

FILED

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

19 MAR 29 PM 4:56  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_

Julian M. Reyes  
Plaintiff

**A19CV0367 LY**

v.

Case no. \_\_\_\_\_

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT,  
and other responsible "JOHN DOE"  
parties to be named later through the  
proper discovery of evidence.  
all individually and in their official  
capacities  
Defendants

**ORIGINAL COMPLAINT**

1. PLAINTIFF Julian M. Reyes, in Austin, Travis County, Texas, U.S.A..
2. Defendants being: City of Austin, Austin Police Department and the following Police Department Officer employees of the Public: Quint Sebek (#3454), Sergeant Vallejo, Captain Ryan and other public officials and officers to be named through the discovery of evidence to follow as much of this info is kept solely by the City and it's gatekeepers from the Public. Address to City of Austin Legal is 301 W. 2nd St Austin, Texas 78701.
3. I request Western District Court of the U.S.A. in Austin, to try my Civil Complaint involving 1st, 4th, 14th Constitutional Amendments violations under section 42 1983 as well as 1985 Conspiracy of Parties. As multiple agents of Municipal government were involved in this crime against myself and essentially the rights afforded to all the Citizens and the Free Press.

APD 15 at 715 E 8th St Austin Texas  
78701

This Court has Jurisdiction in this case and in Travis, County, Texas, United States of America.

4. On or about April 1st, 2017 in the City of Austin, Travis County, Texas, U.S.A. under this Court's functional jurisdiction, corporal Quint Sebek did falsely target and arrest me while I was involved in the exercise of filming the Austin police in Public. This was an exercise of our constitutionally protected Rights under law. And the subsequent police interference with false arrest did act to prevent full transparency under law, was retaliatory and a violation of law. All charges were dropped as there was no merit on prima fascia evidence for any charges or arrest. Also present were multiple other officers, including the Supervisors listed above: Sergeant Vallejo, and Captain Ryan. I do not have all the agents that were present and complicit, their full names or badge numbers yet. I will be awaiting proper discovery of evidence.

Prior to the arrest I informed Corporal QUINT SEBEK, defendant listed, that I had a parking receipt to be on the Public Property. He refused to allow me to show it, refused a proper investigation, and immediately retaliated for me filming in a Public Place by stealing my freedoms, violating my Rights and falsely charging and arresting me. I informed Sergeant Vallejo and Captain Ryan of the false arrest and crimes being committed. They did nothing to investigate the legitimacy of the arrest or to assist me with anything positive. I personally told each of them at that time that I was protected under Federal law and that this action was a false retaliatory arrest and a crime. None of the agents or supervisors acting under color of law and as individuals would cease the criminal actions, further showing their conspiracy of parties against my person, my Rights and the rule of peace and laws of our United States of America.

They acted in conspiracy to deprive me and thereby the Citizenry and it's Free Press of our Rights, Freedoms and Transparency under law.

Corporal Quint Sebek put me into handcuffs, and sent me to jail. I spent time in jail. And we all deserve Justice and our day in a Jury Trial. No Justice, no Peace. Simply put.

A Police Complaint was filed under law with the Office of Police Monitor. They are very dismissive of Citizens' complaints. Internal Affairs also dismisses complaints without further contact with the complainant. The System of Police Accountability and Transparency in Austin, Texas is broken and this is my last remedy for our grievances. Hear my prayers for Justice and Change.

5. Julian Reyes, is pro se, Plaintiff, and is seeking full damages for all losses, time and for the Constitutional and other violations of Law specified above and in further amendments. Punishments and charges for the responsible parties. And injunctions to protect the Citizens and Press of Austin from further stalking, retaliation and harassment of the Austin Police Department and their agents, acting alone or in groups, most especially those involved in filming police intersections in Public. Reyes is also seeking remedy and mediation on the issues of training, Justice and patterns and procedures that lead up to this egregious incident by Austin Police Department and the City of Austin.

6. I, Julian Reyes, pro se litigant, with no formal training in law, requests the Court Assign legal counsel and allow legal access to expert assistance as necessary for Citizens of indigency seeking Justice, like myself.

 3/29/2019  
Signature Date

Julian M. Reyes  
1712 E. Riverside Dr. #357,  
Austin, Texas, 78741  
[julian.reyes.human@gmail.com](mailto:julian.reyes.human@gmail.com)  
512 785-1749

JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

*Julian Reyes*  
 (b) County of Residence of First Listed Plaintiff Travis  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

*Officers Quin + Sebek, Vallejo, Ryan*  
*Austin Police Department et al*  
 County of Residence of First Listed Defendant Travis  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

1983  
**A19CV0367**  
**LY**

(c) Attorneys (Firm Name, Address, and Telephone Number)

*Pro se*

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party) *1983*
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                                       |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input checked="" type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File *1983*

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
*1st Am. & 14th Amendment to USA Constitution 1985*  
 Brief description of cause: *false arrest, conspiracy of parties, police brutality*

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ *5,000,000* CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): *requires further investigation - TBD*  
 JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE *3-29-19* SIGNATURE OF ATTORNEY OF RECORD *Julian Reyes Pro se*

FOR OFFICE USE ONLY  
 RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE *Heikel* MAG. JUDGE \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>JULIAN M. REYES,</b>	§	
<b>Plaintiff,</b>	§	
	§	
v.	§	<b>CIVIL ACTION NO. 1:19-cv-00367-LY</b>
	§	
<b>OFFICERS QUINT SEBEK, BADGE</b>	§	
<b>3454, SGT VALLEJO, CAPN RYAN,</b>	§	
<b>AUSTIN POLICE DEPARTMENT, AND</b>	§	
<b>OTHER RESPONSIBLE “JOHN DOE”</b>	§	
<b>PARTIES TO BE NAMED LATER</b>	§	
<b>THROUGH DISCOVERY OF</b>	§	
<b>EVIDENCE, ALL INDIVIDUALLY AND</b>	§	
<b>IN THEIR OFFICIAL CAPACITIES,</b>	§	
<b>Defendants.</b>	§	

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S  
ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE LEE YEAKEL:

Defendants Quint Sebek, Carlos Vallejo, and “Captain Ryan” file this Answer and Affirmative Defenses to Plaintiff’s Original Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendants respectfully show the Court the following:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), Defendants respond to each of the specific averments in Plaintiff’s Complaint as set forth below. To the extent that Defendants do not address a specific averment made by Plaintiff, Defendants expressly deny that averment.<sup>1</sup>

**DEFENDANTS’ RESPONSES**

1. Upon information and belief, Defendants admit the allegations contained in Paragraph 1 of the Complaint.

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<sup>1</sup> Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiff’s Original Complaint.

2. Defendants Quint Sebek, and Carlos Vallejo admit that Plaintiff has named them as defendants in this lawsuit. Defendants are not certain of the correct identity of named defendant “Captain Ryan,” and out of an abundance of caution, answer the complaint on his or her behalf.
3. Defendants admit that this Court has jurisdiction of this case but deny the remaining allegations contained in Paragraph 3 of the Complaint.
4. Defendants deny the allegations contained in the first paragraph of Paragraph 4 except to admit that Plaintiff Julian Reyes was arrested and taken to jail. Defendants deny the remaining allegations of Paragraph 4 of the Complaint.
5. Defendants deny the allegations contained in Paragraph 5 of the Complaint.
6. Defendants deny the allegations contained in Paragraph 6 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

1. Defendants assert the affirmative defense of qualified/official immunity for actions taken in the course and scope of their employment.
2. Defendants assert the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any, including claims lost due to insufficient service of process.
3. Defendants assert the affirmative defense of contributory negligence. Plaintiff’s claims are barred in whole or in part by Plaintiff’s contributory negligence. Plaintiff, by his actions, failed to exercise ordinary care for his own safety and if he suffered injuries, which is otherwise denied, his own actions contributed in at least fifty-one percent if not more to any such alleged injuries and to any and all damages asserted in this case.

4. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Plaintiff's intentional acts were the proximate cause, or a proximate contributing cause, of his alleged injuries and damages, if any, asserted in this case.
5. Defendants assert the affirmative defense that Plaintiff failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff.
6. Defendants assert that Plaintiff has failed to state a claim upon which relief can be granted and therefore the Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.
7. Defendants assert the affirmative defense of insufficient service of process.
8. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.

#### **DEFENDANTS' PRAYER**

Defendants Quint Sebek, Carlos Vallejo and "Captain Ryan" pray that all relief requested by Plaintiff be denied, and that the Court dismiss the Plaintiff's claims with prejudice and award Defendants their costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF LITIGATION

/s/ David May  
DAVID MAY  
State Bar No. 24092778  
Telephone: (512) 974-2342  
[David.may@austintexas.gov](mailto:David.may@austintexas.gov)  
H. GRAY LAIRD III  
State Bar No. 24087054

Telephone: (512) 974-1342  
[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin – Law Department  
P. O. Box 1546  
Austin, Texas 78767-1546  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that on the 13 day of June, 2019, I served a copy of *Defendants' Answer and Affirmative Defenses* on Plaintiff, via first class mail and email in compliance with the Federal Rules of Civil Procedure.

**Via CM/ECF:**

Julian M. Reyes  
1712 E Riverside Dr. #357  
Austin, Texas 78741  
[Julian.reyes.human@gmail.com](mailto:Julian.reyes.human@gmail.com)  
512-785-1749

**PRO SE**

/s/ David May  
DAVID MAY



(888) 988-9996 (State when this association was contacted and why it could not assist you.) They said that I qualify but that they cannot help me with this type of case.

I have already CONTACTED LOCAL LAWYER REFERRAL SERVICE. (San Antonio Bar Association Lawyer Referral Service: (210) 227-1853). (List the lawyers to whom you were referred, the attorneys you contacted, and why they could not assist you.) They told me like I said before, that they do not help Citizens with police abuse cases and that none of their lawyers do. Which is offensive to the rule of law and Justice for all.

II.

Please state your level of education: College Degree in Asian and Environmental studies in the mid-1990's. But no law school or law training. I am pro se and a layman on this case without understanding of the language, rules, and procedures of this Court and need assistance with the motions, filings, deadlines, discovery and other legal issues in this case.

III.

Please state your employment for the last five years beginning with your most current employment:

Employer: self-employed organic gardener and artist, part-time. Gardener for last 8 years. Artist for about 3 years now.

Salary/Wages per Month: less than \$400 per month usually. Not consistent. Last year I believe I made between \$6000-7000 total in wages and art sales.

IV.

