

281-7110

ORIGINAL

No. \_\_\_\_\_

In The

**Supreme Court of The United States**

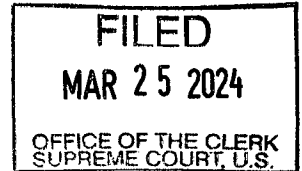
ILEEN CAIN

*Petitioner,*

v.

MERCY UNIVERSITY,  
FORMERLY MERCY COLLEGE  
REEMA ZEINELDIN, ASSOCIATE PROV  
OST, FACULTY AFFAIRS  
KRISTEN BOWES, GENERAL COUNSEL,  
NICK CANZANOS, ASSISTANT DEAN STUDENT AFFAIRS  
THOMAS MCDONALD, TITLE IX COORDINATOR, EQUITY COMPLIANCE OFFICER

*Respondent*



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**ON PETITION FOR A WRIT OF CERTIORARI,  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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## QUESTIONS PRESENTED

In the matter of Ileen Cain v. Mercy University formerly, Mercy College 20-2266, LLS. Several Judgements have been handed down. The District Court January 17<sup>th</sup> 2023 Order dismissed Pro se Petitioner Ileen Cain's motion for Relief from Judgment, claiming that the motion was brought more than a year after judgement was entered. The lower court does not identify the juncture of judgement entered that constituted the finality of Pro se Petitioner civil suit

### Question

1. Which juncture of federal civil proceedings constitute Judgement entered establishes the finality of a civil complaint, Pursuant to Federal Rule Civil Procedure 60(b)(1)(2)(3) & (6)?

In 2019 Pro se Petitioner Ileen Cain via Defendant Respondent Mercy University, formerly Mercy College intranet submitted two allegations that Defendant Mercy University, formerly Mercy College students were engaging and participating in cyberstalking her, via social media platforms, posting racially derogatory comments and imagery of her.

In December of 2020 Defendant Respondent Mercy University, formerly Mercy College issued a letter to students that substantiated, a breach in their information technology [IT] in 2019. The letter described Defendant Respondent Mercy University formerly, Mercy College students engaged and participated with individuals outside of Mercy University, formerly Mercy College in posting racial imagery, and posting derogatory comments during a school sanctioned social media session via Zoom a social media platform.

### Question

2. Does the Constitution First Amendment prohibit or protect students from racially charged speech and racially charged imagery posted via a school sanctioned social media event via social media platform Zoom that target a specific student?

Post this Court denying Pro se Petitioner, Ileen Cain Petition for certiorari February 21, 2023; Pro se Petitioner, Ileen Cain obtained inadvertence subject letter issued to Mercy University formerly Mercy College students that substantiate Defendant Mercy University formerly, Mercy College students engaged and participated in posting racially charged imagery and commentary, during a school sanctioned social media event, via the internet social media platform Zoom. On March 8<sup>th</sup> 2023, Pro se Petitioner moved the District court for Relief from Judgment and moved for a preliminary hearing to argue the value of subject letter the motion was denied.

### Question

3. Does the residual clause of Federal Rule Civil Procedure 60(b)(6) that warrant relief from judgement, based on extraordinary circumstances include documents that were solely in possession of Defendant Respondent during the initial pleading stages, of District and Appellate procedure?

Plaintiff seeks to seal a document that is not part of the record and played no role in this Court's exercise of its Article III judicial power, as the letter was filed after this case was closed. Indeed, this letter should not be part of the court record because the case is closed and Plaintiff's motion to reopen the action has been denied.

Defendant Respondent, Mercy University formerly, Mercy College Appellee Brief is a part of the record and played a significant role in the lower courts exercise of its Article III judicial power docketed at 21-0824, in the Second Circuit Court of Appeals in November of 2021. Defendant Respondent omits, the letter that substantiates a breach in their internet technology in 2019 where students engaged and participated with outsiders in posting racially charged derogatory comments and imagery

### Question

4. Does Defendant Respondent Mercy University, formerly Mercy College deliberate exclusion of documents constitute fraud, Pursuant to Fed. R. Civ. P 60(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party?
5. Whether the subject document should establish part of the record?

This action is closed. If Plaintiff files future documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why Plaintiff should not be barred from filing further documents in this action.

After *Twombly*, the Supreme Court issued another decision addressing the sufficiency of a pleading under Rule 8(a), but this time specifically for a complaint filed pro se. This Court reversed the Tenth Circuits dismissal of prisoner *William Erickson v. Pardus* 06 – 7317 cite as 127 S. Ct. 2197(2007) eighth Amendment claim. Holding that the court of appeals had “departed from the liberal pleading standards of Rule 8(a) Id. at 2200. “A document pleaded Pro se, is to be liberally construed and a Pro se complainant and a Pro se complaint however unartfully, pleaded must be held to less stringent standards than a formal pleading drafted by lawyers.

### Question

6. Did the District Court and the Second Circuit Appeals Panel depart from the liberal pleading standard afforded to Pro se litigants under Federal Rule Civil Procedure 8(a)?

