No. 21-1353

Supreme Court, U.S.
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In The

Supreme Court of the United States

ISABELLA NARTEY,

Petitioner, PRO SE,

v.

FRANCISCAN ALLIANCE d/b/a FRANCISCAN HEALTH HOSPITAL OF OLYMPIA FIELDS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Equitable Aid. The Emergency Medical Treatment and Active Labor Act forbids Medicare-participating hospitals from withholding or downgrading medical services when responding to a suspected emergency medical condition.

Franciscan hospital accepts Medicare and has specialized capabilities verified by Illinois licensing. Nartey requested that Franciscan's emergency department identify and fix the cause of a sudden surge in blood pressure accompanied by weakness on one side. Franciscan substituted life-saving tests and omitted board-certified professionals required by its licensing. Franciscan later admitted its efforts were not for the emergency conditions this hospital diagnosed. Did Franciscan violate The Act?

2. Disparate Treatment. The Department of Health and Human Services decrees delay under dire medical circumstances violates Title VI of the Civil Rights Act of 1964.

Nartey is "black" and an emergency interpreter for the Ghanian language of Twi. Franciscan lacked the neurosurgical expertise necessary to treat the stroke Franciscan diagnosed so Nartey requested transfer to a higher-level hospital. Franciscan waited six days to act on Nartey's request. Franciscan then refused to select the stroke center in Franciscan's written transfer agreement(s) which guaranteed available beds.

Did Franciscan's adverse acts violate Title VI?

QUESTIONS PRESENTED FOR REVIEW
– Continued

3. Supplemental Jurisdiction. Illinois allows actions against hospitals "within *four years* after" the hospital's adverse act or omission. Nartey filed her civil action pro se within the two years required for her federal claims. Then, with the district court's leave, Nartey added Illinois fraud claims to recover from Franciscan's prohibited omission of the transfer records and imaging scans needed to prove Nartey's discrimination claims. Over two years remained to prosecute Nartey's Illinois claims.

Did the court violate supplemental jurisdiction by dismissing timely Illinois claims with prejudice?

4. Due Process. Rule 15 preserves procedural rights to amend thus ensuring the Seventh Amendment's right to trial by jury for plaintiffs.

> Pro se, Nartey presented her proposed amended and supplemental complaint in a motion under Rules 60(b), 60(d), 15, and 52 within 28 days of the District Court's dismissal sanction. Though Nartey's action included jury demand, the District Court refused to review the merits of Nartey's proposed complaint. The Seventh Circuit omitted the complaint also.

Did the Seventh Circuit abandon due process?

PARTIES TO THE PROCEEDING

The Petitioner is Isabella Nartey, who proceeds pro se and was Plaintiff-Appellant PRO SE below ("Nartey"). Nartey is an individual asserting claims on behalf of herself via her standing as a protected person damaged by adverse acts of exclusion, delay in accommodation, and other prohibited activity while requesting emergency aid at a federally funded hospital.

The Respondent is Franciscan Alliance d/b/a Franciscan Health Hospital of Olympia Fields, who was Defendant-Appellee below ("Franciscan"). Franciscan is federally funded by Medicare and also gains additional federal dollars, when available, based on its special licensing as an acute stroke ready hospital in Cook County, Illinois.

STATEMENT OF RELATED CASES

- *Nartey v. Franciscan Health*, No. 18-cv-05327, U.S. District Court for the Northern District of Illinois. Judgment entered Aug. 29, 2019.

- *Nartey v. Franciscan Health*, No. 19-3342, U.S. Court of Appeals for the Seventh Circuit. Judgment entered June 28, 2021. Rehearing denied.

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OPINIONS BELOW

The U.S. District Court for the Northern District of Illinois denied plausibility of federal discrimination and state fraud claims by unpublished order and opinion entered July 11, 2019, as reported at 2019 WL 3037082. [Attached (Appendix ("App.")p.-16-25)] That court's jurisdiction arose via 42-U.S.C.-§-1395dd, 42-U.S.C.-§-2000d, 28-U.S.C.-§-1331 and 28-U.S.C.-§-1367.

The district court entered judgment as a sanction on August 29, 2019. (App.p.14-15); then denied Isabella Nartey's pro se motion for relief under Rule 60 or Rule 52 via unpublished order entered October 9, 2019. (App.p.12-13)

The Seventh Circuit Court of Appeals ("Seventh Circuit") affirmed dismissal of all claims, dismissal as a sanction, and denial of Rule 60 relief in an opinion published on June 28, 2021 and reported at 2 F.4th 1020. (App.p.-1-11). The Seventh Circuit then entered an unpublished order on September 10, 2021, denying the Petitions for Panel Rehearing and for Rehearing En Banc, both timely per a granted 45-day extension. (App.p.-26).

JURISDICTION

The Seventh Circuit United States Court of Appeals ("Seventh Circuit") affirmed dismissal and denial of relief on June 28, 2021 (App.p.-1-11). The Seventh Circuit granted a 45-day extension for Nartey to move

on July 13, 2021; then denied all rehearing on September 10, 2021 (App.p.-26).

On December 6, 2021, this Court granted Nartey an extension to file her petition for writ no later than February 7, 2022. Pro se, Nartey complied with that order, and with the additional notice from the Honorable Clerk, to ensure timeliness under Rules 13.2, 13.5, and 14.5.

This Court has jurisdiction under 28-U.S.C.-§-1254(1) to review the Seventh Circuit's decision on a writ of certiorari. 28-U.S.C.-§-2403(b) may apply. No court certified to the State Attorney General that the constitutionality of an Illinois statute affecting public interest is in question under 28-U.S.C.-§-2403(b). Pro se, Nartey still served the Illinois Attorney General to comply with the notification requirement of Rule 29.4(c).

STATUTORY PROVISIONS AT ISSUE

The Emergency Medical Treatment and Active Labor Act ("EMTALA")

42-U.S.C.-§-1395dd, protects all requesting or receiving medical aid at Medicare-participating hospitals with a dedicated emergency department.

Regarding detecting emergency medical conditions, 42-U.S.C.-§-1395dd(a) provides:

> "In the case of a hospital that has a hospital emergency department, if any individual

> (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists."

Regarding responding to emergency medical conditions, 42-U.S.C.-§-1395dd(b)(1) provides:

> If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either –
>
> (A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or
>
> (B) for transfer of the individual to another medical facility in accordance with subsection (c).

Regarding transfer, 42-U.S.C.-§-1395dd(c)(1)(A)(i) provides:

> "If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection

(e)(3)(B)), the hospital may not transfer the individual **unless** – the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility" (emphasis added)

Regarding stabilization, 42-U.S.C.-§-1395dd(e)(3)(A) provides:

"The term "to stabilize" means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)."

42-U.S.C.-§-1395dd(e)(3)(B) further provides:

"The term "stabilized" means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)."

Regarding the relevance of local standards, 42-U.S.C.-§-1395dd(f) provides:

> "The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section."

Regarding litigation, 42-U.S.C.-§-1395dd(d)(2)(A) provides:

> "Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate."

Title VI of the Civil Rights Act of 1964

42-U.S.C.-§-2000d provides:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Fraud in Illinois

Regarding general fraud, 815 ILCS 505/2 provides:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act."

735-ILCS-5/13-212(a) provides in relevant part:

> (a) Except as provided in Section 13-215 of this Act, no action for damages for injury or death against any physician, dentist, registered nurse or hospital duly licensed under the laws of this State, whether based upon tort, or breach of contract, or otherwise, arising out of patient care shall be brought . . . more than 4 years after the date on which

> occurred the act or omission or occurrence alleged in such action to have been the cause of such injury or death.

Regarding fraudulent concealment actions, 735-ILCS-5/13-215 provides:

> "If a person liable to an action fraudulently conceals the cause of such action from the knowledge of the person entitled thereto, the action may be commenced at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards."

