

NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES

Raoul A. Galan, Jr.

Petitioner

v.

Stephen Michael Petit, Jr.

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- (1) Whether there is deprivation of procedural due process when a person received notice of a hearing only one day prior to said hearing and allowed only a short time to prepare?
- (2) Whether there is deprivation of substantive due process because of the action of the Court of Appeals in failing to recuse a judge on the panel due to a potential conflict of interest?
- (3) Whether there is deprivation of procedural due process when a person refuses to answer interrogatories as a delaying tactic in a time-sensitive proceeding?

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Raoul A. Petitioner, Jr. respectfully requests the issuance of prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

DECISION BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is published at *whatever the citation is* and is reproduced at Petitioner's Appendix A.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit dismissed and denied Petitioner's appeal on June 10, 2022. See Petitioner's Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Louisiana Code of Civil Procedure Article 1231: Types of service; time of making

Service of citation or other process may be either personal or domiciliary, and except as otherwise provided by law, each has the same effect. Service, whether personal or domiciliary, may be made at any time of day or night, including Sundays and holidays.

Louisiana Civil Procedure Article 151: Grounds

A. A judge of any trial or appellate court shall be recused upon any of the following grounds:

- (1) The judge is a witness in the cause.
- (2) The judge has been employed or consulted as an attorney in the cause or has previously been associated with an attorney during the latter's employment in the cause, and the judge participated in representation in the cause.
- (3) The judge is the spouse of a party, or of an attorney employed in the cause or the judge's parent, child, or immediate family member is a party or attorney employed in the cause.
- (4) The judge is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that the judge would be unable to conduct fair and impartial proceedings.

4.

B. A judge of any trial or appellate court shall also be recused when there exists a substantial and objective basis that would reasonably be expected to prevent the judge from conducting any aspect of the cause in a fair and impartial manner.

C. In any cause in which the state or a political subdivision thereof is interested, the fact that the judge is a citizen of the state or a resident of the political subdivision, or pays taxes thereto, is not a ground for recusal. In any cause in which a religious body or religious corporation is interested, the fact that the judge is a member of the religious body or religious corporation is not alone a ground for recusal. Acts 1983, No. 106, §1; Acts 1987, No. 579, §1; Acts 1988, No. 515, §2, eff. Jan. 1, 1989; Acts 2008, No. 663, §1; Acts 2021, No. 143, §1.

Louisiana Code of Judicial Conduct 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

The

provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

Louisiana Code of Judicial Conduct 3: A Judge Shall Perform the Duties of Office Impartially and Diligently

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge shall maintain order and decorum in judicial proceedings.

(3) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, and shall not permit staff, court officials or others subject to the judge's direction and control to do so. A judge may make reasonable efforts, consistent with the law and court rules, to facilitate the abilities of all litigants, including self-represented litigants, to be fairly heard, provided, however, that in so doing, a judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person.

Louisiana Code of Civil Procedure Article 1457A: Interrogatories to parties; availability; additional, hearing required

A. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may accompany the petition or be served after commencement of the action and without leave of court.

STATEMENT OF THE CASE

Petitioner was disqualified from running for elective office as the direct and proximate result of an erroneous allegation that he failed to file his personal Louisiana income-tax return for 2014. Petitioner contends that he was not required to file a return for 2014 and was denied due process in attempting to prove the same.

1. Factual Background of the Matter.

Petitioner filed Notice of Candidacy on 08/07/2019 for the election of Louisiana State Senator, District 10 going to be held on 10/12/2019. At the time of filing of Notice of Candidacy, Petitioner swore before a notary and/or two witnesses as required by law wherein it has been mentioned that: *“For each of the previous five tax years, and I have filed my federal and state income tax returns, have filed for an extension of time for filing, either my federal or*

state income tax, return or both, or was not required to file either a federal or state income tax, return or both”.