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Second Circuit Court of Appeals, August 10<sup>th</sup> 2023 Order

### **Appendix B**

Second Circuit Court of Appeals Reconsideration/reconsideration, En banc Order October 27<sup>th</sup> 2023

### **Appendix C**

March 8<sup>th</sup> 2023 Motion Letter, submitted Southern District March 8<sup>th</sup> 2023 Pursuant to Federal Rule 60(b) (1-5) & 6 & 8(a)

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Southern District March 17<sup>th</sup> 2023 Order

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Letter, from President Timothy Hall, Mercy University, formerly Mercy College, re:  
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### **Exhibit B**

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Pro se Petitioner Email to Defendant Nick Canzano re:  
Investigation and phone calls to fellow classmates and students regarding Pro se Petitioner, Ileen Cain conduct and character

**Exhibit D**

Email from, Director of the Office of the Ombudsman DHS

**Exhibit E**

Email From, Director of Shelter, Lynne Ann Anthony

**STATUTES AND RULES**

Federal Rule Civil Procedure 60(b)(1-5) & (6)

Federal Rule Civil Procedure 8(a)

Title IX of the Education Amendments  
of 1972 (Title IX), 20 USC §§ 1681 et seq.,

28 U.S.C. §1915 Jeanne Clery Act 20 U.S.C. § 1092 Policy and Campus Crime Statistics Act of  
1990,

**US CONSTITUTION**

United States Constitution, First Amendment,

## RELATED PROCEEDINGS

United States Court of Appeals, for the Second Circuit, of New York

- Ileen Cain v. Mercy University, formerly, Mercy College et. al. No. 21-824

United States District Court Southern District, of New York,

- Ileen Cain v. Mercy University, formerly Mercy College. Et. al. 20-cv-2262 (LLS)

Supreme Court of the United States of America

- Ileen Cain v. Mercy University, formerly Mercy College No. 22-6282 Linked with 22A94

## CITATIONS TO PRIOR OPINIONS AND ORDERS IN THIS CASE

The opinion of the United States court of appeals appears at Appendix A  
March 15, 2022 is published at 2022 WL 779311

The opinion of the United States district court appears at Appendix to B  
March 17<sup>th</sup> is published at 2023 WL 2570576

## JURISDICTION

- The Second Circuit Court of Appeals, on August 10<sup>th</sup> 2023 Denied, Petitioner Ileen Cain motion for Relief from Judgement, Order Attached, Appendix A
- Petitioner, Ileen Cain motion for reconsideration/reconsideration en banc was Denied on October 27<sup>th</sup> 2023, Order Attached Appendix B
- United States District Court, Southern District March 17<sup>th</sup> Order Attached Appendix C
- Justice Sotomayor, extended time in which to file this petition until March 25<sup>th</sup> 2024.
- March 15<sup>th</sup> 2022 Second Circuit Court of Appeals Affirmed the District Courts Order of Dismissal, Order Attached Appendix D
- July 6<sup>th</sup> 2022 the Second Circuit Court of Appeals denied Panel Rehearing/ En banc Rehearing, Order Attached Appendix E
- Defendant Respondent Appellee Brief



- Application (22A94) granted by Justice Sotomayor extending the time to file until December 5, 2022.

**The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1)**

**STAUTORY PROVISIONS INVOLVED**

28 U.S.C. §1915

Jeanne Clery Act 20 U.S.C. § 1092

Policy and Procedure Campus Crime Statistics Act of 1990, [Clery] 2018);

Defendant Respondent Mercy University, formerly Mercy College Adopted Policy and

Procedure, for Due Process

**CONSTITUTIONAL AMENDMENTS INVOLVED**

First Amendment, Freedom of Speech

**FEDERAL RULES INVOLVED**

Federal Rule Civil Procedure 60(b)(1)(2)(3) & (6) Federal Rule Civil Procedure 8(a)

## **I. STATEMENT OF THE CASE**

**Documents Discovered, Inadvertence  
Filed, in the Southern District, NY  
Pursuant to Fed. R. Civ. P. 60(b)(1)-(5) & (6)**

At the heart of this petition for granting certiorari rests two [2] documents and the questions before this court that frame them. The documents are of public and national importance. National and public concern raise issues that affect large populations of people that are connected, directly and indirectly. Document one [1] A letter from Defendant Respondent Mercy University, formerly Mercy College president Timothy Hall substantiate Defendant Mercy University, formerly Mercy College students engaged and participated in posting racially charged derogatory commentary and imagery, with individuals outside of Defendant Respondent Mercy University formerly, Mercy College via social media during a school sanctioned social media session, via Zoom a social media platform, that targeted Pro se Petitioner Ileen Cain. The subject letter further describes the incident included a breach in Defendant Mercy University, formerly Mercy College information internet technology [IT]; and there is an ongoing investigation into the source of the breach. In 2019 Pro se Petitioner, Ileen Cain filed two complaints via Defendant Respondent Mercy University, formerly Mercy College intranet regarding students participating in cyberstalking/stalking her posting racial and derogatory commentary about her and her picture via the internet social media platforms.

Document two [2] Defendant Mercy University formerly, Mercy College Department of Campus Annual Security Fire & Safety Report that includes crime statistics for years 2018, 2019, and 2020. The documents are enforced by New York State Department of Education and are governed by the statutory, law Jeanne Clery Act, 20 U.S.C. § 1092; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, [Clery] 2018); that mandates

institutions are required to disclose information about certain crimes. Under the Clery Act, the Annual Security Report [ASR], which is submitted once a year, must document three years - worth of specific crime statistics. The report must also include procedures and information pertaining to basic crime victims' rights. Certain policies must also be clearly explained, including education awareness programs for students and employees and a summary of emergency response systems and procedures. Institutions must make the Annual Security Report [ASR] available to all current and prospective students and institutional employees.

