21-6603

No. _____

ORIGINAL

In the
Supreme Court of the United States

Joanna Blauch,
Petitioner,

v.

City of Westminster, Colorado, et al,
Respondents.

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

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PETITION FOR WRIT OF CERTIORARI

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December 10, 2021

QUESTIONS PRESENTED

Petitioner was strangled.

Purple bruised strangulation marks appear on her neck in photographs police took. She only made physical contact with the strangling hands trying to get them off her neck to defend her life. Since November 19, 2015, everyone— including 10+ judges capable of easily fixing what happened— leaves these facts unrefuted.

The strangling occurred in a municipality notorious in public reports "much published across various media outlets and public forums by various reporters, of "lawsuit avoidance" to "stay ahead of the ACLU" by falsifying and ignoring material evidence in multiple reported cases. Yet, their mayor, city councilors and managers are observed in public reports allowing violations of protected rights to continue despite abundant notice in various forms." Aplt.App.241,¶18

Petitioner averred verbatim systemic conditions— "full factual backdrop"— intertwining impermissible gender-based discrimination, denial of equal protection, and retaliation for asserting federally secured protected rights causing "culminative act" of municipality's fabricated evidence being used in subsequent proceeding.

Record documents screeners' pattern of processing this non-prisoner as prisoner complaint, distorting verbatim facts averred, lacking comprehension of well-established legal principles, and repeatedly subjecting Petitioner to non-standard procedural hurdles. Record also shows repeated diligent attempts to mitigate screener's documented ongoing harm to amendment opportunity being rebuffed.

Tenth Circuit never disputed Constitutional injury-in-fact.

"[A] victim of intentional fabrication of evidence by officials is denied due process when [] either convicted or acquitted" *Cole v. Carson*, 802 F.3d 752,768 (5th Cir.2015) "The Court fails to grasp how this is a relevant distinction. Fabricated evidence is fabricated evidence." *Avery v. City of Milwaukee*, 40 F. Supp. 3d 1089, 1095 (E.D. Wis. 2014)

Named defendants are statutorily-mandated legal custodians of public records system: a function without discretion to enter false statements. They manage and control custody of its contents. Some of them are licensed attorneys. Entering false statements into public records and leaving it there uncorrected rises to both state and federal criminal culpability. This is an easy fix.

Instead of easily fixing this Constitutional injury-in-fact with demonstrated legal

culpability by those directly responsible, Tenth Circuit's analytical gymnastics distorted defendants' direct responsibility, deepening circuit split irreconcilably blocking court access. Instead, completely sidestepping evidentiary nexus of the challenged conduct that disseminated false statements remain in public records.

Circuit splits splinter out around applying sufficient pleading of supervisory liability. Pro se indigent petitioners are particularly illiberally impacted. Despite direct evidence averred verbatim, Tenth Circuit ignores ongoing live controversy, contradicts verbatim record in framing unsupportable conclusions, and condones dissemination of false statements in public records. Questions presented are:

1. Whether ignoring live controversies defies U.S. Supreme Court justiciability standards requiring cause applied to injury-in-fact?

2. Whether condoning dissemination of false statements in public records defies Constitutional interests at stake?

PARTIES TO THE PROCEEDING

Screening procedures at District and Circuit courts prevented named defendants being haled into court. Petitioner Joanna Blauch is Plaintiff in District and Appellant in Circuit. Respondents City of Westminster, Colorado, Donald Tripp, Herbert Atchison, Anita Seitz, David DeMott, Kathryn Skulley, Bruce Baker, Alberto Garcia, Emma Pinter, Maria De Cambra, Shannon Bird, Mark Brostrom, and Tiffany Sorice are Defendants in District and Appellees in Circuit.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, only known corporate party is City of Westminster, Colorado; incorporated as home rule municipality.

LIST OF RELATED PROCEEDINGS

United States Court of Appeals for the Tenth Circuit; No. 20-1430; Joanna Blauch, Appellant, v. City of Westminster, Colorado, et al, Appellees
Date of order denying rehearing en banc: July 16, 2021
* A copy of this order dated July 19, 2021 is attached at Appendix E.

United States District Court for the District of Colorado; 1:20-CV-00431-LTB-GPG No. CV-19-00370-PHX-SRB; Joanna Blauch, Plaintiff, v. City of Westminster, Colorado, et al, Defendants
Date of dismissal order: October 20, 2020

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APPENDIX A: Copy of this Court's Order dated July 19, 2021 for timely filing.

APPENDIX B: Copy of Appellants'[sic] Opening Brief (App.Br.) – Tenth Circuit's consideration of full appeal was based solely on this briefing despite ignored request for oral argument and no named defendants ever being haled into court.

APPENDIX C: Copy of panel opinion issued June 16, 2021 dismissing case entirely.

APPENDIX D: Copy of Petition for Rehearing En Banc timely filed on June 30, 2021. Appendix 4 attached to this specific filing includes copies of two motions filed contemporaneously both also pertinent to this petition. First is "Motion [] Judicial Notice of Several Pertinent Facts." Second is "Motion for renewal of IFP application with modest update of receiving public assistance food benefits and increased medical care and referral for enhanced treatment." As of the date of this filing, neither motion has ever been ruled on, much less even referenced in any case dispositions.

APPENDIX E: Copy of Order issued July 16, 2021 denying Petition for Rehearing En Banc.

APPENDIX F: Copy of Second Amended Complaint (SAC) filed July 31, 2020.

APPENDIX G: Exhibit outlining organized factual headings and sub-headings from initial through first and second amendments to demonstrate definitive "cohesive[ness]" in pleading, however "in artful."

APPENDIX H: Copy of ECF No. 16-2 – July 31, 2020 correspondence to Magistrate Judge Gallagher, assigned as signatory for screener, filed contemporaneously with SAC with subject line addressing "ongoing concerns of repercussion to amendment."

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PETITION FOR WRIT OF CERTIORARI

Desperate Americans without alternatives are routinely denied remedial court access for legally cognizable controversies. One among rapidly growing masses, Petitioner invokes jurisdiction for Writ Of Certiorari to Tenth Circuit Court of Appeals in *Blauch v. City of Westminster, Colorado, et al*, 20-1430.

OPINIONS BELOW

Panel opinion (Appendix C) denied solely on Appellant Opening Brief(App.Br.), (Appendix B). To fully grasp what happened here, Petition For Rehearing En Banc (Appendix D); Order denying (Appendix E); and Amended Complaint(SAC) (Appendix F).

JURISDICTION

Panel opinion issued June 16, 2021. Tenth Circuit denied Petition for En Banc Rehearing July 16, 2021. According to this Court's July 19, 2021 Order, this petition is timely filed. See Appendix A. Jurisdiction invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

This petition grounds substantively in 42 U.S.C. § 1983, First Amendment Right to Petition for Redress and Fourteenth Amendment Due Process provisions. Statutory and regulatory provisions involved, cited herein, relate to culpable. Claims asserted below involved additional provisions. See SAC, Appendix F.

STATEMENT OF THE CASE - VERBATIM FACTS OF RECORD

Appellant Brief (App.Br.) verbatim: "Either home rule municipalities condone fabricating evidence in courts of public record or they don't....Without immunity assessed for 11 of 13 defendants— without applying misjoinder or demonstrably equitable review standards— arbiter simply misapplied law into legal conclusions onto distorted literally unreal facts....significant areas otherwise left insufficient for appellate review. Review is de novo. Fed.R.Civ.P.21. *Skaggs v. Otis Elevator Co.*,164 F.3d 511,514 (10th Cir. 1998)(holding...decision... normally reviewed for an abuse of discretion...reviewed de novo "[w]hen the district court's decision turns on an issue of law")." App.Br.2

Significant substantially corroborated materially relevant facts undisputed here. Petitioner defended her life making physical contact to remove strangling hands from her neck. (undisputed since November 19, 2015) Including sworn verbatim witness testimony, municipal actors documented falsifying statements into public records and withholding materially relevant evidence. (undisputed by Circuit) Defendants received actual written and published notice existing practices of ongoing Constitutional violations. (undisputed by Circuit) Petitioner suffered injury-in-fact. (undisputed by Circuit)

1. "Why is that not conscience shocking?"