Respondent sent a request to access the public records of tax filings, by the Petitioner, to the Department of Revenue, State of Louisiana, for last five years, on 08/07/2019. Consequently, the Respondent, on the basis of a statement sent by the Louisiana Department of Revenue asserting that Petitioner failed to file tax returns for 2014, filed a petition objecting to the candidacy of Petitioner on 08/15/2019, before the 24th *Judicial District Court*???

Respondent caused the issue of a show-cause notice to the Petitioner, on 08/15/2019, for the Petitioner's appearance on 08/20/2019, at 9:00 A.M., in Division J, of the 24th *Judicial District Court*. Petitioner received the show-cause notice, along with the petition objecting to Petitioner's candidacy, on 08/19/2019 at 1:00 P.M., to appear *the next day*, at 9:00 A.M. to make submissions against Respondent's petition for objection.

Respondent filed a request for subpoena to the Louisiana Department of Revenue on 08/16/2019. During the proceedings on 08/20/2019, Respondent testified along with a witness from the Louisiana Department of Revenue. The had less than 4 working hours, to gather evidence to support his position. Petitioner attempted to contact both the IRS and Louisiana Department of Revenue prior to the hearing date on 08/20/2019. Those authorities failed to reply in the time provided to Petitioner to make submissions against the Respondent's petition objecting to the Petitioner's candidacy.

The Louisiana Department of Revenue failed to appear at the hearing or contact Petitioner to clarify the issue of the alleged non-filing of tax returns for 2014, and thereby caused

prejudice to Petitioner's case. As a result, Respondent's objection to the Petitioner's notice of candidacy was granted on 08/20/2019. Consequently, the Petitioner was denied due process by the actions of both the Respondent and the 24th *Judicial District Court*. The situation was compounded by the negligence of the Louisiana Department of Revenue

Respondent admitted that he always asks for the public records of the persons running for a national seat. This is not Respondent's first time to do this. See *Stephen Michael Petit, Jr. Versus Richard Lynn Ducote and Kyle Ardoin, in his Official Capacity as Secretary Of State For The State Of Louisiana No. 18-CA-452*. However, in this instance, he only asked the information of the Petitioner, because it is known that Petitioner is of Latin descent. Petitioner was disqualified to run for the Senatorial seat, because of the Respondent's action.

Subsequently, the Petitioner filed a complaint against the Respondent. The District Court for the Eastern District of Louisiana heard the case. The Court ruled in favor of the Respondent, and Petitioner filed an appeal with the United States Court of Appeals for the Fifth Circuit, which, seemed to mock the Petitioner's claims and arbitrarily dismiss the case.

Furthermore, due to the BP Oil Spill, Petitioner was damaged financially and medically (*No. 20-30502 as LMPC0402457*). Financially, he lost his home, office and more; medically, he became depressed and has been under medical care for said depression. At times, said depression has resulted in memory issues. For example, in the District Court, when the judge asked why he (Petitioner) did not file his 2014 Louisiana individual tax-return. Petitioner could not remember due to the lack of time he had to prepare for Court. Petitioner attempted to contact the Louisiana Department of Revenue several times on the afternoon of 08/19/2019, only to receive a voice-message.

2. The Petitioner was denied due process by the conduct of the hearing.

Due process requires that the procedures by which laws are applied must be even-handed, so that individuals are not subjected to the arbitrary exercise of government power.¹ In civil contexts, however, a balancing test is used that evaluates the government's chosen procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under the chosen procedure, and the government interest at stake.²

Petitioner denies willful disregard of the filing requirement because he had reasonable cause for failure to file his 2014 Louisiana tax-returns. Petitioner did not act willfully by failing to file his 2014 individual-tax return, because he did not receive the required amount of income for filing his 2014 taxes. Therefore, Petitioner did not owe the State of Louisiana any taxes for 2014.

Consequently, Petitioner has indeed abided by Louisiana Revised Statute 18:492, as Petitioner asserted in his Notice of Candidacy that he has filed income-tax returns of previous 5 years. Petitioner was not obligated to file an income-tax return for the year 2014 due to no income, and therefore the objection as raised by Respondent had no basis in either law or fact.