Pro se Petitioner Ileen Cain obtained subject documents inadvertence, post this court denying certiorari February 21<sup>st</sup> of 2023 Dkt. No. 22A94 linked to 22-6682. Subsequently on March 8<sup>th</sup> of 2023 Pro se Petitioner Ileen Cain moved the Southern District of New York Pursuant to Fed. R. Civ. P. 60(b)(1) - (5) & (6) attached thereto were the subject documents. The motion letter moved for a preliminary hearing to argue the value of the two [2] subject documents. The motion letter adhered to Fed. R. Civ. P. 8(a)(2) & (3) that states [1] a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; [2] a short and plain statement of the claim showing that the pleader is entitled to relief; and [3] a demand for the relief sought, which may include relief in the alternative or different types of relief.

Nearly, every complaint filed in federal court must meet the simple pleading requirements of Rule 8(a)(2). However, under Bell Atlantic v. Twombly and Ashcroft v. Iqbal 05-1126 cite at 550 US 544 (2007), the pleading standard is painted with a broad stroke, that does not consider the obstacles Pro se litigants face at the initial pleading stages e.g. Pro se litigants [1] lack the resources to discover the facts before discovery, [2] they are unable to bring claims requiring them to plead information that is solely in the possession of the opposition, [3] rely on forms in drafting

complaints [4] Pro se are unskilled in Fed. R. Civ. P. [5] and they are unable to afford attorney fees.

The District court denied Pro se Petitioner, Ileen Cain's motion for Relief from Judgement on March 17<sup>th</sup> 2023 without prejudice. The District court deemed Pro se Petitioner Cain's motion letter as untimely Pursuant to Fed. R. Civ. P. 60 (c)(1). Pro se Petitioner, Ileen Cain, steadfast disagree, and believes the lower court erred, in its calculation. What is more the District court did not specify the juncture of judgement issued that constituted the finality of Ileen Cain v. Mercy University, formerly Mercy College, et. al. 20-2262 LLS. In the matter of Pro se Petitioner Ileen Cain v. Mercy University, formerly Mercy College several judgements have been handed down in these proceedings.

Therefore, a focal topic in this Pro se petition involves, Federal Rules of Civil Procedures 8(a) ((2)(3) & 60(b)(1) – (5) & (6), and individuals that proceed as Indigent Pro se in the District courts. Below are excerpts from the District court Order of Dismissal. The District court and the Second Circuit court of Appeals gave absolutely no credence to the subject documents. The following excerpts taken from the District Courts March 17<sup>th</sup> Order denying Pro se Petitioner Ileen Cain motion letter titled Relief from Judgement:

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**“The Court has considered Plaintiff's arguments under Rule 60(b). With respect to the reasons set forth in clauses (1)-(3), because she filed this motion more than one year after entry of judgment, these reasons cannot apply. As for reasons set forth in clauses (4) and (5), even under a liberal interpretation of her motion, Plaintiff has failed to demonstrate that these grounds apply. Therefore, the motion under any of these clauses is denied”**

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**“To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. “[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5).” United Airlines, Inc. v. Brien, 588 F.3d 158, 175 (2d Cir. 2009) (quoting Smith v. Sec’y of HHS, 776 F.2d 1330, 1333 (6th Cir. 1985). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b)”. “The Court has considered Plaintiff’s arguments under Rule 60(b).**

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**Here, Plaintiff seeks to seal a document that is not part of the record and played no role in this Court’s exercise of its Article III judicial power, as the letter was filed after this case was closed. Indeed, this letter should not be part of the court record because the case is closed and Plaintiff’s motion to reopen the action has been denied.**

**Pg. 6 Conclusion**

**This action is closed. If Plaintiff files future documents that are frivolous or meritless, the Court will direct Plaintiff to show cause why Plaintiff should not be barred from filing further documents in this action.**

**The Court denies Plaintiff’s motion to reopen the action (ECF 18) and motion to seal a letter (ECF 19). The Court also denies Plaintiff’s motion for the appointment of *pro bono* counsel as moot**

A focal topic of this Pro se Petition are the aforementioned two [2] subject documents that Pro se petitioner Ileen Cain filed in the Southern District, NY Pursuant to Fed. R. Civ. P. 60(b)(1)-(5) & (6) titled Relief from Judgment; On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;(4) the judgment is void;(5) the judgment has been satisfied, released, or

discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or(6) any other reason that justifies relief.

The issue of who is liable for heinous content posted via the internet and social media is currently litigated in the District and State courts, debated in media, topic in publication, and Petitions for a writ of certiorari have been sought in this court. Therefore, the goliath issue of litigating, liability, for heinous content posted via the internet social media platforms is of national, public and global importance. But for Pro se Petitioner Ileen Cain litigating these issues in the District and Appellate court posed a significant challenge at the initial pleading stages for [1] she lacked the resources to discover the facts before discovery, for two [2] Pros e Petitioner Cain was unable to plead the aforementioned subjects documents, because they were solely in possession of Defendant Respondent for three [3] Pro se Petitioner Ileen Cain, is unable to afford attorney fees and was denied appointment of *pro bono* legal representation. The natural course of civil proceedings revealed Pro se Petitioner Ileen Cain does not have a statutory right to the District court's appointment of *pro bono* legal representation.