STATEMENT OF THE CASE

Factual Allegations

Franciscan's capabilities

Franciscan is "a Medicare/Medicaid participating hospital with a defined emergency department." (Complaint.R#33.p.6. ¶13) Franciscan has a stroke specialty license as an "Acute Stroke Ready Hospital (ASRH)" per "210 ILCS/3.117." (*Id.*p.4-¶11).

Franciscan maintains "written acute care protocols related to emergent stroke care." (*Id.*) As condition of its licensing, Franciscan has a "Clinical Stroke Director who shall be a member of the hospital staff . . . AND provide rapid access to an acute stroke team, as defined by the facility" whenever stroke risk is present. (*Id.*p.5-¶11(c)).

Illinois requires Franciscan treat individuals at risk for stroke with "thrombolytic therapy or subsequently developed medical therapies that meet nationally recognized, evidence-based stroke guidelines." (*Id.*-¶11(d)). Any care Franciscan provides on-site must "demonstrate compliance with nationally-recognized quality indicators." (*Id.*-¶11(i)). Illinois forbids hospital admittance unless a "unit can provide appropriate care that considers and reflects nationally-recognized, evidence-based protocols." (*Id.*-¶11(h), App.43-44).

To ensure stroke cases identified at Franciscan have access to "appropriate care," Franciscan maintains "a written transfer agreement with one or more hospitals that have neurosurgical expertise, verified by a comprehensive stroke center or primary stroke center designation." (*Id.*-¶11(h)).

Franciscan is also especially equipped for cardiac emergencies. Franciscan has "advanced exams used to rule out (or confirm) the life-threatening level of heart damage known as heart attack: cardiac CT for calcium scoring, coronary CT angiography, coronary catheter angiography." (*Id.*p.30). Should those tests reveal a cardiac emergency medical condition, Franciscan has onsite expertise to provide "thrombosis (often within three-hours of the heart attack), carotid endarterectomy, laser therapy, carotid angioplasty, and stenting." (*Id.*).

The expertise and technology within Franciscan's capabilities are known to be effective for individuals

"with 70-99 percent blockage in the carotid artery" and effective in "halting post-heart attack damage to the heart muscle." (*Id.*). Thus, when employed, Franciscan's capabilities ensure "with reasonable medical certainty that no decline will result from the discharge of (sic) transfer of the individual . . . even if a related or underlying health condition persists." (*Id.*).

Triage in Franciscan's Emergency Department

"On the afternoon of August 3, 2016," paramedics recorded Mother's "blood pressure as elevated (170/90)" and "identified Franciscan – located at South Crawford Ave . . . as the nearest hospital." (*Id.*p.9.-¶11(b)). "Nartey arrived at Franciscan" about 15 minutes after the ambulance departed Mother's home to find Mother moved "from the ambulance into Franciscan's emergency department" (*Id.*-¶21). Several family members were already at Mother's side Nartey observed Mother's breathing "changed to become somewhat labored" and her "blood pressure rising alarmingly fast, with the systolic number registering over 200 more than once." (*Id.*-¶22). To ensure all treatment options were considered, Nartey and family alerted Franciscan that Mother had "allergic reactions and side effects . . . during the use of pharmaceutical drugs." (*Id.*p.10.-¶23(c)).

"Franciscan's emergency department alerted . . . Nartey and the family present":

- Mother's "heart muscle had some damage evident" (*Id.*-¶25(c)) and

- Franciscan would be using an "observation period" instead admitting. . . . (*Id.*p.11.-¶25(g)).
- "Franciscan's team could prevent a stroke or at least respond quickly if one occurred." (*Id.*-¶25(h)).

No specialist doctors had joined Nartey at Mother's bedside. (*Id.*p.10-¶25(f)). Franciscan's emergency department told Nartey tests "would require at least an hour;" and asked Nartey and family to leave. Nartey and her sister told the male Franciscan nurse present that Mother's "native language was a West African language by the name of TWI" and that "family members were available to translate any information" since Mother "was under distress." (*Id.*p.11-12)-¶28(c-e).

"The nurse said he understood" English as Mother's third language. (*Id.*p.12.-¶29). Franciscan's nurse did not summon a licensed interpreter in Twi and did not allow Nartey or any family member to stay bedside to translate. (*Id.*p.12). When Franciscan allowed family to return, Nartey learned from a female nurse Mother "had been calling out – and seemed to be in great distress – when she came on duty." (*Id.*-¶30). Mother "expressed despair" once Nartey and her sister were bedside so they stayed. (*Id.*-¶31).

Medical Observation

Nearly sixteen hours after this emergency department encounter began, Franciscan sent a lung-doctor bedside to tell Nartey Franciscan had not yet

completed testing for stroke. (*Id.*p.13.-¶33). Franciscan's "Dr. Jain" shared that while Franciscan's initial efforts had conflicting results, his professional training led Dr. Jain to conclude Mother was "trending towards a stroke." (*Id.*-¶35). This lung-doctor then suggested surgeons punch a hole in Mother's throat via a "trach." (*Id.*p.15-¶40). Nartey asked how that surgery could help. (*Id.*). Dr. Jain explained "the invasive trach would not assist" in mitigating Mother's "stroke-like symptoms." (*Id.*).

Upon learning that "an MRI was pending," Nartey requested using the conclusive MRI results to guide Mother and the family on the trach. (*Id.*) Mother "was noticeably weaker" and spoke in the language of her medical captors to urgently request a higher level of care. (*Id.*p.16.-¶44). With "Franciscan's nurse present" Mother "burst into tears and repeated her request stating that 'They're not helping me here.'" (*Id.*-¶45).

Nartey immediately sought options from Franciscan's nurse who heard Mother's tearful plea while at bedside with Nartey. (*Id.*). Franciscan's bedside nurse admitted to Nartey that Mother's "right leg's condition had not improved" and that her "blood pressure was still elevated" at dangerous levels. (*Id.*-¶46). Still, "Nartey did not observe any Franciscan staff or representative provide a written care plan" or discuss treatment options at bedside in response to Mother's plea. (*Id.*-¶47).

Much, much later, Franciscan conducted the "MRI" to conclusively diagnose stroke. (*Id.*p.18). Franciscan

then waited one day after having test results to reveal the diagnosis to Nartey who still waited at bedside. (*Id.*). Mother "still had not regained consciousness" when Franciscan's neurologist arrived to reveal Mother's "severe ischemic stroke" and "mini-stroke." (*Id.*p.19-¶56).

Based on Franciscan's hospital licensing and his professional training, Franciscan's neurologist knew actual medical records could be shared at bedside to make treatment decisions per "Illinois laws 735 5/8-802 (Physician & Patient), and "410 & 50 (Medical Patient Rights Act)." (*Id.*p.2). Yet, in response to Nartey's request to see imaging scans, this doctor only *scribbled* "a representation of the MRI results on paper." (*Id.*p.20-¶57).

Delay and Damages

Franciscan's neurologist told Nartey "Franciscan's current strategy was to 'wait and see,'" how Mother faired even though "brain damage would likely be severe." (*Id.*p.20-¶58-59). Based on Franciscan's specialty licensing and on his privileges at Franciscan, this neurologist knew Illinois required Franciscan "administer thrombolytic therapy or subsequently developed medical therapies that meet nationally-recognized, evidenced-based stroke guidelines," on-site. (*Id.*p.5).

Rather than use the hospital's advanced intervention capabilities (*Id.*p.5), Franciscan *chose* to wait if Mother "pulled through" her cardiac and stroke

emergencies while under observation. (*Id.*p.20). Mother's earlier request for a higher level of care remained unanswered even after Franciscan's stroke diagnosis. (*Id.*p.20).

Within minutes of learning that stroke diagnosis, Nartey requested Franciscan transfer to a "hospital that specializes in stroke cases." (*Id.*-¶60). Based on privileges at Franciscan, this neurologist knew Franciscan had beds guaranteed as available in "one or more" regional stroke centers with "neurosurgical expertise" via its "written transfer agreement." (*Id.*p.5). Franciscan's neurologist did not authorize transfer nor discuss the treatment required by Franciscan's licensing. (*Id.*p.20).