It happened again three years later. Another woman was raped in the same place Petitioner reported. That woman also came forward and when Denver police once again did nothing to deter, she sued.

Without naming names, she specifically cited "prior instance of sexual assault." She didn't have to because that "prior instance of sexual assault" in that same place was reported by a real live person— Petitioner.

That other woman even had an attorney fighting for her. Still, judge claimed that "prior instance of sexual assault" was "insufficient" and "non-specific" even though this plain simple fact shows that place has horrific "history of violence." See [*redacted to protect her privacy*], Civil Action No. 17-cv-02238-PAB-NRN (D. Colo. Sep. 30, 2018) and Aplt.App.124-5,¶30 A fact outside Petitioner's pleadings is that Petitioner contacted that other woman's attorney after that case was dismissed to offer copy of Petitioner's police report about that same place and her attorney was surprised. Meaning— the number of women raped there is even larger.

"Enough damage has been done. Why is that not conscience shocking? When will you make it all stop?" Aplt.Br.3

The rape that Petitioner reported in Denver was irrelevant to being strangled five days later. Sole relevancy was neck photographs showing absence of purple strangulation marks were authenticated with rape kit examination origin mere hours BEFORE Petitioner was strangled AFTER in Westminster's jurisdiction.

They portrayed proven strangler as "nice guy." They twisted fact Petitioner was raped five days prior to being strangled to suggest Petitioner merely "acting out" woman. As if resisting being raped is merely "acting out."

Instead of engaging with plainly simple evidentiary nexus— since November 19, 2015 strangulation is unrefuted and therefore lawful self-defense— Tenth Circuit

engaged in scandalous factual presentation, cherry-picking among otherwise wholly distorted facts. Sufficient pleading requires factual context for understanding why any government actor would choose fabricating evidence to leave a proven strangler roaming free while actively discriminating against a woman defending her life against attempted murder by strangulation.

Yes, there was an arrest. And— a known wrongful conviction. Right upfront, Panel appears suggesting otherwise nonexistent scandal on Petitioner's behalf.

Petitioner has nothing to hide or be ashamed of. Self defense is an equal right. Along with ever-daily growing masses of us— Petitioner's experience shows whatever the rhetoric, American women still do not have fundamental right to simply stay alive.

2. Court-ordered pleading deficiency: non-standard procedural hurdles.

"Procedural history here demonstrates observable divergence from procedural protections afforded all litigants equally." Aplt.App.311 Objections also focused attention on screener issues likely contributing to referenced apparent "factual blindness." "As recorded, the reviewer was consistently notified that asserted claims here do not live in isolation. Nor, are they neat "slip-and-fall" packages. See ¶¶13-32 of ECF No. 4 (with constructive example of how "pertinent factual averments [here] are layered, intersecting and concern the public interest.")" Aplt.App.313-314" App.Br.19-20

Record documents substantial nonstandard procedural hurdles imposed. Record documents repeated patterns of screener claiming verbatim facts non-existent while distorting almost all others into "visible fiction"; lacking comprehension of well-established legal principles; and processing non-prisoner as prisoner complaint. Refusing to mitigate harm to amendment opportunity, screener repeatedly rebuffed motions for clarification.

Without basis in any local or federal procedural rule, screener ordered specific materially relevant facts barred from pleading while ordering adequate room to plead sufficiently slashed. See Appendix G outlining organized factual headings and sub-headings from initial through amendments. See also Appendix H, correspondence imploring Magistrate mitigation of amendment harms.

3. Corroborating "background evidence" of all claims asserted.

Comprehensive factual pleading does not conflate to "prolix," even for punitively impatient screeners. "Full factual backdrop here includes **substantiated, not**

speculative, documented direct evidence also publicly reported; multiple civil rights lawsuits filed against them; and multiple notices from the ACLU and others of ongoing violations of federally secured protected rights of persons subject to their court system. Associated municipal actors **wrote and published** their functional understanding of **Westminster's policy to "stay ahead of the ACLU" grounded in "lawsuit avoidance."** Aplt.App.241,¶18" (Emphasis added.) App.Br.3

"As recorded, the reviewer was consistently notified that asserted claims here do not live in isolation. Nor, are they neat "slip-and-fall" packages. See ¶¶13-32 of ECF No.4 (with constructive example of how "pertinent factual averments [here] are layered, intersecting and concern the public interest.")" Aplt.App.313-314

There is a distinct difference with "slip-and-fall" or "excessive force" types of claims based on "isolated incidents." Claims requiring showings of "practices" or "customs" accepted by those who must take action when they are documented receiving multiple notices that their legal and fiscal responsibilities require active corrective responses to ongoing violations of protected rights in both this action and as documented with others, also require that background evidence (clearly distinct from incidental evidence) be applied by the screener as they meet specific factual sufficiency." App.Br.32-33.

4. Culminative act— "complete and present cause of action."

"Where, for example, a particular claim may not realistically be brought while a violation is ongoing, such a claim may accrue at a later date." *McDonough v. Smith,* 139 S. Ct. 2149, 2155 (2019)... Pleadings repeatedly emphasized [] culminative act served as the "complete and present" basis for this cause of action. Especially— as **the foundational injury occurring with the conduct of using the fabricated evidence** only became "real" when it "actually exist[ed]." Further— "[w]ere remedy available to Plaintiff in federal habeas the possibility remains that other grounds independent of these might render these claims moot." Aplt.App.262,¶78" (Emphasis added.) App.Br.5

"Mostly direct evidence, specific facts in tabular format at ¶60, comprehensively outline how culminative act of creating, inserting and leaving fabricated evidence uncorrected in public records then used against you "hindered [] efforts to pursue a legal claim." *Lewis v. Casey,* 518 U.S. 343,351 (1996) Aplt.App.253-7,¶60 Because of

vast convoluted factual distortions Objections described— whether corresponding legal principles affirming remedy for barred access with damaging fabricated evidence remaining in public records foreclosing state remedial access "when access to applicable state court procedures was extinguished" were ever applied is otherwise insufficient for appellate review. *See* Aplt.App.322-38 and Aplt.App.242,¶21

Conduct specifically described verbatim, including applicable background evidence, demonstrates intentionality. Repeated refusals to correct misconduct serving to bar access no matter how many times both direct and constructive notice was received within the municipality was a series of intentional acts sufficient to support an access to courts claim. An access claim requires a plaintiff "to allege intentional conduct interfering with [written legal communication], and does not require an additional showing of malicious motive. *See Simkins v. Bruce*, 406 F.3d 1239,1242 (10th Cir. 2005)" App.Br.25-26

5. Legally mandated custody of public records allows no discretion for entering and leaving false statements uncorrected.

"Colorado criminalizes "[a]buse of public records" when any person "knowingly makes a false entry in or falsely alters any public record" which "includes all official books, papers, or records created, received, or used by or in any governmental office or agency." *See* Colo.Rev.Stat.§§13-6-310 and 18-8-114.... Guide to Judiciary Policy § 1410.10 further defines federal fraud as an "intentional, wrongful act to obtain ... advantage or benefit" and "includes ... false statements."Aplt.App.252,¶57

Further, defendants are "custodian[s] of associated public court records by law... function[ing] as a final policymaking arm of the municipality's court system." That, defendants included "several licensed attorneys...notified of lawsuits filed against the municipality, yet none ever moved to cease any violative practices giving rise to them." That, defendants had "knowledge that their tacit approvals of these documented illegal practices, as custodians of public records, that rises to criminal culpability is in immediate need of correction." Aplt.App.263,¶82.