This Pro se Petition is not diminished because it lacks the legal experience of an attorney licensed to practice before this court or the District court. This Pro se Petition adheres to Rule 24 of this court, Briefs on the Merits, and complies with Supreme Court Rule 39 Proceedings in *Forma Pauperis*. And emphasizes the need for granting this Pro se petition, is due to the issues on petition are of public, and national importance, that involve but not limited to the United States Constitution First Amendment, freedom of speech; Federal Rules of Civil Procedure 60(b)(1)- 5 & (6); Federal Rules of Civil Procedure 8(a); the statutory law Jeanne Cleary Act. Jeanne Clery Act 20 U.S.C. § 1092 Policy and Campus Crime Statistics Act of 1990, [Clery] 2018); and Title IX.

## ARGUMENT

### **Fraud Pursuant Fed. R. Civ. P. 60(3)**

Defendant Respondent, Mercy University formerly Mercy College committed fraud Pursuant to Fed. R. Civ. P. 60(b)(3); fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. On November 15, 2021 Defendant Respondent submitted their Appellee Brief in the Second Circuit court of Appeals.

Defendant Respondent Appellee Brief played a pivotal role, in the exercise of the lower courts Article III judicial power. The Appellee Brief does not reveal the subject documents. Defendant Respondent, Mercy University formerly Mercy College were in possession of the subject documents in December of 2020. The subject documents, are omitted from Defendant Respondent, Appellee Brief, filed in the Second Circuit court of appeals Docket 21-0824. Therefore, a focal question and issue before this court is whether fraud is applicable Pursuant to Federal Rule Civil Procedure 60(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.

Defendant Respondent Appellee brief does not reveal Document one [1] the letter from Defendant Mercy College, president Timothy Hall substantiates Defendant Mercy University, formerly Mercy College students engaged and participated in posting racially charged commentary and imagery, with individuals outside of Defendant Mercy University, formerly, Mercy College via social media during a school sanctioned social media session, via Zoom a social media platform, that targeted Pro se Petitioner Ileen Cain. Defendant, Respondent Mercy University, formerly Mercy College Appellee brief does not reveal, a breach in Defendants internet technology [IT] occurred in 2019. Defendant Respondent Appellee brief does not reveal Document [2] Defendant Respondent Mercy University, formerly Mercy College Department of Campus Annual

Security Fire & Safety Report that includes crime statistics for years 2018, 2019, that reveals there was one incident of cyberstalking reported in 2019.

**District and Appellate Court  
Egregious Abuse of Article III Judicial Power**

The documents obtained inadvertence create a colossal of differences for these proceedings. But, because a Pro se submitted the aforementioned documents the District and Appellate courts gave no credence to Pro se Petitioner, Ileen Cain's motion and the documents attached thereto. The lower courts egregious abuse of Article III judicial power, abused the most basic Rule of Federal Civil Procedure, Rule 8(a). The plain reading of Fed. R. Civil P. 8(a) (2) & (3) states a complaint must state a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for the relief sought, which may include relief in the alternative or different types of relief provided. Pro se Petitioner, Ileen Cain motion letter was four pages, titled Relief from Judgement; adhered to the Individual Rules and Practices of the presiding judge the Honorable Louis L. Stanton and moved for a preliminary hearing to argue the value of subject documents.

Unfortunately, not obvious to Pro se litigants at the initial pleading stages of civil litigation but is obvious to the District courts and the opposition alike; Pro se litigants will encounter the inability to plead documents that are solely in possession of the opposition. The plain reading of Fed. R. Civil P. 8(a) (2)(3) provided a gateway for Pro se Petitioner Cain's motion letter titled Relief from Judgement, to proceed in the District Court. The District and Appellate courts, closed the gateway when they denied Pro se Petitioner Cain's motion letter and devalued the aforementioned subject documents attached thereto.

**The Jeanne Cleary Timely Disclosure  
of Campus Security Policy and Campus Statistics Report**



Under the Jeanne Clery Act Colleges must issue timely warnings each time a school is notified that a Clery Act crime has occurred on campus. An institutional official must review that crime to decide if it represents a “serious or ongoing” threat. If so, the school must issue a timely warning to the entire campus. Colleges and universities must also establish and, as appropriate, implement emergency response, notification, and testing systems. Institutions must also inform the campus community about any “significant emergency or dangerous situations involving an immediate threat to the health or safety of students or employees on the campus.” Such situations may include, but are not limited to, crimes of sexual violence, fires, earthquakes, on-campus shootings, and other situations listed under the Act, that includes cyberstalking/stalking.

**Title IX of the Education Amendments  
of 1972 (Title IX), 20 USC §§ 1681 et seq.,**

Under the provisions of Title IX of the Education Amendments of 1972 (Title IX), 20 USC §§ 1681 et seq., and its implementing regulations, 34 CFR Part 106, discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance is prohibited. Cyberstalking/stalking under title IX is considered a form of sexual harassment which includes acts of sexual violence, and unwanted physical contact of a sexual nature, is a form of discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature that is sufficiently serious to adversely affect an individual’s ability to participate in or benefit from an educational program. It includes unwelcome sexual advances, requests for sexual favors and other verbal, non-verbal, or physical contact of a sexual nature on or off campus. Sexual assault, domestic violence, dating violence and stalking are forms of sexual harassment and are prohibited forms of discrimination under Title IX.

