NO. 26-175

In the
# Supreme Court of The United States

SUSAN ROMANOV

*Petitioner,*

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

*Respondent.*

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

## PETITIONER'S SUPPLEMENTAL BRIEF PURSUANT TO RULE 15.8

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## PETITIONER'S SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8 of the Rules of this Court, Petitioner Susan Romanov respectfully submits this Supplemental Brief to call the Court's attention to direct and intervening conflicts within the federal circuits and state judiciaries regarding public and party access to electronic court audio recordings. This split has been deepened by recent appellate proceedings related to defendants in their "official capacities as a Chief Judge or District Court Judge" heard on oral argument[1] October 21, 2026 directly within the Petitioner's own circuit and is underscored by the specific administrative practices and structural record restrictions employed by the trial courts.

## ARGUMENT

### I. Intervening Appellate Proceedings in the Sixth Circuit Deepen a Clear and Direct Conflict Across the United States.

On October 21, 2026, the United States Court of Appeals for the Sixth Circuit heard oral arguments[1] in *Samantha Hallman v. Travis Reeds* (6th Cir. No. 25-2166). The case squarely presents the question of whether the First Amendment right of access encompasses a right to electronic court audio and video recordings, or whether a court may restrict public and/or party access strictly to a written format

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[1]https://www.opn.ca6.uscourts.gov/internet/court_audio/audio/10-21-2026%20-%20Wednesday/25-2166%20Samantha%20Hallman%20v%20Travis%20Reeds.mp3 (*Id.* timestamps *infra*).

in civil cases. This Court's review is vital.

The litigation in *Hallman* exposes a stark, nationwide fracture concerning the common-law and constitutional status of electronic court recordings:

**A. The Rigid "Transcript-Only" Rule:**

In direct opposition to the claims of electronic access, the Third Circuit in *Reed v. Bernard*, 976 F.3d 302 (3d Cir. 2020) and the Nineth Circuit in *Oregonian Pub. Co. V. U.S. District Court*, 920 F.2d 1462 (9th Cir. 1990) held that the First Amendment does not grant a right to access or duplicate court-created audio files if a written alternative is conceptually contemplated. This reflects a rigid interpretation of *Nixon v. Warner Communications, Inc.*, 435 U.S. 589 (1978), which treats physical audio tapes as entirely distinct from the public trial record. See also, *Commonwealth v. Keith Winfied*, 464 Mass. 672 (2013) and *Stevens v. Boyd* (W.D. Mich. 2021).

**B. The Modern Access Framework:**

Conversely, the ongoing litigation in the Sixth Circuit highlights a growing consensus among at least 22 state court systems and multiple federal districts that treat court-created audio as a fundamental public record. Under this framework, a blanket ban on the electronic format of a proceeding constitutes an artificial, unconstitutional restraint on information. *U.S. v. Hastings*, 695 F.2d 1278 (11th Cir. 1983) and *Whiteland Woods, L.P. v. Township of West Whiteland*, 193 F.3d 177 (3rd Cir. 1999).

**II. The Trial Court's Official Reliance on Form**

**AO-435 Proves the Audio is the Foundational Record, Making Its Denial a Due Process Violation Where Transcripts Are Deficient, Mask Juror Bias, and Are Shielded by an Absolute Interpretation of Rule 10(e).**

While *Hallman* addresses the right to audio records under standard conditions, Petitioner's case provides the critical, unvarnished context necessary for this Court to resolve the national split. In the underlying proceedings, the U.S. District Court for the Eastern District of Tennessee formally utilizes and relies upon Form AO-435 (Transcript Order Form for Courtroom Audio). By establishing this explicit administrative infrastructure, the district court inherently acknowledges that the digital audio files serve as the foundational, authoritative source from which the written record is derived.

However, a severe constitutional paradox arises when a court relies on digital audio to build its record but systematically denies a party access to that very source file. Critically *here*, the official written transcript is fundamentally broken—containing more than 70 critical omissions replaced entirely by ellipses (". . ."). These omitted statements directly comprise the trial judge's biased conduct, actions, and the explicit, forced rehabilitation of active State Farm policyholders to sit on a highly restricted, six-person civil jury over Petitioner's challenges for cause.