Plaintiff is financially unable to hire counsel for the reasons stated in the attached Application to Proceed In Forma Pauperis. (Please complete the attached Application to Proceed In Forma Pauperis)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Not only does this Court have Jurisdiction, I have Standing in this case and the Case has Merit as it involved (Turner v Driver, etc. ) constitutionally protected Civil Rights and exercises. It is not frivolous in any respect. However, at present I am still concerned that I do not actually comprehend the extremely complex and purposefully unattainable Federal Rules and Procedures and relevant Case Law/Restrictions that would allow me to properly state this claim and instruct the Court properly on this case involving my arrest for filming the Austin police in Public, a First Amendment exercise as also

established in multiple cases including Turner v Driver. As I have little access to law and resources and do not know how to properly research cases as the Defendants' attorneys do. As I have no counsel presently and yet I have contacted the TRGLA, TCJC, TCRP, ACLU and Southern Poverty Law Center, Austin Lawyers' Guild, Texas Appleseed, UT Law School Civil Rights Clinic among others and have not gotten any help yet.

I am in the condition of being lost and without counsel seeking Justice for All. For proper Discovery of Evidence or when there is a qualified attorney assisting in Justice on this case and access to Justice for pro se pauperis Citizens seeking remedy.

As this case progresses and becomes more difficult to proceed without Counsel, legal assistance, discovery, RROG, and Depo help, or forensic experts.

- Requests leave to attempt to find an attorney.
- Plaintiff requests Counsel, legal assistance, evidentiary assistance be assigned by the Court. In the interests of legal access. In the interests of Justice and fairness. In the interests of protecting all those Citizens that would film the Police, a Constitutionally-protected exercise.
- Our Rights are at stake of being denied without merits, without evidence, without recourse.

This Court should grant leave on these issues to the Plaintiff as he is homeless, indigent and operating without proper training in Law or proper Counsel. A disadvantage that should be obvious to all involved.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

 6/28/2019

Signature Date

Julian M. Reyes

1712 E. Riverside Dr. #357,

Austin, Texas, 78741

[julian.reyes.human@gmail.com](mailto:julian.reyes.human@gmail.com)

512 785-1749



access to Justice for pro se pauperis Citizens seeking remedy.

As this case progresses and becomes more difficult to proceed without Counsel, legal assistance, discovery, RROG, and Depo help, or forensic experts.

- Requests 180 days leave to attempt to find an attorney or have one assigned by the Court.
- Plaintiff has submitted a request for Counsel, legal assistance, evidentiary assistance be assigned by the Court. In the interests of legal access. In the interests of Justice and fairness. In the interests of protecting all those Citizens that would film the Police, a Constitutionally-protected exercise.
- Our Rights are at stake of being denied without merits, without evidence, without recourse.

This Court should grant leave and assign counsel to the Plaintiff as he is homeless, indigent and operating without proper training in Law or proper Counsel. A disadvantage that should be obvious to all involved.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

 6/28/2019

Signature

Date

Julian M. Reyes

1712 E. Riverside Dr. #357,

Austin, Texas, 78741

[julian.reyes.human@gmail.com](mailto:julian.reyes.human@gmail.com)

512 785-1749

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

JULIAN M. REYES,	§	
	§	
Plaintiff,	§	
V.	§	
	§	A-19-CV-367-LY
OFFICER QUINT SEBEK, ET AL.	§	
Defendants.	§	

**ORDER**

Plaintiff’s Motion for Appointment of Counsel (Dkt. #18) is before the court.<sup>1</sup> Plaintiff Julian M. Reyes brings this case under 42 U.S.C. §§ 1983 and 1985 for violations of his 1st, 4th, and 14th Amendment rights. Reyes alleges he was arrested on April 1, 2017 in Austin, Texas by Corporal Quint Sebek. Dkt. #1 (Complaint) at ¶ 4. He alleges his arrest was unlawful and in retaliation for his filming the Austin police in public. *Id.* He further alleges he spent some time in jail, but all charges against him were dropped because they had no merit. *Id.* He contends defendants Sergeant Vallejo and Captain Ryan were present at his arrest and he informed them of baselessness of his arrest, but they did not intervene. *Id.* The court previously dismissed Reyes’ claims against the City of Austin and the Austin Police Department but allowed his claims against Austin Police Officers Quint Sebeck, Sergeant Vallejo, and Captain Ryan to go forward. Dkt. #9.

Reyes, who was granted *in forma pauperis* status in this case, states he has contacted private attorneys, a legal aid association, and a lawyer referral services but has been unable to secure representation in this matter. Dkt. #18 at 1-2. He is self employed as an organic gardener

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<sup>1</sup> The motion was referred to the undersigned for resolution by the District Judge pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended. Dkt. #20.

and artist but has a college degree in Asian and Environmental Studies, which he earned in the mid-1990s. *Id.* at 2. He states he has no law school or law training and is “without understanding of the language, rules, and procedures of this Court and need assistance with motions, filings, deadlines, discovery and other legal issues in this case.” *Id.* at 2.

The court notes that this appears to be at least Reyes’ fourth suit brought in this District. In *Reyes v. Walsh*, 1:15-CV-327-RP, Reyes sued the City of Austin, Officer Daniel Walsh, Officer Christopher Anderson, Austin Police Chief Hubert “Art” Acevedo, and Austin City Manager Marc Ott under the 4th and 14th Amendments for unlawful search and seizure, failure to train and supervise, failure to provide procedural due process, and state law violations following an incident in which he was detained and his dog was fatally shot by Austin police officers. 1:15-CV-327-RP, Dkt. #56 at 2. Reyes was appointed counsel, some of his claims were dismissed at the pleading stage, all claims except his claim for unlawful seizure of his person were dismissed at the summary judgment stage, and the parties eventually settled the case. 1:15-CV-327-RP, Dkt. #36, #56, #103, #121, #124, #125. In *Reyes v. Texas Department of Public Safety*, 1:16-CV-889-RP, Reyes brought suit under 42 U.S.C. § 1983 against the Texas Department of Safety and a Department of Public Safety Officer claiming violations of his First and Fourth Amendment rights claiming he was wrongly arrested when he attempted to enter a state building to meet with a Texas state senator to discuss police accountability laws for police shootings of dogs. 1:16-CV-889-RP, Dkt. #1 at ¶¶ 1-3, 15-19. Claims against the Texas Department of Public Safety were dismissed at the pleading stage, Reyes’ repeated requests for appointment of counsel were denied, and Reyes’ remaining claims were eventually dismissed on summary judgment. 1:16-CV-889-RP, Dkt. #12, #30, #39, #41, #52, #55, #62. In *Reyes v. Berry*, 1:17-CV-908-RP, Reyes alleged that defendants wrongly arrested him and used excessive

force against him. 1:17-CV-908-RP, Dkt. #26 at 2-3. Reyes' request for appointment of counsel was denied, and his case was eventually dismissed for failure to timely serve the defendants. 1:17-CV-908-RP, Dkt. # 19, 26.

A court is not required to appoint counsel for an indigent plaintiff in a civil rights action absent exceptional circumstances. *Ulmer v. Chancellor*, 691 F.2d 209, 212 (5th Cir. 1982). Whether exceptional circumstances exist depends on “the type and complexity of the case and the abilities of the individual pursuing that case.” *Cupit v. Jones*, 835 F.2d 82, 86 (5th Cir. 1987). In determining whether exceptional circumstances exist, courts consider (1) the type and complexity of the case; (2) the plaintiff's ability to adequately present the case; (3) the plaintiff's ability to adequately investigate the case; and (4) whether the evidence will “consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.” *Ulmer*, 691 F.2d at 213. A court “should also consider whether the appointment of counsel would be a service to” the plaintiff, the court, and the defendant “by sharpening the issues in the case, shaping the examination of witnesses, and thus shortening the trial and assisting in a just determination.” *Id.* District courts must generally make specific findings explaining the basis for denying a request to appoint counsel. *McAlister v. Livingston*, 348 F. App'x 923, 941 (5th Cir. 2009).

At this stage of the case, this case does not appear to raise novel or complex issues. Reyes alleges he was wrongfully arrested for filming the Austin police in public and all charges were dropped “as there was no merit on prima fascia [sic] evidence for any charges or arrest.” Dkt. #1 at 2. Among other defenses, Defendants have pleaded they are entitled to qualified immunity. Dkt. #17 at 2. Thus, it appears that the outcome of this case will depend on what Reyes was doing at the time of the arrest, whether there was probable cause to arrest him, and if

Defendants were reasonable to believe probable cause existed for the arrest. At this time, those issues do not appear so novel or complex as to go beyond Reyes' abilities to present the case. As described above, he has substantial experience litigating these types of cases against peace officers. Additionally, the key facts of this case—what he was doing at the time of the arrest—is within his personal knowledge. As such, there is no reason to believe he cannot adequately investigate the case. As this time, without knowing whether there is a factual dispute as to Reyes' actions at the time of his arrest, the court cannot determine that the evidence will “consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.” *See Ulmer*, 691 F.2d at 213.

Accordingly, the court declines to appoint counsel to represent Reyes at this time. Reyes' Motion for Appointment of Counsel (Dkt. #18) is **DENIED**.

SIGNED November 1, 2019

  
\_\_\_\_\_  
MARK LANE  
UNITED STATES MAGISTRATE JUDGE



FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

2020 NOV -4 PM 3: 14

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY

JULIAN M. REYES,  
PLAINTIFF,

§  
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§  
§

V.

CAUSE NO. 1:19-CV-367-LY

OFFICERS QUINT SEBECK, BADGE  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT, AND  
OTHER RESPONSIBLE "JOHN DOE"  
PARTIES TO BE NAMED LATER  
THROUGH THE PROPER DISCOVERY  
OF EVIDENCE, ALL INDIVIDUALLY  
AND IN THEIR OFFICIAL CAPACITIES,  
DEFENDANTS.

**FINAL JUDGMENT**

Before the court is the above-styled and numbered cause. On October 27, 2020, the court rendered an order directing Plaintiff Julian M. Reyes to show cause in writing why this cause should not be dismissed for want of prosecution on before November 3, 2020 (Doc. #22).

As of this date, Reyes has not filed a response to the court's order. Accordingly, the court renders the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

**IT IS HEREBY ORDERED** that this cause of action is **DISMISSED WITHOUT PREJUDICE** for want of prosecution.

**IT IS FURTHER ORDERED** that the case hereby **CLOSED..**

SIGNED this 4th day of November, 2020.

  
\_\_\_\_\_  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Julian M. Reyes  
Plaintiff

§  
§

v.