6. Violations continue— retaliation demonstrated— court access remains barred.

"Emphasized throughout is the blossoming of accumulated harms culminating in the act of creating and inserting fabricated evidence into public records remaining statutorily held in municipal custody and wherefrom it was subsequently used against Plaintiff. Here, the violations continue every day the fabricated evidence

remains in public records within the municipality's legal custody compounded by the municipality's active undeterred concealment of other material evidence. Relief sought serves only to lift the resulting court access bar." Aplt.App.319-20"App.Br.28

"Multiple witnesses stated the municipality systemically systematically classified Appellant with impermissibly discriminating gender-based stereotype of "acting out woman" who needs to be "settl[ed] in [] place," because she also belongs to a sub-class of domestic violence victims also reporting being raped. Legal expert testified at least nine times over it was a pervasive "can of worms." Aplt.App.245, ¶34

Further, witnesses also stated associated municipal actors clearly expressed retaliatory motive against Appellant's seeking of legal redress. Aplt.App.247-8,¶43 ...[O]riginal trial judge who was employed there for 12 years is documented as summarily resigning the very next day, without notice, after Appellant confronted ongoing substantial denials of significantly protected civil rights anyone ever faces against core civil liberties. Aplt.App.248,¶45

In publicly available records of municipal decision-making meetings no existing evidence appears showing any direct or inferred corrective actions were ever taken by any named defendant. Nor, does any corrective plan appear despite legal and fiscal accountability as paid elected public officials. Aplt.App.242-3,¶26" App.Br.3-4

"Even without explicit reference to any discoverable conspiracy— attorneys especially those also judges and prosecutors— are statutorily licensed presuming awareness of required withdrawal from conduct that aids and abets criminal culpability. See liability rule well-established in *Pinkerton v. United States*, 328 U.S. 640 (1946). SAC's ¶¶20-21 first detail how court access remains barred with falsified municipal "custodial public records" and "access to applicable state court procedures was extinguished."..."Colorado criminalizes "[a]buse of public records" when any person "knowingly makes a false entry in or falsely alters any public record." Aplt.App.241, ¶¶20-21; Aplt.App.263,¶82; and Aplt.App.252,¶56. Despite apparent notice of false statements in their public records, the only existing evidence is of consistent corrective refusals by municipal custodians. See C.R.S. 24-72-307." App.Br.27-28

GRANTING THE PETITION IS NEEDED.

"I was forced into Jeffrey's room to be raped by Ghislaine. Ghislaine is as responsible— if not more." - Sarah Ransome, author of "Silenced No More:

Surviving My Journey to Hell and Back," CBS News interview with Gayle King, December 7, 2021 As with Epstein's sex trafficking survivors, those with **"direct responsibility"** for stopping wrongful concretely harmful conduct are just as responsible— if not more.

"The most difficult question in interpreting *Twombly* is what the Court means by "plausibility." *Robbins v. Oklahoma*, 519 F.3d 1242,1247 (10th Cir. 2008). Significant functional difference exists between claim's substantive elements and standards used to evaluate complaints. Ever since announcing "plausibility pleading" in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), this Court has not specifically addressed applying plausibility standard to pro se complaints.

Conversely, courts increasingly bar court access contradicting 28 U.S.C. § 1915 legislative purpose increasing indigent court access. Tenth Circuit significant perpetrator barring court access demonstrated in repeated admonishments against illicitly illiberal practices twice within this decade.

Given this Court's delayed ruling in *Erickson v. Pardus*, 551 U.S. 89 (2007) while deciding *Twombly,* applying freshly announced rulings within two weeks, indicates intending *Erickson* demonstrate application to pro se pleadings. Pro se prisoner sued federally in Colorado District alleging "deliberate indifference" including under Fourteenth Amendment when treatment for active hepatitis C summarily withheld. Petitioner objected to Magistrate's dismissal recommendation.

"Motion for Expedited Review Due to Imminent Danger..."undisputed" that he had hepatitis C, that he met the Department's standards for treatment...and that "furtherance of this disease can cause irreversible damage ...possible death...that he was "in imminent danger"...due to [] refusal to treat" He also appealed as Petitioner did here denied by same District Judge Babcock. Tenth Circuit affirmed "quot[ing] extensively" from Magistrate's "discussion of "substantial harm" before holding... only conclusory allegations...[of suffering] cognizable independent harm [resulting from] removal from the [hepatitis C]treatment." *Id* at 92.

Concluding thus, "court saw no need to address whether the complaint alleged facts sufficient to support a finding [around] "sufficiently culpable state of mind." *Id* at 93. "The complaint stated that...remov[ing] petitioner from his prescribed hepatitis C medication was "endangering [his] life."...medication was withheld "shortly after" petitioner had commenced a treatment program...that he was "still in need of treatment for this disease," and [] officials were in the meantime refusing to provide treatment...This alone was enough to satisfy Rule 8(a)(2). Petitioner, in

addition, bolstered his claim by making more specific allegations in documents attached to the complaint and in later filings." *Id* at 94.

Significantly, *Erickson* cited litany of longheld precedents, without qualifying any definitions of "conclusory" and signaling pleading standards, especially liberal for pro se, still very much in force. "In addition, when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint. *Bell Atlantic Corp. Supra*, at 555-556, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929, 940, 2007 U.S. LEXIS 5901, *22 (citing *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508, n. 1, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974))." *Id.*

This is classic case where defendants have **"direct responsibility"** for concrete injury-in-fact. This Court explicitly admonishes against dismissing pro se pleading sufficient causation. Returning to Tenth Circuit as repeat offender a decade later, courts are "required to interpret the *pro se* complaint liberally, and when the complaint is read that way, it may be understood to state [] claims that could not properly be dismissed for failure to state a claim." *Sause v. Bauer*, 138 S. Ct. 2561,2563 (2018)

A leading outlier, Tenth Circuit now among growing split around heightened pleading requirements, especially against this Court's repeated liberal *pro se* admonition. Here, split demonstrates exponential reach with condoning "blatant contradict[ions]" of specific verbatim facts to erase sufficiently pleaded "deliberate indifference" to "foreseeable consequence" of "recurring Constitutional violations" caused by "fairly traceable" "affirmative link" to those "directly responsible" for irreconcilably blocking court access.

Inconsistently contorting *Iqbal*'s liability holdings— especially— lower courts pass and pass and pass the liability buck with pleading sufficient causation leaving only a shell game blocking court access. Significantly— bleeding into two-tiered justice particularly impacting pro se indigent filers required to navigate through analytical gymnastics of functional summary judgments.

I. CONFLATING PERSONAL INVOLVEMENT WITH DIRECT RESPONSIBILITY PLEADING DELIBERATE INDIFFERENCE SUFFICIENTLY SPLINTERS SUPERVISORY LIABILITY SPLIT THROUGHOUT CIRCUITS IRRECONCILABLY BLOCKING COURT ACCESS.

This is a classic case challenging systemic conditions impacting "class of one."

Twombly's "alternative explanation" exacerbated by *Iqbal*'s "purpose" continues splintering circuits split with uncertainty around first constructing then applying supervisory liability standards. Moving ahead from *Iqbal*'s directives requires "purpose rather than knowledge" sufficiently imposing supervisory liability. *Ashcroft v. Iqbal*, 556 U.S. 662,677 (2009) Though, *Ziglar v. Abbasi*, 137 S.Ct. 1843,1864 (2017) fairly recently upheld traditional construction of supervisory liability claims seemingly outside of *Iqbal*'s constraints ruling "the substantive standard" for sufficient pleading is showing "deliberate indifference" to "abuse."

Dual-natured split contouring redress altogether denying remedial court access to remedy constitutional wrongs by accountable governmental actors is extensive. Abundant examples exist capable of further substantial briefing. Foundational examples further understanding of primary importance to questions presented. Justiciability requires clear direction confronting "real controversy with real impact on real persons" *American Legion v. Am. Humanist Ass'n,* 139 S. Ct. 2067,2103 (2019)(GORSUCH, J., concurring in judgment)

IA. Post-*Iqbal* liability standards inconsistently construct among circuits around contours of personal involvement of deliberately indifferent supervisors.

