-esteem, and job security. The second pertinent significant, personal involvement here is sex discrimination with a systemically paternalistic view that it is the right of courts below to engage in abusive pedagogy with Gallogly – or worse, stonewalling – combined with feelings of competition-related threat with an articulate female "outsider" to their field. The mistake made here by courts below is that justice is not their field alone. Justice is a right for our entire nation's constituents to relish. Therefore, Gallogly avers appellate procedure must be crafted in a way to eliminate such sources of local, unconstitutional bias that is "too high to be constitutionally tolerable." *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868.

Furthermore, the lowest court failed to opine and therefore remained silent on Gallogly's objections, as did the Fifth Circuit on her May 30, 2019 motion for reconsideration. Both of these pleadings were pivotal for Gallogly's Fifth Amendment due process affordance. When Gallogly proffered a new argument in a new pleading answering a court's adverse determination, Gallogly had the right to an answer of some substance, and not just prior articulation, to be put on record for the order or judgment responding to the new arguments in the new pleading.

Part of articulating opinion involves both accurate interpretation and accurate articulation for all orders. Courts below stated there is no "automatic", *Caston v. Sears, Roebuck & Co.*, 556 F.2d 1305, 1310 (5th Cir. 1977), or "general", *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987), right to counsel. The lowest court denied

counsel appointment to Gallogly based on its specious argument that Gallogly made no viable claims. Here, reading the entire report (App. 27a-56a) and objections (ROA.274-303) will clarify said speciousness in its pervasive form. The circuit asserted Gallogly's case was not particularly complex, without any criteria provided for what makes for a complex case; any articulation showing the complaint was reviewed; or any objective facts about how Gallogly's case failed to meet (un)said complexity criteria. It is an affront to justice for any court to suggest a complaint possessing 140 pp. in length, claims and facts of which a lower court grossly misconstrued, is not complex. Liberal treatment is intended to maximize due process affordance in the interest of justice for indigent and non-attorney litigants. In summary, articulation to the detriment of the non-attorney litigant that is unsupported, circular, vacuous, and / or in error is an unconstitutional lack of liberal treatment resulting in due process deprivations.

Just one example of intersectional failures in which there was pervasive abuse of this nature, involved plain error on behalf of the lowest court that the Fifth Circuit erroneously failed to notice and articulate pursuant to 5TH CIR. R. 47.6. Specifically, the lowest court asserted The United Nations' Declaration of Human Rights (UNDHR) does not provide a basis for viable claims (App. 37a–39a). This is despite the fact that the complaint was filed under 28 U.S.C. § 1331, in which "[t}he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States" and 42 U.S. Code § 1983, under which:

> "[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."

Clearly, UNDHR is absolutely a customary regulatory framework for the United States given its membership in the United Nations. The rights established under UNDHR can be construed wherein not expressed in the Constitution, to be unenumerated by way of the Ninth Amendment, coming into compliance with *Montville v. Woodmont's* ' "inferential allegations" minimum standard for liberal treatment in accepting non-attorney claims at the complaint stage.

Moreover, Gallogly directly stated several constitutional violations. A complaint cannot be thrown out if there is a claim that is not viable, only if there are no viable claims. Yet, the Fifth Circuit failed to articulate the lowest court's clear and pervasive error. Gallogly avers in considering this prong of the petition, that declaratory relief is needed from the Court to assert litigants' right to call upon UNDHR and to not have the complaint dismissed on the basis that a viable claim for relief was not stated, simply because a UNDHR tenet is expressly claimed.

Articulated opinions provide ongoing checks and balances for judicial competence, about which there are a plethora of federal regulations, showing it to be a concern of historical relevance.

Articulated opinions cure national security concerns. These days, just about anybody has the ability to copy a legal document and modify it to appear as though it was transmitted by a court, and hackers abound. However, not just anybody can

create an articulate and well-reasoned opinion for order or judgment. Therefore, articulated opinions provide a heightened level and sense of security for judicial process.

Articulated opinions provide any litigant the ability to contest an order, in the event it is incorrect and subject to adjustment. However, if the reason for an order is not articulated, the litigant has no rational basis for repose or response. Therefore, articulated opinions for orders are fundamental to due process in the courts. Yet, the Fifth Circuit brandishes rule 5TH CIR. R. 47.6 in affirmance of decisions of courts below without opinion. If this Highest Court is to keep its litigation to a reasonable level and thereby available to all the constituents of this nation in actual need of it, then all the courts below need to function at maximum efficiency in the interest of justice. That maximum efficiency must include logically sound, reasonable, and rational articulated opinions devoid of unfounded allusions to litigants' "delusions". (App. 35a).

5. Gallogly Had a Right to Other Liberal Substantive Due Process

In addition to articulated opinions, Gallogly had a right to clear rather than implied statements and / or guidance for court procedure. Retrospectively, Gallogly can see that perhaps the lowest court was indirectly alluding to the fact that Gallogly could seek further process in the lower court with leave of court from the circuit level (App. 61a–62a). However, there was no clear statement thereof at all. The combination of (1) lack of express communication thereof, (2) the lengthy nature of appellate procedure, (3) the restrictive and punishing nature of the

communication, (4) Gallogly's non-attorney status, (5) Gallogly's work on another complex case in the United States Court of Federal Claims, and (6) both lower courts' failure to appoint Gallogly counsel for this case, manifested as a significant violation of substantive due process. Further, the necessity for leave of court in this instance just served as another logistical hurdle in a quagmire thereof, further violating Gallogly's substantive due process. It would behoove the court to reconsider the custom of leave of court requirements under some circumstances.