§  
§

Case no. 1:19-cv-00367-LY

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT,  
and other responsible "JOHN DOE"  
parties to be named later through the  
proper discovery of evidence,  
all individually and in their official  
capacities

§  
§

Defendants

**REQUEST TO STAY ORDER TO DISMISS/SET ASIDE FINAL JUDGEMENT AND**  
**KEEP CASE OPEN**

I, Julian Reyes, plaintiff in this case, hereby request leniency and apologize that I missed the court's 5 day cause order. You see before you a simple citizen, not an attorney, acting pro se, without meaningful access to law, without working education in law, without research skills and law tools while still working pro se without the ready assistance of counsel. My access to the Internet was already limited prior to the pandemic shutdowns. Now the libraries and cafes and other wifi locations that I can gain access to email and Internet are closed, or limited, only furthering limiting my Internet access. I also cannot get into the public library as I have checked multiple times and the doors are locked and closed for access. Impacting my law research. I am also doing my best to keep up despite these and other challenges. I also have PTSD because of police abuse, retaliation and use of police lethal force. And this litigation without an attorney to represent me only adds to my PTSD stressors. There should be

reasonable accommodations and better access to law for survivors and victims of police abuse seeking relief for the types of injustices I have had to endure for years now. This lack of access to an attorney to represent me has cost me 2 other civil rights cases already. Dismissed not because of merits, but because of access to law and understanding of procedures which an attorney would more readily know and meet. Civil Rights cases where I was also seeking Justice for other incidents of Austin police false arrest and retaliation for filming police work. Filming for the People of the United States of America, Texas and Austin especially and the Challenger Street Newspaper, a 501c3 nonprofit new source for the unhoused community of Austin.

When I did get internet access, I really did not understand what that document/order meant, I did not understand what the title of "show cause" meant and I did not know that it was a 5 day order for days, due to intermittent email access. It was too quick for an informed response. As I am foreign to many of the processes of Civil law. It is simply too confusing for Pro Se people like myself, seeking relief and remedy for deprivation of rights. Before I knew what was going on my case was dismissed without prejudice. Another barrier to Justice it seems. As I definitely want to continue to seek Justice in this lawsuit, and relief for my Civil Rights and Constitutional Rights being taken away unlawfully by the defendants, knowingly, and maliciously as it seemed at the time. I am definitely not trying to neglect this lawsuit. For months and months I've been awaiting defenses' counsel to reach out to me regarding the scheduling and release of discovery evidence in this case and the release of the names of the officers involved so that I could amend my complaint properly.

As soon as I could after seeing the email, I asked several lawyers that I know of to assist me as well as contacted other friends that also are legal advocates for the people. I forwarded the email to them all. To hopefully help me interpret the meaning, access the order on PACER, explain the law and the response that the Court required to show cause again. Since I thought I had already shown cause when this complaint was first evaluated but the original Magistrate and found to not be frivolous. (ORDER ON IN FORMA PAUPERIS STATUS AND REPORT AND RECOMMENDATION ON THE

MERITS OF THE CLAIMS) And I previously had thought we were in a holding pattern due to the Pandemic as is my experience with other Courts in Austin, speaking to attorneys about the Courts' statuses and from the locked doors at the County law library. Yet, the attorneys were little to no help, they mostly ignored my requests for help again. In fact I was actually told again that the system of Justice is not fair, favors crimes and criminals who work in public under color of law, the law is very technical and complicated and is totally inaccessible without at least \$10,000 by the Plaintiff in advance. Justice is for sale in Austin, that is a normal statement from attorneys here, by personal experiences of years trying to seek Justice. Unfortunately still very far out of reach of my humble means. I was also told by an attorney that the political trend of First Amendment suits to protect our Rights to film in Austin are depleted now. Instead the political trend in attorneys and their will is for defending protestors now. And that the time has past for filming rights cases like mine. No remedy or relief will be assisted by the local attorneys on contingency or especially pro bono.

In fact I have prepared a proposed scheduling order and have sent it to defense counsel for review. I have attached it as an exhibit to this motion.

I. **I am only a pro se plaintiff**, without an attorney, in this case trying to keep up with this case's requirements without proper access to the law, to research, evidence, legal tools and legal advisement. I have been dealing with closures and intermittent internet access as well. I also have the same phone number listed in this case. It is the best way to contact me when there are immediate and dismissive deadlines looming, motions to file, or conferencing regarding schedule of discovery, etc. on this case. Counsel for defense has my phone number already.

II. **Covid-19** has closed all points of access for tools, legal research, and the rules and procedures manuals. All the legal tools that are available to a pro se litigant of meager means like me. I get access to legal materials at the public library. Because of Covid-19 closures I have no access to the tools I was using prior to Covid-19. All libraries seem to be closed to the public still.

**III. So I have relied on the only resource I could readily access and download, the Pro Se Guide**

HYPERLINK "<https://www.txwd.uscourts.gov/wp-content/uploads/Filing%20Without%20an%20Attorney/Pro%20Se%20Manual/Pro%20Se%20Manual.pdf>"

**IV. Scheduling Order Proposal ready to review.** I have included my proposed scheduling order in order to put this case back on the docket. And to show how I am interested in moving forward with seeking Justice for my deprivation of rights under color of law U.S.C. 1983. And have sent a copy of this scheduling order to the Defense counsel for review.

**Argument**

“Trial courts possess a discretionary range of control over parties and proceedings which will allow reasonable accommodations to pro se litigants without resultant prejudice to adverse parties. Pro se parties, like other litigants, should be provided the opportunity to have their cases fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party.” *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187, 192 n. 4 (1984).

” Meaningful access requires some tolerance by courts toward litigants unrepresented by counsel. Pro per litigants are by no means exempt from the governing rules of procedure. But neither should courts allow those rules to operate as hidden, lethal traps for those unversed in law. This may require some degree of extra care and effort on the part of the Judge and the Court.” *White v. Lewis*, 804 P.2d 805 (Arizona 1990) (Lankford, J., dissenting). See also *Inquiry Concerning Eriksson*, 36 So. 3d 580 (Florida 2010) (the judge’s “unduly rigid and formulaic process” and his “overly technical and rigid approach” in dealing with pro se litigants in domestic violence injunction proceedings impeded their ability to obtain the relief and protection they sought and “penalized pro se petitioners for being unfamiliar with the judicial system”). Those

principles were reflected in a change made to the American Bar Association Model Code of Judicial Conduct in 2007. Rule 2.2 provides that “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” New comment 4 to that rule adds a caveat: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

I as Plaintiff was denied a FAIR TRIAL, or at least a fair opportunity to explain why the case should be retained on the court docket. In that way, I was Denied Meaningful Access to the the Court and to Justice and relief.

FURTHER, if this case is dismissed as ordered, the Plaintiff asserts he was denied **Equal Protection of the Law**. The Plaintiff feels like he was denied Equal Protection and Due Process of law by being denied meaningful access to the law, and Plaintiff respectfully requests that the Court extend all reasonable efforts to Plaintiff as a citizen who is occasionally and sometimes chronically homeless, indigent and a Pro Se litigant in accordance with the American Bar Association’s Model Rules for the meaningful Access to the Courts and the Protection of His Rights under the Constitutions of the United States and the State of Texas.

**Plaintiff Prays to the Court:**

The Plaintiff in this case prays that the Court will reconsider and withdraw, or stay this order to dismiss this case because it achieves a miscarriage of justice, is prematurely done, prior to Justice because of the above reasons and others, unstated.

The Plaintiff in this case also requests the court to please reassess the qualifications and meaningful access to law. Access to meaningful justice. And to ease the flow of this case in the docket, having this case proceed in an orderly manner to it's conclusion. By taking time to consider assigning an advisory, pro se or contingent attorney to assist the pro se Plaintiff who is seeking remedy for a grievance as stated above. If a hearing would help, I pray for that opportunity to state my case as to why this case should not be dismissed and that I should get some help from the court. I cannot keep up with this case as easily as if I had the abilities and access of counsel.

Last, I apologize for inconveniencing the court, but I am just a pro se litigant doing the best I can. I promise I will try harder. Please re-instate my lawsuit.

Respectfully submitted,

/S/ Julian Reyes

Signature Pro Se

12 / 06 /2020

Date

1712 E. Riverside Dr. #357,  
Austin, Texas, 78741  
512 785-1749  
julian.reyes.human@gmail.com

**IT IS HEREBY ORDERED THE FOLLOWING:**

1. That the Order to Dismiss is stayed \_\_\_\_\_.
2. A hearing for counsel to be determined \_\_\_\_\_
3. Counsel to be assigned by Court to pro se Plaintiff \_\_\_\_\_

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Julian M. Reyes  
Plaintiff

§  
§

v.

§  
§

CAUSE NO. 1:19-cv-00367-LY

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT,  
and other responsible "JOHN DOE"  
parties to be named later through the  
proper discovery of evidence,  
all individually and in their official  
capacities

§  
§

Defendants

**SCHEDULING ORDER PROPOSAL**

I, Julian Reyes, pro se Plaintiff in this cause do submit this proposed scheduling order for review and consideration.

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following scheduling order.

IT IS ORDERED THAT:

1. The parties shall file all amended or supplemental pleadings and shall join additional, if known prior to discovery of evidence, these parties on or before January 31st, 2021.
2. All parties asserting claims for relief shall file and serve on all other known parties their designation of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all other parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before March 15th 2021. Parties resisting claims for relief shall file

and serve on all other parties their designations of potential witnesses, testifying experts, and proposed exhibits, and shall serve on all other parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) on or before March 31st, 2021. All designations of rebuttal experts shall be filed and served on all other parties not later than 14 days of receipt of the report of the opposing expert, and the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) for such rebuttal experts, to the extent not already served, shall be served, but not filed, on all other parties not later than 14 days of receipt of the report of the opposing expert.

3. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties on or before May 15th 2021, and each opposing party shall respond, in writing, on or before May 30th, 2021. All offers of settlement are to be private, not filed, and the Court is not to be advised of the same. The parties are further ORDERED to retain the written offers of settlement and responses as the Court will use these in assessing attorney's fees and court costs at the conclusion of trial.
4. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed on or before June 21st 2021.
5. Any objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, not later than 14 days of receipt of the written report of the expert's proposed testimony or not later than 14 days of the expert's deposition, if a deposition is taken, whichever is later. The failure to strictly comply with this paragraph will be deemed a waiver of any objection that could have been made pursuant to Federal Rule of Evidence 702.
6. The parties shall complete discovery on or before August 31st 2021. Counsel may, by agreement, continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.
7. All dispositive motions shall be filed and served on all other known parties on or before September 31st, 2021 and shall be limited to 20 pages. Responses shall be filed and served on all other parties not later than 14 days after the service of the motion and shall be limited to 20 pages. Any replies shall be filed and served on all other parties not later than 14 days after the service of the response and shall be limited to 10 pages, but the Court need not wait for the reply before ruling on the motion.