How to construct supervisory liability after *Iqbal* recurs resoundingly among split examples. Despite **specific facts existing verbatim**, District claimed "personal[] involve[ment]" deficiently demonstrated. Though, also citing Circuit's seminal delineation applying sufficient supervisory facts: "(1) the defendant promulgated, created, implemented or possessed responsibility for the continued operation of a policy that (2) caused the complained of constitutional harm, and (3) acted with the state of mind required to establish the alleged constitutional deprivation." *Dodds v. Richardson,* 614 F.3d 1185,1199 (10th Cir. 2010)

Constructive distortions also construct inconsistent internal circuit tangles of sufficient supervisory pleading. *Dodds* also clearly states: "Personal involvement does not require direct participation because § 1983 states "'[a]ny official who "causes" a citizen to be deprived of her constitutional rights can also be held liable.'" *Id* at 1195. Further, *Dodds* "did not view these requirements as necessarily distinct....personal direction or knowledge of and acquiescence in a constitutional violation often sufficed to meet the personal involvement, causal connection, and deliberate indifference prongs of the affirmative link requirement for § 1983 supervisory liability." *Id.*

Pahls v. Thomas, 718 F.3d 1210,1225 (10th Cir. 2013) reaffirmed scope: "personal-involvement requirement **does not mean, however, that direct participation is necessary.**" (Emphasis added.) Yet, very next year without further defining, *Walton v. Gomez (In re Estate of Booker)*, 745 F.3d 405,435 (10th Cir. 2014) added: "[t]he contours of the first requirement for supervisory liability are still somewhat unclear." *Walton* also recognized dichotomous application of the second sufficient supervisor liability element, stating surviving *Iqbal* entails "supervisor's own unconstitutional conduct, **or at least, conduct that set the unconstitutional wheels in motion.**" *Id.*(Emphasis added.)

Another year later, recognizing liable "requisite state of mind" with "supervisory responsibility." *Cox v. Glanz*, 800 F.3d 1231, 1240,1249 (10th Cir. 2015). Again only another year later, affirming "we concluded in *Dodds* that **personal involvement may be established by a supervisor's responsibility for policies.**" *Keith v. Koerner*, 843 F.3d 833,838 (10th Cir. 2016)(Emphasis added.)

Deepening circuit split wraps around "deliberate indifference" mens rea element intersecting, sometimes conflated with, scope of "personal involvement" remaining causally ambiguous. Ninth Circuit at one end finding sufficient "knowing failure to act in the light of even unauthorized abuses." *al-Kidd v. Ashcroft*, 580 F.3d 949,976 (9th Cir. 2009), rev'd on other grounds, 563 U.S. 731 (2011). Regardless, legal scholars note "deep[] divide[]" internally regarding Ninth Circuit's supervisor liability. *Evans*, 65 SYRACUSE L.REV. at 164.

Conversely extreme, both Fifth and Seventh Circuits hold supervisor liability lacks independent viability. Only if "a supervisor . . . implement[ed] an unconstitutional policy," does liability attach in Fifth Circuit. *Carnaby v. City of Houston*, 636 F.3d 183,189 (5th Cir. 2011). *See also Barkes v. First Corr. Med., Inc.*, 766 F.3d 307,318 (3d Cir. 2014) rev'd on other grounds sub nom. 135 S. Ct. 2042 (2015)(*Carnaby* "impliedly confirmed" Fifth Circuit reads *Iqbal* as "abolishing supervisory liability in its entirety").

Outright, Seventh Circuit supervisors not responsible for "failing to ensure that subordinates carry out their tasks correctly." *Horshaw v. Casper*, 910 F.3d 1027, 1029 (7th Cir. 2018) Even so, circling around with open factual question of whether operational responsibilities retain direct liability.

Mens rea fluctuates. Eighth Circuit allowed lawsuit against "indifferent" administrator knowing contractors not doing "adequate" job. *Langford v. Norris*, 614 F.3d 445,460-61 (8th Cir. 2010). Demonstrating "deliberate indifference"

establishes Eleventh Circuit supervisor liability. *Franklin v. Curry*, 738 F.3d 1246,1252 n.7 (11th Cir. 2013). D.C. Circuit allows some "failure to supervise." *Smith v. D.C.*, 306 F. Supp. 3d 223,259 (D.D.C. 2018). However, further qualifies intentional torts require supervisors "'purposefully direct[]." *Johnson v. Gov't of D.C.*, 734 F.3d 1194,1205 (D.C. Cir. 2013)

Causation amplifies. First Circuit supervisors "affirmatively linked" when "action[s] or inaction[s]" lead "inexorably to the constitutional violation" and "had actual or constructive notice of the constitutional violation." *Feliciano-Hernández v. Pereira-Castillo*, 663 F.3d 527,533 (1st Cir. 2011) Sustaining contemporaneous to *Iqbal, Sanchez v. Pereira-Castillo*, 590 F.3d 31,49 (1st Cir. 2009) provides two ways "liability typically arises": either as "primary violator or direct participant in the rights-violating incident," or "if a responsible official supervises...with deliberate indifference toward the possibility that deficient performance of the task eventually may contribute to a civil rights deprivation."

Directness pushes beyond responsibilities. Second Circuit liability for "direct participant[s]" in violation. Qualifying "direct participant" includes a person who authorizes, orders, or helps others to do the unlawful acts, even if he or she does not commit the acts personally." *Terebesi v. Torreso*, 764 F.3d 217, 234 (2d Cir. 2014) Yet, upholding pre-*Iqbal* "informed" supervisors failed to "remedy the wrong," were "grossly negligent in supervising," or "exhibited deliberate indifference" to rights "by failing to act on information indicating that unconstitutional acts were occurring." *Colon v. Coughlin*, 58 F.3d 865,873 (2d Cir. 1995)

Third Circuit, "exhibit[ing] deliberate indifference ...is a culpable mental state." *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307,318 (3d Cir. 2014), rev'd on other grounds sub nom. 135 S.Ct. 2042 (2015) A few years prior refraining from answering whether *Iqbal* narrowed or even eliminated supervisory liability while observing along with Tenth and Eighth Circuits, "[n]umerous courts, including this one, have expressed uncertainty as to the viability and scope of supervisory liability after *Iqbal*." *Argueta v. U.S. Immigration and Customs Enforcement*, 643 F.3d 60,70 (3d Cir. 2011).

However, Sixth Circuit requires "active unconstitutional behavior." "[M]ere failure to act" fails to establish supervisor liability. Clarifying, "active" doesn't require physical contact or presence during the violation. Minimally, standard demands supervisor "authorized, approved, or knowingly acquiesced." *Peatross v. City of Memphis*, 818 F.3d 233,242 (6th Cir. 2016) "Since *Iqbal*, the circuits have

grappled with the precise contours of § 1983 supervisory liability, and while the claim of supervisory liability has not been altogether eliminated, the requirements for sustaining such a claim vary by circuit." *Id.*

Comparing *Elkins v. District of Columbia*,690 F.3d 554,566 (D.C.Cir.2012) (noting supervisory liability triggered by deficient training "in the wake of a history of past transgressions") with *Wilkins v. Montgomery*,751 F.3d 214,226 (4th Cir.2014)(noting § 1983 claims of supervisory liability, requires showing, "among other things...actual or constructive knowledge" that his or her subordinate "engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to citizens like plaintiff.") *Peatross* at 242 n.3.

IB. Circumventing substantive law liberally construing pro se pleadings— laying "technical mouse-trap" that forces literal court-ordered pleading deficiency— particularly impacts pro se indigent filers with inconsistently applied pleading standards.

"This is no technical mouse-trap..."

Recurring resoundingly in examples, overlapping layer of supervisory liability split lurches into processing pro se amendments. Before *Twombly/Iqbal* standards, First Circuit's "pleading threshold...price of entry... *factual* predicate concrete enough." *DM Research, Inc. v. Coll. of Am. Pathologists*, 170 F.3d 53,55-56 (1st Cir. 1999) Recognized applying substantive law to whether pleading term "agreement" is "unreasonable," is "complicated matter" and ""[l]iterally read, the complaint does allege such a conspiracy, albeit in conclusory terms." But, "terms like "conspiracy," or even "agreement," are border-line" *Id.* All pleadings processed deficiently can turn on one literal term, with pro se's particularly forced into amendment, split's granular level broadens.

"[A]nonymous"— one critical word pro se's amendment omitted. District granted summary judgment to defendants who contended fatal one-word omission from amendment. On appeal, Seventh Circuit ruled "most important question" was whether "undisputed facts showed" that the tip detectives acted on in searching plaintiff came from "anonymous" source. *Beal v. Beller*, 847 F.3d 897 (7th Cir. 2017)

Seventh Circuit incorporated pro se's previously pleaded facts, found District "made a number of critical assumptions, all unfavorable to [plaintiff]" and reversed. *Id* at 900. Significant to liberal pro se pleading processing, defendants relied on "rule... facts or admissions from [] earlier complaint [excluded from] later complaint cannot be considered on a motion to dismiss." *Id* at 901. *Beal* cited to similar

finding in *Hartsfield v. Colburn*, 371 F.3d 454, 455-57(8th Cir. 2004) where Eighth Circuit also "considered both [original and amended] versions... reversing summary judgment." *Id* at 902.

