CASE NO.: 21-30061

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JANE DOE,

Plaintiff-Appellant

v.

THE CITY OF BATON ROUGE; BATON ROUGE POLICE DEPARTMENT; JAMES WEBER; CHARLES DOTSON; STEPHEN MURPHY, ET AL.,

Defendants-Appellees

Appeal from the United States District Court

for the Middle District of Louisiana

BRIEF FOR APPELLANT

Respectfully submitted:

JANE DOE

[redacted]

I. CERTIFICATE OF INTERESTED PERSONS

Appellant believes that all named defendants and their unsued co-conspirators might have interest in the outcome of this proceeding as described in the fourth sentence of Rule 28.2.1.

s/ Jane Doe

II. STATEMENT REGARDING ORAL ARGUMENT

Appellant Jane Doe waives oral argument.

s/ Jane Doe

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V. JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. The appeal is timely as the final judgement was entered on January 29, 2021 and the Notice of Appeal was filed on February 1, 2021.

VI. STATEMENT OF THE ISSUES

1. Whether Middle District of Louisiana clearly abused its discretion in its handling of the Appellant's legal action, including but not limited to misapprehending the facts of the complaint, misapplying the law to the facts, and disregarding the law and legal authorities.
2. Whether Middle District of Louisiana's handling of the *Jane Doe* legal matter or any matter where Appellant is a party is unconstitutional.
3. Whether the judges of Middle District of Louisiana have been denying meaningful access to courts to Appellant in the *Jane Doe* legal matter.

VII. STATEMENT OF THE CASE

This case boils down to a multiyear abuse of the Appellant and denial of meaningful access to courts to her by the judges of Middle District of Louisiana. They have employed various unlawful tactics in order to block Appellant's access to courts: suppression of her legal action and not taking any action on the case for months after it was filed; dismissing her case with prejudice when a motion under

Federal Rules of Civil Procedure 41(a)(1) was filed; purporting to "screen" her case under the Prison Litigation Reform Act and the prisoner in forma pauperis statute; "not permitting" plaintiff to pay the filing fee so that they can continue misusing the in forma pauperis statute; grossly misapprehending the facts, presented in the Appellant's complaint; manufacturing the "facts" in order to come up with false, fraudulent "analysis" of purportedly the Appellant's complaint; diligently working as a "counsel" for the defendants – their friends and business partners; grossly misapplying the law to the facts; and simulating the proceedings in order to disguise the unlawful handling of the Appellant's legal action and hostility towards the Appellant.

The judges of Middle District of Louisiana continued unlawfully retaining jurisdiction and "applying" the law in discriminatory manner as they denied Appellant's motions to disqualify judge and change venue. This appeal has been filed to request declaratory judgement against Middle District of Louisiana, to request that all Middle District of Louisiana's erroneous as a matter of law conclusions and findings be invalidated and reversed, and the case be transferred to U.S. District Court for the District of Oregon and consolidated with the case *Doe v. City of Baton Rouge*, No. 6:21-cv-314-AA (D. Or.).

VIII. SUMMARY OF THE ARGUMENT

The instant brief intends to demonstrate that Middle District of Louisiana and its judges have been harboring hostility towards Appellant; that all their rulings, reports, opinions, and orders are violative of the law and tainted with actual prejudice against Appellant; that all their rulings must be reversed as they are erroneous as a matter of law; that it is unconstitutional for any judge of Middle District of Louisiana to handle any matter where Appellant is a party.

XI. ARGUMENT

A. Middle District of Louisiana's perpetual denial of access to courts to Appellant and discrimination against Appellant

1. Suppression of Appellant's first lawsuit and unlawful dismissal with prejudice

Being abused and tormented by corrupt Louisiana "law enforcement" that has been covering up the crime committed against Appellant and discriminating against Appellant based on her gender, national and ethnic origin, and not being connected to wealth and/or Louisiana corruption, Appellant, exhausted by that abuse, on December 4, 2018 stated to the assistant district attorney for the

nineteenth judicial district of Louisiana that she will try to expose their corruption and "criminals that run Baton Rouge police department and Louisiana department of justice." Immediately, the persecution of Appellant has ensued. Just in a few days after her statement to the assistant district attorney, she has been viciously attacked in the Louisiana "medical" office where she was injected with a corrosive-like substance that ate through and destroyed the structures of her eyelids. Appellant's face has been also severely infected by the "injection" although prior to the attack Appellant never had any issues with her eyes, did not have any preexistent conditions, and never had any infection of any kind in her entire life. Appellant's dog whom she adored has been also injured at the same time Appellant was attacked, and no one could tell Appellant what happened to her dog who also was exceptionally healthy and never had any prior injuries or traumas.

Importantly, immediately after Appellant made that statement the defendants took control over all Appellant's online activities and have been barbarically suppressing the Appellant's political speech and preventing her from exercising her First Amendment rights and criticizing the "government" – precisely the kind of speech that Amendment protects. The defendants-appellees and their co-conspirators deactivated all Appellant's social media accounts, deleted texts posted in Appellant's blog and then made her blog unsearchable to the public, took

control over the email account that she used trying to get in touch with the investigative journalists and over other accounts such as the Appellant's regular email account that she at that time used for almost 10 years. By continuously tampering with the Appellant's electronic devices and networks, the criminals whom Appellant wanted to expose have been ensuring that Appellant cannot discuss or even mention online in any meaningful way *any* event she talks about in her complaint.

Shortly after the persecution of the Appellant has ensued, she started drafting her complaint, planning to file it in the federal court to request, among other things that the defendants-appellees be enjoined from criminally silencing her and violating her First Amendment rights. In attempt to minimize unlawful eavesdropping by the defendants-appellees and their co-conspirators, Appellant was writing her complaint by hand. After it was finished, plaintiff went on January 25, 2019 to the Middle District of Louisiana courthouse and attempted to file her lawsuit. The clerk did not want to accept it and a "courtroom deputy" read it for almost an hour prior to coming out to tell Appellant that her complaint "must be filed under seal." After plaintiff protested, it was finally filed.

The action was docketed as 19-cv-48[1] and assigned to chief judge Shelly Dick. Dick suppressed the action as no ruling on the filed application to proceed without prepaying of costs and fees was made for over seven weeks.[2] This has been done in direct disregard for the Federal Rules which in its Rule 1 lays the foundation for the entire judicial process whose goal is "to secure the just [and] speedy…determination of every action and proceeding." Rule 4(m) further provides that the plaintiff has only 90 days after the complaint is filed to serve the defendant and if fails to timely serve, "the court…must dismiss the action without prejudice against that defendant." The committee notes on Rule 4(m) – 2015 amendment further reiterates the goal of the speedy and effective handling of the complaint and "reduc[ing] delay at the beginning of litigation."

After waiting for over seven weeks and realizing that her action has been suppressed and access to courts has been denied to her, Appellant filed an involuntary "voluntary" Motion to Dismiss Without Prejudice,[3] indicating her intent to refile her action. Dick immediately "granted" Appellant's motion by dismissing it with prejudice – with clear disregard for the Federal Rules and the Fifth Circuit's law:

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[1] *Doe v. City of Baton Rouge*, No. 19-48 (M.D.La), Document 1
[2] *Doe v. City of Baton Rouge*, No. 19-48 (M.D.La), Document 2 – an application to proceed without prepaying of costs and fees was never ruled on.
[3] *Doe v. City of Baton Rouge*, No. 19-48 (M.D.La), Document 6

> "[A] plaintiff has an absolute right to dismiss a lawsuit before the defendant has filed an answer or summary judgment motion." *Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977). See FED.R.CIV.PRO. 41(a)(1)." *Doe v. City of Baton Rouge*, et al., No. 19-30277 (5th Cir., November 19, 2019).[4]

The U.S. Supreme Court stated that the court *must* exercise jurisdiction it possesses, and if it declines to do so, it commits a "treason to the constitution." *Cohens v. Virginia*, 19 U.S. at 404 (1821). In *Moses H. Cone Memorial Hospital v. Mercury Construction Co.,* 460 U.S. 1, 15 (1983), the Court stated that federal courts have a "virtually unflagging obligation…to exercise the jurisdiction given them." In her complaint, Appellant pleaded serious issues of constitutional dimension, and asserted irreparable injury:

> "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. See *New York Times Co*. v. *United States*, 403 U.S. 713 (1971)." *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976).
>
> "[T]he purpose of the First Amendment includes the need…'to protect parties in the free publication of matters of public concern, to secure their right to a free discussion of public events and public measures, and to enable every citizen at any time to bring the government and any person in authority to the bar of public opinion by any just criticism upon their conduct in the exercise of the authority which the people have conferred upon them.'" *Id.*, at 392 (quoting 2 T. Cooley, Constitutional Limitations 885 (8th ed. 1927))," *Elrod v. Burns*, 427 U.S. 347, 374 n.29 (1976).
>
> "[T]he First Amendment was "fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *Roth* v. *United States*, 354 U.S. 476, 484, [77 S. Ct. 1304 (1957)]." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271-72 (1971).