Concerned about the immediate risk of death or permanent disability, Nartey repeated her multilingual mother's earlier request for transfer to Franciscan's nurses. (*Id.*-¶62). Franciscan's nurses also denied Nartey's request instantly, commenting that "transfer was unlikely considering [Mother's] care plan." (*Id.*p.21-¶63(g)). Mother "did eventually regain consciousness;" yet Nartey saw "mother's waking moments as those of extreme distress." (*Id.*p.21).

Franciscan waited six days, until Nartey's third transfer request, to provide Franciscan's transfer authorization form. (*Id.*p.23-¶73). Franciscan did so under the condition that Nartey and family search for the new hospital location for stroke treatment. (*Id.*p.24-¶77-80). Nartey's first two ad hoc selections left her request for a medically-necessary transfer to

treat stroke unfulfilled. (*Id.*p.24-¶77-80). Franciscan still withheld the location(s) which had *pre-approved acceptance* of Franciscan's stroke transfers via written contracts complaint with Franciscan's specialty licensing. (*Id.*p.12-24).

Franciscan's silence compelled Nartey's *fifth transfer request*. (*Id.*p.24-¶81). Nartey's final transfer hospital selection was a public hospital certified as a primary stroke center: "Cook County/Stroger." (*Id.*). As a public hospital, Stroger guaranteed to accept stroke transfers regardless of insurance status or hospital administrative status.

Rather than give Nartey the results of her lawful transfer request, Franciscan sent *medical residents* to diagnose Mother with a "clinical brain death." (*Id.*p.24-¶83, p.25-¶87). Franciscan's medical residents then refused to answer care plan questions or to share imaging results as Nartey requested "in the presence of a Franciscan case manager," Mother's husband, and several of Nartey's siblings. (*Id.*p.25-¶87–p.26-¶89).

Nartey asked to have Franciscan's specialists do a second test with brain imaging to verify the results of the rookie doctors in case hospital transfer was still possible. (*Id.*p.26-¶89(c)). Had Nartey seen imaging scans at bedside confirming Mother's brain activity and vitality, Nartey would have acted to "alter the course" of Franciscan's actions by seeking a court injunction to "exercise the right, guaranteed and protected by EMTALA" to transfer to the public hospital Nartey selected while unaware of Franciscan's written transfer agreement. (*Id.*p.2-¶4(b)).

Deceit and Fraud

The family did request medical records in writing once allowed to do so. (*Id.*p.27-¶93). Nartey and all relied on the medical records as provided by Franciscan due to Franciscan's specialized knowledge of "HIPPA" and "corresponding state law," which required full disclosure. (*Id.*p.62). In July 2018, lawyers had not yet produced a special "affidavit" with the records Franciscan provided. (*Id.*p.62, p.59-77).

Now Nartey's grief had subsided enough to review those records personally. (*Id.*p.26-¶91). In July 2018, "Nartey discovered several discrepancies" between the actions required by Franciscan's licensing, Franciscan's response to her requests "at Franciscan's emergency department and the protections that EMTALA provides." (*Id.*). Nartey found Franciscan's deviations from state-mandated hospital policy discriminatory.

During efforts to secure counsel for her own claims, "Nartey discovered imaging test results, copies of the hospital transfer records, and other documents" were missing from Mother's medical record." (*Id.*-¶93). Franciscan omitted these records "even though they had been requested in writing per Franciscan's policy." (*Id.*p.27-¶93).

Now Nartey also learned of an online testimony from a white, native-English-speaking mother-daughter pair who, unlike Nartey, had prompt consultations with Franciscan's board-certified specialists. (R#58-59, App.p.45-47). There, the stroke survivor received surgical interventions for stroke through Franciscan's

emergency department. (R#58-59, App.p.46-¶f-g). Realizing her damages as separate from any potential medical claims for Mother (App.p.46-¶d-e), Nartey requested a certified copy of Mother's record and continued to efforts to secure counsel. (R#58-59).

Court of First Instance

Nartey filed her civil action *with jury demand* pro se on August 3, 2018, to recover from Franciscan's adverse acts occurring on and after August 3, 2016. 42-U.S.C.-§-1395dd, 42-U.S.C.-§-2000d; 28-U.S.C.-§-1331; 28-U.S.C.-§-1367. Franciscan disregarded the summons. (R#16-21. See Hearing Transcript, App.p.33).

Franciscan had its motion to dismiss granted (App.p.25) before the district court terminated the case as a sanction for clumsy pro se execution of local rules. (App.p.14-15).

Nartey moved under Rule 15, Rule 60, and Rule 52 of the Federal Rules of Civil Procedure ("Rule") in unison to present her proposed amended and supplemental complaint for the District Court's review. (R#61-63, App.p.37-42 (Hearing Transcript)). Nartey attached her affidavit, proposed complaint, exhibits and evidence from Franciscan's website in compliance with federal and local rules. (*Id.*). The District Court directed Nartey to appeal for relief. (R#68, App.p.12-13).

Nartey appealed (R#69,71,77) seeking:

1. Vacatur of the District Court's order requiring an amended complaint.
2. Vacatur of the District Court's sanction.
3. Vacatur of Rule 60/15 denial which blocked review of Nartey's proposed complaint.

The Seventh Circuit disregarded federal regulations and statistics presented on appeal to expose the high plausibility of Nartey's claims. (App.p.1-11). The Seventh Circuit relied on cases that excluded Medicare's observation period, the relevance of specialized hospital capabilities, and the plaintiff's right to have a proposed complaint adjudicated when considering post-judgment relief. (*Id.*). The Seventh Circuit affirmed dismissal and the denial of Nartey's right to amend to overcome a motion to dismiss. (App.p.11).

REASONS FOR GRANTING CERTIORARI

Considering the protections in place for all United States persons seeking medical care, this Court's review shall settle questions of law arising from whether withholding state-mandated hospital capabilities and violating written policies constitute discrimination prohibited by the Emergency Medical Treatment and Labor Act and Title VI.

The Seventh Circuit's interpretations of the above federal antidiscrimination statutes split from the

First, Fourth, Fifth, Ninth, and Tenth Circuits. Nartey's petition is at least the fourth to seek review of the Emergency Medical Treatment and Labor Act, but the first to include review of the screening mandate. This Court requires courts "must read the words 'in their context and with a view to their place in the overall statutory scheme.'" *King v. Burwell*, 576 U.S. 473, 135 S.Ct. 2480, 2489, 192 L.Ed.2d 483 (2015) (as citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000)).

Nartey's pro se civil action, filed *with jury demand*, also gives opportunity to settle the narrowness of the federal rules at the pleading stage to ensure courts identify relevant "factual matter" necessary for the claim to be "plausible." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, at 570, 127 S.Ct. 1955 (2007); Rule 8.

Unlike in *Iqbal*, Nartey preserved her right to amend when responding to the motion to dismiss and on appeal. As such, this Court's review will improve the efficiency of the judiciary by settling:

a. Whether federal rules require all elements of timely *supplemental* claims during notice-pleading, instead of at summary judgment. (Rule 8-9).

b. Whether courts may deny "leave to amend" while time remains in the statute where the plaintiff requests to amend both before and after presenting the proposed complaint. (Rule 15).

Review is warranted to enforce the federal rules of civil procedure and end the haphazard use of local rules so litigants receive "just" proceedings as mandated. Afterall, "Courts enforce the requirement of procedural regularity on others, and must follow those requirements themselves." *Hollingsworth v. Perry*, 558 U.S. 183, 184 (2010). The Seventh Circuit decision violates *King* and *Hollingsworth* while also violating civil procedure.

I. Omitting statutory text to deny plausibility abandons judicial standards.

Post-*Iqbal*, plaintiffs stating "events that, they alleged, entitled them to damages" provide "the factual basis" necessary and are "required to do no more to stave off threshold dismissal for want of an adequate statement of their claim." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). Rule 8.