**The parties shall not complete the following paragraph 8. It will be completed by the Court at the initial pretrial conference to be scheduled by the Court.**

8. This case is set for final pretrial conference, in chambers, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ and \_\_\_\_\_ trial in the month of \_\_\_\_\_ 20\_\_\_\_\_. The final pretrial conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of the final pretrial conference.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

LEE YEAKEL  
UNITED STATES DISTRICT JUDGE

AGREED:

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)



November 1, 2019, (Doc. 21) or the roughly 575 days that have elapsed since he first filed his complaint in March, 2019 (Doc. 1).

3. In addition to the above, Plaintiff has neither styled his pleading as an Appeal of the Court's Final Judgment herein, in which case his pleading would be late and therefore null, and has further not raised his request as a Rule 60 Request for Relief from a Judgment or Order, thus, it is difficult, if not impossible for Defendant to respond to a Plaintiff's unclear request and Defendants decline to do so more robustly without a more definite statement of the relief sought by Plaintiff Reyes herein.

4. Out of an abundance of caution, if the Court does accept Plaintiff's filing as a Rule 60(b) request, Defendants briefly note that relief available under Rule 60(b) is circumscribed so as not to unduly intrude on the public policy of finality. *See Comfort v. Lynn School Committee*, 560 F.3d 22, 26, 242 Ed. Law Rep. 659 (1st Cir. 2009). Also, relief under Rule 60(b) is considered to be an extraordinary remedy available only in limited circumstances. *See Trade Well International v. United Central Bank*, 825 F.3d 854, 860 (7th Cir. 2016); *Lebahn v. Owens*, 813 F.3d 1300, 1306, 93 Fed. R. Serv. 3d 1575 (10th Cir. 2016); *U.S. Commodity Futures Trading Com'n v. Kratville*, 796 F.3d 873, 896, 92 Fed. R. Serv. 3d 759 (8th Cir. 2015); *Karak v. Bursaw Oil Corp.*, 288 F.3d 15, 19, 52 Fed. R. Serv. 3d 918 (1st Cir. 2002).

5. Extraordinary circumstances do not exist here as noted by the court in its Order denying Reyes request for appointment of counsel. (Doc. 21). Therein, the Court noted that this suit is Plaintiff's fourth suit within this district and raised no novel or especially complex issues of law that would entitle him to the relief requested. (*Id.*). Further, the fact that Reyes has "substantial experience litigating these types of cases against peace officers" (*Id.*) was found to be relevant in that decision and should likewise inform the Court's decision herein. As noted above, Plaintiff

had approximately a year to have sought a scheduling order or really any sort of relief from the Court but has failed to do so. Plaintiff has further had no contact with Defendants and made no requests in that time period.

6. In short, there is nothing about Plaintiff's request or in his suit that would merit the extraordinary relief he now seeks, and his Request should be denied. For the reasons set forth above, Defendants Quint Sebek, Carlos Vallejo, and "Capn Ryan" respectfully request the Court deny Plaintiff's Request. Defendants request any and such other additional relief to which they may show themselves justly entitled.

RESPECTFULLY SUBMITTED,

ANNE MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF LITIGATION

/s/ David May  
DAVID MAY  
State Bar No. 24092778  
Telephone: (512) 974-2342  
[David.may@austintexas.gov](mailto:David.may@austintexas.gov)

H. GRAY LAIRD III  
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City of Austin – Law Department  
P. O. Box 1546  
Austin, Texas 78767-1546  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 9<sup>th</sup> day of December, 2020.

**Via CM/ECF:**

Julian M. Reyes

1712 E Riverside Dr. #357

Austin, Texas 78741

[Julian.reyes.human@gmail.com](mailto:Julian.reyes.human@gmail.com)

512-785-1749

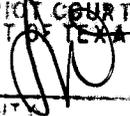
**PRO SE**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2020 DEC 18 PM 4:28

CLERK, US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY  REPUT

JULIAN M. REYES,  
PLAINTIFF,

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V.

CAUSE NO. 1:19-CV-367-LY

OFFICERS QUINT SEBECK, BADGE  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT, AND  
OTHER RESPONSIBLE "JOHN DOE"  
PARTIES TO BE NAMED LATER  
THROUGH THE PROPER DISCOVERY  
OF EVIDENCE, ALL INDIVIDUALLY  
AND IN THEIR OFFICIAL CAPACITIES,  
DEFENDANTS.

**ORDER**

Before the court are Plaintiff Julian M. Reyes's "Request to Stay Order to Dismiss/Set Aside Final Judgment and Keep Case Open," which the court construes as a Rule 60(b) Motion for Relief from Final Judgment filed December 6, 2020 (Doc. #24) and Defendants' Response to Plaintiff's Motion to Stay filed December 9, 2020 (Doc. #25). The extraordinary relief afforded by Rule 60(b) requires that the moving party make a "showing of unusual or unique circumstances justifying such relief." *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 286 (5th Cir. 1985). Plaintiff's motion has provided no justifiable ground for relief from final judgment in this case under Rule 60.

**IT IS THEREFORE ORDERED** that Plaintiff Julian M. Reyes's "Request to Stay Order to Dismiss/Set Aside Final Judgment and Keep Case Open," which the court construes as a Rule 60(b) Motion for Relief from Final Judgment filed December 6, 2020 (Doc. #24) is **DENIED**.

Signed this 18~~th~~ day of December, 2020.

  
\_\_\_\_\_  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE

UNITED STATES 5th CIRCUIT APPELLATE COURT

Julian M. Reyes  
Plaintiff

v.

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§  
§  
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§  
§

Case no. 1:19-cv-00367

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT,  
and other responsible “JOHN DOE”  
parties to be named later through the  
proper discovery of evidence,  
all individually and in their official  
capacities

Defendants

**Notice of Appeal**

**Constitutional Treatment and Meaningful Access to the Courts by Pro Se Litigants**

Notice is hereby given that, I Julian Reyes, plaintiff in this case, hereby appeal to the United States Appellate Court for the Fifth Circuit from the 5th Circuit Court’s Order signed on December 18th, 2020. The decision by the Court to deny meaningful access to the law, to deny legal advisement or attorney to assist me with this complex and difficult complaint in the interest of Justice and Equal Rights under the Law.

This pro se plaintiff also requests process and legal leniency from the Court. As I am only a pro se litigant, without an attorney, in this case trying to keep up with this case’s legal requirements without proper access to the law.

“Trial courts possess a discretionary range of control over parties and proceedings which will allow reasonable accommodations to pro se litigants without resultant prejudice to adverse

parties. Pro se parties, like other litigants, should be provided the opportunity to have their cases fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party." *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187, 192 n. 4 (1984).

” Meaningful access requires some tolerance by courts toward litigants unrepresented by counsel. Pro per litigants are by no means exempt from the governing rules of procedure. But neither should courts allow those rules to operate as hidden, lethal traps for those unversed in law. This may require some degree of extra care and effort on the part of the Judge and the Court.” *White v. Lewis*, 804 P.2d 805 (Arizona 1990) (Lankford, J., dissenting). See also *Inquiry Concerning Eriksson*, 36 So. 3d 580 (Florida 2010) (the judge’s “unduly rigid and formulaic process” and his “overly technical and rigid approach” in dealing with pro se litigants in domestic violence injunction proceedings impeded their ability to obtain the relief and protection they sought and “penalized pro se petitioners for being unfamiliar with the judicial system”). Those principles were reflected in a change made to the American Bar Association Model Code of Judicial Conduct in 2007. Rule 2.2 provides that “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” New comment 4 to that rule adds a caveat: “It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”

The Plaintiff was denied a FAIR TRIAL, was Denied Meaningful Access to the the Court.

Further, the Plaintiff believes he was denied Equal Protection and Due Process of law by being denied meaningful access to the law, respectfully requests that the Court extend all reasonable efforts to Plaintiff as a citizen who is chronically homeless, indigent and a Pro Se litigant in accordance with the American Bar Association’s Model Rules for the meaningful Access to the Courts and the Protection of His Rights under the Constitutions of the United States and the State of Texas.

The Plaintiff in this case also requests the court to please reassess the qualifications and meaningful access to law. Access to meaningful justice. And to facilitate the flow of Justice in this case. Proceeding in an orderly manner to it's just and equitable conclusion. By taking time to consider assigning a pro bono or contingent attorney to assist the Pro Se Plaintiff who is seeking remedy for a grievance as stated within the complaint. If a hearing would be necessary, I pray for that opportunity to state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advise or counsel.

SIGNED this 5th day of January, 2021.

Respectfully submitted,

/S/ Julian Reyes

Signature Pro Se

1 / 05 /2020  
Date

1712 E. Riverside Dr. #357,  
Austin, Texas, 78741  
512 785-1749  
julian.reyes.human@gmail.com

UNITED STATES 5th CIRCUIT APPELLATE COURT

Julian M. Reyes  
Plaintiff

v.

§  
§  
§  
§  
§  
§

Case no. 1:19-cv-00367

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN RYAN,  
AUSTIN POLICE DEPARTMENT,  
and other responsible “JOHN DOE”  
parties to be named later through the  
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Defendants

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**Constitutional Treatment and Meaningful Access to the Courts by Pro Se Litigants**

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This pro se plaintiff also requests process and legal leniency from the Court. As I am only a pro se litigant, without an attorney, in this case trying to keep up with this case’s legal requirements without proper access to the law.

“Trial courts possess a discretionary range of control over parties and proceedings which will allow reasonable accommodations to pro se litigants without resultant prejudice to adverse

parties. Pro se parties, like other litigants, should be provided the opportunity to have their cases fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party." *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187, 192 n. 4 (1984).

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The Plaintiff was denied a FAIR TRIAL, was Denied Meaningful Access to the the Court.

Further, the Plaintiff believes he was denied Equal Protection and Due Process of law by being denied meaningful access to the law, respectfully requests that the Court extend all reasonable efforts to Plaintiff as a citizen who is chronically homeless, indigent and a Pro Se litigant in accordance with the American Bar Association’s Model Rules for the meaningful Access to the Courts and the Protection of His Rights under the Constitutions of the United States and the State of Texas.

The Plaintiff in this case also requests the court to please reassess the qualifications and meaningful access to law. Access to meaningful justice. And to facilitate the flow of Justice in this case. Proceeding in an orderly manner to it's just and equitable conclusion. By taking time to consider assigning a pro bono or contingent attorney to assist the Pro Se Plaintiff who is seeking remedy for a grievance as stated within the complaint. If a hearing would be necessary, I pray for that opportunity to state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advise or counsel.

SIGNED this 5th day of January, 2021.

Respectfully submitted,

/S/ Julian Reyes

Signature Pro Se

1 / 05 /2020  
Date

1712 E. Riverside Dr. #357,  
Austin, Texas, 78741  
512 785-1749  
julian.reyes.human@gmail.com

**UNITED STATES 5th CIRCUIT APPELLATE COURT**

Julian M. Reyes  
Plaintiff

v.