[4] ROA.457

> "This Court, in *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940), said: "The freedom of speech . . . which [is] secured by the First Amendment against abridgment by the United States, [is] among the fundamental personal rights and liberties which are secured to all persons by the Fourteenth Amendment against abridgment by a State." *Burson v. Freeman*, 504 U.S. 191, 196 (1992). In *Burson v. Freeman*, 504 U.S. 191, 196 (1992), the Court struck down "three central concerns in our First Amendment jurisprudence: regulation of political speech, regulation of speech in a public forum, and regulation based on the content of the speech." "'For speech concerning public affairs is more than self-expression; it is the essence of self-government.' *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)." *Id.*
>
> "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, see *Lovell v. Griffin*, 303 U.S. 444[, 58 S. Ct. 666 (1938)] to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to … criticize governmental agents and to clamor and contend for or against change … muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free." *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966).

Although the district court has an "unflagging obligation…to exercise the jurisdiction," and although suppression of the First Amendment freedoms – among other substantial issues that Appellant has pleaded – is unquestionably serious irreparable injury and serious constitutional question, Middle District of Louisiana,

in conspiracy with the defendants-appellees and other unsued co-conspirators entirely blocked Appellant's access to courts and made it impossible for Appellant to prosecute her action.

2. ***Second attempt to access courts following the Fifth Circuit's reversal of Middle District of Louisiana is again blocked by the court***

Although after Middle District of Louisiana was reversed[5] by the Fifth Circuit and Appellant formally got back her violated by Middle District of Louisiana absolute legal right, the district court was not going to afford any meaningful access to courts to Appellant.

a. "Screening" of Appellant's complaint under Prison Litigation Reform Act

In order to block Appellant's access to courts for the second time the district court decided to simulate the proceedings and "screen" Appellant's complaint under 28 U.S. Code § 1915 – a federal statute that has been enacted to regulate *prisoner* filings. It contains directives regarding handling *prisoner* complaints. In the text of the statute the word "prisoner" is repeated at least 21 times, and the statute specifies:

> "As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or

[5] ROA.457

> the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S. Code § 1915(h).

The Ninth Circuit has explained that the statute applies exclusively to prisoners who proceed in forma pauperis:

> "We explained that "the natural reading" of the definition of "prisoner" in 28 U.S.C. § 1915(h)…" is that, to fall within the definition of 'prisoner,' the individual in question must be currently detained as a result of accusation, conviction or sentence for a criminal offense." *Page* , 201 F.3d at 1139. Thus "only individuals who, at the time they seek to file their civil actions, are detained as a result of being accused of, convicted of, or sentenced for criminal offenses are 'prisoners' within the definition of …28 U.S.C. § 1915." *Id.* at 1140." *Olivas v. Nevada, ex rel. Dep't of Corr.*, 856 F.3d 1281, 1284 (9th Cir. 2017).

The Ninth Circuit has further found that it was an error for the district court to "screen" a complaint of a non-prisoner:

> "Section 1915A provides that a federal district court "shall review ... a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). "On review, the court shall… dismiss the complaint, or any portion of the complaint," if it "(1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). Section 1915A defines "prisoner" as "any person incarcerated…Because it is undisputed that Olivas was released from custody a month before he filed his complaint, the screening requirement of 28 U.S.C. § 1915A does not apply to his claims. The district court therefore erred in subjecting them to screening." *Olivas v. Nevada, ex rel. Dep't of Corr.*, 856 F.3d 1281, 1283 (9th Cir. 2017).

In order to abuse Appellant and sabotage her access to courts, Middle District of Louisiana claimed that it needs to "to h[o]ld [the hearing] pursuant to Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).[6]"

The Fifth Circuit has held:

> "In *Spears*, we authorized an evidentiary hearing in the nature of a Fed.R.Civ.P. 12(e) motion for more definite statement, as we confronted the difficulties of selecting meritorious **prisoner complaints** from the "surfeit of meritless *in forma pauperis* complaints in the federal courts," and sought an effective way to protect the right of indigent prisoners with valid claims to access to the courts under 28 U.S.C. § 1915. The *Spears* hearing is neither a trial on the merits nor a mini-trial; rather, **it aims to flesh out the allegations of a prisoner's complaint to determine whether *in forma pauperis* status is warranted**." *Eason v. Holt*, 73 F.3d 600, 602 (5th Cir. 1996) (emphasis added).

The Fifth Circuit has specified that, in accordance with § 1915, it authorized the screening procedure for the purpose of "protect[ing] the right of indigent prisoners with valid claims." Id. "Spears" proceeding has been created to "afford an opportunity for ["mostly uneducated and indeed largely illiterate prison population" *Lewis v. Casey*, 518 U.S. 343, 354 (1996)] to verbalize [their] complaints, in a manner of communication more comfortable to many prisoners," *Davis v. Scott*, 157 F.3d 1003, 1005 (5th Cir. 1998).

[6] ROA.153

Not only Appellant's complaint could not be screened as a matter of law because she is not a prisoner but she also did not need any "opportunity to verbalize" her complaint. Her matter is factually dense and complex, and she has already pleaded the meritorious claims which Middle District of Louisiana corruptly and improperly labeled "frivolous" in order to deny her access to courts. Further, the magistrate did not ask Appellant a single question regarding her claims or their substance as the "Spears" proceeding requires (a "hearing in the nature of a Fed.R.Civ.P. 12(e) motion for more definite statement," *Eason v. Holt*, 73 F.3d 600, 602 (5th Cir. 1996).

Fed. R. App. P. 10(a) provides:

> Composition of the Record on Appeal. The following items constitute the record on appeal:(1) the original papers and exhibits filed in the district court;(2) the transcript of proceedings, if any; and (3) a certified copy of the docket entries prepared by the district clerk.

Fed. R. App. P. 10(b)(1)(A) further provides that an appellant has a duty to timely order the transcript which Appellant has done.[7] Appellant also timely designated the record on appeal, and her designation includes the transcript.[8] However, Middle District of Louisiana excluded the transcript from the record on appeal which, as a matter of law, constitutes the record on appeal. See Fed. R. App. P. 10(a).

[7] ROA.512
[8] ROA.514

Because of that, Appellant is precluded from urging on appeal some of the unsupported by evidence Middle District of Louisiana's conclusions in its reports and opinions. Appellant is also precluded from demonstrating that, for instance, it did not ask Appellant about her claims during the simulation of the proceedings, the "Spears hearing:"

Fed. R. App. P. 10(b):

> (2) *Unsupported Finding or Conclusion.* If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

b. Refusal to accept filing fee from Appellant

Even if Middle District of Louisiana could "screen" as a matter of law the complaint of a non-prisoner, legal authorities have explained that the purpose of the screening is "to flesh out the allegations of a prisoner's complaint to *determine whether in forma pauperis status is warranted.*" *Eason v. Holt*, 73 F.3d 600, 602 (5th Cir. 1996) (emphasis added). Surely, it means that if in forma pauperis status is not warranted, the prisoner is free to file a paid complaint:

> "Because a § 1915(d) dismissal is not a dismissal on the merits, but rather an exercise of the court's discretion under the *in forma pauperis* statute, the dismissal **does not prejudice the filing of a paid complaint making the same allegations**." *Denton v. Hernandez*, 504 U.S. 25, 34 (1992) (emphasis added).