A. Emergency Medical Treatment and Labor Act violations are section and regulation specific.

Federal conflicts over the elements required for plausible claims under the Emergency Medical Treatment and Labor Act (EMTALA) now require this Court. EMTALA violations occur in each area of the statute, and according to the Journal of Western

Medicine's review, CMS found 40% of received EMTALA complaints meritorious.[1]

EMTALA Violation per Inspector General[1]	Cases with Financial Penalty/Settlement
Failure to appropriately screen:	75%[1]
On-call physician refused to appear	6.3%[1]
Failure to stabilize	42.7%[1]
Improper Transfer	11.5%[1]
Failure to transfer	11.5%[1]
Financial reasons	15.6%[1]

Hospitals with high standards may violate EMTALA without triggering state claims. 42-U.S.C.-§-1395dd(d)(2), (f).

1. Screenings must meet three conditions to be "appropriate" or else EMTALA is void.

To ensure access to the relief EMTALA promises, "no clause, sentence, or word shall be superfluous, void, or insignificant'" when interpreting statutes to assess claims. *Market Co. v. Hoffman*, 101 US 112, 115, 25

[1] Zuabi N, Weiss LD, Langdorf MI. Emergency Medical Treatment and Labor Act (EMTALA) 2002-15: Review of Office of Inspector General Patient Dumping Settlements. *West J Emerg. Med.* 2016;17(3):245-251. doi:10.5811/westjem.2016.3.29705.

L.Ed. 782 (1879). Yet, circuits struggle to agree on EMTALA discrimination claims, differing if screening liability can attach:

> a. after the hospital identifies an emergency medical condition (*Nartey v. Franciscan*, 7th Cir. App.p.8).
>
> b. only if the hospital had ill intent during adverse acts (*Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266 (6th Cir. 1990) requiring an improper reason for screening violations).
>
> or
>
> c. when the hospital violated protocols during the screening offered (*Cruz-Vázquez v. Mennonite General Hospital, Inc.*, 717 F.3d 63, 72 (1st Cir. 2013), "the failure appropriately to screen, by itself, is sufficient to ground liability." *Correa v. Hosp. San Francisco*, 69 F.3d 1192 (1st Cir. 1995). "[A] refusal to follow regular screening procedures in a particular instance contravenes the statute.").

This Court once declined to determine whether the Sixth Circuit's screening interpretation was correct. *Roberts v. Galen of Va.*, 525 U.S. 249, 250, 119 S. Ct. 685, 685 (1999). Yet, the First Circuit's interpretation is most correct because Congress established three conditions that must exist in every emergency screening. **To qualify as an "appropriate medical screening exam," the hospital's efforts must involve**:

a. **the right tools** 42-U.S.C.-§-1395dd(a)

b. **the right person** 42-U.S.C.-§-1395dd(d)(1)(b); 42-U.S.C.-§-1395kk-1(a)(3)

c. **the right timing** 42-U.S.C.-§-1395dd(d)(1)(c)

This Court's intervention is required because circuits continue to apply the statute differently despite federal regulations which clarify common screening misconceptions. For example, Triage, the preliminary effort done to determine how quickly one must be seen and which medical specialist is appropriate to send bedside, cannot automatically satisfy the mandate. 42-C.F.R.-§-489.24.

Thus, even when an emergency condition is identified, hospitals remain EMTALA-liable for excluding ancillary diagnostic services (discrimination) or for relying on triage efforts to make a diagnosis (cursory exams). 42-C.F.R.-§-489.24(a)(1)(i) and (c). These EMTALA regulations set by CMS were only done after much input from the public and covered hospitals. Since *Chevron U.S.A. v. Natural Resources Defense Council, Inc.* 467 U.S. 837, 844 (1984), this Court requires all federal courts to apply "the principle of deference to administrative interpretations."

Those who disapprove of *Chevron* deference can use EMTALA's statutory preemption clause instead. 42-U.S.C.-§-1395dd-(f) Illinois imposed high standards on Franciscan. 210 ILCS 50/3.117(b). Franciscan's EMTALA obligations activated on August 3, 2016 when paramedics brought Mother to Franciscan with blood

pressure of 170/90 to identify her stroke risk. 42-U.S.C.-§-1395dd(a). Nartey joined and made requests for aid directly in Franciscan's emergency department. *Id.* Franciscan's emergency department suspected stroke and cardiac emergencies. If Franciscan's protocols require brain imaging be done within 20 minutes and Franciscan did it within 180 minutes instead, Franciscan violated EMTALA. If Franciscan's protocols require a board-certified cardiologist to do a bedside consultation and Franciscan used a lung-doctor and medical residents instead, Franciscan violated EMTALA.

Nartey cited those required protocols in her complaint along with the who, what, where, and when of events she believed damaged her personally. Nartey must "do no more" at the notice-pleading stage. *Johnson*, 574 U.S. 10, 12 (2014). Under federal rules, Nartey recovers whether Franciscan violated hospital protocols for cardiac emergencies or stroke emergencies because Franciscan was aware of both. (Rule 8(d)(3): "A party may state as many separate claims . . . as it has, regardless of consistency.").

This Court can review circuit splits by relying on precedent set in *King* and *Market*. Resolving this split of authority helps Americans be "secure in their persons" even while most vulnerable. (U.S. Const., Amend. IV).

2. Stabilization turns on the "capability of the hospital" as held by this Court's precedent.

The Seventh's Circuit's position that any treatment or movement from the emergency department waives stabilization liability contradicts government data and This Court. According to the Centers for Disease Control and Prevention, of the 130 million people seeking aid at U.S. emergency departments in 2018, over 113 million (87.5%) received care anywhere in the hospital without being admitted as inpatients[2]. In *Roberts v. Galen of Va.*, 525 U.S. 249, 250, 119 S. Ct. 685, 685 (1999), this Court protected those people with two precedents:

1. Intent is irrelevant when assessing EMTALA liability in stabilization claims, *Id.*
2. EMTALA offers several paths to stabilization liability within the statute. *Id.*

Under EMTALA, any testing or treatment which did not "assure, within reasonable medical probability, that no material deterioration of the condition is likely" can be contested. 42-U.S.C.-§-1395dd(e)(3)(A). This statutory definition forbids the Seventh Circuit's reliance on any treatment or even the intent to treat. (App.p.21-22).

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[2] "Emergency Department Visits." National Center for Health Statistics. Center for Disease Control and Prevention. https://www.cdc./nchs/fastats/emergency-department.htm.

a. "Observation" is a novel stabilization issue.

Since *Galen*, the government added complexity to EMTALA by introducing "medical observation." Observation allows hospitals to avoid the financial penalties associated with individuals returning for care within 30 days.[3] CMS defines "observation" cases as non-inpatients "even if they occupy a bed overnight." 42-C.F.R.-§-489.24(f).

As of 2012, observation beyond 72-hours had increased 88%.[4] In 2016, the Office of the Inspector General revealed that observation use also increased despite CMS' providing criteria to help assign the correct administrative status early on.[5] Despite these trends, CMS maintains a hospital's "placement in an observation status of an individual who came to the hospital's DED (dedicated emergency department) does not terminate the EMTALA obligations of that hospital or a recipient hospital." 42-C.F.R.-§-489.24(f). [ROA#36-p.29]. CMS also clarifies that movement within the hospital or Franciscan's use of different parts of the hospital during observation

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[3] Observation stays fact sheet. Medicare Advocacy. https://www.medicareadvocacy.org/wp-content/uploads/2017/09/Observation-Coalation-Fact-Sheet.pdf.

[4] Feng Z, Wright B, Mor V. Sharp rise in Medicare enrollees being held in hospitals for observation raises concerns about causes and consequences. Health Aff (Millwood). 2012 Jun;31(6):1251-9. doi:10.1377/hlthaff.2012.0129. PMID: 22665837; PMCID: PMC3773225.

[5] Department of Health and Human Services Office of Inspector General (OIG), December 2016 Report OEI-02-15-00020.

cannot satisfy the statute. 68-FR-53222 at 53247. [ROA#55-p.5-¶3-4] 42-C.F.R.-§-489.24(f)..