**October 4<sup>th</sup> 2019  
Petitioner spoke with Defendant Nick Canzano**

On October 4<sup>th</sup> 2019 Defendant Nick Canzano invited Pro se Petitioner Ileen Cain to Defendant Respondent Mercy University, formerly Mercy College Dobbs Ferry Campus to discuss the cyberstalking/stalking allegations; the affects the social media posts are having on Pro se Petitioner Cain in class and off campus and that she is in jeopardy of losing her apartment because of the numerous complaints she has made to her landlord, regarding cyberstalking/stalking victimization taking place on subject property 66 Rockwell Place Brooklyn, NY 11217. After the meeting Nick Canzano asked Petitioner Cain what does she expect to happen. Pro se Petitioner Ileen Cain replied “she would like Defendant Mercy University formerly, Mercy College, et al. to investigate and substantiate her allegations and to help her obtain justice through the legal system. Defendant Nick Canzano, replied “In a Perfect World”.

After, Pro se Petitioner Ileen Cain attended the meeting with Defendant Nick Canzano on October, 4<sup>th</sup> 2019; Defendant Respondent Mercy University formerly, Mercy College created a hostile environment for Petitioner Cain while she attended classes. Over the course of three semesters October, November and December, of 2019 Defendant Mercy University, et. al. formerly, Mercy College created a list of demeaning questions regarding Petitioner Cain’s conduct and character, while attending class.

Defendant, Mercy University, formerly, Mercy College, contacted Pro se Petitioner Ileen Cain’s fellow classmates and students, via phone, and questioned the students regarding whether Pro se Petitioner Ileen Cain was acting violently during class; shoving desks around; blurting obscenities, and acting in a threatening behavior. Pro se Petitioner Ileen Cain fellow classmates alerted her to the phone calls informing Pro se Petitioner Ileen Cain that Defendant Mercy College, et. al. was, trying to coerce students to talk bad about her. The revelation that Defendant Mercy University, formerly Mercy College were trying to coerce Petitioner Cain fellow classmates and

students to talk bad about her; Petitioner Cain felt the weight of despair while she attended classes on Defendant Mercy University, formerly Mercy College campus. Pro se Petitioner Cain began leaving class early.

October of 2019 Pro se Petitioner Ileen Cain phoned Defendant, Nick Canzano, Dean of Student Affairs informing him she is now homeless, and that she is aware of the phone calls made to her fellow classmates and students, regarding her conduct and character. Defendant, Nick Canzano, did not respond to Pro se Petitioner Ileen Cain's email. The phone calls and questions sought to have Pro se Petitioner, Cain's fellow students and classmates corroborate Pro se Petitioner Cain as unfit to benefit from Defendant Mercy University, formerly Mercy College services. Petitioner Cain began leaving class early and was unable present a class project, for her communications class, lectured by Professor Claudette Charles Barr. Pro se Petitioner Cain received an unfavorable grade because she began leaving class early.

Petitioner Ileen Cain appealed the grade and an academic-appeals hearing committee was convened in January of 2020. Pro se Petitioner Ileen Cain spoke with the organizer of the hearing committee Defendant Reema Zeineldin, Associate Provost, Faculty Affairs, in November, and December of 2019 and in January of 2020 via phone regarding the phone calls and questions that her fellow classmates and students received and her allegations that Defendant Respondent Mercy University formerly, Mercy College, students were engaging in and participating in cyberstalking/stalking her. Defendant Reema Zeineldin, informed Pro se Petitioner Ileen Cain that she conducted a fact- finding investigation. And that she does not have to reveal the outcome of her fact- finding investigation. Defendant Reema Zeineldin, advised Pro se petitioner Ileen Cain the hearing committee will not consider or determine her allegations of cyberstalking/stalking. In

January of 2020 Defendant Reema Zeinelden convened the academic hearing panel and allotted Petitioner Cain and her professor Claudette Charles Barr separate hearing times.

Defendant Reema Zeineldin, Associate Provost, Faculty Affairs, prohibited Pro se Petitioner Ileen Cain from attending her professors hearing. The result of the hearing; the grade was stayed. Pro se Petitioner, Ileen Cain's Professor, Claudette Charles Barr confirmed she did receive a phone call from Defendant Mercy University formerly, Mercy College regarding Petitioner Ileen Cain's conduct and character. And further confirmed students were concerned regarding the phone calls and questions. Professor Claudette Charles Barr, stated "she did not feel threatened by Petitioner Cain".

Pro se Petitioner Ileen Cain in December of 2019 received an email from Defendant Mercy University formerly, Mercy College in house attorney Kristin Bowes. The email attained, Defendants "do not believe that petitioner is being cyberstalked/stalked and suggest petitioner take advantage of Defendants counseling services". In January of 2020 Defendant Reema Zeinelden, via email referred Petitioner to Thomas McDonald, Defendant Title IX coordinator. Defendant Thomas McDonald referred Petitioner to Defendant Mercy University, formerly Mercy College counseling services.

Petitioner Ileen Cain, is currently homeless, since 2019, residing in a shelter and is violently accosted, challenged and threatened because she is a victim of cyberstalking/stalking. Pro se Petitioner sought and received some advocacy from The Office of the Ombudsman that supports individuals and families experiencing homelessness in New York City. After receiving some advocacy, from the Ombudsman Office, the shelter director, Lynne Ann Anthony emailed Petitioner Cain and advised Petitioner Cain that she should not file any more complaints outside of the shelter, going forward.

## II. PROCEDURAL BACKGROUND

### **Initial Proceedings: Southern District of New York**

The initial proceedings of Cain v. Mercy University formerly Mercy College, et. al. 1:20-cv-02262 were filed by Ileen Cain proceeding Pro se, in the Southern District of New York in March of 2020. The causes of action *inter alia*; Defendant Respondent Mercy University, formerly Mercy College, et. al. violation of the Title IX rules and regulations, implemented under the Authority of former Secretary of State Betsy Devos; Violation of Title VI VII, 42 U.S.C. 2000 of the civil rights act; Violation of the Americans with Disabilities Act; race and gender discrimination, coercion, hostile environment and student on student cyberstalking/stalking via the internet social media platforms taking place on Defendant Mercy University, formerly Mercy College that is prohibited under Title IX.