However, the only purpose of the Middle District of Louisiana's "screening" was to unlawfully sabotage and block Appellant's access to courts, and all that purported "screening" was just the simulation of the proceedings and the way for it to mislabel the Appellant's complaint as "frivolous:"

> "Section 1915(d) gives the courts "the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.,* at 327. Thus, the court is not bound, as it usually is when making a determination based solely on the pleadings, to accept without question the truth of the plaintiff's allegations. However, in order to respect the congressional goal of assuring equality of consideration for all litigants, the initial assessment of the *in forma pauperis* plaintiff's factual allegations must be weighted in the plaintiff's favor. A factual frivolousness finding is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely. The "clearly baseless" guidepost need not be defined with more precision, since the district courts are in the best position to determine which cases fall into this category, and since the statute's instruction allowing dismissal if a court is "satisfied" that the complaint is frivolous indicates that the frivolousness decision is entrusted to the discretion of the court entertaining the complaint. Pp.31-33. Because the frivolousness determination is a discretionary one, a § 1915(d) dismissal is properly reviewed for an abuse of that discretion." *Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

Because the Court found that trial courts do not even need a "guidepost" for the "frivolousness" determination and afforded an especially wide discretion to trial courts in handling of in forma pauperis *prisoner* complaints where all they need in order to dismiss such a complaint is to get "satisfied" that it is "frivolous," Middle District of Louisiana refused to accept payment of the filing fee from

Appellant so that it can misuse and abuse the in forma pauperis statute. Middle District of Louisiana instructed its clerk to keep returning Appellant's cashier's checks, and keep deceiving Appellant regarding the amount of payment. When Appellant had a cashier's check for $402 delivered to Middle District of Louisiana on December 8, 2020,[9] it refused to accept and process it and instead returned it, accompanied by the letter[10] that claimed that the "check is being returned to [Appellant] as the filing fee was $400 at the time [Appellant's] suit was filed." Appellant promptly reordered the check for the amount the clerk told her was accurate - $400 - and had it sent to Middle District of Louisiana. The cashier's check was similarly returned, accompanied by another fraudulent, deceitful letter:[11]

> "[T]he fee schedule…changed as of December 1, 2020. The civil filing fee now is $402…Please forward payment in the amount of $402 to pay the filing fee for the [20-cv-514-JWD] matter."

Immediately after Appellant received a notification that her first cashier's check was delivered to Middle District of Louisiana on December 8, 2020, she filed a motion to withdraw[12] her in forma pauperis application. After her two cashiers' checks were returned and it became apparent that the right to render the filing fee has been intentionally and corruptly refused to her, Appellant filed a

[9] ROA.497
[10] ROA.498
[11] ROA.501
[12] ROA.320

motion to accept and properly process filing fee.[13] Middle District of Louisiana said that Appellant "will not be permitted to pay the filing fee,"[14] and also denied[15] the motion to withdraw in forma pauperis application.

Undoubtedly, Middle District of Louisiana could not lawfully sua sponte dismiss the Appellant's case neither under in forma pauperis nor as a paid complaint:

> "[F]actual frivolousness finding is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them, but a complaint cannot be dismissed simply because the court finds the allegations to be improbable or unlikely." *Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

Nothing in the Appellant's complaint is even "improbable or unlikely." Appellant presented solid, sound, truthful factual allegations that reveal discriminatory application of the laws to the unfavored individual – Appellant, and clear retaliatory and persecutory treatment, including barbaric suppression of the First Amendment rights of the whistleblower who wanted to expose the impenetrable corruption of the Louisiana law enforcement. Middle District of Louisiana corruptly, deceitfully, and unlawfully mislabeled the Appellant's meritorious claims as "frivolous," "devoid of merit," "unsubstantiated," "fantastical"[16] by

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[13] ROA.322
[14] ROA.356
[15] ROA.356
[16] ROA.349

grossly misapprehending the facts of the Appellant's complaint, by manufacturing the facts and "unseeing" the true allegations, and by grossly misapplying the law to the facts.

c. Misapprehension of the facts of the Appellant's complaint

In *In re Volkswagen of Am. Inc.,* 223 Fed.Appx. 305 (5th Cir. 2007), the Fifth Circuit has found that the district court "clearly abused its discretion [when] ignored [its] precedents, misapplied the law, and misapprehended the relevant facts."[17] In the course of the simulation of the proceedings, Middle District of Louisiana grossly misapprehended the facts and manufactured the untruthful version of the events, purportedly described in the Appellant's complaint. By narrowly extracting certain phrases and "unseeing" the actual allegations, it came up with the narrative that is

> "abusive, deceptive, intentionally misrepresents the facts and the truth, demonstrates persistent disregard for the law and legal authorities,...is the quintessence of injustice, denial of access to courts, and corrupt assistance to defendants in concealing the truth about their reprehensible actions."[18]

Middle District grossly misapprehends the facts of the Appellant's complaint when it claims:

> "Plaintiff alleges that Defendants were engaged in a vast conspiracy among various levels of state and municipal government and the private sector over

[17] ROA.369
[18] ROA.360

> approximately a three-year period beginning in 2017 solely designed to cover-up the actions of Poulicek (the "Conspiracy"). However, substantially all of Plaintiff's claims, which were filed on August 6, 2020, are untimely and should be dismissed."[19]

Here, it deceitfully claims that the actionable conspiracy, alleged in the Appellant's complaint has been "solely designed to cover-up the actions of Poulicek." However, the detailed factual narrative of the complaint demonstrates that in the beginning, corrupt Louisiana "law enforcement" had been discriminating against Appellant on the basis of her national origin,[20] gender, and not being connected to Louisiana corruption and/or wealth; however, after Appellant protested to their discriminatory, unlawful treatment and expressed her willingness to expose their corruption, the matter turned into the completely different ordeal and the retaliatory persecution[21] has ensued which has not ended at the time of the filing of the instant appellant brief.

Middle District of Louisiana falsely claims that the Appellant's claims are "untimely."[22] It again refuses to read the Appellant's complaint that clearly demonstrates that there have been a series of repeated unlawful acts and the malfeasance by the defendants-co-conspirators has not ended. Therefore, the

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[19] ROA.342
[20] ROA.274
[21] ROA276-277
[22] ROA.342, 351

statute of limitations has not begun to run yet as the legal action undoubtedly falls within the continuing[23] violation doctrine. A conspiracy to violate civil rights is a continuing violation that accrues for limitations purposes upon the final act in furtherance of the conspiracy, see *White v. Bloom*, 621 F.2d 276, 280-81 (8th Cir. 1980).

> "The continuing-violation exception 'extends the limitations period for all claims of discriminatory acts committed under [an ongoing policy of discrimination] even if those acts, standing alone, would have been barred by the statute of limitations,' *Lightfoot v. Union Carbide Corp*., 110 F.3d 898, 907 (2d Cir. 1997)," *Annis v. County of Westchester*, 136 F.3d 239, 246 (2d Cir. 1998).
>
> "For a continuing violation to be established, a plaintiff must show "a series of related acts, one or more of which falls within the limitations period, or the maintenance of a discriminatory system both before and during the limitations period." *Green v. Los Angeles County Superintendent of Schools,*883 F.2d 1472, 1480 (9th Cir. 1989)." *Western Center for Journalism v. Cederquist*, 235 F.3d 1153, 1157 (9th Cir. 2000).

In addition to continuing violation, the statute of limitations, even if ever started to run, has been repeatedly interrupted and tolled,[24] including by the numerous legal impediments that Appellant has faced, some of which have been created by Middle District of Louisiana. For instance, when Appellant realized[25] that there was no error in refusal of police to investigate and arrest Poulicek but that the defendants have conspired to cover up the crime and intentionally

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[23] ROA.421, 479-480
[24] ROA.423-426
[25] ROA.420

discriminate against Appellant, and Appellant made the statement to the assistant district attorney that she would want to expose their corruption, persecution of Appellant has ensued. Appellant then filed her complaint in less than two months[26] – a rare plaintiff would be as proactive as Appellant has been. However, Middle District of Louisiana blocked Appellant's access to courts and made it impossible for Appellant to prosecute her action.[27] Thereafter, it unlawfully dismissed the Appellant's legal action with prejudice in March 2019. On November 19, 2019, the Fifth Circuit reversed[28] Middle District of Louisiana and ordered it to enter[29] a correct order, dismissing the complaint without prejudice.