Willfulness requires that the government prove that: (A) the law imposed a duty on the Defendant; (B) the Defendant knew of the duty; and (C) he voluntarily and intentionally violated that duty. *See United States v. Pomponio*, 429 U.S. 10, 12 (1976).³ In other words, if you know

¹ *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894)

² *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)

³ Based on its reading of *United States v. Bishop*, 412 U. S. 346 (1973), the Court of Appeals held that the jury was incorrectly instructed concerning willfulness and remanded for a new trial. 528 F.2d 247 (1975). The United States petitioned for certiorari. We reverse.

that you owe taxes and you do not pay them, you have acted willfully. *United States v. Easterday*, 564 F.3d 1004, 1006 (9th Cir. 2009).⁴

The act of giving only a mere twenty (20) hours to prepare for a disqualification hearing is not enough to defend oneself, especially a person who is defending himself. Petitioner, who has been experiencing depression ever since the B.P Oil Spill affected his mental well-being and being of advanced age has also caused lapses in his work. However, such lapses are understandable. Regardless, giving Petitioner only a short time to prepare efficiently for his disqualification hearing is inexcusable. The Citation to Show Cause was delivered to Petitioner less than 24 hours before the hearing. Louisiana Revised Statutes §18:1408, requires a diligent effort shall be made to make personal service on the Petitioner at his domiciliary address as shown by his qualifying papers.

Respondent's action in delaying the hearing, among other things is considered by law to be a violation of his procedural due process.⁵ First, "procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." Thus, the required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. Second, the core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require

⁴ Easterday contends that Poll is binding on us because this court has never expressly overruled it. The district court held that Poll was no longer good law. We agree with the district court. Poll's requirement that the government prove that the taxpayer had sufficient funds to pay the tax was premised on a definition of willfulness that included some element of evil motive. The Supreme Court subsequently rejected any such definition of willfulness in the tax statutes.

⁵ Fourteenth Amendment of the Constitution

an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.⁶

As held in *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970), ordinarily, service of notice must be reasonably structured to assure that the person to whom it is directed receives it. Notice is the elementary and fundamental requirement of due process in any proceeding which is to be accorded finality if notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314) ⁷

As reiterated in *Carey v. Piphus*, 435 U.S. 247, 266-67(1978), At times, the Court has also stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. In this case, the Lower Court did not give importance to the procedural rights of Petitioner, as those acts of Respondent in violation of this right was not sought head-on. This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. "⁸

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. Thus, the notice of hearing and the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." As held in *Armstrong v. Manzo*,

⁶ *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972)

⁷ Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

⁸ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard."

380 U.S. 545, 552.⁹ Therefore, the twenty (20) hour preparation for a disqualification hearing is insufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest.

3. Malicious prosecution by the Respondent.

Respondent tried to mold and mislead the court through his interpretation of the term malicious prosecution regarding the claim that Petitioner was trying to bring and must not be interpreted in any other way except mentioned herein. Respondent maliciously restrained Petitioner to stand as a candidate in 2019 election with no basis in fact or in law.

Respondent has been solely negligent in inquiring in full facts about the tax return that was not filed by Petitioner for the reason that Petitioner had no personal income. Consequently, Petitioner was not required by law to file a tax return with no income. Petitioner was not provided with adequate time to produce documents and contact parties and authorities, herein Louisiana Department of Revenue, to submit details as regards to the objection raised by the Respondent in regard to Petitioner's application for candidacy in the 2019 election.

Respondent's conduct amounts to tortious action as against Petitioner under 18 U.S.C. §§371, 1001, 1519. The implications of Respondent's conduct results in political repression of voters in the Louisiana Senate District by denying the constitutional rights of voters to choose among all qualified candidates and denying the constitutional rights of candidates, herein Petitioner, to stand as a candidate in the free and fair election.

⁹ Had the petitioner been given the timely notice which the Constitution requires, the Manzos, as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed.

