

No. _____

In the Supreme Court of the United States

BILLIE RENÉ FRANCES LILLIAN POWERS,
Petitioner,

v.

THE BANK OF NEW YORK MELLON, FKA Bank
of New York, as Trustee, on behalf of the holders of
the alternative Loan Trust 2007-HY9 Mortgage
Pass Through Certificates Series 2007-HY9;
SELECT PORTFOLIO SERVICING, INC.;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; JON SECRIST; NICHOLE
CLAVADETSCHER; COMMONWEALTH LAND
TITLE COMPANY; BANK OF AMERICA, NA;
DOES, 1-10,
Respondents

**On Petition for a Writ of Certiorari to
the United States Court of Appeals for the
Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether this Court should exercise its supervisory authority to issue the Writ of Certiorari to the Ninth Circuit Court of Appeals (“Circuit Court”) because Petitioner relied on the forms and instructions of the Circuit Court provided to pro se litigants and, as a result of using the forms and following the instructions, the District Court’s Order was summarily affirmed.

II. Whether the Circuit Court denied the pro se Petitioner Due Process of Law and, to the extent applicable, Equal Protection of the Laws¹ under the Fifth Amendment to the *Constitution of the United States* by inviting pro se litigants to file Informal Briefs, providing the forms for Informal Briefs and instructing, for the Informal Opening Brief, “You may refer to cases and statutes, but you are not required to do so”, and then affirming the District Court based on “[her] utter failure to provide any legal support or argument.”

¹ The Equal Protection Clause of the Fourteenth Amendment may be applied in federal jurisdiction under the Due Process Clause of the Fifth Amendment to the *Constitution of the United States* as implicitly included or by reverse incorporation.

PARTIES

Pursuant to Rule 14.1(b)(i), the parties and their legal representatives who appeared in the Ninth Circuit Court of Appeals are set forth below:

Billie René Frances Lillian Powers, an individual,
domiciled in the State of California

The above-named Petitioner appeared
Pro se (self-represented *in propria persona*) and now
appears by

Wendy Alison Nora, member of the bar of this Court
ACCESS LEGAL SERVICES, LLC
310 Fourth Ave. South, Suite 5010
Minneapolis, Minnesota 55415

THE BANK OF NEW YORK MELLON, FKA Bank
of New York, as Trustee, on behalf of the holders of
the alternative Loan Trust 2007-HY9 Mortgage
Pass Through Certificates Series 2007-HY9,
purportedly a series of certificates issued by
purported Real Estate Mortgage Investment
Conduit (REMIC) Trust

The above-named Respondent appeared by
KUTAK ROCK LLP
Attorney Steven M. Dailey
Attorney Rebecca L. Wilson
5 Park Plaza, Suite 1500
Irvine, California 92614-8595

SELECT PORTFOLIO SERVICING, INC., a
corporation organized in and domiciled in the State
of Utah

The above named Respondent appeared by

KUTAK ROCK LLP
Attorney Steven M. Dailey
Attorney Rebecca L. Wilson
5 Park Plaza, Suite 1500
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MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware corporation

The above-named Respondent appeared by

KUTAK ROCK LLP
Attorney Steven M. Dailey
Attorney Rebecca L. Wilson
5 Park Plaza, Suite 1500
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BANK OF AMERICA, NA, a national banking
association with its headquarters in Charlotte,
North Carolina

The above-named Respondent appeared by

SEVERSON & WERSON, APC
Attorney Kerry W. Franich
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19100 Von Karman Avenue, Suite 700
Irvine, California 92612

JON SECRIST, an individual

The above-named Respondent appeared by

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Irvine, California 92612

NICHOLE CLAVADETSCHER, an individual

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COMMONWEALTH LAND TITLE COMPANY, a
California corporation

The above-named Respondent appeared by

SINCLAIR BRAUN LLP
Kevin S. Sinclair
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INTRODUCTION

Petitioner, Billie René Frances Lillian Powers (“Petitioner” or “Ms. Powers”), respectfully petitions for a writ of certiorari to the Ninth Circuit Court of Appeals (“Circuit Court”) for review the July 22, 2020 Memorandum Opinion in No. 19-55013, affirming the dismissal of her action the United States District Court for the Central District of California (“District Court”) in Case No. 8:17-cv-01386-DOC-KES. She invokes the supervisory jurisdiction of this Court under Rule 10(a) because she was affirmatively misled to the detriment of her appellate rights by the Circuit Court’s format for Informal Brief adopted pursuant to the Circuit Rule 28-1(c). See Request for Judicial Notice, Exhibit 1-B.