Undoubtedly, Appellant was precluded by Middle District of Louisiana from prosecuting her action between January 25, 2019[30] and November 19, 2019.[31] Although that and other legal impediments were pleaded into the Appellant's complaint [32], Middle District of Louisiana "unsees" them. Instead, it fraudulently and falsely claims that it was not reversed by the Fifth Circuit but voluntarily amended its order – in around eight months after signed it and immediately after

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[26] ROA.426
[27] ROA.385, 376-377
[28] ROA.491
[29] ROA.493
[30] First *Doe v. City of Baton Rouge*, No. 19-48 that was suppressed and then unlawfully dismissed with prejudice was filed on January 25, 2019.
[31] The Fifth Circuit reversed LAMD on November 19, 2019, returning to plaintiff her absolute right to refile her action.
[32] ROA.197, 266

the Fifth Circuit issued the order of reversal, ordering LAMD to amend its order. See **ROA.491** and **493**.

> "Plaintiff has not shown bias or prejudice against her by the judges assigned to her prior action because the initial order of dismissal of that action was subsequently amended to be without prejudice, per Plaintiff's request."[33]
>
> "The suit was initially dismissed with prejudice on March 19, 2019, but the order of dismissal was amended to be without prejudice, as Plaintiff requested, on November 19, 2019."[34]
>
> "Plaintiff appealed the initial dismissal with prejudice to the U.S. Court of Appeals for the Fifth Circuit, but the order of dismissal was amended to be without prejudice prior to the Fifth Circuit's ruling granting Plaintiff's appeal to convert the dismissal to one without prejudice."[35]

Appellant pointed out other instances of tolling and interruption of prescription, such as timely filing various actions in state courts that interrupted prescription for all conspirators.[36] Note that although Appellant objected to each and every portion of the magistrate's report and all its "conclusions," and prepared a detailed 90-page Objection Memorandum,[37] the district judge in violation of Rule 72(b)(3) failed to conduct and provide an intelligent written review of the objections to the report. His laughable 3-page opinion[38] further reveals the corrupt simulation-of-the-proceedings business where all reports, opinions, and

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[33] ROA.339
[34] ROA.346
[35] ROA.340
[36] ROA.427-428
[37] ROA.360
[38] ROA.504

conclusions have nothing to do with the Appellant's complaint but are the result of the conspiratorial, pre-determined agenda.

Middle District of Louisiana corruptly perverted and misapprehended ***all the facts*** of the Appellant's complaint. For instance, the Appellant's entire complaint is dedicated to demonstrating that no matter where she would turn, she was equally duped, deceived, her speech was suppressed, and her matter was never investigated. However, LAMD falsely claims that "according to [Appellant's] own facts, her allegations were given consideration on several different levels."[39] Another example of an entirely false LAMD's narrative would be the following:

> "Plaintiff does not allege any facts to show that the alleged main perpetrator of the conspiracy, Weber, had a motive to engage in a coverup of the actions of Poulicek, or in fact, that Weber even knew Poulicek." ROA.348.

However, Appellant has asserted in her complaint:

> "As soon as Weber got down from the witness stand, it approached Poulicek…and openly displaying closeness and intimacy of their relationship, with the distinct warmth in its eyes, enthusiastically shook [Poulicek's] hand and then chatted." ROA.230-231 and 406-407.

One more example out of countless instances of falsifying the facts and misrepresenting them to the public by Middle District of Louisiana: Appellant explains in her complaint that the recordings of her appointments with Dr. Hetzler

[39] ROA.409

provided so many strong statements[40] regarding Appellant's injuries that the criminals, sued in the Appellant's complaint, went an extra mile in order to copy them[41] and then lie – under oath[42] -- that they were "altered."[43] Those recordings and the statements themselves were later fully authenticated[44] by Dr. Hetzler during her deposition. Middle District falsely and corruptly, while purporting to be summarizing the Appellant's complaint, claims that "the recordings failed to give probable cause"[45] and that the defendants "failed to understand how the recordings were evidence."[46] The factually dense and significant narrative that concerns those events have been provided in the complaint, however, LAMD corruptly reduces them to something entirely different and offers its own false conclusions while purporting to be reciting the complaint.

It is impossible to list all instances of Middle District of Louisiana's misapprehension, perversion, and unseeing of the facts, presented in the Appellant's complaint because they are so **numerous.** At nearly all times, under the guise of summarizing the complaint, it promotes its false, manufactured "facts" in the spirit of strong advocacy for the defendants. Because such instances are

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[40] ROA.212
[41] ROA.212-214
[42] ROA.233
[43] ROA.229
[44] ROA.230, ROA.54
[45] ROA.343
[46] ROA.344

numerous, Appellant incorporates by reference the portion of her Objection Memorandum, **ROA.389 – 410**, where Appellant attempted to point out the most significant and shocking distortions of her complaint by Middle District of Louisiana.

d. Misapplication of the law to the facts of the Appellant's complaint

While pretending to "unsee" the facts, alleged in the Appellant's complaint, Middle District of Louisiana grossly misapplies the law to the facts. Because Middle District of Louisiana declines to acknowledge the actual allegations of the Appellant's complaint, its "analysis" has nothing to do with the Appellant's legal action. It writes:

> "[D]istrict courts have the inherent authority to screen a pleading for frivolousness and may dismiss sua sponte claims that are 'totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion' because such claims lack the 'legal plausibility necessary to invoke federal subject matter jurisdiction.' Apple v. Glenn, 183 F.3d 477, 479–80 (6th Cir. 1999). Dilworth v. Dallas Cty. Cmty. Coll. Dist., 81 F.3d 616, 617 (5th Cir. 1996)"[47]

In *Apple v. Glenn*, 183 F.3d 477 (6th Cir. 1999), "district court lacked subject matter jurisdiction to entertain Apple's complaint [who] sued top government officials, claiming that the defendants violated his First Amendment right to petition the government because they did not answer his many letters or

[47] ROA.506

take the action requested in those letters." The court held that Apple's complaint was based "on a mistaken reading" of the First Amendment which does not protect the right "to compel government officials to act on or adopt a citizen's views," expressed in personal letters. *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999).

Similarly, in *Dilworth v. Dallas County Community College Dist.*, 81 F.3d 616, 617 (5th Cir. 1996), a college student's lawsuit "against his college and his English professor after his "A" in English was reduced to a "B" because he was tardy for six classes and counted as absent was frivolous, insubstantial, and insufficient to invoke federal question jurisdiction." *Apple v. Glenn*, 183 F.3d 477, 480 (6th Cir. 1999).

In stark contrast, Appellant brought serious questions of constitutional dimension, and convincingly plead that she has been denied equal protections of the laws, discriminated based on her gender, national origin, and not being connected to Louisiana law enforcement, corruption, and/or wealth. When Appellant protested, the defendants have started persecuting her and barbarically preventing her from publicly and truthfully speaking about her experiences. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits intentional discrimination, including selective or discriminatory enforcement of the law:

> *Whren v. United States,* 517 U.S. 806, 813 (1996) ("[T]he Constitution prohibits selective enforcement of the law" and "discriminatory application" of the law).
>
> "[T]here is a constitutional right . . . to have police services administered in a nondiscriminatory manner — a right that is violated when a state actor denies such protection to disfavored persons. *Estate of Macias v. Ihde*, 219 F.3d 1018 (9th Cir. 2000).
>
> *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 197 n. 3, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989) ("The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause.").
>
> *Elliot-Park v. Manglona*, 592 F.3d 1003, 1007 (9th Cir. 2010) (Equal Protection Clause prohibits law enforcement from intentionally discriminating in the provision of any services to any degree, including discriminatory denial of investigative services of a crime or denial of making an arrest [of the victim's attacker] due to the victim's ethnicity and nationality).

A failure to take action on behalf of "unfavored" victims constitutes unlawful discrimination:

> *Bell v. Maryland*, 378 U.S. 226, 309 (1964) ("Denying includes inaction as well as action…These views are fully consonant with this Court's recognition that state conduct which might be described as "inaction" can nevertheless constitute responsible "state action" within the meaning of the Fourteenth Amendment. See, *e. g., Marsh* v. *Alabama*, 326 U.S. 501; *Shelley* v. *Kraemer*, 334 U.S. 1; *Terry* v. *Adams*, 345 U.S. 461; *Barrows* v. *Jackson*, 346 U.S. 249.").