When Petitioner sought to resolve these glaring transcript deficiencies, the systemic failure was structurally cemented by a deep and mature circuit

split concerning the scope and application of Federal Rule of Appellate Procedure 10(e) which has recently been *favorably* discussed in *Hallman* by the very same Appellate Court from which Petitioner seeks her Writ of Certiorari in this high Court:

**A. The Absolute Gatekeeper Rule:**

The lower courts in this circuit applied a highly deferential, restrictive interpretation of Rule 10(e), treating the trial judge's refusal to supplement the record with the master audio file as entirely discretionary and unreviewable. As illustrated by *Thompson v. Bell*, 373 F.3d 688 (6th Cir. 2004), the rule in this jurisdiction uncompromisingly limits the record, transforming Rule 10(e) into an absolute shield that allows a trial court to validate a factually censored print record while locking away the objective electronic data that would expose the gaps.

**B. The Corrective Record Rule:**

Conversely, circuits like the Ninth, Tenth, and Eleventh Circuits reject this absolute gatekeeper framework. They hold that the text and spirit of Rule 10(e) are designed to ensure that the appellate record accurately and completely discloses what actually occurred in the courtroom. In those jurisdictions, where a transcript is verifiably deficient or missing material statements, a trial court's refusal to supplement the record with original, objective media constitutes an abuse of discretion. Furthermore, this overlaps with a distinct split concerning juror rehabilitation; while some circuits grant total

deference to formalistic assurances of fairness, the Second Circuit in *United States v. Torres*, 128 F.3d 38 (2d Cir. 1997), and the Ninth Circuit in *United States v. Kechedzian*, 902 F.3d 1023 (9th Cir. 2018), recognize that structural commercial ties cannot simply be coached or massaged away by a judge's verbal questioning.

This split over Rule 10(e) and juror rehabilitation becomes weaponized against a pro se litigant when combined with a rigid "transcript-only" access rule. Because the written text in this case emerged with 70+ omissions explicitly masking judicial misconduct and structural juror bias, appellate review was completely frustrated. A trial court cannot be permitted to use its administrative boundaries under Rule 10(e) to shield both a defective print record and an unconstitutionally biased jury from scrutiny. This structural breakdown across circuits turns the guarantee of Due Process under the Fifth Amendment and Fourteenth Amendment into a total nullity.

## III. The Stark Distinction Between Tone and Substance Demands Review Where the Audio Discloses the True Happenings of the Trial.

The critical necessity of Petitioner's case over related litigation within the circuit highlights why this petition provides the ideal vehicle for review. In *Samantha Hallman v. Travis Reeds*, the dispute centers strictly on formatting and the public's right to access audio to capture "tone and inflection"—abstract rights that lower courts routinely classify as

non-constitutional. Here the issue is exacerbated as Petitioner's challenge in the Eastern District of Tennessee concerns a fundamental breakdown of the substantive record itself. Crucially, the recent oral argument within *Hallman* has significant statements of support for permissible access to the court's audio Real Time recordings for multiple reasons (from explicit statements to the otherwise excessive costs of a typed transcript which may be void of information to present the actual court proceedings) including that of tone and inflection. Chief Judge Sutton was very candid during oral argument in *Hallman* (*Id.* at 24:01) as was Judge Moore (*Id.* at 25:47; 31:43).

The core of this instant Petition has even a higher stake in split circuit opinions which is critical to due process in that Petitioner's transcript does not merely lack emotional inflection; it lacks the actual words spoken, featuring more than 70 overt omissions (". .. ") that expunged instances of judicial bias and grounds for a mistrial. While the panel in *Hallman* debated the nuances of audio access in a case with a complete written text, Petitioner's case demonstrates the dangerous reality of the current framework: an absolute format ban allows a trial court to censor its printed transcript with total impunity while withholding the master audio (the only objective record capable of revealing the true happenings of the trial).

In the instant *Hallman* case, judicial notice should also be taken of the Amicus Curiae Brief (Doc 18) filed 04/14/2026 by Grand Traverse-Leelanau-

Antrim Bar Association in support of Appellant Urging Reversal which further emphasizes the national split on access to the Court's audio. For example: "In *Stevens*, this Court acknowledged that an argument could be made that "furnishing audio recordings, in addition to the forms of access already made available, could play a 'significant positive role' in these types of court proceedings" because the "audio recordings could reveal the demeanor of a judge or party, adding valuable context to a 'sterile paper record', and reveal errors in the transcript. *Stevens v. Mich. State Court Admin. Off.*, No. 21-1727, 2022 WL 3500193, at *13 (6th Cir. Aug. 18, 2022)(unpublished). Although the Court declined to resolve the logic prong in that case due to an underdeveloped record, that recognition confirms that recordings are capable of improving the functioning of the judicial process."