§  
§ Appellate Case no. 21-50013  
§ Originating Case no. 1:19-cv-00367

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN  
RYAN, AUSTIN POLICE  
DEPARTMENT, and other  
responsible “JOHN DOE”  
parties to be named later through the  
proper discovery of evidence,  
all individually and in their official  
capacities

§  
§  
§

Defendants

**Motion for Extension of Time to file Brief**

I, Julian Reyes, pro se, request an extension of time of for 30-90 additional days to file the appellant’s brief.

I realize that I previously asked for time to file the brief but still do not have access to law and the Courts. And after much effort, contacts at the Appellate Court Library, the Travis County Law Library, and the Texas State Law Library, but no responses from any actual legal counsel, I still feel an overwhelming need to have an attorney to assist with this case and the brief for this case. I have been in contact with at least one attorney, no legal guidance has been given yet. Which I am

working on getting legal advice and access to specific case law research for this appeal. We will continue to ask about legal advise or a contingent attorney. I will continue to study and work on the brief and try to research relevant case law, albeit very difficult to read and do. And I will also continue to pray for motion for this Court to assign counsel, probably my only prayer for actual Justice and access to the Court and law.

This case did not have the assistance of counsel and that is why it struggled under the rules, deadlines and complexity of the law itself. Though this case's merits met the scrutiny of the District Court. The reason that I have appealed the decisions of the District Court is access to the law and legal counsel in the interests of Justice and Equality under the law. Access to law should not be this complicated, complicit to injustice, or a barrier itself to Justice and Equal Justice under the Law.

Though I have been reading the FRAP and confused by them, the language, the nuances of the rules and law, and rules behind them and surrounding them. I have concentrated on the brief rules and found them overly cumbersome, the rules on the brief outlines, the technical details for appendix and citations and not to mention finding relevant case law.

In contacting the Appellate Court's Law Library they did not have any information to assist pro se litigants with the brief. This should be remedied

immediately. Instead they referred me to the Texas State Law Library, also closed due to the Covid-19 pandemic. The State law librarian said that there was nothing specific for appellant briefs at the federal level that would explain it to a layman or a law student. The Travis County Law Library stated that they did not have much information to share digitally as they do not have the copyrights, and they are also closed to in person visits. They referred me elsewhere.

The primary Law Library that I use for questions and access to law is the Travis County Law Library which remains closed to the Public as the City of Austin is now in Stage 4 Covid restrictions again due to Covid variants, the City officials say.

As I am a layman the above were all further dead ends for research for me. I have been unable to access research materials and law that is necessary I feel to filing a successful brief to allow us to find Justice in the court. The process and rules of the Court have proven laborious to me as I am without counsel, without proper legal training and the pandemic has more severely limited any real access to the law and research of the law and this appellate law.

The Defendants, a government employees, have multiple attorneys from what I gather including a new lead counsel, the Assistant City Attorney. Against me, with no counsel. How is that access to law and equal access to Justice for a redress of Citizen's grievances?

Also, on 3/26/2021, the Case Team finally manually emailed me a brief's template on my case. Which I did not get access to previously or know about. Which was helpful partially, but not clear on how to populate with the case, issue and appendix. The sending of this template to pro se Citizens should be automatic, clear, and with a tutorial for laymen on the notice of brief. For the best results of Justice. I still do not understand the brief or have access to case law and tools of legal research.

These are the little details that take up time and are not even in the rules that I have read to date. Counsel would be familiar with these rules and briefs. If I had counsel. And the case would have in turn been already expedited to proceed on it's merits and questions of constitutional basis under 1983 and 1985, U.S.C.. Not bogged down in technicalities and complexities of the law for me, an untrained layman Citizen.

After my previous talks with the Appellate Court's Case Team and sending an email request for clarity, I decided to request an additional extension of time. As this is more complex than I had realized and the appendix is not to be delayed as I was thinking by reading the FRAP. Presently the record excerpts and appendix rules are still beyond my understanding. And I would not be able to get this completed reasonably well and accurately according to the FRAP so I decided it's

time to request additional time from the Court. I still wish the Court would reconsider my previous Motion to Appoint Counsel due to this appellate brief. Which I still need help with to get to that point, obviously.

As I am still just a layman without good working knowledge of the processes, procedures, Appellate brief and letter of the Federal Courts. Having no formal access or training in law. And facing the attorneys of the Defense that work for the City of Austin, Inc. in a complex case involving rules, laws, procedures, legal wording, First Amendment protections, discovery of evidence and a myriad of case law that I have no good working knowledge of or meaningful and ready access to such knowledge.

In the interests of Justice and in the interests of the Court to process and progress this case to it's due justice and equitable access to Justice and Due Justice.

### **PLEAS**

This pro se plaintiff also requests process and legal leniency from the Court. As I am only a pro se litigant seeking Justice. I am presently without an attorney, in this case trying to keep up with this case's legal requirements without proper access to the law as I stated above.

This pro se Citizen plaintiff requests the Court review and answer my previous Motion for Appointment of Counsel, please, thank you. For the Brief to be filed completely, and by the enormous burden of the regulations and rules regarding this and the case law, legal opinions, to support my appeal.

The Plaintiff in this case also requests the court to please allow me in this case meaningful access to law. With access to meaningful justice. And to facilitate the flow of Justice in this case. Proceeding in an orderly manner to it's just and equitable conclusion. Assignment of Counsel. as there is a submitted Motion for Appointment of Counsel, would satisfy these needs. expedite this case in Justice and the Court, and would be an actual asset to Justice for all parties including the Court itself.

If a hearing would be necessary, I pray for that opportunity to show and state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advice or counsel. **ORAL ARGUMENT REQUESTED.**

SIGNED this 7th        day of        September       , 2021       .

Respectfully submitted,

       Julian Reyes /S      

Signature Pro Se

       09 / 07 /2021

Date

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[julian.reyes.human@gmail.com](mailto:julian.reyes.human@gmail.com)

**Certificate of Conference**

I, Julian Reyes, pro se litigant, have conferred with counsel for defense, Mr. Laird, via email and have been informed of the following:

Defense opposes my pro se motion

\_\_\_\_ Julian Reyes, pro se /S

**Certificate of Service**

I, Julian Reyes, pro se litigant, hereby certify that I have communicated this motion/document with the 5th Circuit Court of Appeals using the CM/ECF filing system, which will cause a copy of the document to be electronically delivered to Appellant's attorney, Mr. Gray Laird, defendants' counsel.

\_\_\_\_ Julian Reyes, pro se /S

**Certificate of Compliance**

I, Julian Reyes, pro se litigant, hereby certify on Sept. 7, 2021 that,

1. This document complies with the word limit of Fed. R. App. P.27(d)(2) (A) because this document contains approximately 1500 words or does not exceed 20 pages.

2. This document complies with the typeface requirements of Fed. R.App. P. 27(d) (1)(E) and 32(a)(5) and the type-style requirements of Fed. R. App. P. 27(d)(1) (E) and 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Apple Pages version 5.6 in 14-point Times New Roman.

\_\_\_\_ Julian Reyes, pro se /S

**No. 21-50013**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

Julian M. Reyes,

Plaintiff - Appellant

v.

Quint Sebek, individually and in his official capacity, Badge# 3454, Austin Police Department; Sergeant FNU Vallejo, individually and in his official capacity, Austin Police Department; Captain FNU Ryan, individually and in his official capacity, Captain, Austin Police Department; John Doe, other responsible parties to be named later through the proper discovery of evidence, individually and in their official capacities,

Defendants - Appellees

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**On Appeal from**  
United States District Court for the Western District of Texas in Austin

1:19-CV-367

**BRIEF OF APPELLANT JULIAN REYES**

---

SUBMITTED BY:

Julian Reyes

10900 Research Blvd Suite 160c Box 147  
Austin, Texas, U.S.A. 78759

## CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5<sup>th</sup> CIR Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

<b>Appellees:</b>	<b>Counsel for Appellees:</b>
John Doe	David Wayne May of City of Austin Austin, TX
FNU Ryan	David Wayne May of City of Austin Austin, TX
FNU Vallejo	David Wayne May of City of Austin Austin, TX
Quint Sebek	David Wayne May of City of Austin Austin, TX

<b>Appellants:</b>	<b>Counsel for Appellants:</b>
Julian Reyes	Julian Reyes, pro se. Austin, TX

<b>Other Interested Parties:</b>	<b>Counsel for Interested Parties:</b>
Type Here	Type Here

Julian M. Reyes /S  
pro se plaintiff

A Certificate of Interested Persons is required by 5<sup>th</sup> CIR. R. 28.2.1.

I do not understand this field.

## **STATEMENT REGARDING ORAL ARGUMENT**

I respectfully request a hearing and oral arguments and hearings as well as a Jury Trial. As I have not been allowed one single hearing on this case since it was originally filed in the 5th Circuit. And have not been allowed any oral arguments and that has diminished my ability to have access to the Courts and to law. This error has deprived me of access to the courts. As well it stymies my efforts to provide justice to these issues of law, The effect of which causes degradation and more increased suppression of our first amendment rights.

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## TABLE OF AUTHORITIES

**Cases.....Pages(s)**

Type here a Table of Authorities as required by FED. R. APP. P. 28(a)(3). As you complete the brief the table of authorities will have to be updated.

( I do not understand how to complete this properly, and need more time to amend.)

## **JURISDICTIONAL STATEMENT**

The events of this case occurred in Austin, Texas on Public Property. This Court has jurisdiction over Texas, Mississippi and Louisiana, the 5th Circuit and Questions of Constitutional Issues including 42 U.S.C. 1983 Deprivation of Civil Rights. As it is a issue of Federally protected Civil Rights in the 5th Circuit. And has jurisdiction over orders and judgements made at the Federal Civil Court in Austin, Western District, 5th Circuit.

## **STATEMENT OF THE ISSUES**

Should indigent, pro se litigants that do not have an understanding of the complexities of law, and lack proper counsel be afforded access in the interests of justice or should the status quo be protected at all costs?

Like issues of access to the Court and barriers. There were issues of timing during the pandemic closures. And issues with strict timelines and hard deadlines. There was a power dynamic that is apparent between the two parties, affecting access to law, legal process barriers. Motions for appointment of Counsel were denied. All helped create a de facto barrier and blocked this case and my justice every which way denying discovery and a trial. Causing further harm on me and my rights to a redress of grievances from my government for deprivation of civil rights, under color of law.