Petitioner was misled by the Informal Brief format adopted by the Circuit Court under Circuit Rule 28-1(c) and accessible through the Circuit Court’s website¹, causing her to believe that citation

¹ See Request for Judicial Notice Exhibit 1, the Circuit Court’s website <https://www.ca9.uscourts.gov/> (Exhibit 1), most recently retrieved on December 16, 2020, and linking to the Pro Se Litigant’s webpage at https://www.ca9.uscourts.gov/forms/pro_se_litigants.php (see Request for Judicial Notice Exhibit 1-A), which provides a link to the format for an Informal Opening Brief and which, in turn, provides at item 8:

8. What law supports these issues on appeal? **(You may refer to cases and statutes, but you are not required to do so.)** Emphasis added. See Request

to cases and statutes was not required² (because that is exactly what the Circuit Court's form stated), she has not yet submitted the legal authority which her appellate briefs would otherwise have been required to provide under Fed. R. App. P. 28.

The Circuit Court affirmed the District Court because Petitioner followed the Circuit Court's instructions in Item 8 of the recommended form provided to pro se litigants for Informal Opening Briefs. Petitioner believed that she was not required to refer to cases and statutes because the instructions in Item 8 plainly state, "(You may refer to cases and statutes, but you are not required to do so.)" See Request for Judicial Notice Exhibit 1-B, Item 8.

Petitioner's appeal to the Circuit Court was disposed of based on "[her] utter failure to provide any legal support or argument" (Appendix A) when she believed that she had followed the instructions to Item 8 on the Informal Opening Brief form provided by the Circuit Court.

Accordingly, because the Opinions of the District Court have not yet been subjected to meaningful review, the District Court's Opinions are not necessary to the exercise of this Court's

for Judicial Notice Exhibit 1-B.

² *Id.*

supervisory review under Rule 10(a). The District Court's Opinions are not submitted herewith in the interest of brevity and simplicity. Petitioner has not yet been heard on appeal with respect to the multiple issues set forth as assignments of error in her Informal Opening Brief to which the Circuit Court refers in footnote 1 to its July 22, 2020 Memorandum (Appendix A).

OPINIONS BELOW

None of the Opinions below are published. The only Opinion pertinent to this Petition is the July 22, 2020 Memorandum (Appendix A) upon which the August 13, 2020 Mandate (Appendix B) was issued.

JURISDICTION

The jurisdiction of this Court arises under 28 U.S.C. § 1254(1). The July 22, 2022 Memorandum Opinion (Appendix A) is subject to review by Petition for Writ of Certiorari. The Circuit Court's Mandate was issued to the District Court on August 13, 2020 (Appendix B). This Petition filed within Petition for Writ of Certiorari. The Circuit Court's Mandate was issued to the District Court on August 13, 2020 (Appendix B).

This Petition filed within 150 days following the entry of the Circuit Court's Memorandum Opinion under this Court's standing Order entered

on March 19, 2020 as Order List: 589 by which this Court extended the time for filing Petitions for Writs of Certiorari as the result of the COVID-19 national emergency.

The jurisdiction of the Circuit Court arose under 28 U.S.C. § 1291 from the final order dismissing Petitioner's action in the District Court. The jurisdiction of the District Court was invoked under 28 U.S.C. § 1331 based causes of action arising under federal statutes in Petitioner's Complaint(s). Supplemental jurisdiction over Petitioner's related causes of action under California state statutory and common law arose under 28 U.S.C. § 1367.

**CONSTITUTIONAL PROVISIONS,
AMENDMENTS AND COURT RULES
INVOLVED**

Petitioner asks this Court to exercise its constitutional supremacy under Article III, Section 1 of *Constitution of the United States* (the "*Constitution*") recognized in this Court's Rule 10(a). Petitioner relies on the Due Process Clause of Fifth Amendment to the *Constitution of the United States* (the "*Constitution*") and, to the extent applicable, the Fourteenth Amendment to the *Constitution*.³

³ The Equal Protection Clause of the Fourteenth Amendment may be applied in federal jurisdiction under the Due Process Clause of the Fifth Amendment to the *Constitution of the United States* as implicitly included

The Rules of Court upon which this Petition relies are this Court's Rule 10(a), Fed. R. App. P. 28 and Cir. Rule 28-1. The pertinent constitutional provisions, amendments and rules of court involved in this Petition are lengthy, so they are cited herein and are set forth in their entirety in Appendix C.