Sustaining two decades in Eighth Circuit, District threatened dismissal of pro se/IFP complaint unless amended using court-ordered form; also implying violation of Fed.R.Civ.P. 8(a) merely for number of pages. Confused, plaintiff rearranged significant facts previously sufficiently pleaded causing harm.

Citing 1987 precedent, "original complaint is lengthy not because he failed to state his claims concisely or in compliance with Rule 8, but because he named so many defendants." Comprehending pleadings need sufficient room providing notice. Reviewing de novo, standing on liberal reading mandated by *Haines v. Kerner*, 404 U.S. 519,520 (1972), Eighth Circuit incorporated facts in all pleading versions and reversed dismissals. *Cooper v. Schriro*, 189 F.3d 781,783 (8th Cir. 1999) Further, Nebraska's District even codifies in Local Civil Rule 15.1(b) that amendments be considered supplemental.

Seventh and Eighth Circuit recognizing essential wholesomely incorporating all pro se pleading versions trickles down. Citing Circuit instruction to liberally construe "in favor of the pro se party," District held "directive is best complied with by accommodating [pro se plaintiff's] request and reading his original and amended complaints together." *Steele v. Turner Broadcasting System, Inc.*, 607 F. Supp. 2d 258,262 (D. Mass. 2009) Finding allegations of "some involvement... although [] marginally implicative" sufficient to withstand dismissal, admonishing against transforming motions to dismiss into summary judgment "for mere expediency." *Id* at 264-265.

Pro se prisoner in *Bradley v. Smith*, 235 F.R.D. 125 (D.D.C. 2006) amended complaint adding events occurring after original filing. Defendants moved for judgment on pleadings. Unclear whether amended complaint intended to supersede or supplement original, District "construe[d] plaintiff's pleadings broadly"..."did not abandon claims raised in the original complaint." Admonishing, "[d]efendants proceed as if plaintiff's Amended Complaint does not exist. They fail to demonstrate that no material fact is in dispute or that they are entitled to judgment as a matter of law." *Id* at 127.

Moore v. Samuel S. Stratten Veterans Administration Hospital, No. 1:16-CV-475, 2016 WL 6311233 (N.D.N.Y. Aug. 10, 2016) judged amendment incomplete because it "fail[ed] to contain the full version of events and claims that were set forth in the

original complaint." *Id.* at *3. Judging it inappropriate to order another amendment, "as plaintiff is proceeding pro se, and...it is unlikely that a direction from this Court will result in a submission of a full and proper amended complaint containing all of the relevant factual assertions" and "claims," the court determined better to treat amended complaint as "supplement to the original." *Id.*

Conversely, pro se unwittingly adding essential points in oppositional filings in other Second Circuit Districts blocked from application if not included in complaint. District concluded it "may not consider" allegations omitted from pro se's last-filed complaint. *Williams v. U.S. Info. Sys., Inc.*, 11 Civ. 7471 (ER), at *9 n.4 (S.D.N.Y. Jan. 17, 2013)

"[N]umerous health conditions...including end-stage renal disease, diabetes, diabetic neuropathy with lower left extremity motor dysfunction and instability, coronary artery disease with congestive heart failure, hepatitis C, bile-duct obstructions, and high blood pressure" suffered by Fourth Circuit pro se prisoner. Dismissing some claims and ordered amendment District stipulated "this second amended complaint will supplant all previous complaints and will serve as the sole operative complaint in this action." *Banks v. Gore*, No. 16-7512, at *3-4(4th Cir. June 13, 2018). Despite denying attorney assistance while refusing to incorporate original complaint's content, defendants were granted summary judgment finding "inexperience with the law and his prisoner status do not constitute an "exceptional circumstance." *Id* at *12.

Exponentially expanding illiberality like *Banks*, twice within current decade, first with *Erickson* then *Sause*, this Court found Tenth Circuit repeatedly undeterred elevating "form" over "substance" with pro se pleading processing. Significantly, Judge Babcock of Colorado District is common denominator willing to sign away illiberal transgressions— as here also— condoned by Tenth Circuit.

IC. Non-speculative substantiated statements of direct documentary evidence applied in blatant contradiction to verbatim record denies Constitutionally-guaranteed court access.

"Visible fiction."

Confirming "spectrum of possible tests," *Iqbal*'s dissent verified "turn[ing] a blind eye for fear of what they might see" legitimate liability. Courts increasingly conflate "plausibility" into inconsistent applications of "specificity" twisting trail leading from *Iqbal* into apparent "factual blindness" to sufficient supervisory

pleading. AppBr.2 Dual-natured deepening split first constructing standards then applying to pro se pleadings particularly summarized supra, Sections IA-IB.

Here panel "blatantly contradicted by the record": "she does not say what facts the magistrate judge inaccurately described or the district court distorted." "[With] two different stories, one [] blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380-81 (2007) "Beyond mere "blatant[] contradict[ion]"—15 pages of specifically delineated exact comparisons to record exist showing factual distortions rise to "visible fiction" created below. *Crowson v. Wash. Cnty. Utah*, 983 F.3d 1166,1177 (10th Cir. 2020)." EnBanc,p.7

Stated verbatim: "Westminster municipality has a **documented history, capable of further substantiation much published across various media outlets and public forums by various reporters,** of "lawsuit avoidance" to "stay ahead of the ACLU" by **falsifying and ignoring material evidence in multiple reported cases.** Yet, their mayor, city councilors and managers are **observed in public reports allowing violations of protected rights to continue despite abundant notice in various forms.**" Aplt.App.241,¶18" Aplt.Br.13

Order here literally barred Petitioner from pleading specific facts making "any reference to other individuals' negative experiences with [named defendants]." Aplt.App.114 Diligently responsive with Motion for Clarification: "Question: How does Plaintiff use the required form to present factual averments involving documented intersecting facts as sufficiently specific to demonstrate ongoing patterns of conduct if the Court's order has barred Plaintiff from presenting relevant reported specific incidents of other individuals with[named defendants]?" Aplt.App.125,¶32

Despite asking specifically for clarification of court order threatening dismissal unless compliance with individualized directives; found nowhere in any Federal procedural rule and outside the bounds of standard procedural rules— no answer ever. Only: "The court does not give litigants legal advice as to how to comply with Fed.R.Civ.P. 8." Aplt.App.131-132

Less than 24 hours after first amendment filed, order commanded another with increased individualized directives also alleging things "blatantly contradicted" by verbatim record and demonstrating lacking comprehension of established legal principles. Every complaint her organized using headings and subheadings and

providing breadth of specific "pertinent" details. Yet, screener alleged "facts are not presented in a cohesive fashion." See Appendix G outlining headings with each complaint version.

Same order declared "selective enforcement"..."devoid of any factual allegations to show [Petitioner] treated less favorably than similarly-situated individuals." Petitioner subsequently requested clarification of extensively growing non-standard procedural hurdles including definitively extreme term "devoid" describing actually existing verbatim facts.