By Order dated July 20<sup>th</sup> 2020 the District court granted Pro se Petitioner Ileen Cain leave to amend her complaint to identify individuals in their official capacity and give dates and times of Defendants omissions Ileen Cain v. Mercy University, formerly Mercy College 20 - 2262 (LLS). Pro se Petitioner Ileen Cain adhered to the District Court Order and timely filed her amended complaint. The amended complaint joined, Defendants, in their Official Capacity Reema, Zeinelden, Associate Provost Faculty Affairs, Kristen Bowes, General Counsel, Nick Canzanos, Assistant Dean Student Affairs Thomas McDonald, Title IX Coordinator, Equity Compliance Officer. The District court issued its Civil Judgement on February 25<sup>th</sup> 2021 dismissing Pro se Petitioner, Ileen Cain amended complaint without prejudice *sua sponte* under 1915 (e)(2)(B)(ii).

Pro se Petitioner Ileen Cain appealed the decision, and on July 13<sup>th</sup> 2022, the United States Court of Appeals for the Second Circuit affirmed the lower court's dismissal. Petitioner Cain, petitioned this court for a writ of certiorari. The petition was docketed on December 12<sup>th</sup> 2022

Docket. No. 6282 linked with 22894. The petition for certiorari was denied on February 21, 2023. Post the February 21<sup>st</sup>, 2023 denial of her petition for certiorari Pro se Petitioner Ileen Cain obtained subject documents, inadvertence and on March 8<sup>th</sup> 2023 Pro se Petitioner Ileen Cain filed a four-page motion letter, pursuant to the presiding judge the Honorable Louis L. Stanton Individual Rules of Practice. The motion letter was tilted Relief from Judgment, Pursuant to Fed. R. Civ. P. 60(b)(1)-(5) & (6).

**Proceedings:  
Second Circuit Court of Appeals**

The Second Circuit Panel of three on August 10<sup>th</sup> 2023 ORDERED that Petitioners motion letter for Relief from Judgment is DENIED and the appeal is DISMISSED as frivolous because it “lacks an arguable basis either in law or in fact citing “Neitzke v. Williams, 490 U.S. 319, 325 (1989); see 28 U.S.C. § 1915(e)””.

The Panel’s decision to dismiss Pro se Appellant Cain’s complaint under 28 U.S.C. 1915(e) conflicts with this Courts established authority and guidance, on the solicitude afforded Pro se litigants is compulsory at every stage of litigation, that includes the Appellate stage. After *Twombly*, the Supreme Court issued another decision addressing the sufficiency of a pleading under Rule 8(a), but this time specifically for a complaint filed pro se See *Erikson v. Pardus, U.S. 127 S. Ct. 2197, 167 L. Ed. 2d 10801 (2007) (per curium)*. This Court reversed the Tenth Circuits dismissal of prisoner *William Erikson* Eighth Amendment claim. Holding that the court of appeals had “departed from the liberal pleading standards of Rule 8(a)(2) *Id.* at 2200.

The Court reiterated that specific facts are not necessary and that the complainant need only give the defendant fair notice of what the claim is and the grounds upon which it rests. (*quoting Twombly 127 S. Ct. at 1964*) (internal quotation marks omitted), But *Erikson* also emphasized that the court of appeals departure from Rule 8(a)’s liberal pleading standard was particularly

unwarranted because the complainant was a Pro se. "A document pleaded Pro se, is to be liberally construed and a Pro se complainant and a Pro se complaint however unartfully, pleaded must be held to less stringent standards than a formal pleading drafted by lawyers.

Nearly, every complaint filed in federal court must meet the simple pleading requirements of Rule 8(a)(2). However under Bell Atlantic v. Twombly and Ashcroft v. Iqbal the pleading standard is painted with a broad stroke, that does not consider the obstacles Pro se litigants face at the initial pleading stages e.g. Pro se litigants [1] lack the resources to discover the facts before discovery, [2] they are unable to bring claims requiring them to plead information that is solely in the possession of the opposition, [3] rely on forms in drafting complaints [4] Pro se are unskilled in Fed. R. Civ. P. [5] and they are unable to afford attorney fees

### **III. REASON FOR GRANTING CERTIORARI**

Pro se Petitioner, Ileen Cain Petition for a writ of certiorari has precedential value; Because, it encompasses recurring topics that are controversial that have recently lobbied on Capital, Hill debated in broadcasting, the media, publishing, and petitions for a writ of certiorari have come and have been granted before this court. Pro se Petitioner Ileen Cain asks this court to grant certiorari to clarify at what junction of judgment issued constituted the finality of her Pro se complaint under Federal Rule Civil Procedure 60(b)(1) - (5) & (6). This court granting certiorari will surely resolve the recurring misconception that promote delusions amongst Pro se litigants, and those represented by attorneys licensed to practice before this court regarding the juncture of federal civil proceedings that constituted the finality of a civil complaint. Granting certiorari, will provide transparency and educate Pro se litigants in Federal Rules of Civil Procedure 60(b)(1) – (5) & (6) that govern time for answering, and appealing judgements entered, from the federal courts.