Those who resist deferring to agency regulations and industry research, can rely on Illinois' statute to reverse the Seventh Circuit instead. Illinois recognizes observation individuals as *not-admitted* and requires hospitals notify individuals of their observation status. 210 ILCS 86/6.09. Franciscan's emergency department team told Nartey this hospital used observation instead of a hospital admission. (Complaint.R#33.p.11). Franciscan does not dispute using observation. Based on Illinois law, Franciscan did not admit. Circuits relying on clear statutory text simply require the complaint allege EMTALA violations early in the emergency encounter for stabilization claims to be plausible. *Bryan v. Rectors and Visitors of Univ. of Virginia*, 95 F.3d 349, 353 (4th Cir. 1996). *Bryan* supports plausibility here since Nartey specified the treatments with the capability to stabilize which Franciscan withheld from the outset of the emergency encounter.

As such, The Seventh Circuit undermined federal and state law by interpreting "observation" as an inpatient status. 210 ILCS 86/6.09 EMTALA forbids courts from using the statute to preempt state law like the Seventh Circuit did here. 42-U.S.C.-§-1395dd-(f). Illinois' requirement that observation be recognized as a non-admission status also helps limit the scope of discovery for EMTALA violations. A review of administrative hospital records will reveal when the Franciscan's observation first ended and thus establish the period

for stabilization liability. 68-FR-53222 at 53247. [ROA#55-p.5-¶3-4] 42-C.F.R.-§-489.24(f).

EMTALA requires hospitals deliver all stabilizing services within the hospital's capacity. 42-U.S.C.-§-1395dd(e)(3)(A). This obligation persists even when presenting individuals have "an underlying medical condition that severely affects their quality of life and ultimately may result in their death." *In the Matter of Baby "K"*, 16 F.3d 590 (4th Cir. 1994), *certiorari denied.* Thus, plausible stabilization violations during observation include:

1. Delayed or disparate "further testing and treatment." 42-U.S.C.-§-1395dd(b)(1).

2. Failure to transfer when conditions require. 42-U.S.C.-§-1395dd(c)(1)(A).

3. Noncompliant transfer 42-U.S.C.-§-1395dd(c).

Nartey petitions so This Court ensures federal courts recognize both the "further testing and treatment" and "appropriate transfer" stabilization claims. The statute explicitly separates them via 42-U.S.C.-§-1395dd(e)(3)(A) and 42-U.S.C.-§-1395dd(c)(1)(A)(i). *Market*, 101 U.S. 112, 115 (1879).

b. Onsite resources expose treatment violations.

Unlike state-malpractice claims, EMTALA stabilization claims address disparate access to life-saving treatment and expertise regardless of professional negligence. 42-U.S.C.-§-1395dd(e)(3)(A). The Fifth Circuit

upholds EMTALA's statutory requirement for "treatment that medical experts agree would prevent the threatening and severe consequences" of a diagnosed emergency condition. *Burditt v. U.S. Dept. of Health and Human Services*, 934 F.2d 1362, 1369 (5th Cir. 1991).

In *Burditt*, the Fifth Circuit held the trier of fact "could properly disregard" defendant's version of events to instead "accept that of all other testifying experts." *Id.* On appeal, Franciscan describes its efforts as "for nourishment," and *not* for either of the emergency medical conditions Franciscan suspected and then diagnosed. [ROA#55-p.10-¶1-2]. Franciscan thus supported Nartey's claims that Franciscan did not attempt to stabilize according to 210 ILCS 50/3.117 and its specialties an "ASRH."[6] Thus, Nartey's allegations permit expert testimony for her stabilization claims as in *Burditt*.

Pleading rules confirm that alternating claims allow relief. Rule 8(d)(2-3). According to public information, EMTALA stabilization violations occurred within the first 90-180 minutes based on the strict protocols and high standards imposed by Franciscan's specialty ASRH licensing.[7] App.p.43 lines 2-5,6-7. Nartey listed the dates and specialists involved when Franciscan excluded specific "testing" and "treatment"

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[6] The Joint Commission Stroke Certification Programs – Program Concept Comparison. https://accred-and-cert/certification/certification-by-setting/stroke/dsc-stroke-grid-comparison-chart-42021.pdf.

[7] *Id.*

required by Franciscan's protocols and capabilities during this emergency department encounter. (R#33.p.10-75).

Contrary to the Seventh Circuit's holding, the First Circuit clarifies that "further testing" claims like Nartey's, based on a "failure to provide certain diagnostic test," may overcome a 12(b)(6) motion. *Del Carmen Guadalupe v. Negron Agosto*, 299 F.3d 15, 22 (1st Cir. 2002) (holding that to move to trial a plaintiff's discovery efforts shall either prove the hospital was capable of performing such tests – but did not – or that the exam was cursory.). The immediate awareness of and later diagnosis of both cardiac emergencies and stroke required even-handed use of Franciscan's technology, protocols, and expertise. 42-U.S.C.-§-1395dd(e)(3)(a). Nartey identified not only Franciscan's "written transfer agreement," but also Franciscan's stabilizing treatments including onsite surgical interventions. (Complaint.R#33.p.4-&-p.29-30).

Franciscan's concession that Franciscan prioritized "nourishment" over diagnosed emergency medical conditions, compels setting binding EMTALA authority. [R#33.p.15-¶40]. Nartey alleges that Franciscan withheld expertise and cardiac treatment with the capacity to stabilize from the outset of the emergency encounter. (R#33.p.29-30). Franciscan does not dispute Franciscan's nurse reported "heart damage" in the emergency department. Nartey's specificity in alleging Franciscan's capabilities and EMTALA's mandate that hospitals use their capabilities "to stabilize"

warrant this Court now set binding authority for identifying plausible stabilization claims.

c. Specialized abilities trigger transfer liability.

EMTALA further requires that nothing in the act be used to preempt stricter state requirements. 42-U.S.C.-§-1395dd(f). Illinois requires Franciscan keep a bed guaranteed for hospital transfers available at "at least one" higher level of care hospital via Franciscan's state-mandated "written transfer agreement." 210-ILCS-50/3.117(b)(3)(B) [Complaint.R#33.p.4]. Unlike treatment claims, EMTALA's transfers exclude the individual's formal hospital status. 42-U.S.C.-§-1395dd(c)&(g).

EMTALA requires nondiscriminatory access to any transfer or specialized capabilities and specific paperwork whenever conditions obligate the hospital to transfer the unstabilized. *Id.* Should a hospital attempt to end transfer obligations by declaring death, earlier transfer transgressions are recoverable. Liability persists for all transfer efforts violating EMTALA via the hospital's refusal to ensure proper papers or nondiscriminatory transfer conditions. *Id.* EMTALA relieves "any person" personally damaged who files suit within two years of the last transfer attempt. 42-U.S.C.-§-1395dd(d).

Franciscan's emergency department awareness of a cardiac emergency condition that increased stroke risk and an impending stroke required Franciscan:

> a. "administer thrombolytic therapy or subsequently developed medical therapies that meet nationally-recognized, evidenced-based stroke guidelines," 210-ILCS-50/3.117(b)(3)(D).
>
> and/or
>
> b. Ensure a successful hospital transfer using Franciscan's transfer agreement. 210-ILCS-50/3.117(b)(3)(B)-&-(H). 42-U.S.C.-§-1395dd(g).

Far from discouraging transfers, Seventh Circuit, (App.p.22), EMTALA ensures any hospital transfer is medically necessary and not an act of discrimination. 42-U.S.C.-§-1395dd(c) Hospitals are required to report each other to the government for suspected violations within days of any hospital transfer.[8] 42-C.F.R.-§-489.20(m).

This Court's power to enforce statutory language ensuring the relevance of state law in adjudicating EMTALA claims is needed here. Illinois requires Franciscan use a dedicated stroke unit to care for stroke victims. 210 ILCS/3.117(b) Illinois requires Franciscan's ASRH protocols remain consistent with national guidelines. *Id.* National guidelines reveal Franciscan's protocols would have required neurological services "within 3 hours (provided through transferring the patient)" Appendix-p.43, Chart line 6 in "ASRH" column).