Regardless, the burden of proof lies on the Respondent to check and verify any and all details of Petitioner's alleged acts or omissions, in their entirety before raising any objection as against Petitioner. Therefore, the Respondent's negligent misconduct coupled with the Court's complicity in denial of due process, through the truncated notice of hearing, disqualified the Petitioner from standing in the election as a candidate.

4. Failure to recuse is deprivation of substantive due process.

Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property. To ensure an impartial tribunal, the Due Process Clause requires a judge to recuse himself from a case.¹⁰ The Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has a 'direct, personal, substantial, pecuniary interest' as reiterated in a case.¹¹

The Supreme Court noted that "under our precedents, the Due Process Clause may sometimes demand recusal even when a judge 'has no actual bias.'" As reiterated in *Arnett v. Kennedy*, 416 U.S. 155 (1974), the due process requirement entails the opportunity to be heard at a meaningful time and in a meaningful manner. Likewise, it was characterized with fluidity in that it negates any concept of inflexible procedures universally applicable to every imaginable situation. A salutary norm is that he reflects on the probability that losing party might nurture at the back of his mind the thought that the judge had unmeritorious tilted the scales of justice against him.

That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject

¹⁰ LA C. CV. P. ART. 151: Grounds

¹¹ 556 U.S. __, No. 08-22, slip op. at 6, quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927).

to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party is involved. The act of non-recusal violates the Louisiana Code of Judicial Conduct.¹² ¹³

Recusal is required when, objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813, 825 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)]. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Bias or prejudice of an appellate judge can also deprive a litigant of due process.¹⁴

In the facts above, there was no recusal of said Judge Hans Liljeberg even if there was no "bias" on his part. Such failure of the act is deprivation of due process. The non-recusal of Judge Hans Liljeberg from this case set a mischievous precedent and open the floodgates to bias.

(5) Refusal to answer interrogatories is a deprivation of due process.

Petitioner's right to a procedural due process was not satisfied when the Respondent refused to answer the Interrogatories. Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.¹⁵ It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property. The parties may be allowed to raise clarificatory questions and elicit answers from the

¹² LA. C. Jud. Cond. 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary

¹³ LA. C. Jud. Cond. 3: A Judge Shall Perform the Duties of Office Impartially and Diligently

¹⁴ *Aetna Life Ins. Co. v. LaVoie*, 475 U.S. 813 (1986)

¹⁵ Daniel Webster

opposing party and or witness, as the case may be, for determination of whether or not the proposed questions are necessary and relevant.

The law and the rules afforded us the right to ask questions in order to determine whether our right is denied or granted. However, in answering such, it all depends on the question that is subjected to one's liking and we find that unjust. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of: "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."¹⁶

Petitioner has submitted Interrogatories for the Defendant to answer but refused. Causing a delay in the proceedings before the Court, and such delay is tantamount to deprivation of due process. The purpose of interrogatories under Rule 33 of Federal Rules of Civil Procedure is to obtain admissions from the adversary, thereby limiting matters in dispute to avoid unnecessary attendance of witnesses and waste of time of the parties and the Court. *[Hoffman v. Wilson Line, Inc. (E.D.Pa. 1946)]*

The argument that the questions are too imprecise to warrant an answer is unfounded. In total, it demands specific facts; facts on which the defendant currently bases its answer to the complaint. The information sought by these particular interrogatories is of a nature peculiarly within the mind of defendant. Moreover, no rule or authority is cited which authorizes refusal to answer an interrogatory simply upon the ground that the answer is known to the party seeking the information. *[Singer v. Superior Court 54 Cal. 2d 318 (1960)]*

¹⁶ Chief Justice Hughes, in *Morgan v. U. S.*, 304 U. S. 1, 58 S. Ct. 773, 999, 82 Law. ed 1129,

The interrogatories here involved do not call for "all the facts" defendant intends to produce at the trial in support of the pleaded defenses. If the questions were that broad the trial court might well have been justified in refusing to compel answers. But the interrogatories here involved are not of that character. They carefully limit the questions to facts now known to defendant. They request a statement of "what fact or facts form the basis for the allegation. All that is requested are the facts now known to the defendant upon which it predicates its defenses.