#### **Reason II**

**Case Law No. 21-5726**  
**Dexter Earl Kemp v. United States**  
**Kemp v. United States, 857 Fed. Appx. 573 (2021)**

This court granted certiorari in the matter of Kemp v. United States, 857 Fed. Appx. 573 (2021) Dexter Kemp, v. United States No. 21-5726; To resolve the Courts of Appeals' long-standing disagreement whether "mistake" in Rule 60(b)(1) includes a judge's errors of law. This Court heard arguments on April 19<sup>th</sup> 2022. The, argument in Kemp paralleled to Pro se Petitioner Ileen Cain's writ for certiorari involve Federal Rule of Civil Procedure 60(b)(1) – (5) & (6).; What is not paralleled, is that Kemp was represented by an experienced attorney admitted to practice before this court afforded to him under, the sixth amendment of the constitution that guarantees the right in all prosecutions "the accused shall enjoy the right to the assistance of legal representation for his defense".

Pro se Petitioner Ileen Cain, believes the matter of Dexter Kemp, v. United States No. 21-5726 is convoluted. And does not make for good precedential effect for properly applying Rule 60(b) in federal civil litigation, where the question and issues involves the juncture of judgement issued that constituted the finality of a civil complaint. In kemp the question presented involves a judge's error of law. Pro se Petitioner question asks for Fed. R. 60(b) transparency to clear misconception in the matter of judgment entered that constitute finality of a civil complaint. Dexter Kemp, v. United States No. 21-5726 is a criminal conviction that involves several codefendants, Petitioner Dexter Kemp and seven codefendants were convicted of various drug and gun crimes. The Eleventh Circuit consolidated their appeals and, in November 2013, affirmed their convictions and sentences. This court granted certiorari to resolve the long- standing disagreement whether mistake involves a Judges, error of law in Rule 60(b). Indeed Rule 60(b) is pivotal to any complaint that seeks relief from a final judgment and applied properly will provide that relief from



judgement. But, at what juncture of judgement entered constitute Rule 60(b) applicable? This court should grant certiorari to make Fed. R. Civ. P. 60(b) transparent for all litigants proceeding in the federal courts.

## **Reason II**

### **NETCHOICE V PRAXTON**

**Cite as 142 S. CT 142 1715 (20002)**

**Supreme Docket 21A720**

A focal topic in this petition and ample reason for granting this petition for a writ of certiorari involves the ever- recurring debate of the First Amendment to the United States Constitution; Freedom of Speech. Recently, this court granted certiorari; In the matter of, NETCHOICE, LLC v. PAXTON Cite as 142 S. Ct. 1715. (2022) S. Ct. 21A720. This case on a novice level is comprehensible to Pro se Petitioner Ileen Cain it involves House Bill 20 (HB20), a Texas law enacted on September 9, 2021. It prohibits large social media platforms from removing, moderating, or labeling posts made by users in the state of Texas based on their "viewpoints", unless considered illegal under federal law or otherwise falling into exempted categories. It also requires them to make various public disclosures relating to their business practices (including the impact of algorithmic and moderation decisions on the content that is delivered to users). The bill is part of a wider array of Republican-backed legislation seeking to prohibit the censorship of political speech, based on allegations that the moderation policies of large social media platforms are not politically neutral.

And is currently the subject of a circuit split between the Fifth Circuit, and a decision by the Eleventh Circuit that struck down a similar bill in the state of Florida. In September 2023, the U.S. Supreme Court agreed to hear NetChoice v. Paxton jointly with NetChoice v. Moody on questions of whether the Florida and Texas state laws are in compliance with, the 1<sup>st</sup>

Amendment. Applicants are two trade associations that represent major social media platforms covered by the statute. They claim the First Amendment Constitution challenged the constitutionality of HB20 in the United States District Court for the Western District of Texas, contending, among other things, that the law is facially unconstitutional under the First Amendment.

This court in dissent recognized the novelty, in the matter of NetChoice v. Paxton the court's opinion on dissent. "This application concerns issues of great importance that will plainly merit this Court's review. "Social media platforms have transformed the way people communicate with each other and obtain news". At issue is a ground-breaking Texas law that addresses the power of dominant social media corporations to shape public discussion of the important issues of the day". The law in question, HB20, that regulates "social media platform[s]" that are "open to the public;" that "enable[e] users to communicate with other users for the primary purpose of posting information, comments, messages, or images;" and that have at least "50 million active users in the United States in a calendar month." App. to Application 39a–41a (App.). Section 7 of HB20 prohibits these platforms from "censor[ing]" users based on viewpoint, and § 2 requires covered platforms to disclose certain information about their business practices, including an "acceptable use policy" and "a biannual transparency report." *Id.*, at 39a–46a, 48a–52a. These platforms must also establish procedures by which users can appeal a platform's decision to "remove content posted by the user." *Id.*, at 44a.

Pro se Petitioner petition for certiorari raise the issue of the effect's social media has on students attending higher education. Does the revelation every State in the nation has an institution of higher education including Texas ascertain a national need for granting this Pro se

petition for a writ of certiorari and is a major issue that requires this courts definitive response to this debacle on whether the First Amendment protect or prohibits, students attending higher education from posting defamatory racially derogatory comments, racially derogatory imagery, that target a specific student, or protected class of students via the internet's social media platforms on and off campus. The question of what speech is prohibited and what is protected via social media platforms is not framed in the US Constitution First Amendment, freedom of speech.