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[8] Zibulewsky J. The Emergency Medical Treatment and Active Labor Act (EMTALA): what it is and what it means for physicians. *Proc (Bayl Univ Med Cent)*. 2001;14(4):339-346. doi:10.1080/08998280.2001.11927785.

Franciscan pre-determined the benefits of transfer would outweigh the risks in cases with acute stroke risk via its "written transfer agreement." (R#33-p.5). Franciscan's emergency department identified stroke risk here. (R#33-p.11). Franciscan withheld transfer to the bed in the dedicated stroke unit specified its transfer agreement. (*Id.*). While Franciscan eventually responded to the hospital transfer requested by Nartey and Mother, Franciscan omitted transfer request records from the full medical record. (*Id.*p.26). Omitted records would show:

1. Franciscan's record of "preliminary diagnosis, treatment provided, results of any tests" at the time of transfer. 42-U.S.C.-§-1395dd(c)(2)(C).

2. "the name and address of any on-call physician . . . who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment. *Id.*

3. Whether it was the receiving hospital or Franciscan that cancelled transfer.

No part of any statute may be made void during judicial interpretation, but must rather be taken in context. *King v. Burwell*, 576 U.S. 473, 135 S.Ct. 2480, 2489, 192 L.Ed.2d 483 (2015) EMTALA compels an "appropriate" *transfer of the unstabilized*:

1. WHEN the patient or her representative requests the transfer after diagnosis. 42-U.S.C.-§-1395dd(c)(1)(A)(i).

2. IF an on-call physician "fails or refuses to appear within a reasonable period of time" thus making a transfer more beneficial. 42-U.S.C.-§-1395dd(d)(1)(C).

3. AS SOON AS the hospital's examiner determines the benefits of transfer outweigh the risks. 42-U.S.C.-§-1395dd(c)(1)(A)(ii-iii).

Thus, the Seventh Circuit's version of stabilization and transfer liability is unconstitutional. Illinois courts and the federal government are required to ensure no person is denied "equal protection of the laws." (U.S. Const., Amend. XIV). Because Nartey personally requested aid and transfer, Franciscan's violations of hospital protocols and EMTALA damage Nartey as acts of discrimination.

B. TITLE VI claims alleging disparate execution of written policy plausibly invoke constitutional protections.

Even if a court could focus on race only to exclude national origin under Title VI, the Seventh Circuit splits from this Court, the Tenth Circuit and clearly established federal protections. App.p.9. This Court holds that race-neutral state laws administered in a prejudicial manner, is an unlawful infringement on protected rights. *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) (discussing anti-discrimination rights under the Equal Protection Clause of the Fourteenth Amendment.) This Court typically relies on the Fourteenth Amendment for Title VI claims and can also look to the

Fourth Amendment, (U.S. Const., Amend. IV providing the "right" for all in America "to be secure in their persons.").

A. Title VI mandates equal benefit for all.

Claims alleging treatment which contradicts written policies required by state law are plausible claims of prohibited discrimination. Had Nartey appealed in the Tenth Circuit, that Court would have reasonably held that Franciscan's freedom excludes any response that contradicts written policy to result in Title-VI prohibited exclusion. *Plotke v. White*, 405 F.3d 1092, 1102 (10th Cir. 2005). Here, Franciscan's Title VI liability stems from Franciscan's undisputed receipt of federal Medicare dollars and its state-mandated written policies. When a written policy sets the action, the defendant should have taken under the circumstances, a Title VI defendant acting contrary that policy commits an adverse act indicative of intentional discrimination. *Plotke v. White*, 405 F.3d 1092, 1102 (10th Cir. 2005). Unlike in *Iqbal*, Franciscan's delay and discriminatory actions cannot be explained by a lawful alternative.

Here, Nartey shares the same West African origin as her mother; Nartey is "black" in these United States[9] and thus of a race/color that can be Title VI protected. Illinois allows surrogate decision makers like

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[9] Daniel J. Sharfstein, Crossing the Color Line: Racial Migration and the One-Drop Rule, 1600-1860, 91 Minnesota Law Review 592 (2007) Available at: http://scholarship.law.vanderbilt.edu/faculty-publications/38.

Nartey "to make medical treatment decisions" quickly "without judicial involvement of any kind." 755 ILCS 40/5. In her role as emergency interpreter and bedside surrogate, Nartey is just as Title-VI-protected as Mother. 45-C.F.R.-§-80.4-(d)(2). Nartey requested transfer to a "hospital specializing in stroke" immediately after Franciscan's neurologist revealed Mother's stroke diagnosis thus ending Franciscan's discretion to offer some treatments over others. When treatment is requested under dire medical circumstances by or for a Title VI protected person, then binding Title VI protections apply. 45-C.F.R.-§-80.4(d)(2) [ROA#36-p.33-¶1-3].

The right to equal benefit is protected by statute. 42-U.S.C.-§-2000d. Franciscan damaged Nartey personally by denying "the opportunity to participate in the provision of services or other benefits to such [Title VI protected] individuals," as required by Title VI and federal regulations. 45-C.F.R.-§-80.4(d)(2). Here, Nartey repeated her medically urgent transfer request five times over seven days. [Complaint.R#33-p.20-¶58-60; ¶62; p.23-¶73-74; p.23-¶74-76; p.24-¶81]. Franciscan made Nartey wait six days before producing the form to initiate transfer, yet Franciscan's undue delay was unlawful.

Considering Franciscan's "written transfer agreement" for stroke, Franciscan's decision to wait then to have Nartey research and select transfer locations to treat stroke created willful injury. "A willful or wanton injury arises from an act "committed under circumstances exhibiting a reckless disregard for the safety of

others, such as a failure, after knowledge of impending danger, to exercise ordinary care to prevent it." *Schneiderman v. Interstate Transit Lines, Inc.*, 394 Ill. 569, 583, 69 N.E.2d 293 (1946). By including dates, times, staff, and Franciscan's transfer agreement in her complaint, Nartey pled the "factual content" necessary to allege plausible Title VI claims. *Johnson*, 574 U.S. 10, 12 (2014).

Resolving the split between the Seventh (App.p.9) and Tenth Circuit heightens considering statistical evidence of rampant Title VI violations. (ROA#36-p.34-¶4-5). "Insofar as statistical evidence of divergent racial patterns is admitted . . . such a showing *cannot be rebutted* by evidence that the divergent . . . patterns may be explained by causes other than race." *Thornburg v. Gingles*, 478 U.S. 30, 32-33 (1986) (on prohibited discrimination and the legal concept of racially polarized voting.) Medical statistics mute any nuances between what "blacks" and "whites" perceive as discrimination.[10]

In research analyzing nearly 400,000 stroke cases in American hospitals with protocols committed to improving the quality of stroke care, the American Heart Association reveals:

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[10] Pew Research Center. Whites and blacks differ widely in views of how blacks are treated. April 2019. https://www.pewresearch.org/social-trends/2019/04/09/race-in-america-2019/psdt_04-09-19_race-00-03/.

1. "Hispanic patients received similar care as their white counterparts," yet blacks did not.[11]

2. Over 1100 US hospitals show "a consistent pattern" of "reduced odds for black patients of receiving guideline-recommended care compared with white patients" despite neutral hospital protocols.[12]

3. Hospitals are nearly 4x less likely to offer stroke care required by protocols when the receiver is black regardless of stroke severity. (*Id.*).

Research shows adults endure "racial/ethnic discrimination" *more frequently than* "financial" discrimination when seeking U.S. healthcare.[13] As such, Nartey remained equally vulnerable to prohibited exclusion as a black translator and bedside advocate. The stroke center in Franciscan's written transfer agreement would have reversed the disabling effects of stroke using "neurosurgical expertise" Franciscan lacked. 210 ILCS 50/3.117(b).

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[11] Schwamm, Lee H. et al. (2010) Race/Ethnicity, Quality of Care, and Outcomes in Ischemic Stroke. Circulation. Vol. *121*, No. 13:1492–1501 doi.org/10.1161/CIRCULATIONAHA.109.881490.