STATEMENT OF THE CASE

A. RELEVANT PROCEDURAL HISTORY

Petitioner commenced an action in the United States District Court for the Central District of California, Orange County Division (the "District Court" in Case No. 8:17-CV-01386 on August 11, 2017, shortly after being forcibly removed from her home as the result of a Trustee's sale⁴ to The Bank of New York Mellon claiming to be Trustee for "holders"⁵ of a series of certificates purportedly

therein or by reverse incorporation.

⁴ California allows nonjudicial foreclosures which means that there is no court order required to obtain title to real estate based on a purported security interest.

⁵ The substantive issues raised by Petitioner were not addressed on the merits by the Circuit Court and will not be addressed before this Court. The issue before this Court is whether this Court should exercise its supervisory jurisdiction to remand this matter to the Circuit Court with instructions to allow Petitioner file appellate briefs in compliance with Fed. R. App. P. 28 because the Informal Briefs allowed by Cir. Rule 28-1 and recommended by the Circuit Court caused the

issued by Real Estate Mortgage Investment Conduit (REMIC), Alternative Loan Trust 2007-HY9 with which she contends she had no contract.

Petitioner endeavored to plead federal and state causes of action which were met by multiple motions to dismiss, culminating with the dismissal of her case with prejudice on the basis of supposed pleading deficiencies in her Fourth Amended Complaint by Order dated November 26, 2018.

Petitioner filed her Notice of Appeal on December 27, 2018. Although the District Court never entered a separate judgment on the November 26, 2018 Order under Fed. R. Civ. P. 58(a), never entered a separate judgment on the November 26, 2018 Order under Fed. R. Civ. P. 58(a), Petitioner's appeal was to have been deemed effective 150 days after November 26, 2018 under Fed. R. Civ. P. 58(c). See also, Fed. R. App. P. 4(a)(7)(A)(ii); *ABF Capital Corp. v. Osley*, 414 F.3d 1061, 10664 (9th Cir. 2006).

Nevertheless, an appellate scheduling order was set on January 4, 2019, setting the deadline for filing Petitioner's Opening Brief on April 4, 2019. (Request for Judicial Notice Exhibit 4, Docket Entry #1). Several extensions of time for filing the Opening Brief were granted and Petitioner

inevitable failure of the Petitioner's direct appeal.

eventually filed her Informal Opening Brief on November 12, 2019, using the form provided to pro se litigants by the Circuit Court.

B. MATERIAL FACTS

Petitioner filed her Informal Opening Brief on November 12, 2019 using the form made available through the Circuit Court's website at www.ca9.uscourts.gov/ (Request for Judicial Notice Exhibit 1). Clicking on link titled "Pro Se Litigants" takes pro se litigants to https://www.ca9.uscourts.gov/forms/pro_se_litigants.php (Request for Judicial Notice Exhibit 1-A). The web page for "Pro Se Litigants" makes forms for Informal Briefs available for their use. One of the forms made available to pro se litigants is titled Appellant's Informal Opening Brief at the entry which reads:

- Appellant's Informal Opening Brief Form
Word version of Appellant's Informal Brief⁶
Pro se litigants: use this form to file an opening brief in your appeal. (Emphasis added.)

⁶ The word version of the pro se Appellant's Opening Brief on the Circuit Court's website is fillable.

Petitioner read the above invitation to file an Informal Opening Brief as an instruction to use the Circuit Court's form (see Request for Judicial Notice Exhibit 1-B) because she was not represented by counsel. She endeavored to follow the form provided by the Circuit Court.

Petitioner tried to follow the Circuit Court's form for the Informal Opening Brief and did so to the best of her ability by:

- Answering the questions regarding Jurisdiction (Item 1);
- Setting forth her Facts including some Procedural History (Item 2);
- Responding to Item 3 by describing what she identified as Proceedings before the District Court;
- Misnumbering Item 4 from the Circuit Court's form and creating a second Item 3, skipping Item 5 which did not apply to her⁷;

⁷ **5. Exhaustion of Administrative Remedies.** For prisoners, did you use up all administrative remedies for each claim before you filed your complaint in the district court? If you did not, please tell us why.

Petitioner is not an incarcerated individual, so she did not enumerate or respond to Item 5 because Item 5 does not apply to her.