Unquestionably, neither *Apple* nor *Dilworth* apply to the Appellant's case. By contrast, those two cases highlight the meritoriousness of the Appellant's claims. More than half of the page of the 3-page Degravelles' opinion is a long quote from *McLean v. Country of Mex.*, 1:19-CV-591-RP (W.D. Tex. Jul. 3, 2019).

The summary of that case, however, shows that it is grossly improper to insinuate that there is any similarity between it and the Appellant's legal action.

> "The list of defendants McLean names spans 11 pages and includes "Mexico, Country of, 1917 to Present," the current president and several former presidents of Mexico, current and former elected representatives of several states, professional sports leagues such as the National Basketball Association and National Football League, federal judges of Latino or Hispanic descent, and Latino and Hispanic celebrities and athletes such as "Jennifer Lopez Puerto Rican Known as JLo Celebrity" and "Alexander Rodriguez Dominican Former New York Yankees Player." (Dkt. 1, at 1-11).
>
> McLean purports to bring claims against these Defendants under 17 federal statutes. (*Id*. at 1-2). She alleges that Defendants are "allowing massive numbers of Mexican Citizens and falsely documented Mexican U.S. Citizens . . . to invade the United States to aid the U.S. Federal Reserve Shareholders to control and overtake the legitimate U.S. Government and U.S. Citizens established under the U.S. Constitution attacking them both financially and physically daily inside the United States on U.S. domestic soil." (*Id*. at 14).
>
> Due to [several Foreign Intelligence Surveillance Court] cases being active with active investigations specifically addressing the yearly massive theft of U.S. funds by the Federal Reserve Shareholders back till 1913 there exists a much greater threat from immigrants, legal and illegal living inside the United State, to rise up and revolt against the U.S. Citizens in the border States and Coastal States while enabling the mass movement of foreign troops from the Mexican border falsely claiming asylum and refugee status, from overseas from China by way of cruise ships, and from Russia by way of illegal international underground subways to overtake the United States and the United States Citizens for the Federal Reserve Shareholders planned massive United States genocide.
>
> For relief, McLean requests, in part, (1) that the Mexican Government be "liable for all terrorist attacks caused by the Mexican citizens" because "Mexican Citizens [are] the dominant immigrants working inside and with the illegal Harvard Mind Control Headquarters to carry out the mass shootings and terrorist attacks inside the United States"; (2) that "immigrants" be prohibited from "protest[ing] in or out of court" the

> construction of the "U.S. Mexico Border Wall" because such protests "can only be addressed by immigrants and citizens of Mexico in an international court"; and (3) that the Mexican Government be ordered to change its "visa policies" and be required to "man[ ] the border with massive numbers of Mexican border agents with military support." (*Id.* at 119-21). McLean ends by stating that "Mexican citizens inside the United States" holding "top U.S. and State governmental positions" "are thieves and killers," requesting that the Court "deport[ ] them permanently" and "deem the Mexican Citizens inside the United States as an enemy [sic] of the State"; and urging the Court "to be obedient to" scripture from the Torah to "move swiftly to get revenge and retribution from the government of Mexico and the Mexico Citizens living in the United States or expected [sic] to be cursed by the God of Israel once again for 70 years down to 4 generations for not swiftly getting revenge and retribution for the real authentic U.S. Citizens." (*Id.* at 122-24)." *McLean v. Country of Mex.*, 1:19-CV-591-RP, 2-3 (W.D. Tex. Jul. 3, 2019).

Degravelles continues further grossly misapplying the law by claiming:

> "The Fifth Circuit has recently affirmed that "[s]ome claims are 'so insubstantial, implausible, ... or otherwise completely devoid of merit as not to involve a federal controversy.'" Atakapa Indian de Creole Nation v. Louisiana, 943 F.3d 1004, 1006 (5th Cir. 2019)…Although Plaintiff attempts to distinguish the facts of Atakapa [from the facts, alleged in her complaint, they] are similarly implausible."[48]

Just like with the previous case, to show that *Atakapa* is grossly inapplicable, it is necessary to cite a large portion of the opinion as the claims in *Atakapa* just like in *McLean* are simply shocking and only citing the opinion verbatim would allow to illustrate that.

> "The plaintiff, a lawyer who styles himself both a monarch and a deity, brought claims on behalf of an Indian tribe alleging that the defendants have, among other misdeeds, monopolized "intergalactic foreign trade." The district court dismissed the case based on sovereign immunity. We affirm on

[48] ROA.506 and ROA.349

the alternate basis that the plaintiff's claims are frivolous and the district court therefore lacked jurisdiction to entertain them.

The initial complaint alleged the Atakapa "are being held as wards of the State through the Louisiana Governor's Office of Indian Affairs" and "in pupilage under the United States," and sought formal recognition as "indigenous to Louisiana." The claims were based on a gumbo of federal and state laws, including eighteenth-century federal treaties with France and Spain, as well as sources such as the "Pactum De Singularis Caelum, [or] the Covenant of One Heaven." The plaintiff subsequently filed something resembling an amended complaint, which sought to reclassify the action as a "libel suit" under maritime jurisdiction.

Some claims are "so insubstantial, implausible, ... or otherwise completely devoid of merit as not to involve a federal controversy."…Federal courts lack power to entertain these "wholly insubstantial and frivolous" claims…Determining whether a claim is "wholly insubstantial and frivolous" requires asking whether it is "obviously without merit" or whether the claim's "unsoundness so clearly results from the previous decisions of (the Supreme Court) as to foreclose the subject." *Id.* at 342.

Unsurprisingly, we can find no Supreme Court precedent controlling or even addressing the plaintiff's exotic claims. We must therefore ask: are the claims "obviously without merit"? We say yes.

The pleadings speak for themselves. To begin with, the Atakapa's counsel, Edward Moses, Jr.—who appears to be the real plaintiff—refers to himself throughout under such titles as: "His Majesty," "[T]he Christian King de Orleans," "[T]he God of the Earth Realm," and the "Trust Protector of the American Indian **Tribe of Moses** " (bold and Hebrew script in original).

The plaintiff's claims are no less bizarre. For instance, the original complaint alleges, without any explanation, that the Atakapa are being held in "pupilage" by the United States and as "wards" of Louisiana. The first amended complaint seeks a "declaration of rights guaranteed ... by the 1795 Spanish Treaty with the Catholic Majesty of Spain and the 1800 French Treaty with the former Christian Majesty of France." The proposed second amended complaint attempts to name these additional defendants: Secretary of the Interior Ryan Zinke, Attorney General Jeff Sessions, King Felipe VI of Spain, Prime Minister Justin Trudeau of Canada, President Emmanuel

> Macron of France, Chancellor Angela Merkel of Germany, Prime Minister Theresa May of the United Kingdom, Pope Francis, President Xi Jinping of China, President Abdel Fattah el-Sisi of Egypt, Prime Minister Fayez al-Sarraj of Libya, President George Weah of Liberia, Prime Minister Antonio Costa of Portugal, and President Donald J. Trump. That same document also alleges that the United States and Louisiana seek to monopolize "intergalactic foreign trade." This was no typographical error: the plaintiff continues to argue on appeal that the defendants are attempting to "monopoliz[e] ... domestic, international and intergalactic commercial markets."
>
> We will not try to decipher what any of this means. "[T]o do so might suggest that these arguments have some colorable merit."...Despite all this, jurisdiction would still lie if the plaintiff presented a non-frivolous federal question. We find none…He seeks an injunction, not to stop anything defendants are doing to the Atakapa, but instead to "restrain[ ] the Doctrine of Discovery and the Doctrine of Conquest more commonly known as the Doctrine of White Supremacy." Many of the arguments depend, not on the alleged violation of any federal statute or rule, but instead on the assertion that "[t]he 1803 Louisiana Purchase Treaty is not 'Law of the Land.'" We could say more, but these examples are enough to show the plaintiff's claims are wholly without merit." *Atakapa Indian de Creole Nation v. Louisiana*, 943 F.3d 1004, 1007 (5th Cir. 2019).

Truly shockingly, Middle District of Louisiana equates the Appellant's action with *Atakapa* and *McLean.* Appellant pleaded her personal interactions with each defendant, and demonstrated that she has been discriminated against. Appellant's complaint presents important federal and constitutional questions such as 42 U.S.C. §§ 1983, 1985, 1981, 1986, the rights, secured under First and Fourteenth Amendments, etc. Middle District of Louisiana – and specifically Degravelles and Wilder-Doomes – simply disingeneously and fraudulently labeled

the Appellant's claims "frivilous," and, by misapplying the law to the facts, intentionally and corruptly "reached" patently erroneous conclusions.