## **STATEMENT OF THE CASE**

This case is a suit for damages and protections to violations of First Amendment Civil Rights under 42 U.S.C. 1983 deprivation of rights. This claim was filed in the Western District Federal Court in Austin, Texas, U.S.A.

As I am a laymen, pro se, without access to law and counsel in a pandemic with multiple closure barriers, I requested and motioned for appointment of counsel. The case was complex, difficult, the rules, procedures and deadlines too difficult for me without proper resources. There was an unfair access to resources and power dynamic present that was obvious to me.

Without access to counsel I was unable to argue for accountability for patterns, practice, policy, statutes, and citations that would help sustain accountability and justice when it comes to U.S.C. 1985 conspiracy of parties, etc, against the City's attorneys and almost unlimited staff. Qualified immunity was applied unfairly and prematurely I believe. Barriers to access to law. This is a failing in my understanding of case law, law research, access to research staff.

Then then Covid-19 pandemic hit us hard. Law Libraries, Courts, businesses, everything changed and access changed. Another set of exceptional circumstances that should offer exceptional relief.

Defense counsel and I did not confer or set a discovery schedule for a long time as the closures and pandemic emergency continued across Austin and the U.S.A..

During this emergency pandemic shutdown District Judge Lee Yeakel filed a show cause order on October 27th, 2020 with a deadline of November 3, 2020. 5 days.

A layman, I did not understand what that order implied and I sought more information. I felt that 5 days was not enough time to respond and with dismissal. The case was dismissed without prejudice for lack of prosecution. I tried to reopen the case, stay the order and submitted a proposed scheduling order as soon as I could figure it all out without counsel. And that was denied also on December 18, 2020.

As I had no other recourse for justice I filed a notice of appeal on January 5, 2021.

I seek remedy and justice for my grievances and deprivation of rights.

## **SUMMARY OF THE ARGUMENT**

In this case the District Court the barriers to reasonable access to the Courts, to law, and to justice are glaring.

There were no hearings, evidence process or trial proceedings on this case. And the actual facts and matters of laws of this violation were never brought to the civil Court. Qualified Immunity was not contested with any form of counsel for the Plaintiff.

Instead this indigent, pro se, layman plaintiff was denied meaningful access to the Court and law. All motions and requests were denied for assistance of counsel and expert assistance. The process and barriers of law, barriers to civil counsel, during ongoing Covid shutdowns created a de facto barrier and blocked this case and my justice every which way denying any type of a trial, therefore there are no recorded references, there is just the clerks record of motions.

My case was dismissed without enough time to respond, 5 days notice during the Nation-wide Novel Coronavirus Covid-19 Pandemic. While most Courts were closed and Law Libraries too.

I motioned the Court to reopen this case that was dismissed without prejudice, and they refused. I submitted a scheduling order and contacted the Defendants' attorney with the scheduling order. The Court made no reference to the fact that defendants' counsel ignored their shared a responsibility to meet and confer about the scheduling order prior to dismissal. Although I mentioned this in the motion to stay the order to dismiss, which was denied by the Court.

Although the District Court references my previous failed cases. They failed to mention how this case is similar in that I am not an expert in Civil law, I have been denied counsel and I have been denied reasonable access to the court, to the Law and to Justice. Which is why this and previous cases have been dismissed at the Austin Western District Court, 5th Circuit. And which shows a major concern for this appeal, as a matter of law and not to be deferred to the lower Courts' judgement of final determination. Our ability to exercise and protect our civil rights under U.S.C. 1983 depends on this Appellate Court decision.

Should pro se plaintiffs be put in this position and their Rights be left undefended so easily without proper access and counsel?

How does supporting the status quo and limiting access affect the long-term power of our civil rights and justice as a whole over time?

## **ARGUMENT**

This is a case of how can the Court assist in the timely and orderly cases that involved complicated laws, evidence, discovery, deadlines, and access to both the Courts and the law.

Also the Austin Police Department, who I believe discovery will show, has a pattern and practice of police abuse of photojournalists and activist. But I was not able to get to the discovery stage to prove this. Effectively obliterating the conspiracy of parties and also protecting qualified immunity for alleged civil rights violation under color of law. Protecting the status quo of law, leaving no room for ultimately protection our civil rights and defending the constitutional law that we all need to protect us in daily life.

The Austin Police Department was given qualified immunity for this complaint. I was not given an oral hearing, although I requested one for this decision. I did not have Counsel or access to the Courts or law, so this qualified immunity decision which goes against my conspiracy of parties complaint, denies justice in this case and should be reconsidered with access to law and the Courts and a hearing.

False arrest and police retaliation are still unlawful. Unlawful and criminal actions should be considered as qualified immunity should not be intended to protect public servants and municipal organizations that violate federal, state laws.

The City's attorney helped to cause this dismissal by not making any attempt to setup a scheduling order. The City's attorney also led a deposition on another case involving Austin police. A wrongful death suit, a separate case non direct related, from another Austin Plaintiff. Even though he recognized me, I did not recognize him. The lead attorney for Defense should have done due diligence and followed the FRAP rules and made contact in good faith as they understand the rules and procedures and I do not, I am a layman. As they had access to my contact information and chose not to make contact. Defending my rights without good understanding of the rule, law and procedures. Previously I have filed Civil Rights Suits. 2 against the City of Austin's Police and Department for similar instances of police retaliation and abuse and false arrest for lawfully filming them at work with the Public, and engaged in apparent police abuse on the Public as well. The first case was actually for the shooting and killing of my companion animal, Shiner Bock, case ( 1:15-cv-327-RP) and the Court granted motion of appointment of counsel so I was able to make a settlement agreement with the City of Austin for social justice and the safety of dogs and police as well. To reduce the numbers of lethal force incidents by police encountering dogs in public and private settings. The assignment of Counsel enabled Justice to be done, access to law and the Courts, and the case proceeded in an organized fashion in the interests of Justice and Societal Justice as well as Peace and public safety.

The next case where I was filming the Austin police at a protest against police brutality and racism, I was dog-piled, beaten, tazed, and almost killed in several ways for filming the police at work in public, attacking men, women and children that were involved in peaceful protesting. That case is 1:17-cv-908-RP and it was dismissed as I had no access to Counsel and could not understand and keep up with

the rules and procedures of the Court. Without access to the Counsel and the law and the Courts, I had no chance for Justice. The People and the Judicial System as well were denied actual Justice also. This case was dismissed with prejudice for my not having access to Counsel the law or the Courts.

This case is similar in that there is no Counsel and I have been denied access to the Court, to the Law and to Justice. Which is why it has been dismissed at the Austin Western District Court, 5th Circuit. And which is one major concern for this appeal. The status quo again protected, no rights, no justice due to meaningful access.

During this emergency pandemic shutdown District Judge Lee Yeakel filed a show cause order on October 27th, 2020 with a deadline of November 3, 2020. 5 days.

A layman, I did not understand what that order implied and I sought more information. I felt that 5 days was not enough time to respond and with dismissal. The case was dismissed without prejudice for lack of prosecution. I tried to reopen the case, stay the order and submitted a proposed scheduling order as soon as I could figure it all out without counsel. And that was denied also on December 18, 2020.

I have previously told the court in writing that I have PTSD from repeated police abuse incidents and that I requested reasonable accommodations under the American Disabilities Act, time and leniency. That was apparently ignored as no mention of reasonable accommodation was made by the Court. PTSD is real. Litigation without counsel is further PTSD.

I requested counsel from the onset of the case, early on. And I tried to assert my prayers for relief and leniency on the court's original response and recommendations, but was not considered seriously for erroneous and seemingly strict reasons. And they were overruled without prejudice.

Even as late as June 28, 2019 I was still motioning for time and assistance with the simple task of e-filing motions. A task that the City's counsel had no problems with. A task that appointed counsel would have no problems with. I was lost and needed

help with basic procedures and rules over and over including missing important deadlines due to no understanding of rules and law. And no access to case law to guide me.

As I had no other recourse for justice I filed a notice of appeal on January 5, 2021.

I seek remedy and justice for my grievances and deprivation of rights and for lack of meaningful access to law and the courts.

I apologize in advance for the lack of citations that refer to the appendix. I ran out of time and do not understand the appendix and quotations. This would be a lot better if I had counsel and understanding of the all the rules and terms of law.

Regarding meaningful access and the Courts:

Constitutional Treatment and Meaningful Access to the Courts by Pro Se Litigants

Trial courts possess a discretionary range of control over parties and proceedings which will allow reasonable accommodations to pro se litigants without resultant prejudice to adverse parties. Pro se parties, like other litigants, should be provided the opportunity to have their cases "fully and fairly heard so far as such latitude inconsistent with the just rights of any adverse party." *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187, 192 n. 4 (1984). We are not proposing that trial judges should become surrogate attorneys for pro se litigants. The fundamental tenet that the rules of procedure should work to do substantial justice, [6] however, commands that judges painstakingly strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules. See, e.g., *Mazur v. Department of Transportation*, 507 F. Supp. 3 (E.D. Pa. 1980), aff'd, 649 F.2d 860 (3rd Cir. 1981), cert. denied, 452 U.S. 962, 101 S. Ct. 3111, 69 L. Ed. 2d 973 (1981); *Connecticut Light and Power Company v. Kluczinsky*, 171 Conn. 516, 370 A.2d 1306 (1976); *Lombardi v. Citizens Nat'l Trust & Savings Bank*, 137 Cal. App. 2d 206, 289 P.2d 823 (1955).

Making reasonable accommodations to protect a self-represented litigant’s right to be heard, so long as those accommodations do not give the self-represented litigant unfair advantage. This Rule does not require a judge to make any particular accommodation. In a joint resolution adopted in 2012 (<http://tinyurl.com/lqyp4rz>), the Conference of Chief Justices and the Conference of State Court Administrators also put the handling of cases involving pro se litigants in the context of “the importance of access to justice for all,” noting “access to courts extends both to lawyer-represented and self-represented litigants.” Other codes affirmatively state a judge’s ability to accommodate self-represented litigants, rather than use the “it is not a violation” formulation of the model code. The California comment explains that, “when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard.” The Montana version of comment 4 provides: “A judge may make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.” The Missouri comment is the same except that it uses “afford” rather than “ensure.” Some states further emphasize the importance of this exercise of judicial discretion by placing the language in the text, not just in a comment. In its resolution, the Conference of Chief Justices recommended adding “a judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard” to the text of the rule. The Louisiana, New Hampshire, and Wisconsin codes have included that language in the text. In the text of its rule, the Illinois code includes that language but refers only to self represented litigants, not to “all litigants.”