- Continuing her misnumbering and setting forth the issues she sought to have the Circuit Court consider at Item 4 which should have been numbered Item 6;
- Representing at Item 5 (which should have been Item 7) that she had raised the issues referred to in her numbered Item 4 at the District Court (Informal Opening Brief Form Item 6);
- Renumbering Item 8 of the Circuit Court's form for the Informal Opening Brief as Item 6.
- Renumbering Item 9 of the Circuit Court's form for the Informal Opening Brief as Item 7.
- Renumbering Item 10 of the Circuit Court's form for the Informal Opening Brief as Item 8.

Item 8 (Petitioner's Item 6) of the Circuit Court's form for the Informal Brief reads:

8. What law supports these issues on appeal?
(You may refer to cases and statutes, but you are not required to do so.)

In reliance on the instruction that she “may refer to cases and statutes, but . . . [was] not required to do so, she wrote:

“Any and all law, cases, codes, treaties etc. Allowed (by Appellant to use against Appellees and for my children, and under the California State and Federal Laws of the United States of America, Americas, and International Law, including Treaties, Family, Probate, Property, Bank, Insurance Trust Laws and Statutes.”
See Request for Judicial Notice Exhibits 2, page 21.)

Petitioner next recited what she labeled “Maxims of Equity” tracing the source of her Maxims of Equity to scriptures in the Old Testament of the Christian faith. She also set forth categories of legal authority which she believed that the Circuit Court would apply (Request for Judicial Notice Exhibit 2, bottom of page 23 to middle of page 24) because she was led to believe that the Circuit Court would find and apply the cases and statutes applicable to the thirty-three issues she presented. The plain reading of Item 8 which informed her that **she was not required to refer to cases and statutes**. Finally, Petitioner tried to make her legal argument in the two (2) closing paragraphs of her numbered Item 6 on page 24.
See Request for Judicial Notice Exhibits 2, pages 21-24.)

Petitioner’s evident belief that the Circuit Court would find and apply the applicable cases and

statutes to her issues on appeal seems naïve to those who know how the court processes actually function, but the Circuit Court's Informal Opening Brief form for pro se litigants at Item 8 specifically states that pro se litigants are not required to refer to cases and statutes. From the point of view of a pro se litigant, Petitioner's interpretation of Item 8 was reasonable and she prepared her Informal Opening Brief in a good faith effort to comply with the dictates of the form made available only to pro se litigants.

Respondents, represented by counsel, were required to file formal answering briefs under Fed. R. App. P. 28 and the associated Circuit Rules applicable to represented parties.

^y
Counsel for The Bank of New York Mellon f/k/a The Bank of New York as Trustee for on behalf of the holders of the alternative Loan Trust 2007-HY9 Mortgage Pass Through Certificates Series 2007-HY9 ("BONYM as Trustee for Certificates"), Select Portfolio Servicing, Inc. ("SPS") and Mortgage Electronic Registration Systems, Inc. ("MERS") (the "SPS Respondents"⁸), relying on inapplicable and

⁸ These Respondents are designated as the "SPS Respondents" because substantial evidence has been discovered that SPS is the party which has the contractual obligation with the other SPS Respondents to engage counsel in matters involving putative principals identified as Trustees of Real Estate Mortgage Investment Conduit (REMIC) Trusts or as Trustees for

outdated holdings of the Circuit Court decided long before the Circuit Court adopted Cir. Rule 28-1(c) and published the form for Appellant's Informal Opening Brief on its website, wrote in its Answering Brief:

“This Court interprets *pro se* briefs liberally, but Rule 28(a)(4) states that an appellant's brief must contain ‘the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.’ *Pro se* litigants are not excused from supporting their claims with legal argument. See *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); see also *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 n.2 (9th Cir. 1988) (*pro se* litigant abandoned arguments not addressed in brief).

“Appellant's Brief does not address any particular error in the District Court's orders dismissing her dismissing her multiple pleadings, let alone with cognizable legal argument **supported by relevant authority.**” (Emphasis added.)

In the December 23, 2019 Answering Brief for the Respondents Bank of America, N.A. (“Bank of America”) and its employees or former employees Jon Secrist (“Secrist”), Nichole Clavadetscher (“Clavadetscher”) (“Bank of America Respondents”), Docket Entry #25, their counsel wrote:

“holders” of REMIC certificates series and for MERS.