"The district court abuses its discretion if it identifies an incorrect legal standard, applies the correct standard "illogically, implausibly, or in a manner without support in inferences that maybe drawn from facts in the record." *Carijano v. Occidental Petroleum Corp*., 643 F.3d 1216, 1224 (9th Cir. 2011). Here, Middle District of Louisiana grossly abused its discretion, deliberately used incorrect legal standard, and neither of its manufactured conclusions are supported by the Appellant's pleadings.

e. Disregard for the Federal Rules and the Supreme Court's precedents

"The district court had no discretion to disregard the Federal Rules of Civil Procedure." *Yamamoto v. Omiya*, 564 F.2d 1319, 1327 (9th Cir. 1977). In both *Doe v. City of Baton Rouge*, No. 19-48 and No. 20-514 (the instant appeal), Middle District of Louisiana, in order to block Appellant's access to courts, has been clearly disregarding the Federal Rules. It has been demonstrated in this brief that the Appellant's first *Jane Doe* action was suppressed in disregard, among others, of Civil Rule 1. Thereafter, it was dismissed in violation of Rule 41(a)(1). That violation was of truly egregious nature.

For comparison, even a dismissal under Rule 41(a)(2) after defendant filed an answer "allows the court to impose conditions on the dismissal," and also allows the plaintiff to choose to proceed with its lawsuit if the conditions of dismissal are not favorable. *Welsh v. Correct Care. L.L.C.*, 915 F.3d 341, 344 (5th Cir. 2019).

> "A plaintiff typically "has the option to refuse a Rule 41(a)(2) voluntary dismissal and to proceed with its case if the conditions imposed by the court are too onerous." *Mortgage Guar. Ins. Corp. v. Richard Carlyon Co.*, 904 F.2d 298, 301(5th Cir. 1990). Thus, "before requiring a Rule 41(a)(2) dismissal to be with prejudice, a court must allow a plaintiff the opportunity to retract his motion to dismiss" rather than accept the dismissal with prejudice." *Bell v. Keystone RV Co.* , 628 F.3d 157, 163 n.4 (5th Cir. 2010).

Appellant, however, was not given any options and was entirely precluded from prosecuting her action and even from dismissing it without prejudice to which she had an absolute right. Appellant had to go through the appeal during which Appellant continued suffering the irreparable injuries that she asserted in her complaint, waiting for reversal on appeal for eight months. Shockingly, after being reversed, Middle District of Louisiana started to fraudulently claim that it was not reversed but voluntarily granted dismissal without prejudice and amended its order, further claiming that because of that it has no prejudice against Appellant.

Although Middle District of Louisiana has been grossly misapplying the law to the facts and disregarding various the Supreme Court's and federal circuit's

precedents, likely the most shocking – relevant to this appeal – its disingenuous equation of Appellant's meritorious claims with the wholly unsubstantiated ones, as well as abuse and disregard for the Supreme Court's unequivocal frivolousness standard:

> "Under § 1915(d)'s frivolousness standard…dismissal is proper only if the legal theory…or the factual contentions lack an arguable basis…Where a complaint raises an arguable question of law…dismissal on the basis of frivolousness is not [appropriate]." *Neitzke v. Williams*, 490 U.S. 319, 320 (1989).
>
> "Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are "so attenuated and unsubstantial as to be absolutely devoid of merit," *Newburyport Water Co*. v. *Newburyport*, 193 U.S. 561, 579 (1904); "wholly insubstantial," *Bailey* v. *Patterson*, 369 U.S. 31, 33 (1962); "obviously frivolous," *Hannis Distilling Co*. v. *Baltimore*, 216 U.S. 285, 288 (1910); "plainly unsubstantial," *Levering Garrigues Co*. v. *Morrin*, 289 U.S. 103, 105 (1933); or "no longer open to discussion," *McGilvra* v. *Ross*, 215 U.S. 70, 80 (1909). One of the principal decisions on the subject, *Ex parte Poresky*, 290 U.S. 30, 31-32 (1933), held, first, that "[i]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question should be presented"; second, that a three-judge court was not necessary to pass upon this initial question of jurisdiction; and third, that "[t]he question may be plainly unsubstantial, either because it is `obviously without merit' or because `its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' *Levering Garrigues Co*. v. *Morrin, supra; Hannis Distilling Co*. v. *Baltimore*, 216 U.S. 285, 288; *McGilvra* v. *Ross*, 215 U.S. 70, 80."
>
> "`Constitutional insubstantiality' for this purpose has been equated with such concepts as `essentially fictitious,' *Bailey* v. *Patterson*, 369 U.S., at 33; `wholly insubstantial,' *ibid.;* `obviously frivolous,' *Hannis Distilling Co*. v. *Baltimore*, 216 U.S. 285, 288 (1910); and `obviously without merit,' *Ex parte Poresky*, 290 U.S. 30, 32 (1933). The limiting words `wholly' and `obviously' have cogent legal significance. In the context of the effect of

> prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial…A claim is insubstantial only if `"its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy."' *Ex parte Poresky, supra*, at 32, quoting from *Hannis Distilling Co*. v. *Baltimore, supra*, at 288; see also *Levering Garrigues Co*. v. *Morrin*, 289 U.S. 103, 105-106 (1933); *McGilvra* v. *Ross*, 215 U.S. 70, 80 (1909)." *Goosby* v. *Osser*, 409 U.S. 512, 518 (1973)." *Hagans v. Lavine*, 415 U.S. 528, 536-38 (1974).

It is clear that, under *Neitzke* and *Hagans,* only the entirely nonsensical complaint such as the one similar to *Atakapa* or *McLean,* or if based on "an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Newsome v. E.E.O.C*, 301 F.3d 227, 231 (5th Cir. 2002) could be labeled as "constitutionally insubstantial." Note that the Court has specifically stated that the claims could be considered "constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous." There are numerous decisions that show that Appellant has standing to sue and that her clearly established constitutional rights have been violated. See *Estate of Macias v. Ihde*, 219 F.3d 1018 (9th Cir. 2000). *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 197 n. 3, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989). *Balistreri v. Pacifica Police Dep't,* 901 F .2d 696, 7001 (9th Cir. 1990). *Vill. of Arlington Heights v. Metro, Hous. Dev. Corp*., 429 U.S. 252,

265-66 (1977). *Mills v. Alabama*, 384 U.S. 214, 218-19 (1966). *Burson v. Freeman*, 504 U.S. 191, 196 (1992). There are many more precedents in addition to the ones, named above.

Middle District of Louisiana falsely applies all those labels to the Appellant's claims, fraudulently calling them "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion" ROA.506 to the extent that it purportedly does not have jurisdiction. Although it corruptly refused to accept the payment of the Appellant's filing fee so that it can misuse the in forma pauperis statute and disguise its unlawful acts behind a much wider discretion, given to the courts for handling the prisoner section 1915 lawsuits, it also claims that even if Appellant "were to pay the filing fee, this court has the inherent power to screen a pleading for frivolousness," further claiming that even if she was "permitted to pay the...filing fee, her claims in this case are subject to dismissal." ROA.506. To supposedly back up its claim, it cites *Apple v. Glenn*, 183 F.3d 477 (6th Cir. 1999) where the Sixth Circuit held that "the district court erred in dismissing Apple's complaint under § 1915(e)(2) [because] Apple…is neither a prisoner nor proceeding IFP."

The dismissal however was affirmed on the ground that the federal court did not have subject-matter jurisdiction because there is simply no such constitutional right as to have the Supreme Court's Justice to respond to personal Apple's

correspondence and also implement or follow his suggestions in his letters. Middle District of Louisiana, by refusing to acknowledge the actual allegations of the complaint, corruptly and falsely labeled meritorious allegations as "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit" ROA.506 and has been deceiving the public by issuing "opinions" that are plainly wrong and based on falsehoods, to discredit Appellant and undermine her entire action in order to protect the defendants – its friends and business partners from any embarrassment, liability, or inconvenience.