This court recognize in the matter of NetChoice v. Paxton "It is not at all obvious how our existing precedents, which predate the age of the internet, should apply to large social media companies". The internet's reach is a world- wide web [www] global, and is used by children, young adults, and adults alike and connects individuals directly and indirectly, publicly, and nation-wide. This, Pro se Petition for certiorari demonstrates the disruption of liberty that freedom of speech via the internet social media platforms have on students attending higher education. The text of the first amendment describes the purpose of limiting the authority of the government on people and securing liberty for the citizens of America. But, the text does not cover prohibition against and or explain protection from speech that is racially defamatory racially derogatory, or racist, with the intention to harm and disrupt a student's life, on and off a college campus, via the internet's social media platforms. Currently, the First Amendment Freedom of speech is a topic of public and national importance because it involves Goliath, the companies that created social media platforms. e.g. Face Book, Twitter, Tic Toc, Instagram, Zoom. Pro se Petitioner, Ileen Cain is not a Goliath. Pro se Petitioner, Ileen Cain is a former student of Defendant Mercy University formerly Mercy College that asks this Court to grant this petition for a writ of certiorari to definitively clarify for the public and the nation whether the

First Amendment protects or prohibits derogatory racial commentary, derogatory pictures, all defamatory speech that target a specific student attending higher education for the sole purpose of harassing disrupting a student's life on and off campus that cause a student to fear for their livelihood and wellbeing. The voice of this court sound authority on the US Constitution First Amendment, Freedom of Speech is ever more required. The notion and issue of individuals utilizing, the internet's world wide web social media, platforms to connect with individuals to promote racially charged, comments, hate speech and imagery, *et. al.* that target a specific student and or protected class of individuals is horrifying.

### **Reason III**

Before this Court, but not framed in a question is that Pro se Petitioner, Ileen Cain, asks this court to grant certiorari to make transparent the due process rights in higher education is a matter of right, where the school has in place a contracted doctrine of policy and procedure, that guarantees students due process rights. When the school violates that contract they are liable, to the student for the breach of contract. Defendant Respondent Mercy University, formerly Mercy College adopted policy and procedure pursuant to the Jeanne Ann Cleary Act and title IX that are enforced by New York State Department of Education and are governed by the statutory, law Jeanne Clery Act, 20 U.S.C. § 1092; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, [Clery] 2018); that mandates institutions are required to disclose information about certain crimes. Under the Clery Act, the Annual Security Report [ASR], which is submitted once a year, must document three years - worth of specific crime statistics. The report must also include procedures and information pertaining to basic crime victims' rights. Certain policies must also be clearly explained, including education awareness programs for students and employees and a summary of emergency response systems and

procedures. Institutions must make the Annual Security Report [ASR] available to all current and prospective students and institutional employees. The aforementioned Policy and Procedures guaranteed Pro se Petitioner a right to a hearing and the right to the outcome of Defendant Respondent investigation regarding the allegations of students cyberstalking/stalking her via the internet social media platforms and the right to confront the accused.

#### **Reason IV**

This Court Should Grant Certiorari to uphold this Courts precedent, on the solicitude afforded to pro se litigants is obligatory at every stage of litigation, including the Appellate stage. The District and Appellate courts, favor of dismissing Pro se claims, as frivolous, untimely filed, or failure to state a claim to which relief can be granted before establishing the record is a disservice to the public and the nation.

The obstacles Pro se litigant face are transparent to the Courts and the opposition alike. The hallmark of pro se litigant [1] lack the resources to discover the facts before discovery, [2] they are unable to bring claims requiring them to plead information that is solely in the possession of the opposition, [3] and rely on forms in drafting complaints [4] they are unable to afford attorney fees [5] and are inexperienced in Federal Rules of Civil Procedure. *see Williams v. Faulkner, et. al. No. 87-1417 U.S.C.A. 7<sup>th</sup> Circ. (1988).* “Applying the proper standard for *sua sponte* dismissal of a, pro se *in forma pauperis* complaint we conclude that the district court prematurely dismissed Williams eighth amendment claim. At this stage of the proceedings, we must consider all of the documents Williams filed in support of his claim and accept his allegations as true”

The focal point of this petition involves two documents obtained inadvertence. A third document is focal as well. The Constitution is known as a “living” document because it can be amended, although in over 200 years there have only been 27 amendments. The first Amendment:

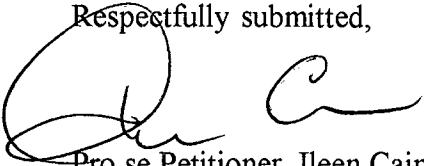
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

This, indigent Pro se Petition for a writ of certiorari intertwines Federal. Rules. Of Civil Procedure 60(b) (1-5) & (6); 8(a) (1-3); Statutory law 28 U.S.C. §1915 Jeanne Clery Act 20 U.S.C. § 1092 Policy and Campus Crime Statistics Act of 1990, [Clery] 2018); Title IX and the First Amendment of the Constitution, freedom of speech. This petition for a writ certiorari would be misrepresented without adjoining of the aforementioned, rules of law, statutory law, and raising the issue of whether the First Amendment to the Constitution, protects or prohibits, students from using the internet social media platforms to promote racist, hate speech and imagery that target a specific student. Pro se Petitioner, Ileen Cain Petition for a writ of certiorari is submitted Pursuant this Courts Rule 10. Considerations Governing Review on Writ of Certiorari. (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power; c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

### **CONCLUSION**

For the foregoing reasons this Pro se Petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Ileen Cain', written in a cursive style.

Pro se Petitioner, Ileen Cain

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