"Where a form of access materially improves accuracy, reduces disputes, enhances efficiency, and promotes equal access to justice, it plays a significant positive role in the functioning of the judicial process. Audio recordings meet that standard. They are not duplicative of existing forms of access, nor are they merely a 'third option'. They are a necessary component of a functional system of public access to judicial proceedings."

"Under the functional inquiry required by *Press–Enterprise*, the district court's categorical framing cannot be sustained. The inquiry is not whether recordings are indispensable, but whether they make the judicial process more accurate,

efficient, and fair. The record in this case demonstrates that they do. Once the proper functional inquiry is applied, the conclusion follows: access to audio recordings satisfies the logic prong." (*Id.* at pgs. 6-7). The brief cannot be quoted ad nauseum here but emphatically supports the need for higher court review in the interest of justice for all.

Especially relevant to the exacerbated issues now before this Court is:

"In addition, recordings are equally critical to the evaluation of judicial conduct. The Supreme Court has long recognized that public access to judicial proceedings serves as a critical check on the conduct of judges and participants, ensuring fairness, integrity, and public confidence in the judicial process. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569–73 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). The manner in which a judge interacts with counsel and witnesses—including tone, phrasing, interruptions, and responsiveness—can bear directly on issues such as neutrality, fairness, and the proper exercise of judicial authority. These qualitative aspects of judicial behavior may be essential in assessing claims of bias, procedural irregularity, or the overall fairness of the proceeding." (Id. pgs. 11-12)

"Without access to recordings, such evaluation is necessarily incomplete and may obscure conduct that is apparent only through auditory context."

During recent oral argument, Chief Judge Sutton, identified the impact on cases everywhere and

the potential for the outcome across districts and circuits to be conflicting. (*Id.* at 39:05).

## IV. Non-Article III Clerk-Signed Orders Actively Insulate Critical Constitutional Violations from Judicial Review, Creating Institutional Blindness.

Critically, this internal instability within the Sixth Circuit is not merely an analytical oversight. The structural crisis presented by Petitioner's case extends beyond format restrictions and enters the foundational requirements of Article III of the United States Constitution. A primary issue presented in this Petition is whether a non-Article III court clerk may constitutionally sign a detailed opinion and order of dismissal in an appellate case, bypassing the mandatory oversight of certified Article III Judges.[2]

The October 21, 2026, oral arguments in *Hallman* provided definitive, public proof of the severe systemic danger this practice creates. During those proceedings, Chief Judge Sutton explicitly stated that the Sixth Circuit had not encountered a case regarding a party's right to access real-time digital audio tapes from a federal district court; ". . . this is a first." (Id. at 39:13)[2] This statement stands in stark, irreconcilable conflict with reality: Petitioner's pending case *here* raised this exact, devastating issue within this very circuit.

Reasonably, the fact that Chief Judge Sutton

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[2] Chief Judge Sutton was on the panel of justices in Petitioner's appeal (No. 23-5868); the order was signed by the court clerk.

within his circuit was completely unaware of a case involving a transcript missing 70+ critical statements and denial of the party's right to review the Real-Time audio is because an Article III Judge did not review, sign, or validate the order in Petitioner's appeal. Instead, a non-Article III court clerk signed the detailed Writ of Mandamus dismissal order fighting for access to court audio. (Case No. 25-5123).

When court clerks are permitted to draft and sign detailed opinions rather than life-tenured, Senate-confirmed judges, the active censorship of a print transcript to shield judicial bias and unconstitutional jury rehabilitation are summarily insulated from the appellate court's view. Chief Judge Sutton's public ignorance of Petitioner's Writ of Mandamus strongly suggests that clerk-signed orders actively obstruct the flow of information to Article III Judges, fundamentally denying litigants their Constitutional right to a qualified judicial review.

## CONCLUSION

For the foregoing reasons, and those stated in the Petition for a Writ of Certiorari, the Petition should be granted.

Dated: October 26, 2026
Respectfully submitted,

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