Note that *Hagans v. Lavine*, 415 U.S. 528, 536-38 (1974) on which Degravelles purportedly relies and which quotes, see ROA.506, specifically states that "[i]n the absence of diversity of citizenship, it is essential to jurisdiction that a substantial federal question should be presented." Without a doubt, numerous substantial federal questions are presented in the Appellant's complaint. However, there was diversity of citizenship present as well. Middle District of Louisiana falsely claims:

> "Plaintiff alluded to diversity jurisdiction during the Spears hearing, but it is not clear that it exists based on Plaintiff's statements during the hearing, as Plaintiff repeatedly referred to her "residency" in Oregon, which began in July 2020 about a month before the original Complaint was filed. It is unclear whether Plaintiff's domicile is in Oregon." ROA.334.

Appellant has unequivocally stated that she is domiciled in Oregon. However, because Middle District of Louisiana improperly excluded transcript

from the record which, as a matter of law, constitutes record on appeal, Fed. R. App. P. 10(a), Appellant is precluded from demonstrating or proving that yet another falsity and deception in LAMD's reports and opinions, Fed. R. App. P. 10(b). Therefore, Middle District of Louisiana did not just commit one error – its reports, opinions, and the entire handling of the Appellant's actions are marked and replete with numerous gross and shocking errors and abuses of discretion.

3. ***Unconstitutionality of handling of any matter where Appellant is a party by any judge of Middle District of Louisiana***

The Supreme Court's and Congress's intent is very clear – even appearance of impartiality is unacceptable. See 28 U.S. Code § 455(a).

> "The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)). Our decision in *Bracy* is not to the contrary: Although we explained that the petitioner there *had* pointed to facts suggesting actual, subjective bias, we did not hold that a litigant must show as a matter of course that a judge was "actually biased in [the litigant's] case,"*Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (citing *Williams v. Pennsylvania,* 579 U.S. ——, ——, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016)).

Here, Middle District of Louisiana's impartiality not just "might reasonably be questioned" or "an unconstitutional potential" for prejudice against Appellant exists. Appellant has demonstrated the actual prejudice, abuse, and persecution that has spanned several years. Middle District of Louisiana in a literal sense has

"hermetically sealed [the courtroom door] against [Appellant]"[49] and blocked access to courts to Appellant. "The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution…A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be 'adequate, effective, and meaningful.' *Bounds v. Smith,* 430 U.S. 817 (1977)," *Ryland v. Shapiro,* 708 F.2d 967 (5th Cir. 1983).

The dismissal being appealed has likely been done with calculation that the case will be returned back to it by the Fifth Circuit. And then it will dismiss the action again on another "ground" and have it bounce back and forth between it and the appellate court until Appellant is entirely exhausted by that abuse and the perpetual fight for the right to simply enter the courtroom and all evidence is destroyed by the defendants.

Middle District of Louisiana claims that "Judicial rulings along (sic) almost never constitute valid basis for a bias or partiality motion," *US v. Landerman,* 109 F.3d 1053, 1066 (5th Cir. 1997)," ROA.339. However, the full quote looks as follows:

> "Judicial rulings alone almost never constitute valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 114 S.Ct. 1147, 1157 (1994). Instead, the judge's rulings should constitute grounds for

[49] *McCray v. Maryland,* 456 F.2d 1 (4th Cir. 1972)

> appeal, not for recusal. Id. Opinions formed by the judge that are based on the evidence in the case or events occurring during the proceedings do not constitute a basis for recusal "unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *U.S. v. Landerman*, 109 F.3d 1053, 1066 (5th Cir. 1997).

Middle District of Louisiana certainly openly displays a deep-seated favoritism toward the defendants and antagonism toward Appellant. See, for instance, its purported "summary" of the Appellant's complaint where it does not acknowledge or truthfully recite any single important fact, alleged by Appellant but perverts and twists the narrowly extracted statements, usually the unimportant ones, to lovingly protect the defendants and deceive the public by the falsehoods it manufactured. Neither of Middle District of Louisiana's "opinions" are based on the evidence. In fact, it entirely ignores the facts, pleaded by Appellant such as, for instance, that many of her assertions could be easily confirmed by copies of the public record files, the deposition transcripts, and video or audio recordings. See ROA.215, 194, 230, 206, 212.

Note that Middle District of Louisiana should have unquestionably recused itself like it voluntarily did in the case *Owens v. Louisiana State University*, No. 3:21-cv-00242. See, e,g, CM/ECF doc. 2. The entire Middle District recused itself. After it was reassigned to Eastern District of Louisiana, it also recused itself. See

doc. 15. Similarly, in the case Lewis v. Board of Supervisors of LSU, No. 3:21-cv-00198, the entire Middle District recused itself. See, e.g., doc. 3.

Appellant asserts and submits that the allegations in her complaint have more merit, are based on the actual factual and particularized allegations, and *unquestionably* demonstrate violations of her clearly established constitutional rights compared to the two above-referenced cases. Appellant also submits that the judges of Middle District of Louisiana have stronger connections with the defendants of the Appellant's complaint compared to the defendants in the two above-mentioned cases. However, because Appellant is not several national law firms that represent the plaintiffs in the above-referenced cases, Middle District does not mind abusing her, "applying" the law in selective and discriminatory manner, and otherwise blocking Appellant's access to courts so that it could keep its friends – defendants and their co-conspirators in the Appellant's complaint – happy.

There are only three like-minded judges in Middle District of Louisiana. After Dick grossly mishandled the Appellant's first *Jane Doe* legal matter by unlawfully suppressing and then dismissing it with prejudice, Middle District carefully avoids assigning any Appellant's matter to that judge. The second judge, Jackson, has been also recused by Middle District of Louisiana as both cases, No. 20-514 (the instant appeal) and the second case, No. 20-388, were initially

assigned to him but quickly reassigned to Degravelles, likely due to some very obvious connection to some defendant. Therefore, although the *entire* Middle District is unquestionably hostile toward Appellant, there is actually one judge to whom Middle District assigns Appellant's cases.

Appellant has recently filed two petitions for writ of mandamus with the Fifth Circuit, **No. 21-30587** (filed on September 23, 2021) and No. 21-30692 (filed on November 9, 2021)**,** requesting that John W. Degravelles be removed from any case where Appellant is a party and that such cases be transferred to District of Oregon and one of them (No. 21-30587) be consolidated with the case *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA because handling of it by John W. Degravelles or Middle District of Louisiana is **unconstitutional**.

4. Doe v. City of Baton Rouge, No.: 6:21-cv-00314-AA (D. Or.)

After being kicked out of the courtroom by Middle District of Louisiana prior to when Appellant had a chance to even meaningfully enter it, Appellant has exercised her absolute legal right and filed her complaint in the U.S. District Court for the District of Oregon. Because Middle District of Louisiana dismissed her complaint under the guise of "screening" under the Prison Litigation Reform Act and the in forma pauperis statute, *even if* such a dismissal were proper, Appellant had the absolute right to file a paid complaint, which she has done:

> "Because a § 1915(d) dismissal is not a dismissal on the merits, but rather an exercise of the court's discretion under the *in forma pauperis* statute, the dismissal does not prejudice the filing of a paid complaint making the same allegations." *Denton v. Hernandez*, 504 U.S. 25, 34 (1992).

Appellant requested[50] that Middle District of Louisiana would transfer the action to District of Oregon based on either section 1404(a) or 1406(a) and *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466-67 (1962) that determined that the venue is proper where there are no"[o]bstacles [that] may impede[51] an expeditious and orderly adjudication of cases and controversies on their merits." Middle District, not surprisingly, denied the motion. ROA.507.

Doe v. City of Baton Rouge, No.: 6:21-cv-00314-AA (D. Or.) is the case where two cases – No. 20-514-JWD (the instant appeal) and No. 20-388-JWD (mandamus No. 21-30587, filed on September 23, 2021) – have been consolidated because actually comprise one legal matter. The operative complaint in the case *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA (CM/ECF doc. 115) is an up-to-date version[52] of the events because not only the malfeasance of the defendants-co-conspirators has never ceased but the Appellant has been learning and finding out about the ill effects and consequences of their persecution.