Petitioner's clarification motion delineates specifically detailed existing verbatim facts "showing favoritism" under sub-heading "HE SAID / SHE SAID" CLASSIFICATION ESTABLISHES CLASS OF ONE DISCRIMINATION" stretching across ¶¶305-334. Then asking: "Given that these particular factual allegations, as examples of favoritism among two similarly situated persons also involving a "class of one," are shown as being actually contained in the filing— what does it then mean to say the filing is "devoid" of them?" Aplt.App.214,¶12 Especially pertinent is that those facts literally began on page 31 and screener had also imposed 30-page limitation beyond any procedural rule and without providing any legal authority

Stated verbatim: "Full factual backdrop here includes **substantiated, not speculative, documented direct evidence also publicly reported; multiple civil rights lawsuits filed against them; and multiple notices from the ACLU and others of ongoing violations of federally secured protected rights of persons subject to their court system.**" (emphasis added) Aplt.App.241,¶18; see also Aplt.Br.3." EnBanc,p.2

Only with summary judgment are facts outside pleading contents allowed consideration. Clearly, Petitioner asserted "Class of One" claim for relief, not for class certification. Distinctive pleading requirements exist. "Class of One" does not require "demonstrat[ing] ...class members [] suffer[ing] the same injury." *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147,157 (1982). xxxcheck citation

Crescendo of Tenth Circuit's condoning "factual blindness" was attaching requirements relevant only to class certification wholly outside of any pleading's verbatim contents. Tossing out all actual verbatim facts, Circuit crafted false allegation themselves that specifically averred supporting facts "do not involve the same type of conduct allegedly perpetrated against [Petitioner]." Aplt.App.374

Yet, this formative straw man is inapposite to specifically averred verbatim facts of direct evidence named defendants possessed personal knowledge of continuing

(for years) constitutional violations leading to Petitioner's injuries AND that they had direct responsibility to supervise according to mandated law. Demonstrating customs continuing common violations— not necessitating common injuries— sufficiently show actual notice of accepted practices' moving force further corroborating direct evidence. Further, never disputing concrete injury-in-fact here...harm remains harm.

II. [Question 1] IGNORING LIVE CONTROVERSIES DEFIES U.S. SUPREME COURT JUSTICIABILITY STANDARDS REQUIRING CAUSE APPLIED TO INJURY-IN-FACT.

Courts have turned standing into quicksand for sufficient pleadings.

The "grounds" for this federal "case" of "barred court access" for "class of one" Plaintiff suffering specifically factually demonstrated systematic "retaliatory" "gender discrimination" include named defendants with "direct responsibility" for "fairly traceable" personal supervisory conduct possessing actual notice of ongoing publicly reported known systemic conditions "foreseeable" to cause constitutional harm. Especially— where "documented history, capable of further substantiation much published across various media outlets and public forums by various reporters" demonstrates widespread practices of "falsifying and ignoring material evidence in multiple reported cases." Aplt.App.241,¶18 *See also* AppBr.18-28.

Material layers of ongoing live controversy include "SAC's ¶77 plainly states verbatim that defendants Brostrom and Sorice "are both also active participants in continuing to withhold, possibly having destroyed (fact unknown outside of formal discovery), key material evidence." Aplt.App.262" App.Br.26 Anyone with "Cases" and "Controversies" may invoke Article III remedial jurisdiction when suffering or even threatened with injury "traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472,477 (1990). "[A] federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377,1386 (2014)

"Live" controversy extinguishes "only when it is impossible for a court to grant any effectual relief whatever...a concrete interest, however small, in the outcome of the litigation" keeps the case live. *Knox v. Serv.Emps.Int'l Union*, 567 U.S. 298,307-08 (2012) Even if unconstitutional conduct later changes, right to remedy for injury does not "erase[] the slate concerning [Constitutional] violations. *Comm. For First Amendment v. Campbell*, 962 F.2.d 1517,1526 (10th Cir.1992) "[C]laim for damages

cannot evade review; it remains live until it is settled..." *Genesis HealthCare Corp. v. Symczyk*, 569 U.S. 66,77 (2013).

While *Campbell-Ewald v. Gomez*, 577 U.S. 153 (2016) dealt with mootness and derivative sovereign immunity, footnote 6 underscored questions of immunity must grapple with deliberate takings of property. Plaintiff cited *Yearsley v. Ross Constr. Co.*, 309 U.S. 18 (1940) for its "derivative immunity" defense" where landowner asserted damages against private federal government contractor who caused plaintiff's land to wash away. Where governmental authority for work "validly conferred...within the constitutional power of Congress," simply performing from governmental direction cancelled contractor liability. However— "If there had been a taking of the plaintiff's property, the Court noted, "a plain and adequate remedy" would be at hand." *Id*, citing to *Yearsley*, at 21.

"When a man does an act which in law and fact is a wrongful act, and injury to another results from it as a natural consequence, an action on the case will lie." *Angle v. Chica*go, St. Paul c. Railway, 151 U.S. 1,2 (1894) Core tenet of "live" controversy: "because the plaintiff ha[s] a stake and the court [can] grant relief." *Campbell-Ewald* at 162. This Court continues to hold a form of property right exists affirmatively to have others "answer for negligent or illegal impairment of... interests." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,313 (1950) Further, "a chose in action is a constitutionally recognized property interest." *Phillips Petroleum v. Shutts*, 472 U.S. 797,807 (1985)

This Court further recognizes due process itself is federally secured protected right implicating fundamental interests. Before government may "take" "life, liberty, or property" "due process" is "guaranteed." While establishing minimum requirements this Court affirmed, "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause." *Mullane* at 313.

Campbell-Ewald's plaintiff had also cited Fed.R.Civ.P.12(b)(1) for lack of subject-matter jurisdiction claiming mootness in tendering settlement offer of "complete relief" for "individual claim." Requesting class certification, defendant rejected settlement. Plaintiff moved for summary judgment discretely on derivative sovereign immunity grounds, which District granted. Ninth Circuit reversed agreeing "case remained live." *Campbell-Ewald* at 159. Clearly, teaching "live controversy" sustains subject-matter jurisdiction.

What happened here shows lower courts banking on barring court access to pro se indigent filers by running them through analytical gymnastics of "technical

mouse-trap." As if— somehow— poverty renders persons outside equal protection. Yet, Federal Reserve confirms, especially since Covid-19 increased financial hardships, added expense of $400 leaves substantial numbers of American adults without ability to pay current month's bills. While already— 3 in 10 cannot. *See* "Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020."

Tellingly, Tenth Circuit stated abandonment of advancing any affirmative limitations defense effectively advocating for named defendants never haled into court throughout screening, sub silentio confirming live controversy exists. Here, Tenth Circuit is clearly aware "[i]n this live controversy involving false statements in public records:

- records are controlled by named defendants;
- records are housed by named defendants; and
- records content is managed by named defendants.

As plainly averred verbatim—all named defendants had the power of legislated custodial control of public records as government actors with no discretion allowed in this ministerial function. Having that government power, they all personally participated in the control, housing, and content management of public records within their legislated custodial control." En Banc,p.4

IIA. Justiciability standards require cause applied to injury-in-fact.

You do not erase cause by practicing analytical avoidance of effect.

"Pleadings...should not raise barriers [preventing] achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938) Deprivations of federally-secured protected interests including liberty and property— here undisputedly existing— triggers First Amendment Petition Clause; "the right of people to petition the Government for a redress of grievances." *Borough of Duryea v. Guarnieri*, 564U.S. 379,382 (2011)

Courts necessarily must ask how conduct complies with Due Process Clause depending on "purpose and effect of the Government's action." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43,52 (1993) Reaffirming this principle in *McDonough v. Smith*, 139 S. Ct. 2149 (2019) finding claim "sound[ed] in denial of due process" and "express[ed] no view as to what other constitutional provisions (if any) might provide safeguards against the creation or use of fabricated evidence

enforceable through a 42 U.S.C. § 1983 action." Id at 2155 n.2

With fabricated evidence, adjudicatory process is intentionally corrupted. When used in subsequent proceeding it causes tortiously incorrect results. Right before Petitioner's appeal, Tenth Circuit appeared well-established "plaintiffs must show that fabricated evidence was used against them in a proceeding." *Advantageous Cmty. Servs. v. King*, No. 19-2211, at *8-9 (10th Cir. Feb. 5, 2021)

Record shows screener seemingly not grasping well-established legal principles upfront even after ordering Plaintiff to amend. Seeking clarification required diverting resources from amendment opportunity. For example, mitigating foreseeable harm:

"10. Plaintiff cited to both federal and tenth circuit well-established precedent for independently recognized claims of fabricated evidence as shown in this representative table:

Miller v. Pate 386 U. S. 1 (1967)	*Pierce v. Gilchrist*, 359 F.3d 1279 (10th Cir. 2004).
Actual evidence: a pair of shorts smeared with the substance of paint stains on them.	Actual evidence: hairs and sperm collected at the scene and on the body of the victim of a rape which had dna matches to the actual rapist.
Fabricated evidence (used against Miller in a subsequent proceeding): statements that claimed that the shorts were smeared with the substance of blood, not the actual documented paint stains.	Fabricated evidence (used against Pierce in a subsequent proceeding): statements that claimed that the collected hairs and sperm matched those belonging to Pierce, not to the actual rapist.