[12] *Id.*

[13] Nong P, Raj M, Creary M, Kardia SLR, Platt JE. Patient-Reported Experiences of Discrimination in the US Health Care System. *JAMA Network Open.* 2020;3(12):e2029650. doi:10.1001/jamanetworkopen.2020.29650.

Franciscan's refusal to reveal that stroke center or to use its stroke hospital transfer agreement to accommodate Nartey's transfer request after diagnosing a severe stoke is consistent with prohibited racially-motivated exclusion.

Considering *Johnson* and *Thornburg* Nartey's allegations make this petition a sufficient vehicle to resolve the split between the Seventh and Tenth Circuits for adjudicating Title VI claims.

B. National Origin Protections Endure

Critically, the Seventh Circuit's exclusion of national origin discrimination defiles Title VI. (App.p.9). Granting certiorari to uphold national origin discrimination as plausible and unlawful in healthcare would be consistent with This Court's precedent in *Lau v. Nichols*, 414 U.S. 563, 567-68 (1974). Hesitation here erases constitutional protections for the:

- 67.3 +-million U.S. residents speaking a language other than English at home.[14]
- 45% of those speaking a non-English language at home who are ***citizens born in the United States***. (*Id.*).

In ignoring Nartey's claims, the Seventh Circuit splits from This Court and from the Fifth Circuit. The Fifth Circuit recognizes that one's "bilingual ability" creates vulnerability to national origin discrimination. *But cf.*

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[14] https://cis.org/Report/673-Million-United-States-Spoke-Foreign-Language-Home-2018.

Chhim v. Spring Branch Indep. Sch. Dist., 396 F. App'x 73, 74 (5th Cir. 2010).

On appeal, Nartey argued existing law makes her claims plausible. Illinois has clearly established that hospitals must provide a licensed interpreter *or other accommodation* to ensure "meaningful communication" in *each* session with a non-native English speaker. 210 ILCS 87/5. Critically, the U.S. Department of Health and Human Services requires special considerations in "an emergency involving an imminent threat to the safety or welfare of an individual . . . where there is no qualified interpreter for the individual with limited English proficiency immediately available." 42-C.F.R.-§-92.101(b)(4)(ii)(A).

During medical emergencies, covered entities may "rely on an adult accompanying an individual with limited English proficiency to interpret or facilitate communication" to ensure compliance with Title VI. *Id.* Thus, when Franciscan refused to provide Mother an interpreter licensed in Twi, Illinois and federal law required Franciscan give Nartey the same access a licensed interpreter would receive. 210 ILCS 87/5 Doing so would have ensured Nartey could fulfill her duty to secure informed consent as the approved volunteer Twi interpreter and promptly consult with Franciscan's emergency medical specialists. Instead, Franciscan waited 14 hours to respond to Nartey's two direct emergency requests to learn clinical results as soon as possible. Discovery allows evidence verifying Nartey's authorization to interpret and her personal damages from Franciscan's undue delay.

Based on the facts alleged, the Seventh Circuit's exclusion of national origin claims splits authority with the Ninth and Tenth Circuits:

- "differential" treatment remains "actionable" as 'national origin' discrimination." *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 154 F.3d 1117, 1120 (9th Cir. 1998).
- A reasonable *jury* could find any explanation offered by a defendant acting inconsistently to be a pretext for national origin discrimination. *Avila v. Jostens, Inc.*, 316 F. App'x 826, 832-34 (10th Cir. 2009).

Considering *Johnson and Thornburg*, national origin splits which most often affect America's majority are equally worthy of this Court's review as the more common color/race-based Title VI claims.

C. Supplemental Jurisdiction prohibits dismissal "with prejudice" of timely fraud claims which satisfy Rule 9.

Federal courts split on the most effective way to uphold both notice-pleading and fraud claim rules. The Ninth Circuit embraces the specificity requirement while honoring notice pleading. In the Ninth Circuit, plaintiffs only "set forth what is false or misleading about a statement, and why it is false." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Here, the Seventh Circuit requires each state-law

fraud claim element at the pleading stage and also denies opportunity to amend while time remains in the statute. (App.p.10). That reading sets a dangerous precedent violating notice pleading rules.

This Court requires federal courts allow amendment for timely claims (*Iqbal*, 556 U.S. 662, 678 (2009)), and remanding claims for consideration of leave to amend. This requirement also applies to claims under supplemental jurisdiction (*Artis v. District of Columbia*, 138 S. Ct. 594 (2018)), holding the clock for supplemental state claims stop upon the filing of a federal action; see also *United States v. Ibarra*, 502 U.S. 1, 4, n.2 (1991), and that "when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped.").

Here, Illinois allows individuals to recover from fraud before knowing the full extent of damages. **815 ILCS 505/2**. Nartey gained the District Court's leave to add Illinois fraud claims before Franciscan answered. (App.p.35 (Transcript), R#21). Under *Artis* and *Ibarra*, Nartey's timely federal complaint, filed with jury demand, gives her the full length of the statute of limitations to litigate and amend claims as needed. Review is warranted to set binding guidelines for the correct application of Rule 9.

Critically, even if there was no split of authority, this Court's intervention is required to uphold the required deference to state courts for state claims under

supplemental jurisdiction. To enforce the constitutional right to one's "papers," Illinois encourages court action when a complete, accurate copy of requested medical records is not produced within 30-60 days. (U.S. Const., Amend. IV; 735 ILCS 5/8-2001(c)). Illinois has five elements which must be proven to recover from fraud. *Abazari v. Rosalind Franklin Univ. of Med. & Sci.*, 40 N.E.3d 264, para. 27 (Ill. App. Ct. 2015) (quoting *Bauer v. Giannis*, 359 Ill. App. 3d 897, 902-03 (2d Dist. 2005)).

Any perceived failure to alleged all five elements is not fatal to Illinois claims, *Grove v. Carle Foundation Hospital*, 364 Ill. App. 3d 412, 417 (2006), holds courts must "liberally" allow amendments for fraud claims "whenever a potential medical malpractice claim exists" rather than have "procedural technicalities" terminate opportunities to establish a case. Moreover, *Burke v. 12 Rothschild's Liquor Mart*, 148 Ill.2d 429, 593 N.E.2d 522, 170 Ill.Dec. 633 (1992) ensures that a plaintiff's missteps cannot be compared to a defendant's willful and wanton conduct to reduce the amount of damages.

Here, the Seventh Circuit overstepped Illinois' *Grove* and *Burke* to require "justifiable reliance" at the pleading stage and deny Nartey any amendments. Franciscan first denied Nartey's oral request to review medical records she had a legal right to access them at bedside. (R#33-p.20). In response to Nartey's later written record request with the required signatures, Franciscan provided some records, but omitted others.

(*Id.*-p.26-27). Nartey pled she was justified in relying on provided records since:

1. Illinois law requires Franciscan promptly provide complete and accurate records in response to any lawful written request or face fines under "HIPPA." (R#33-p.61).

2. Experts who reviewed the records as provided were also duped.

Unlawful falsification and tampering with medical records include: "removing a diagnostic report, inserting information without standard documentation, rewriting or destroying the record, omitting significant facts, or even creating records for nonexistent patients or staff."[15] Franciscan intended for Nartey to rely on those partial records because, as a hospital, Franciscan knows any altered records prevent action against named doctors and nurses in privity with Franciscan.

Critically, even if Nartey could have discovered Franciscan's fraud faster, *Burke v. 12 Rothschild's Liquor Mart*, 148 Ill.2d 429, 593 N.E.2d 522, 170 Ill.Dec. 633 (1992) ensures that one's missteps cannot be compared to a defendant's willful and wanton conduct to reduce the chance to collect damages when claims are timely.