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[50] ROA.466
[51] ROA.489
[52] A copy has been attached to the mandamus petition No. 21-30587, filed on September 23, 2021

The legal action *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA (D. Or.) is **cemented** to District of Oregon because the unlawful, tortious ongoing acts of the defendants have been directed not only at Appellant, the resident of the State of Oregon, but at the State itself. For instance, after Appellant filed her action on February 28, 2021, her case got assigned, and Appellant mailed her filing fee that was essential for the case to be properly commenced, see 28 U.S.C. § 1914 and Local Rule 3-4(a) of District of Oregon, defendants-co-conspirators unlawfully interfered with the official business of the U.S. District Court for the District of Oregon and intercepted the envelope with payment of the filing fee. See *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA, CM/ECF docs. 389 and 389-4 through 389-11 inclusive – plaintiff's declaration and exhibits in support of opposition to defendant Middle District of Louisiana's motion to dismiss.). Note that when Appellant was trying to pay her filing fee by mailing it to LAMD, defendants-appellees did not have to intercept it or do anything externally – they knew that their co-conspirator, Middle District of Louisiana, will handle it for them and will continue protecting the defendants. ROA.498 and 501.

In addition to the unlawful act of interception of the Appellant's filing fee, defendants have been continuously and constantly unlawfully monitoring all Appellant's online activities, tampering with her electronic devices and network, suppressing her political speech, and barbarically preventing Appellant from

speaking about the matters of utmost public concern in the State of Oregon. In addition to the Appellant's strong jurisdictional assertions and the tortious acts, committed against the resident and the forum, many of the defendants who filed their baseless, often 3-4 pages motions to dismiss, consented to personal jurisdiction over them by the U.S. District Court for the District of Oregon. For instance, the following defendants have explicitly consented to the exercise of personal jurisdiction over them:

> The city of Baton Rouge, Baton Rouge police department, Weber, Murphy, Windham, Carey, Paul, Jr., Freeman, Brooks, Morris, East Baton Rouge parish, Moore, Fields, Hunt, Nakamoto, and Poulicek.

Several other defendants waived their defenses by failing to timely assert them, and a large group of defendants or arguably all defendants waived any objections to personal jurisdiction and venue through litigation conduct, submitted documents, including but not limited to omission of the defenses in their filed papers. See *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA, ECF docs. 302, 388, 185, 193, 223, etc.

Appellant argues that in addition to the pleaded facts, jurisdictional assertions, and explicit and implicit waivers, there is also no district where the legal action may be brought ("§1391(b)(3)'s fallback option," *Atl. Marine Constr. Co. v. U.S. Dist. Court for the W. Dist. of Tex.*, 571 U.S. 49, 56-57 (2013)). Middle District of Louisiana is the wrong district by the definition of *Goldlawr, Inc. v.*

Heiman, 369 U.S. 463, 466-67 (1962), *Dubin v. United States*, 380 F.2d 813 (5th Cir. 1967) ("We conclude that a district is 'wrong' within the meaning of § 1406 whenever there exists an 'obstacle [to] […] an expeditious and orderly adjudication' on the merits."), *Porter v. Groat,* 840 F.2d 255 (4th Cir. 1988) ("[§] 1406(a) has been read more expansively by other courts. In essence they read 'wrong division or district' to mean an impediment to a decision on the merits for some reason.").

Although currently the defendant in *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA is Middle District of Louisiana, Appellant seeks to add the individual judges as defendants:

> "Plaintiff will make a separate request by way of motion to amend pleadings under Rule 15 and seek to add John Degravelles, Erin Wilder-Doomes, and Shelly Dick as the defendants for the purpose of seeking declaratory relief against them as the law permits because plaintiff and her action is still continuously harmed by those judges' fraudulent, unlawful, and corrupt "findings" and actions." (see discussion in ECF doc. 388, pages 58-59 – Appellant's opposition to Middle District of Louisiana motion to dismiss.)

Declaratory relief against judges is available in the case of a live controversy. See *Md. Cas. Co. v. Pac. Coal & Oil Co*., 312 U.S. 270, 273 (1941). "Judicial immunity does not bar declaratory relief." *Severin v. Parish of Jefferson*, 357 F. App'x 601, 605 (5th Cir. 2009). See also *Butz v. Economou,* 438 U.S. 478, 500, 98 S.Ct. 2894, 2907, 57 L.Ed.2d 895 (1978):

> "There is no basis for according to federal officials a higher degree of immunity from liability when sued for a constitutional infringement…The constitutional injuries made actionable by section 1983 are of no greater magnitude than those for which federal officials may be responsible."

In *Lund v. Cowan*, No. 20-55764 (9th Cir. Jul. 15, 2021), the Ninth Circuit noted that although harm has ended as the judge recused himself and withdrew his orders, he "cannot handle Lund's probate matter again at any point in the future, and an opinion declaring that [the judge] acted unconstitutionally would be advisory." Note that all that the judge in *Lund* has done that was found to be prejudicial and inappropriate was making a remark that suggested that Lund has a Down syndrome and implying that he would not be able to manage his inheritance, left to him by his grandfather, Walt Disney. Specifically noting the retrospective character of the relief in the *Lund* case, the court still supported the conclusion that declaratory relief, barring the judge from ever handling the matters of that particular plaintiff, Lund, would be proper. Here, Appellant asserts and has demonstrated "continuing violation or harm stemming from [the judges'] past conduct. See *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 803 (7th Cir. 2016)," *Id.* Therefore, declaratory relief would be proper.

Note that in *Lund*, the judge finally recused himself and even withdrew his orders. Here, the judges, in direct violation of the Supreme Court's law, continue improperly retaining jurisdiction (see mandamus petition No. 21-30587**,** filed on

September 23, 2021). Perhaps even more importantly, their unlawful, patently erroneous, and corrupt findings (see discussion in the instant brief) are being used by the defendants to support their baseless theories and motions to dismiss. That presents the case of the live controversy as Appellant is continued being unquestionably, greatly harmed by the judges of Middle District of Louisiana and their unlawful, unconstitutional conduct.

CONCLUSION AND REQUEST FOR RELIEF

In *Levin v. Harleston*, 966 F.2d 85, 90 (2d Cir. 1992), the Second Circuit, on appeal and while in part relying on *Halkin v. Helms,* 690 F.2d 977, 1007 (D.C.Cir. 1982), "conclude[d] that an award of declaratory relief is appropriate" although appellant Levin did not specifically request it but instead requested "such other and further relief as the Court may deem just." Nevertheless, the Second Circuit vacated the portion of the district court's order and replaced it with the following declaratory relief:

> "[W]e declare that the commencement, or threat thereof, of disciplinary proceedings against Professor Levin predicated solely upon his protected speech outside the classroom violates his First Amendment rights." *Levin v. Harleston*, 966 F.2d 85, 90 (2d Cir. 1992).

Here, Appellant specifically requests **declaratory relief**, stating that handling of the *Jane Doe's* matters (No. 19-48, filed on January 25, 2019 and No.

20-514, filed on August 6, 2020) by the judges of Middle District of Louisiana was/is unconstitutional, violated the Federal Rules, the Supreme Court's and the Fifth Circuit's precedents, and the Appellant's clearly established constitutional right of meaningful access to courts. That the judges of Middle District of Louisiana have misapprehended the facts of the Appellant's complaint(s), misapplied the law to the facts, and clearly and repeatedly abused their discretion in all aspects of handling of the Appellant's *Jane Doe* actions. That by denying Appellant meaningful access to courts, the judges of Middle District of Louisiana have created legal impediments and made it impossible for Appellant to have effective access to courts and prosecute her action. That the judges of Middle District of Louisiana cannot handle any legal matter where Appellant is a party, especially the *Jane Doe* matter, in the future.

Appellant requests that all conclusions, findings, reports, opinions, and judgements of Middle District of Louisiana in the instant case be invalidated and reversed, and the case be transferred to U.S. District Court for the District of Oregon and consolidated with the case *Doe v. City of Baton Rouge*, No.: 6:21-cv-00314-AA (D. Or.).

Respectfully submitted,

Jane Doe

s/ Jane Doe

[redacted]

CERTIFICATE OF SERVICE

I have not served any party with this brief because, to my knowledge, no other party has made appearance in this appeal.

Dated: January 17, 2022.

s/Jane Doe

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume requirements of the Fed. R. App. P. 32(A)(7)(B) because it contains 11981 words, excluding the parts of the document, exempted by Rule 32(f). The submission also complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface Times New Roman 14, using Microsoft Word 2019.

s/Jane Doe