For another example of failures in clear communication, a Fifth Circuit clerk raised the issue with Gallogly during a phone conversation that Gallogly's case had not yet been served. The Fifth Circuit clerk did not ask why the case had not yet been served, or make any recommendations for how to cure the lowest court's failure to serve the case, thereby violating Gallogly's substantive due process rights by way of failure to communicate clear procedural remedy.

Gallogly was provided ample opportunity to correct constructed procedural defects to the point of causing her significant mental and emotional anguish. The "deficiencies" that required correction involved meaningless deficiencies, such as the requirement conveyed *post hoc* from the Fifth Circuit that Gallogly include a typed rather than handwritten signature on her appellant brief. By contrast, the lowest court provided no opportunities to cure substantive defects. For example, the provision by the lowest court of a 25 pp. report and recommendation to a non-attorney litigant, with myriad legal citations was abuse of process alone. For the judge to then speciously raise the fact that Gallogly did not provide evidence for her

own commutation with her initial complaint as a failure of hers in a small-print footnote, is abuse of process in opposition with *Evancho v. Fisher*. Still, if the lowest court really wanted a particular type of evidence to be provided by Gallogly to avert dismissal, the reasonable and ethical course of action would be to specifically ask for the evidence from Gallogly directly, and give Gallogly time to provide it.

Whereas some manifestations of this due process failure – the failure to state specific deficiencies absent a firehose of legalese and then give Gallogly the opportunity to cure them – are conveyed in the previous paragraphs of this subsection, they abound throughout lower court process. For example, the lowest court provided no credible answers for how Gallogly's claims were deficient, or how they could be constructed in a manner so as to be made viable. Whereas the Fifth Circuit found Gallogly's appellant brief and petition for panel rehearing procedurally sufficient, judges clarified nothing about how Gallogly's briefs wanted for substance, or how she could correct brief substance to come into compliance with whatever unarticulated standard was presented. Clearly, federal court procedure requires explicit rules for providing opportunities to cure substantive defects.

In affordance of Fifth Amendment due process by way of liberal treatment, non-attorney litigants have a right to lack of trickery from courts. Gallogly was confronted with potential trickery from the Fifth Circuit, wherein the order and affirmance for rehearing denial were issued on different dates. This simple act interjected high probability of due process failure for Gallogly, and would for any non-attorney litigant, due to appellate procedure. Specifically, if a petition for panel

rehearing is filed, then the due date for a petition for writ of certiorari is counted from the order date, not from the judgment date. Providing the order and judgement for dismissal of the same case on different dates was problematic. That is, if Gallogly had made the reasonable assumption that her certiorari petition was due counting from the (later) judgment date, she would have missed her opportunity to timely file a certiorari petition. Here, both non-attorney litigants and this country's constituents deserve to have process preserved in the lower courts. Yet, when that process is made unavailable, they deserve to not be deceived into a substantive due process failure due to a procedural trick. Either the certiorari deadline should be counted from the latest dispositive promulgation date, or the dispositive order and judgment should be required to issue on the same day.

In line with this lack of trickery tenet, so too must facial constitutional and statutory language supersede precedent in court opinions, pursuant to reformed federal court procedure codes.

In summary, Fifth Amendment due process is a cornerstone of our judicial system, yet Gallogly was summarily failed in this regard for virtually every manifestation thereof. Gallogly avers court procedure must be reformed to correct for such deficiencies for litigants in general, and even more so for non-attorney litigants. The addition of overt statements regarding liberal treatment of non-attorney litigants must be added to both civil and appellate court procedure, including all pertinent points raised above in this petition.

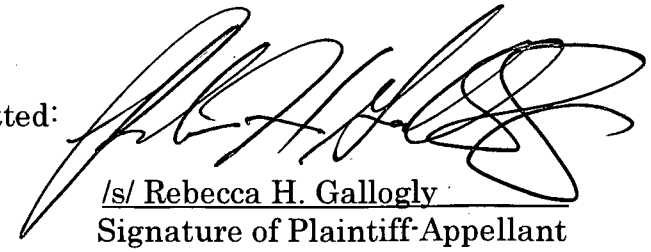
In pursuit of this goal is this remaining list of added points not yet raised for relief. A pro se clerk should be required for all courts, with a direct phone line and email address. An overt statement is necessary stating the intent of Federal Rule of Appellate Procedure 2 is to preserve due process. The Notice of Appeal deadline must be changed to reflect postmark rather than receipt, like virtually all other papers. Deadlines for all papers, including responses to non-dispositive orders, must be indicated in PACER. Deadlines for all court papers must have a minimum month requirement for all litigators, to accommodate cycling women. All litigants should be unburdened from providing record excerpts, and permitted to simply cite the record on appeal. Only one hard paper copy should be required for any pleading, and only in the event of security concerns, while preserving indigents' right to also file hard copies. Docket citations should change from Docket numbers to PACER document numbers in all courts. This list of additional points is not exhaustive.

CONCLUSION

In conclusion, this petition for writ of certiorari should be granted, along with any other relief which the court deems proper.

SIGNED July 15, 2020

Respectfully submitted:



/s/ Rebecca H. Gallogly
Signature of Plaintiff-Appellant

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