The Wisconsin list also includes “permitting narrative testimony” and “allowing litigants to adopt their pleadings as their sworn testimony.” Other states have adopted lengthier guidelines separate from the code of judicial conduct. For example, judicial guidelines for civil hearings involving self-represented litigants have been adopted by the Delaware Supreme Court ([http://courts.delaware.gov/Supreme/AdmDir/ad178\\_guidelines.pdf](http://courts.delaware.gov/Supreme/AdmDir/ad178_guidelines.pdf)) and the Massachusetts courts ([9](http://www.mass.gov/courts/court-info/trial-court/exec-office/ocm/jud-institute/jg-self-</a></p>
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rep.html). The two states' guidelines are similar but not identical. Both include general practices and guidelines for pre-hearing interaction, conducting hearings, and post-hearing interaction. Specific topics in either or both include plain English, language barriers, legal representation, application of the law, materials and services for self represented litigants, opportunity to be heard, managing the case, preparation, trial process, brevity and consistency, burden of production and proof, ex parte communications, the judge as fact-finder, right of self-representation, settlement, approval of settlement agreements, alternative dispute resolution, courtroom decorum, stress, evidence, issuing the decision, and appeals. The Delaware guidelines explain: It is proper that Judges exercise their discretion to assume more than a passive role in assuring that during litigation the merits of a case are adequately presented through testimony and other evidence.

A. Meaningful Access to the Courts for Self-Represented Litigants <https://www.hostobuchan.com/.../meaningful-access-to-the-courts-for-self-represented...> These individuals are referred to as self-represented litigants or pro se litigants. ... duty to make certain that all individuals have meaningful access to the courts.<sup>6</sup>

B. Accommodations for All - The Importance of Meaningful Access to .. [www.denverlawreview.org/.../accommodations-for-all-the-importance-of-meaningful-...](http://www.denverlawreview.org/.../accommodations-for-all-the-importance-of-meaningful-...) Jun 7, 2018 - In county court civil cases, consisting primarily of collections, evictions, and restraining orders, the pro se rate for responding parties held steady ...<sup>8</sup>. SEE[PDF] A. equal access to justice: ensuring meaningful ... - Columbia Law School [https://web.law.columbia.edu/.../equal\\_access\\_to\\_justice\\_-\\_cerd\\_shadow\\_report.pdf](https://web.law.columbia.edu/.../equal_access_to_justice_-_cerd_shadow_report.pdf) Jul 2, 2014 - Significant numbers of litigants must navigate the court system without a .... thirty-seven states, the majority reported that pro se litigants were ... B. There is no justice as long as millions lack meaningful access to it [http://www.abajournal.com/news/article/there\\_is\\_no\\_justice\\_as\\_long\\_as\\_millions\\_lack\\_meaningful\\_access\\_to\\_it](http://www.abajournal.com/news/article/there_is_no_justice_as_long_as_millions_lack_meaningful_access_to_it) Aug 30, 2018 - There is no justice as long as millions lack meaningful access to it ... has described the situation as a “pro se tsunami hitting the nation's courts.

C. Court-Supported Assistance to Litigants <https://www.ncsc.org/microsites/access.../Court-Supported-Assistance-to-Litigants.aspx> Evaluating pro se litigation at the Tarrant County Family Law Center. ... Ensuring Meaningful Access to Appellate Review in Non-Criminal Cases Involving ...

D. Pro Se Litigants In The Code Of Judicial Conduct - National Center for ...7 [https://www.google.com/search?ei=MOmCXNK7NIK15gLyk6zABw&q=+Pro+Se++Meaningful+Access+to+the+court&oq=+Pro+Se++Meaningful+Access+to+the+court&gs\\_l=psy-ab.3..33i299i3.10738.24341..27181...0.0..3.425.7751.7j27j5j5j1.....0....1..gws-wiz.....0i71j33i160j0j0i273j0i67j0i22i30j0i13j0i13i30j0i13i5i30j0i8i13i30j33i22i29i30.651OZZxpolA](https://www.google.com/search?ei=MOmCXNK7NIK15gLyk6zABw&q=+Pro+Se++Meaningful+Access+to+the+court&oq=+Pro+Se++Meaningful+Access+to+the+court&gs_l=psy-ab.3..33i299i3.10738.24341..27181...0.0..3.425.7751.7j27j5j5j1.....0....1..gws-wiz.....0i71j33i160j0j0i273j0i67j0i22i30j0i13j0i13i30j0i13i5i30j0i8i13i30j33i22i29i30.651OZZxpolA) Meaningful access requires some tolerance by courts toward litigants unrepresented by counsel.

Wherefore Premises Considered, this plaintiff requests Appeal as I was effectively denied a fair trial was Denied Meaningful Access to the District Court and no Evidence was entered in the Court. And the detail of counsel effectively terminated my case due to my lack of ability and access to law.

FURTHER :1.Plaintiff was denied Equal Protection and Due Process of law by being denied meaningful access to law and to the District Court. respectfully requests that the Court extend all reasonable efforts to Plaintiff as an indigent pro se litigant in accordance with the American Bar Association’s Model Rules for the meaningful Access to the Courts and the Protection of his Rights under the Constitution of the United States and the State of Texas.SEE[PDF]Pro Se Litigants In The Code Of Judicial Conduct - National Center for ...[https://www.ncsc.org/~media/Files/PDF/Topics/.../JCR/JCR%20Fall%202014.ashx](https://www.ncsc.org/~/media/Files/PDF/Topics/.../JCR/JCR%20Fall%202014.ashx)1.Cached Meaningful access requires some tolerance by courts toward litigants ..... American Bar Association Model Code of Judicial Conduct in 2007. Rule 2.2 provides ...8 [PDF]The Professional Responsibility of Fair Play When Dealing with a Pro ...[https://home.innsofcourt.org/AIC\\_PDFs/Burger\\_Prize/Burger\\_2017\\_Yee\\_Essay.pdf](https://home.innsofcourt.org/AIC_PDFs/Burger_Prize/Burger_2017_Yee_Essay.pdf) Related articles dealing with pro se litigants presents challenges to the lawyers opposing them.15 ... se party.To be sure, the law of

lawyering includes Model Rule 4.3 of the ABA .... Chase T. Rogers, Access to Justice: New Approaches to Ensure Meaningful.

## **Prayer/Conclusion**

I apologize to the Court as I do not presently have sufficient training in law, I do not understand the citations and other items in this brief, which is why I asked the Courts repeatedly for an attorney and legal experts for this brief and previous submissions to the courts. I ask for leniency, guidance, permission and time to amend, etc. Not sure how to ask any more than I already have. In the interests of life and justice and the inequities of that access for indigent, pro se litigants. I pray that this court will defy the status quo and uphold the access to law for people like me and cases like this.

Also I have requested additional time and consideration of my motion for extension of time. I request that the Court reconsider, add additional time for counsel, to do research, for guidance, etc. And then dismiss this brief to be resubmitted more completely at a later date. At least 30 days please.

The system of police accountability and transparency of government in Austin, Texas is broken and this is my last remedy for my grievances. Hear my prayers for justice, protection and change.

I pray that the Court would reopen this case and let it proceed to discovery with a new scheduling order between the 2 parties. Allow arguments of fact to be introduced. And allow for the completion of this case in the interest of access to

law, the courts and protection of our Constitutionally protect civil rights and in the name of justice for the people.

I pray for remedy, relief in the name of justice and for my grievances and deprivation of rights by these officers and their organization patterns, practices, supervision and policies that created this injury.

**SUBMITTED BY:**

s/ Julian Reyes, pro se

Mr. Julian Reyes

512 785-1749

10900 Research Blvd

Suite 160c Box 147

Austin, Texas, U.S.A. 78759

[justicenowpeople@protonmail.com](mailto:justicenowpeople@protonmail.com)

[julian.reyes.human@gmail.com](mailto:julian.reyes.human@gmail.com)

## **CERTIFICATE OF SERVICE**

I certify that on 09/16/2021, the foregoing document was served, via the Court's CM/ECF Document Filing System, upon the following registered CM/ECF users.

Which will cause a copy of the document to be electronically delivered to Appellant's attorney, Mr. David May and Mr. Henry Laird, defendants' counsel.

s/ Julian Reyes, pro se

## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of FED. R. APP. P. 32(a)(7) (B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f) and 5<sup>th</sup> CIR. R. 32.1: this document contains 4311 words.
  
2. This document complies with the typeface requirements of FED. R. APP. P. 32(a) (5), and 5<sup>th</sup> CIR. R. 32.1 and the type-style requirements of FED. R. APP. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Apple Pages version 5.6 in 14-point Times New Roman.

s/ Julian Reyes, pro se



United States Court of Appeals  
for the Fifth Circuit

A True Copy

Certified order issued Oct 13, 2021

*Steph W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

\_\_\_\_\_  
No. 21-50013  
\_\_\_\_\_

JULIAN M. REYES,

*Plaintiff—Appellant,*

*versus*

QUINT SEBEK, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,  
BADGE# 3454, AUSTIN POLICE DEPARTMENT; SERGEANT FNU  
VALLEJO, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,  
AUSTIN POLICE DEPARTMENT; CAPTAIN FNU RYAN,  
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, CAPTAIN,  
AUSTIN POLICE DEPARTMENT; JOHN DOE, OTHER RESPONSIBLE  
PARTIES TO BE NAMED LATER THROUGH THE PROPER  
DISCOVERY OF EVIDENCE, INDIVIDUALLY AND IN THEIR  
OFFICIAL CAPACITIES,

*Defendants—Appellees.*

\_\_\_\_\_  
Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:19-CV-367  
\_\_\_\_\_

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of October 13, 2021, for want of prosecution. The appellant failed to timely a sufficient brief and to file record excerpts.

No. 21-50013

Because the brief remains insufficient, if appellant moves to reopen the appeal, both record excerpts and a sufficient brief must accompany any motion to reopen this appeal.

LYLE W. CAYCE  
Clerk of the United States Court  
of Appeals for the Fifth Circuit

A handwritten signature in cursive script that reads "Melissa Mattingly". The signature is written in black ink on a white background.