QUESTION: Given the order's use of what is commonly termed "scare quotes" to highlight specifically Plaintiff's claim of "fabricated evidence"—what is the intended implication there?" Aplt.App.213,¶10

Responsive order indicated screener perceived request for clarification as "legal advice." This required additional diverted resources to continue mitigating further ongoing harm to amendment opportunity, clarifying on record: "...interpreted ECF No. 6 as a request for legal advice, although the purpose was to seek clarification of directives that were unusual in seeming like preemptive denials of the functional ability to "fairly present" issues as referenced in *United States* v. *Fykes*, No. 19-1027, at *3 (10th Cir. Dec. 2, 2019)" Further, providing Wikipedia distinguishing

definition of "legal information": "instructions on how to meet court requirements for the submission of forms and other court documents do not constitute legal advice." Aplt.App.218-19,¶4 and ¶10

"The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'" *Ex parte Virginia*, 100 U.S. 339,346 (1879). Congress knew "state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts." *Mitchum v. Foster*, 407 U.S. 225,242 (1972)

Specifically, Congress created "a federal right in federal courts because... state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." *Monroe v. Pape*, 365 U.S. 167,180 (1961) "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum*, at 239.

Sustained approaching a century: "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 U.S. 197 (1938)

They started by seeking to portray factual context scandalously. Circuit upended pleadings purpose entirely by obviously refusing to apply undisputed constitutional injury-in-fact to factually sufficient cause. Precedent-defying analytical gymnastics accomplished jurisdictional abdication, including:

- condoning outstanding factual distortions claiming, in blatant contradiction to record, that 15+ pages delineating specifically non-existent;
- ignoring well-established principle; "ministerial functions are not immune;"
- ignoring well-established culpable duties to correct false statements; and
- contravening clear direct documentary evidence and full corroborating factually sufficient context.

Ultimately, Tenth Circuit twisted clearly observable Good Faith efforts to access

appellate review rights into punitive cash generation without permissible cause.

IIB. Erecting illogical impossible traceability barriers denies Constitutionally guaranteed court access.

28 U.S.C. § 1915 designed to open doors to remedial access for those too poor to pay for it— not slam them shut in ever-devolving gymnastic ways.

No evidence supports intent was denying Federal Court jurisdiction where government actors obstruct court access for Congressionally-authorized review. Tenth Circuit acts like named defendants lack "under color of law" administrative enforcement powers. Verbatim pleadings sufficiently specifically averred otherwise. Why then are paid elected officials or any other governmental managers ever needed? If panel opinion stands, it renders executive managerial purpose obsolete stripped of remedial redressability.

Article III standing, Justice Scalia noted, doesn't require government to be "legal cause" of injury or solely culpable. Legal causation "irrelevant to the question of core, constitutional injury-in-fact, which requires no more than de facto causality." *Block v. Meese*, 793 F.2d 1303,1309 (CADC 1986). Citing to *Block*, this Court recently reaffirmed "[b]ecause Article III "requires no more than de facto causality... traceability is satisfied here." *Dep't of Commerce v. N.Y.*, 139 S. Ct. 2551,2566 (2019)

Clearly averred verbatim "traceability": "The culminative act only occurred and became known to Plaintiff when access to applicable state court procedures was extinguished.... Violations continue leaving open the ability to again take the evidence fabricated into false statements "out of the drawer" and use it against Plaintiff in any subsequent legal proceeding as it remains recklessly disregarded in custodial public records." Aplt.App.241-2¶21

"[I]t is possible to go too far in the interests of expediency and to sacrifice basic fairness in the process." *Malcolm v. Nat'l Gypsum Co.*, 995 F.2d 346, 350,354 (2d Cir. 1993) Clearly, these plain and simple statements give "fair notice" current lawsuit seeks remedial relief for named defendants' state-mandated duty-laden legislated culpability abusing control exercised over public records. Not— as Tenth Circuit would like, for mere expediency, for it to otherwise fit neatly into violations at "trial" or "postconviction proceedings."

Yesterday's "proximate cause" is today's "plausible" "personal involvement." Seldom discussed below is *Twombly's* corporate magnitude and *Iqbal's* high-level

federal executives. Popularly prevailing Ninth Circuit precedent, however, boldly proclaims wholesome truth with plausibility pleading's purpose against providing plaintiffs ability to "extract undeservedly high settlements from deep-pocket companies" and "too little protection for high-level executive[s]." *Starr v. Baca*, 652 F.3d 1202,1215 (9th Cir. 2011)

Even beyond undisputed injury-in-fact here, "[w]hen the government erects a barrier...more difficult for members of one group to obtain a benefit than it is for [others] . . . [t]he 'injury in fact' . . . is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656,666 (1993). Causation— "plausible" "personal involvement" doesn't require defendant actions be "very last step in the chain of causation." *Bennett v. Spear*, 520 U.S. 154,168 (1997)

All wrongdoers here stand on equal footing. When injury entails denying fair process and equal treatment all named defendants with enforcement powers participate directly in causing injury complete with every instance of unfairness. No later, more proximate cause exists. Illogically absolving named defendants of "fairly traceable" accountability denies Constitutionally-guaranteed court access.

Would today's Court deny yesterday's schoolchildren equal protection? Even though defendants in *Brown v. Board of Education*, 347 U.S. 483 (1954) followed government directives from outside, they were not absolved of de facto causation or traceability. None questioned injury traceable to school boards.

Why would today's Court indulge "avoid[ing] attachment of responsibility where it ought to attach?" No human person deserves being "locked in the limbo of uncompensable wrong." *Bonbrest v. Kotz*, 65 F. Supp. 138, 241 (D.D.C. 1946).

III. [Question 2] CONDONING DISSEMINATION OF FALSE STATEMENTS IN PUBLIC RECORDS DEFIES CONSTITUTIONAL INTERESTS AT STAKE.

There is no "plausible" "alternative explanation" of what happened here.

Perhaps Petitioner's claims presented as particularly novel. However, that does not qualify for effective summary judgment; just because no other has wherewithal to invoke standing for current live controversy here— deliberately fabricated evidence into manufactured false statements housed uncorrected where external dissemination caused documented damage barring court access without alternative remedy: it is what it is.

"The Court fails to grasp how this is a relevant distinction. Fabricated evidence is fabricated evidence." *Avery v. City of Milwaukee*, 40 F. Supp. 3d 1089,1095 (E.D. Wis. 2014) "Reporting that a witness said something he or she did not cannot reasonably be characterized as a recording error or a misstatement," but is instead fabricated evidence. *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134,1146 (9th Cir. 2021) Dealing with these facts may be uncomfortable— but **verbatim facts** are what they are and they remain what they are despite performing analytical gymnastics keeping pro se indigent filers denied justiciable standing.

IIIA. "Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540,1550 (2016).

TransUnion LLC v. Ramirez, No. 20-297, at *31 (June 25, 2021) reaffirmed "dissemination" of "false information" distinguishes standing. Citing to *Spokeo* at 340 and reinforcing "[c]entral to assessing concreteness is whether the asserted harm has a "close relationship" to a harm "traditionally" recognized as providing a basis for a lawsuit in American courts." *TransUnion* at 2. Class members "whose credit reports were provided to third-part[ies]" suffered concrete harm and "have standing as to the reasonable-procedures claim." Correspondingly, where false statements disseminated externally from public records requiring official certification as to their veracity cause concrete harm, claims ground in equal protection of due process answering to procedural "reasonable[ness]."

Stated verbatim within ongoing live controversy, before culminative act occurred "no way existed for Plaintiff to know whether or how the fabricated evidence would appear again, i.e., be "taken out of the drawer," or used []" Aplt.App.252,¶58 Also plainly averred named defendants "yielded all the power to correct protected rights violations." Aplt.App.241,¶21 Actionable injury-in-fact was not inevitable even though reasonably foreseeable to defendants. Framing "deliberate indifference" recognizes defendants possess ability to choose corrective actions to prevent speculative, otherwise reasonably foreseeable, injury-in-fact." AppBr.6-7

Is allowing "dissemination" of "false information" outside of federally-secured equal protection of procedural due process known to cause concrete harm ever reasonable? Perhaps with pro se indigent screener hopes to diminish to prisoner status— Tenth Circuit says it's reasonable to leave masses suffering concrete harm inflicted in ongoing live controversy without alternative remedy. Precedent says no.