“This Court ‘review[s] only issues which are argued specifically and distinctly in a party’s opening brief.’ *Cruz v. Int’l Collection Corp.*, 673 F.3d 991, 998 (9th Cir. 2012). An appellant who provides no meaningful argument or reasoning in support of his or her contention, waives the issue on appeal. *See W. Radio Servs. Co. v. Qwest Corp.*, 678 F.3d 970, 979 (9th Cir. 2012); *Brownfield v. City of Yakima*, 612 F.3d 1140, 1149 n. 4 (9th Cir. 2010).

“Of course, Powers’ status as a self-represented appellant entitles her to ‘some leniency.’ *Recchia v. City of L.A. Dep’t of Animal Servs.*, 889 F.3d 553, 563 (9th Cir. 2018). But whatever leniency this Court might allow is not without limits. *Ventress v. Japan Airlines*, 747 F.3d 716, 723 fn. 8 (9th Cir. 2014) (‘Although we are sensitive to Ventress’s pro se status on appeal and construe his arguments liberally, our leniency is not without limit and does not excuse his utter failure to provide any legal support or argument for this contention.’).

“Here, Powers filed an opening brief that identifies 33 supposed errors committed by the district court. AOB 18-21. But like the *pro se* appellant in *Ventress*, Powers discussed none of her arguments. When asked to identify the law supporting her numerous claims of error, Powers instead cited ten maxims from the Bible.⁹ AOB 21-22. She discussed no **statutory or decisional law**

⁹ The Bank of America Respondents’ remark regarding Petitioner’s citation to the Bible is disrespectful of

that might illustrate where the district court supposedly went wrong, nor did she explain how any such law applied to the facts alleged in her complaint. Since Powers provided no meaningful argument regarding the issues raised in her brief, the Court should summarily affirm the judgment without reaching the merits.” (Emphasis added.)

Finally, displaying a comprehension of some the legal principles completely disregarded by the SPS Respondents and neglected by the Bank of America Respondents¹⁰, counsel for the Respondent Commonwealth Land Title Company wrote in its Answering Brief:

“Commonwealth is sensitive to the fact that Courts must remain accessible to all litigants, including those acting in *propria persona* without the benefit of formal legal training. Commonwealth acknowledges that it is appropriate for Courts to show some deference to unrepresented parties. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Having

Petitioner’s faith-based understanding of the foundation of natural law. It is also disregards her efforts to refer the Court to statutes which she did not cite because she understood from the pro se Informal Opening Brief form that she was not required to do so, because that is exactly what Item 8 of the form says.

¹⁰ Commonwealth also relies on *Ventress v. Japan Airlines* in error citing to footnote 8 as if it was the holding of Court.

said this, there must necessarily be some limit to the deference shown by the courts. As this Court previously observed, ‘[a]lthough we are sensitive to Ventress’s pro se status on appeal and construe his arguments liberally, our leniency is not without limit and does not excuse his utter failure to provide any legal support or argument for this contention.’ *Ventress v. Japan Airlines*, 747 F.3d 716, 723 (9th Cir. 2014). Appellant’s brief is entirely devoid of any analysis regarding the adequacy of the claims for relief asserted against Commonwealth. . . For that reason, the Court should deem any error by the lower court waived.”

Petitioner submitted three (3) separate Informal Reply Briefs to each of the three (3) groups of Respondents’ Opening Briefs, in which she, once again, endeavored to follow the instructions in the Circuit Court’s form Appellant’s Informal Reply Brief (Request for Judicial Notice Exhibit 1-C). See exemplified Request for Judicial Notice Exhibit 3 submitted as an example of the form used by Petitioner as one of her Informal Reply Briefs.

On July 22, 2020 a panel of the Circuit Court affirmed the District Court’s dismissal of Petitioner’s action, reasoning only:

“In her opening brief, Powers lists thirty-four¹¹ issues that she asks to be reviewed. However, she provides no legal argument whatsoever.

¹¹ Petitioner set forth thirty-three issues for review at Item 4 of her Informal Opening Brief.

‘Although we are sensitive to [her] pro se status . . . , our leniency is not without limit and does not excuse [her] utter failure to provide any legal support or argument’ *Ventress v. Japan Airlines*, 747 F.3d 716, 723 n.8 (9th Cir. 2014).”
(*See* Appendix A).

ARGUMENT

REASONS FOR GRANTING THIS PETITION

A. This Court has supervisory authority over the lower federal courts under its constitutional supremacy under Article III, Section 1 of the *Constitution of the United States* which is recognized in this Court’s Rule 10(a).