As such, confirming proper interpretation of fraud claims at the pleading stage for all litigants is

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[15] "Falsifying Medical Records and Identifying Missing or Misleading Information." Med Law Advisory Partners. Last reviewed February 27, 2021. Originally published July 2017. https://medlawadvisory.com/medical-records-altered.

warranted here because Nartey's claims are timely. Nartey discovered her injuries within both the three-year window to bring general fraud claims and within the required four-years for actions against hospitals. 735 ILCS 5/13-212. Even if Illinois' two-year limitations period for medical patients could apply to Nartey as a non-patient, the district court record and Rule 15 preserve Nartey's claims. First, Nartey filed her federal action on August 3, before the 2-year August 17, 2018 deadline for her EMTALA and Title VI claims. [R#1]. Second, Nartey's Illinois fraud claims added by amendment "relates back to the date of the original pleading" as those claims "arose out of the conduct" in that pro se pleading. (Rule 15(c)(1)(B)).

Dismissing fraud claims with prejudice while statutory time remains defiles the constitutional right to resolve claims exceeding "twenty dollars," by the jury trial (U.S. Const., Amend. VII). Nartey included jury demand in her action and Illinois protects the right to recover fully. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d. 217 (2010) and *Best v. Taylor Machine Works*, 179 Ill.2d 367, 413-14 (1997) (finding "caps" on damages recoverable during jury trial unconstitutional.)

This Court preserves jury trial right when statutes "create legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 193-94, 94 S.Ct. 1005, 1007-08, 39 L.Ed.2d 260, 265-66 (1974). Illinois' 815 ILCS 505/2 and 735 ILCS 5/13-215 ensure *Curtis* applies here. This Court can rely on *Iqbal*, *Artis*, and *Curtis* to grant review of the Seventh and Ninth Circuits' split over the federal pleading standards for fraud claims.

II. Post-judgment relief upholds procedural due process.

A. Judicial inconsistency blocks due process in violation of Rule 52.

The Seventh Circuit held Nartey's move for Rule 52(b) relief was "without merit (App.p.11)," but This Court holds otherwise. Nartey's Rule 52(b) motion for additional findings was "filed no later than 28 days after the entry of judgment," as part of her Rule 60 motion. The Supreme Court requires that this Court act using Rule 52(b) when (1) the error exists, (2) the error is "plain" and (3) the error affects "the outcome of the district court proceedings." *United States v. Olano*, 507 U.S. 725, 733 (1993). Thus, Rule 52(b) relief is available to correct three judicial errors preventing due process in district Court proceedings. *Id.*

First, the district court did not notify Nartey of her right to object when Franciscan disobeyed the district court summons. (App.p.33). Hearing transcripts show Franciscan lacked excusable neglect and had no meritorious defense prepared when it filed no response or appearance by the date on the district court summons. (App.p.33, lines 5-18). Yet the District Court granted leave. *Id.* (App.p.34). Had the district court let Nartey know she could object to Franciscan's request made while in default, Nartey would have objected and then requested time to meet with a volunteer attorney to put the legal grounds for her objection in writing and move under Rule 55. (App.p.22, line 19-end of page). A Rule 55 move conserves judicial resources and allows justice on the merits:

1. Avoid time wasted in on any motions to dismiss since Franciscan lost the right to defend against claims on January 19, 2019. (R#).

2. Prevent expending appellant resources should the district court err again at the summary judgment stage to force Nartey to appeal.

3. Ensure the trier of fact (a jury) proper opportunity to resolve Nartey's case on the merits after a preponderance of the evidence.

Nartey's objection and move on appeal to correct error allows This Court "discretion under Rule 52(b) to correct 'plain errors or defects affecting substantial rights,'" *United States v. Olano*, 507 U.S. 725, 733 (1993) (citing *United States* v. *Atkinson*, 297 U.S. 157, 160 (1936)).

Second, the district court outcome was marred by the district court's attempt to join Nartey's claims with Mother's. (R#10,13). Nartey was harmed differently than Mother under both EMTALA and Title VI. (App.p.45-47). While any injury to Mother would be medical, Franciscan injured Nartey by restricting her legally protected rights. Each harmed party can pursue relief independently of the other. (Rule 20(b); Rule 42(b)).

Third, the District Court's termination of the case in the same order denying Nartey's pro se motion for an extension of time gave Nartey no opportunity to comply with specified local rules. (R#49). Nartey objected

to the entry of judgment (R#53, R#57) and showed a willingness to comply with rules by using the formal Rule 60 process for relief. (R#61-63).

B. Omissions during Rule 60 review set dangerous precedent denying Rule 15's leave.

The Seventh Circuit's refusal to consider the material of this pro se litigant's Rule 60 motion seeking leave to amend threatens the integrity of the legal system. (App.p.11). "Courts enforce the requirement of procedural regularity on others, and must follow those requirements themselves." *Hollingsworth v. Perry*, 558 U.S. 183, 184 (2010). Rule 15 requires "The court should freely give leave when justice so requires." Rule 15(a)(2). States also prefer justice on the merits, decreeing that courts "may extend the time for filing any pleading or the doing of any act which is required . . . either before or after the expiration of the time" upon motion. (Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011)).

Using Rule 15 with 60 heightens the court's mandate to ensure "justice" in its response. (Rule 15a)(2), Rule 1). Rule 60(b) ensures "surprise," "mistake," and "inadvertence" are considered worthy of relief while judges maintain their discretion. Rule 60(d) when used allows courts to "entertain an independent action to relieve a party from a judgment, order, or proceeding" independent of Rule 60(b)'s reasons. A district court's failure to adjudicate the proposed amended complaint

when Rule 15 is used results in prompt reversal. *Foster v. Deluca*, 545 F.3d 582, 585 n.1 (7th Cir. 2008) (citing "whether the proposed amended complaint would survive a Rule 12(b)(6) motion" is "something that the district court should revisit on remand.").

During Rule 60(b) review, the Seventh Circuit overlooked *Foster* and Rule 15 when it omitted:

> 1. Nartey's move under Rule 15 which attached her proposed amended and supplemental complaint while complying with the local rules cited in the District Court's sanction. (R#61-63, App.p.11).
>
> 2. Nartey's affidavit (App.p.27-31) explaining the surprise which caused her delay to earn relief under either Rule 60(b) or 60(d). (App.p.11).

Rule 60's relief for "surprise" and "mistake is especially applicable when the litigant takes quick action. Contrary to the Seventh Circuit's assessment, the record shows pro se Nartey preserved her right to relief and ensured consistent communication with both the district court and Franciscan's counsel. (App.p.29, Affidavit). After losing all the material on her hard drive, Nartey generated a new proposed amended complaint, from scratch. (App.p.28). To improve upon her work, Nartey also consulted a Hibbler Pro Se assistance volunteer attorney. *Id.* Within 28 days of judgment, Nartey submitted her proposed amended and supplemental complaint with an affidavit (App.p.27-30) that also explained the surprise that inadvertently caused of her delay. (R#61-63).

The District Court *did not* identify any defects in Nartey's proposed amended and supplement complaint. (App.p.12-13). Rather, the District Court took "well note of the very organized presentation that Miss Nartey has presented," before denying relief. (App.p.38-40, Transcript).

In further offense to procedural regularity, The Seventh Circuit only considered relief under Rule 60(b) when Nartey moved under both Rule 60(b) and (60(d). (App.p.11). In omitting Rule 60(d) as an alternative to Rule 60(b) relief, the Seventh Circuit "mistook the scope of its discretion and the nature of the problem." *Pearson v. Target Corp.*, 893 F.3d 980, 987 (7th Cir. 2018) (reversing due to the district court's omission of Rule 60(d) review when a litigant raised the argument). Franciscan never argued relief under Rule 60(b) or 60(d) would cause undue prejudice. (App.p.37-40, Transcript). With no argument of prejudice, the Seventh Circuit's omission of the required Rule 60 factors creates precedent for all courts to abuse judicial power.

This Court's review to enforce "procedural regularity" demanded in *Hollingsworth* is as warranted as any review to create binding authority for the plausibility of Emergency Medical Treatment and Labor Act, Title VI of the Civil Rights Act, and fraud claims.

CONCLUSION

For the above reasons, PRO SE PETITIONER Isabella Nartey respectfully requests This Court GRANT Writ of Certiorari in *Nartey v. Franciscan.*

Respectfully submitted,

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