Lawless judicial restraint in the face of factual "fraud, misrepresentation, or other misconduct" morphs into abdication. Standing on developing grounds for adjudicating concrete harm, this Court dealt with "unconstitutional jurisdiction" in *Thomas v. Union Carbide Agric. Prods. Co.,* 473 U.S. 568 (1985). There, appellees challenged constitutionality of mandatory provisions allocating judicial functions to arbitrators that limited Article III review. There, this court recognized concreteness lives within the controversy itself with ripe claims.

For Article III purposes, it's sufficient for claims challenging jurisdictional functioning documented depriving due process to demonstrate there "has been or inevitably will be subject to an exercise of such unconstitutional" wielding of jurisdictional power. Further, no adjudication ripeness exists if depending on "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Thomas, at* 580-81. App.Br.5.

Are federal judges ever allowed to reinvent "grounds" blatantly contradicting verbatim record? None ever denied plainly documented false statements existing in named defendants' legal custody. None denied "grounds"—"but for" documented "fabricated evidence" used oppositionally in subsequent proceeding currently outstanding constitutional injury-in-fact results.

Significant among analytical gymnastics is panel's claim points made below were "largely repeat[ed]" ignoring District dismissal's "dispositive reasons." Acting as defendant advocate, one example of many, District itself raised affirmative limitations period defense. Clearly contradicting panel, verbatim appellate briefing dedicated entire section with organizational heading "I. "COMPLETE AND PRESENT" CAUSE OF ACTION ONLY AROSE WITH INJURY-IN-FACT AND NOT BEFORE IT BECAME "REAL." Subheadings further explicated: "A.The culminative act occurred within limitations period. B.Background evidence is allowed and corroborates asserted claims. C.Prior restraint of content and form defeats amendment purpose."

"The Court fails to grasp how this is a relevant distinction. Fabricated evidence is fabricated evidence." *Avery v. City of Milwaukee,* 40 F. Supp. 3d 1089, 1095 (E.D. Wis. 2014)" App.Br.1 *Spokeo* confirms well-established Congressional zone of interest demanding preventive procedural protections reaffirmed by *TransUnion* curtails need to invoke remedial federal jurisdiction from disseminated false statements before "injury-in-fact" becomes concretely "real."

IIIB. When courts block demonstrated non-immune flow of damages,

Constitutionally-guaranteed court access is denied.

"[C]onduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *County of Sacramento v. Lewis*, 523 U.S. 833,849 (1998) "[D]ue process rights are implicated by both *fabricated* testimony (that is, "testimony that is made up") and *false* testimony (that is, "testimony known to be untrue"...) *Saunders v. City of Chi.*, No. 12-cv-09158, at *5-12 (N.D. Ill. July 11, 2014)

Tellingly, panel abandoned District's rote reliance on *Dodds v. Richardson*, 614 F.3d 1185 (10th Cir. 2010). Sub silentio, panel realized sufficient verbatim facts averred demonstrate named defendants' "direct liability" with showing supervisors "breached a [legally mandated] duty to plaintiff which was the proximate cause of the [resulting Constitutional] injury... Personal involvement does not require direct participation." *Dodds* at 1195.

Observably functioning as defendant advocate, whether specific verbatim facts are matter of documented direct policy statements or years of publicly documented constitutionally abusive customs and practices, everyone wielding Article III powers here recognized they "continued to operate." "Therefore, the facts, taken in the light most favorable to Plaintiff [as precedent mandates], show..."more than a passive role...thereby present[ing] facts [establishing] personal involvement... sufficient to satisfy § 1983." *Id* at 1204.xxxpage number correct?

Duty is well-established element of "direct liability" circuits regularly delete from sufficient pro se processing, outside of their own well-established precedents, effectively barring court access with functional summary judgments.

Truly, how much clearer can anyone get for any federal judge to comprehend whole briefing section: "Ministerial functions are not immune."? Yet, analytical gymnastics here brazenly claimed "[c]ertain exceptions could overcome these immunity defenses, but [Petitioner] does not allege them here."

Further, much ado made about immunities while 11 of 13 named defendants never assessed qualifying anywhere. However inartfully, Petitioner clearly raised sustaining precedential prosecutorial duty to correct known testimonial falsity citing abundant controlling precedents including foundational *Napue v. People of the State of Ill.*, 360 U.S. 264,269 (1959). Plus, this Court's proclamation: "knowing use" of false testimony "more importantly, involves 'a corruption of the truth-seeking function.'" *United States v. Agurs*, 427 U.S. 97,104 (1976).

Petitioner's claims challenging constitutionally abusive conditions require pleadings provide "fairly notice[able]" sufficient supporting facts. Corroboration shows factual background including prosecutorial misconduct throughout years of accumulating harms including multiple documented falsities. See, e.g., SAC at Aplt.App.250, ¶¶50-51 *Napue* underscores longstanding well-established independently binding prosecutorial "duty to correct what he knows to be false and elicit the truth."

Here, none denied verbatim statement demonstrated sufficient factual support, however inartfully expressed, that triggering culminative act included prosecutor defying affirmative correction duty "further amplify[ying] them by creating his own convolutions of factual truth....corresponding false light continues violating." Aplt.App.252,¶58. Prosecutor defying "duty to correct what he knows to be false and elicit the truth," he "prevent[s] . . . a [proceeding] that could in any real sense be termed fair." *Napue*, at 270.

True to observable trending "[r]emedial abridgement" documented by legal scholar Pamela Karlan in "What's a Right Without a Remedy?"— here formal right still standing but remedial machinery insidiously constricted by courts blocking non-immune damages flow. Injunctive and declaratory relief, including damages, still very much alive and available here.

CONCLUSION

Abundant beautiful sounding case "law" exists making American masses think our federally secured guaranteed protected civil rights actually have teeth, or, at least "legal force." This case is only one joining many ideal vehicles to confirm for us all, as we all know it to be absolutely true, when courts block demonstrated non-immune flow of damages, Constitutionally-guaranteed court access is denied. Granting this petition is needed. This Court can easily fix things by summarily Granting, Vacating, and Remanding.

Thank you,

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December 10, 2021

INDEX OF APPENDICES

[* Note, per xxxrule attached Appendix documents xxxpurpose. Due to volume and in accordance with, they are separately bound. This is an Index of their contents.]

APPENDIX A: Copy of this Court's Order dated July 19, 2021 for timely filing.
- 2 pages

APPENDIX B: Copy of Appellants'[sic] Opening Brief (App.Br.) – Tenth Circuit's consideration of full appeal was based solely on this briefing despite ignored request for oral argument and no named defendants ever being haled into court.
- 59 pages

APPENDIX C: Copy of panel opinion issued June 16, 2021 dismissing case entirely.
- 7 pages

APPENDIX D: Copy of Petition for Rehearing En Banc timely filed on June 30, 2021. Appendix 4 attached to this specific filing includes copies of two motions filed contemporaneously both also pertinent to this petition. First is "Motion [] Judicial Notice of Several Pertinent Facts." Second is "Motion for renewal of IFP application with modest update of receiving public assistance food benefits and increased medical care and referral for enhanced treatment." As of the date of this filing, neither motion has ever been ruled on, much less even referenced in any case dispositions.
- 62 pages

APPENDIX E: Copy of Order issued July 16, 2021 denying Petition for Rehearing En Banc.
- 1 page

APPENDIX F: Copy of Second Amended Complaint (SAC) filed July 31, 2020.
- 46 pages

APPENDIX G: Exhibit outlining organized factual headings and sub-headings from initial through first and second amendments to demonstrate definitive "cohesive[ness]" in pleading, however "in artful."
- 7 pages

APPENDIX H: Copy of ECF No. 16-2 – July 31, 2020 correspondence to Magistrate Judge Gallagher, assigned as signatory for screener, filed contemporaneously with SAC with subject line addressing "ongoing concerns of repercussion to amendment."
- 2 pages