The Circuit Court created Cir. Rule 28-1(c) and the Appellant’s Informal Opening Brief and Appellant’s Informal Reply Brief from its inherent authority to regulate procedures in the course of adjudication. This Court has the authority to supervise and review the Circuit Court’s exercise of its inherent authority under this Court’s constitutional supremacy under Article III, Section 1, as recognized by Rule 10(a).

The opening remarks in “The Supervisory Power of the Supreme Court”, 106 Colum. L. Rev. 324 (2006), by Justice Amy Coney Barrett reads:

Item 4 of her Informal Opening Brief.

Relying on something it calls “supervisory power” or “supervisory authority,” the Supreme Court regularly prescribes rules of procedure and evidence for inferior courts. Both scholars and the Court have treated the Court’s exercises of this authority as unexceptional exercises of the inherent authority that Article III grants every federal court to regulate procedure in the course of adjudication. Article III’s grant of inherent authority, however, is conventionally understood as permitting a federal court to regulate its own proceedings. When the Supreme Court exercises supervisory power, it regulates the proceedings of other federal courts. More than a reference to every court’s inherent authority, therefore, is required to justify the Court’s action. If the Supreme Court possesses a unique ability to regulate federal court procedure, it must be because of some unique attribute of the Supreme Court.

This Article explores a justification that may well animate the Court’s assertions of supervisory power: the notion that the Court possesses supervisory power by virtue of its constitutional supremacy. . . .

The Article continues with the following citation from *Dickerson v. United States*, 530 U.S. 428, 437 (2000):

The law in this area is clear. This Court has supervisory authority over the federal courts, and we may use that authority to prescribe rules of evidence and procedure that are binding in those tribunals.

B. This Court should exercise its supervisory authority to issue the Writ of Certiorari to the Ninth Circuit Court of Appeals (“Circuit Court”) because Petitioner relied on the forms and instructions of the Circuit Court provided to pro se litigants and, as a result of using the forms and following the instructions, the District Court’s Order was summarily affirmed.

This Court should exercise its supervisory authority over Ninth Circuit Court of Appeals (the “Circuit Court”) to remand Petitioner’s appeal to the Circuit Court with instructions to allow Petitioner to file her briefs under Fed. R. App. P. 28 because she followed the instructions provided by the Circuit Court for filing pro se appellants’ Informal Briefs¹²,

¹² See Request for Judicial Notice, Exhibit 1-B retrievable by clicking on the link for “Appellant’s Informal Opening Brief” provided at https://www.ca9.uscourts.gov/forms/pro_se_litigants.php (Exhibit 1-A), most recently retrieved on December 16, 2020.

which makes citation to statutes and case law optional, resulting in the Circuit Court's July 22, 2020, Memorandum affirming the District Court's dismissal of Petitioner's action for "[her] utter failure to provide any legal support or argument."

Petitioner's reliance on the Circuit Court's own form for Informal Briefs¹³ and specifically the instructions at Item 8 of the form provided for Appellant's Informal Opening Brief, resulted in the July 22, 2020 Memorandum affirming the District Court of dismissal of Petitioner's action for "utter failure to provide any legal support or argument." If it were not for Cir. Rule 28-1(c) and the form provided for the pro se Appellant's Informal Opening Brief, created by the Circuit Court under its inherent authority to regulate its procedures for adjudication, Petitioner would have been required to file her Opening Brief in conformity with Fed. R. App. P. 28. Compliance with Fed. R. App. P. 28 is undoubtedly difficult for pro se appellants, but would alert the pro se party to the expectations of

¹³ See Request for Judicial Notice, Exhibit 1-B retrievable by clicking on the link for "Appellant's Informal Opening Brief" provided at https://www.ca9.uscourts.gov/forms/pro_se_litigants.php (Exhibit 1-A), most recently retrieved on December 16, 2020.

the Circuit Court. Here, Petitioner, as a pro se appellant was misled into believing that the Circuit Court would supply the legal authority in support of the issues assigned as errors below. That is not and never was the role of the Circuit Court, as any lawyer would know, but because Item 8 makes reference to cases and statutes optional, Petitioner was immediately in a position to lose her appeal.

If the Circuit Court was aspiring to comply with *Haines v. Kerner*, 404 U.S. 519, 520-521, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) and *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) and reiterated in *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 167 L.Ed.2d 1081(2007) in an effort to provide a format in which pro se appellants could have their appellate briefs “liberally construed”, that effort failed because Petitioner tried to comply with the instructions of the Circuit Court by filing a version of the Appellant’s Informal Opening Brief and was confronted with guaranteed failure as shown by the Answering Briefs and the summary disposition by the Circuit Court (Appendix A).