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All that is necessary is that the procedures be tailored, in light of the decision to be made to the "capacities and circumstances of those who are to be heard to ensure that they are given a meaningful opportunity to present their case."¹⁸ In assessing what process is due in this case, substantial weight must be given to the good-faith judgments of the individual. The petitioner is entitled to the information requested and having the outright refusal to answer has violated the right to due process of the Petitioner. This is especially so where, as here, the prescribed procedures not only provide the claimant with an effective process for asserting his claim prior to any action, but also assure a right to a hearing, as well as to subsequent judicial review, before the denial of his claim becomes final.

REASONS FOR GRANTING THE WRIT

This Court should grant review in this case to further solidify the role of the due process clause of the Fourteenth Amendment to the United States Constitution in protecting the rights of

¹⁷ Singer v. Superior Court 54 Cal. 2d 318 (1960)

¹⁸ "Due process is a flexible concept that calls for such procedural safeguards as the situation demands" Elkony v. Abououf, No. 352810, 4 (Mich. Ct. App. Dec. 10, 2020)

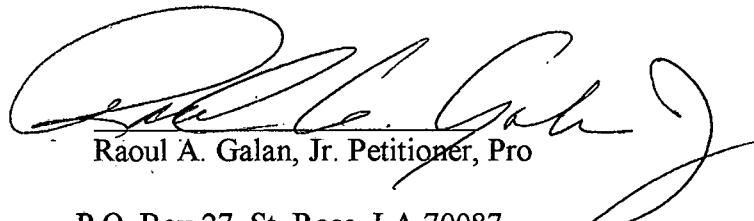
citizens against the arbitrary and capricious application of the law. The failure to provide the Petitioner with adequate notice of a hearing was a grievous violation of his constitutional rights and resulted in irreparable harm to the Petitioner. In addition to the harm done to the Petitioner, the citizens of Louisiana were denied the right to choose from a full slate of qualified candidates for public office. Because the lower courts have failed to grant both procedural and substantive due process as required by the Constitution, this Court's review is warranted.

CONCLUSION

Petitioner respectfully pleads that this Court grant his writ of certiorari and permit briefing and argument on the issues.

Date: December 20, 2022

Respectfully Submitted,



Raoul A. Galan, Jr. Petitioner, Pro

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United States Court of Appeals
for the Fifth Circuit

No. 21-30728

United States Court of Appeals
Fifth Circuit

FILED

May 19, 2022

Lyle W. Cayce
Clerk

RAOUL A. GALAN, JR.,

Plaintiff—Appellant,

versus

STEPHEN MICHAEL PETIT, JR.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:20-CV-2235

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

The district court dismissed the pro se plaintiff's case in a thorough and well-reasoned opinion. Unsatisfied with the district court's ruling, the plaintiff appeals. However, because his homemade brief on appeal begins and ends with a mishmash of plagiarized history and legalese that is so unintelligible as to be utterly frivolous, any issues he attempts to raise on

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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appeal are abandoned, and the district court is accordingly AFFIRMED. See FED. R. APP. P. 28; *Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir. 1994) (“A party who inadequately briefs an issue is considered to have abandoned the claim.”).

United States Court of Appeals
for the Fifth Circuit

No. 21-30728

RAOUL A. GALAN, JR.,

Plaintiff—Appellant,

versus

STEPHEN MICHAEL PETIT, JR.,

Defendant—Appellee.

Appeal from the United States District Court
Eastern District of Louisiana
USDC No. 2:20-CV-2235

ON PETITION FOR REHEARING

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellant's motion for leave to file petition for rehearing out of time is GRANTED.

IT IS FURTHER ORDERED that the petition for rehearing is DENIED.

21-30728