C. The Circuit Court denied the pro se Petitioner Due Process of Law and, to the extent applicable, Equal Protection of the Laws ¹⁴ under the Fifth Amendment to the *Constitution of the United States* by inviting

¹⁴ The Equal Protection Clause of the Fourteenth Amendment may be applied in federal jurisdiction under

pro se litigants to file Informal Briefs, providing the forms for Informal Briefs and instructing, for the Informal Opening Brief, “You may refer to cases and statutes, but you are not required to do so”, and then affirming the District Court based on “[her] utter failure to provide any legal support or argument.”

Petitioner, appearing *in propria persona* (pro se) was misled by the Circuit Court’s invitation to file Informal Briefs posted on the left hand side of the Circuit Court’s website¹⁵ which reads “Pro Se Litigants” which links to a page for pro se litigants¹⁶ and includes a series of forms for the apparent purpose of assisting unrepresented parties with their filings in the Circuit Court. The instructions appearing at item 8 of the Circuit Court’s form for Informal Opening Brief plainly states, “You may refer to cases and statutes, but you are not required to do so. The Circuit Court then affirmed the District Court based on “[her] utter failure to provide any **legal support** or argument.” As stated

by reverse incorporation.

¹⁵ See <https://www.ca9.uscourts.gov/> and Request for Judicial Notice Exhibit 1.

¹⁶ See https://www.ca9.uscourts.gov/forms/pro_se_litigants.php and Request for Judicial Notice Exhibit 1-A.

above, Petitioner provided what she thought was legal support for her position on pages 21-24 of her Informal Opening Brief, but she did not do what she was instructed was optional: she did not cite cases and statutes in support of her thirty-three issues.

Cir. Rule 28-1(c) provides:

Rule 28-1. Briefs, Applicable Rules

(c) Appellants proceeding without assistance of counsel may file the informal form briefs provided by the Clerk in lieu of the briefs described in FRAP 28(a) and (c), and need not comply with the technical requirements of FRAP. (Rev. 1/96; 12/1/19)

Revisions to Cir. Rule 28-1(c) were made on in January, 1998 and December 1, 2019. The later date was after Petitioner used the recommended form for filing her Informal Opening Brief.

Petitioner's only opportunity to be heard by direct appeal to the Circuit Court at a meaningful time and in a meaningful manner (*Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965)) was lost when she filed her version of the Appellant's Informal Opening Brief. She used the Circuit Court's form as the website directed her to do and followed the plain meaning of the instructions at Item 8 (her Item 6 as explained above). It is apparent that the Circuit Court's panel

was inclined to summarily dispose of Petitioner's sincere effort to present her issues on appeal under footnote 8 appearing in *Ventress v. Japan Airlines*, 747 F.3d 716 (9th Cir. 2014), not based on the merits of her issues, but based on her pro se status and her reliance on the Circuit Court's own forms and instructions.

From the concurring opinion in *Ventress v. Japan Airlines*, 747 F.3d at 724, it can be ascertained that Ventress used the form for Appellant's Informal Opening Brief. *Ventress* was decided in 2014. Ventress filed informal briefs and received full and fair consideration of all but one of his issues. Ventress court's footnote 8 applies only to a new issue Ventress attempted to raise by motion for reconsideration in the district court. The Ventress court carefully considered and reasoned through all of Ventress's issues, save the issue to which footnote 8 applies.

Footnote 8 in *Ventress* reads:

8. Ventress also asserts in passing that the FAA does not apply to "foreign" air carriers like JAL. We decline to address this undeveloped argument, which is not supported by citations to the record, argument, or any legal authority. See, e.g., *Western Radio Servs. Co. v. Qwest Corp.*, 678 F.3d 970, 979 (9th Cir.2012) ("We will not do an appellant's work for it, either by manufacturing its

legal arguments, or by combing the record on its behalf for factual support.”); *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir.2010) (“Arguments made in passing and not supported by citations to the record or to case authority are generally deemed waived.”). Although we are sensitive to Ventress's pro se status on appeal and construe his arguments liberally, our leniency is not without limit **and does not excuse his utter failure to provide any legal support or argument for this contention.**

The Circuit Court’s panel curiously omitted the phrase “for this contention” in footnote 8 and replaced it with ellipsis to cover all issues Petitioner identified in her appeal. The Circuit Court used footnote 8 in *Ventress*, not to apply the principles of *Haines v. Kerner*, supra, *Estelle v. Gamble*, supra, and *Erickson v. Pardus*, supra, which require liberal construction of her Informal Opening Brief, as was provided to Ventress, but to deny her right to due process by refusing to consider any of her issues at all.

This Court has determined that pro se parties are entitled to a liberal construction of documents they file in judicial proceedings to allow them an opportunity to be heard. The opportunity to be heard is an aspect of the rights due process guaranteed under the Fifth Amendment to the *Constitution of the United States*. In addition, the Circuit Court has chosen to create a separate class of pro se litigants in what can assumed to be an effort to conform to the expectations of *Haines v.*

Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 30 L.Ed. 652 (1972), and *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed. 251 (1976) and reiterated in *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 167 L.Ed.2d 1081 (2007).

This Court held in *Haynes v. Kerner*, supra:

The handwritten pro se document is to be liberally construed. As the Court unanimously held in *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), a pro se complaint, “however inartfully pleaded,” must be held to “less stringent standards than formal pleadings drafted by lawyers” and can only be dismissed for failure to state a claim if it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”

Once the Circuit Court decided to create the class of pro se litigants to exempt them from the rigors of compliance with the requirements for filing briefs under Fed. R. App. 28, the Circuit Court summarily cannot dispose of pro se appeals without giving a liberal construction to the Informal Briefs that they are invited by Cir. Rule 28-1(c) and the Court’s website to file. There is a rational basis for distinguishing between parties represented by counsel and those who are self-represented under the holdings of *Haines v. Kerner*, 404 U.S. 519, 520-521, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d

5251 (1976) and reiterated in *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 167 L.Ed.2d 1081(2007). To disadvantage the class of pro se litigants in the manner in which Petitioner was dispensed with is a denial of due process under the Fifth Amendment and may also deny them equal protection of the laws, if applicable.

CONCLUSION

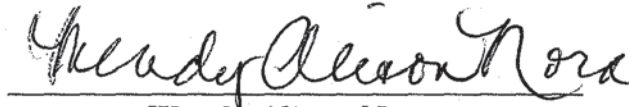
The Petition for Writ of Certiorari should be granted. This Court should exercise its supervisory authority to determine whether remand to the Circuit Court should be required to allow Petitioner to file her Opening Brief conventionally, in accordance with Fed. R. App. P. 28 and the applicable Circuit Rules (not including Cir. Rule 28-1(c), so that she may cite legal authority including references to “cases and statutes.”

In addition, this Court should instruct the Circuit Court, if it intends to provide informal brief forms for pro se appellants that the Circuit Court instruct pro se appellants that failure to cite legal authority in support of the issues on appeal may result in the Circuit Court summarily affirming the decision of the lower tribunal.

Dated this 18th day of December, 2020.

Respectfully submitted,

AN IMAGE OF THE SIGNATURE BELOW
SHALL HAVE THE SAME FORCE AND EFFECT AS
THE ORIGINAL

A handwritten signature in cursive script that reads "Wendy Alison Nora". The signature is written in black ink and is positioned above a horizontal line.

Wendy Alison Nora,
Attorney for Petitioner
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No. _____

In the Supreme Court of the United States

BILLIE RENÉ FRANCES LILLIAN POWERS,

Petitioner,

v.

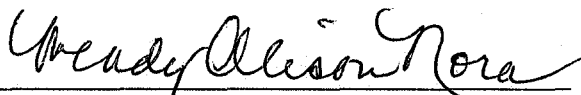
THE BANK OF NEW YORK MELLON, FKA Bank
of New York, as Trustee, on behalf of the holders of
the alternative Loan Trust 2007-HY9 Mortgage
Pass Through Certificates Series 2007-HY9, et al.,

Respondents

**RULE 33.1(h) CERTIFICATE OF
COMPLIANCE WITH WORD LIMITATIONS
SET BY RULE 33.1(g)**

Wendy Alison Nora certifies that the Petition for Writ of Certiorari complies with the word limitations set by Rule 33.1(g), according to the Word 2007 word count tool which was set to include footnotes, and that the Petition consists of 5,678 words, including the Questions for Review.

Dated this 18th day of December, 2020.



Wendy Alison Nora

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/s/ wan

The image of the signature above has the same effect as the original.