By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

October 13, 2021

Ms. Jeannette Clack  
Western District of Texas, Austin  
United States District Court  
501 W. 5th Street  
Austin, TX 78701-0000

No. 21-50013      Reyes v. Sebek  
USDC No. 1:19-CV-367

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk  
504-310-7719

cc w/encl:  
Mr. Henry Gray Laird III  
Mr. Julian M. Reyes

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

October 13, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-50013      Reyes v. Sebek  
USDC No. 1:19-CV-367

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk  
504-310-7719

Mr. Henry Gray Laird III  
Mr. Julian M. Reyes

United States Court of Appeals  
for the Fifth Circuit

---

No. 21-50013

---

JULIAN M. REYES,

*Plaintiff—Appellant,*

*versus*

QUINT SEBEK, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,  
BADGE# 3454, AUSTIN POLICE DEPARTMENT; SERGEANT FNU  
VALLEJO, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,  
AUSTIN POLICE DEPARTMENT; CAPTAIN FNU RYAN,  
INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, CAPTAIN,  
AUSTIN POLICE DEPARTMENT; JOHN DOE, OTHER RESPONSIBLE  
PARTIES TO BE NAMED LATER THROUGH THE PROPER  
DISCOVERY OF EVIDENCE, INDIVIDUALLY AND IN THEIR  
OFFICIAL CAPACITIES,

*Defendants—Appellees.*

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:19-CV-367

---

ORDER:

The original briefing order in this case issued on January 20, 2021. Under that order, appellant's opening brief was due on March 1, 2021. On March 2, 2021, the clerk extended appellant's deadline by 30 days. On March

No. 21-50013

31, 2021, the clerk extended appellant's deadline by another 30 days. On April 27, the clerk suspended appellant's briefing schedule indefinitely while the court considered and decided appellant's motion for appointment of counsel. On July 1, the court denied appellant's motion for appointment of counsel and gave appellant an additional 40 days to file his brief and record excerpts. On August 5, 2021, the clerk granted appellant an additional 30 days to file his brief and record excerpts. On September 16, 2021, the appellant filed an insufficient brief. On October 6, 2021, the clerk denied appellant's motion for an extension of time to file a sufficient brief and record excerpts. Appellant now moves for reconsideration of the clerk's October 6 order. The court is sensitive to the concerns expressed in appellant's pro se motion. But this case has been pending for almost nine months, and it is unclear how an additional month will move the case closer to disposition. IT IS THEREFORE ORDERED that the motion is DENIED.



---

ANDREW S. OLDHAM  
*United States Circuit Judge*



LSCC At GISD Richarte  
2295 N Austin Ave  
Health Clinic Suite  
Georgetown, TX 78626-4514  
Phone: (877)-800-5722

10/20/2021

To Whom It May Concern:

Julian Reyes was seen by virtual visit on 10/18/2021. He was advised to seek further medical treatment at the hospital given severity of his illness.

If you require additional information please contact our office.

Sincerely,

Karen Long FNP-BC, CDCES

**Document generated by: Karen Long, APRN 10/20/2021**

Name: JULIAN REYES. DateOfBirth: 19680531. Description: CHEST, 2 VIEWS. Date: 10/18/2021 8:59:12 AM.

CHEST, 2 VIEWS: 10/19/2021

CLINICAL HISTORY: Shortness of breath and cough for two weeks.

COMPARISON: None available.

There are relatively mild bilateral and symmetrical infiltrates that are nonspecific but consistent with pneumonia, suspicious for COVID pneumonia. The cardiac silhouette is normal. No hilar, mediastinal, pleural, or significant skeletal finding is detected.

IMPRESSION:

Bilateral pulmonary infiltrates are suspicious for pneumonia, particularly COVID pneumonia.

Editor:vj

Note: Results were called to Daine P. at KAREN M LONG, NP office on 10/19/2021 9:03 AM - vj

Ronald Hoelscher, MD  
Electronically Signed: 10/19/2021 9:10 AM  
Austin Radiological Association

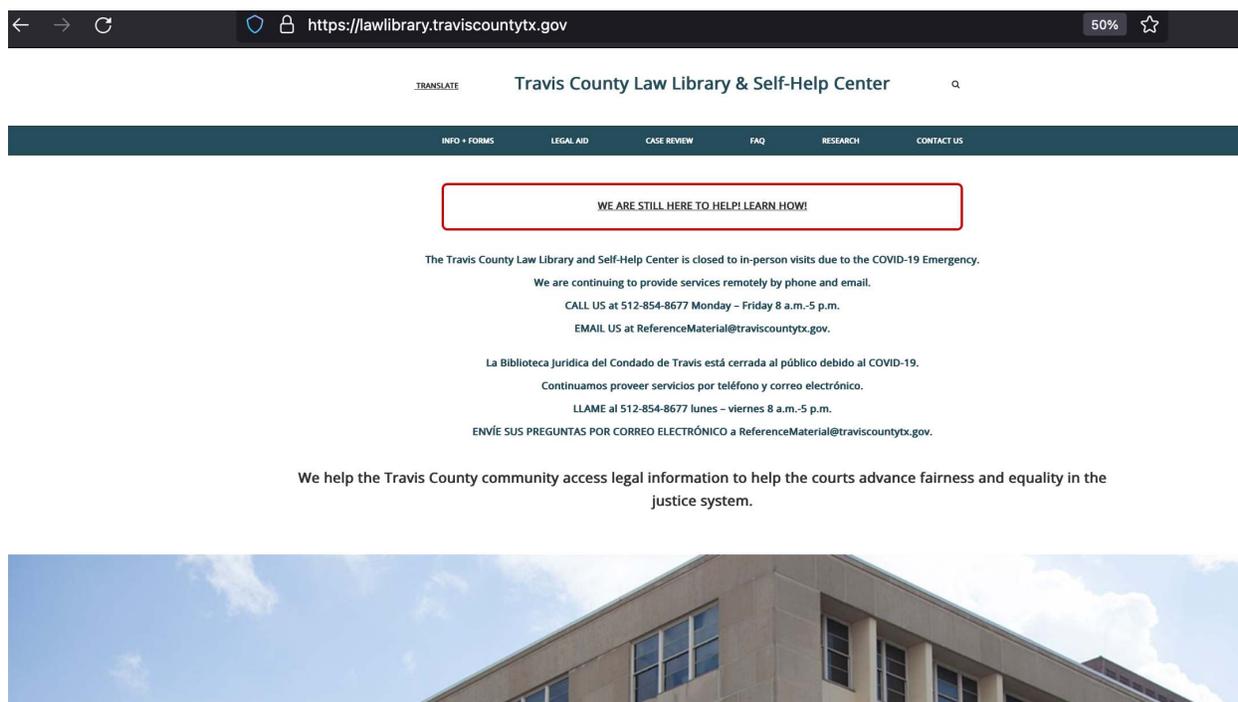
Referring Provider: LONG, KAREN  
Performing Location: ARA

Electronically signed by Karen Long FNP on 10/19/2021 09:40 AM

# Exhibit C

## Travis County Law Library Web site

Screen Shot from October 28, 2021 1300 hours



# Exhibit D

## Travis County Courts Docket

Screen Shot from October 28, 2021 1500 hours

attorney or the court gave you different instructions, please follow those.  
 If you are unable to afford a lawyer, please call 512-854-9381 and select option 5. You will be transferred to a Pretrial Officer who will complete the indigence screening.

**I want to see court dates by:**

[Person Name](#) [Attorney Name](#) [Court Number](#) [Case/Cause Number](#) [Bond Review](#) [Docket](#)

Last Name  Required  First Name

Use the checkboxes to select which settings to print. You can click on a column heading to sort the list. English ▾

<input type="checkbox"/> Defendant	Attorney	Cause	Date & Time	Appear at Court	Court	Floor	Type	Charge
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-20-207122	11/1/21 8:30 AM	No	CC9	6	UNF	INTERFER W/PUBLIC DUTIES
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-20-206275	11/1/21 8:30 AM	No	CC9	6	UNF	ASSAULT CAUSES BODILY INJ
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-19-214588	11/1/21 9:00 AM	No	CC9	6	PTRC	CRIMINAL TRESPASS
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-19-210517	11/1/21 9:00 AM	No	CC9	6	PTRC	CRIMINAL TRESPASS
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-20-500327	11/1/21 9:00 AM	No	CC9	6	PTRC	INTERFER W/PUBLIC DUTIES
<input type="checkbox"/> REYES, JULIAN MANUEL	MARTINEZ, GILBERT	C-1-CR-19-200182	12/6/21 9:00 AM	No	CC9	6	JTR	INTERFER W/PUBLIC DUTIES

# Exhibit D

# Exhibit E

## Austin Municipal Courts Docket

Screen Shots from October 28, 2021 1500 hours

Also there is a new case class C Misdemeanor for free speech, retaliation arrest by multiple APD officers and sergeants not listed here as it has just been filed case # 167400 making 2 cases in Municipal Court

The screenshot shows the 'Municipal Court Public Inquiry' page for case 8817081. The page includes a navigation menu, a breadcrumb trail, and several data tables.

**Case Information Table:**

Case #	Type	Status	Date Filed	Date Closed
8817081	CRIM MISD	TBS - ATAD	2/7/2020	

**Defendant Information Table:**

Defendant	Total Cost	Amount Paid	Balance Due
REYES, JULIAN MANUEL	\$381.00	\$0.00	\$381.00

**Violation Information Table:**

Code	Violation	Date Ticket Issued
41810	DISREGARD ORDER OF PEACE OFFICER	2/7/2020

**Scheduled Events Table:**

Event	Date	Time
COMPLAINT GENERATED BY MAGISTRATION	2/7/2020	11:13 PM
ISSUED	2/7/2020	11:14 PM
PROBABLE CAUSE AFFIDAVIT FILED	2/7/2020	11:14 PM
VRRESTED ON CLASS C'S ONLY	2/7/2020	11:17 PM
VRRAIGNMENT	2/8/2020	07:00 AM
NITIAL APPEARANCE DATE	3/6/2020	08:00 PM
BOOKED & RELEASED TO APPEAR	3/9/2020	06:00 PM
NOTICE TO APPEAR - DOCKET CALL	3/12/2020	04:30 PM
NOTICE - COURT CANCELLED	4/1/2020	02:11 PM
TO BE SCHEDULED FOR CRIMINAL APPEARANCE DOCKET	4/1/2020	10:02 AM
ANNUAL CALL MADE - RESET COURT DATE	4/7/2020	03:30 PM
MISDEMEANOR APPEARANCE DOCKET	4/23/2020	12:00 PM
DIALER ATBS SMS - LEFT TEXT MESSAGE	2/11/2021	02:22 PM
NOTICE TO APPEAR - VIRTUAL DOCKET	8/11/2021	12:26 AM
FAILR LETTER NOT MAILED - LAST KNOWN ADDRESS IS BAD	9/9/2021	01:30 PM
VRVIRTUAL CRIMINAL MISDEMEANOR APPEARANCE DOCKET	9/9/2021	05:00 PM
VRORDER OF THE COURT - JUDGE'S ORDER	9/9/2021	05:00 PM
VRFAIL TO APPEAR - LETTER	9/9/2021	06:00 PM
VRFAILURE TO APPEAR IN COURT	9/9/2021	12:00 AM
VRADLINE TO SHOW CAUSE	10/16/2021	07:28 AM
VRDEFENDANT MOTION FOR CONTINUANCE FILED (1ST)	10/20/2021	07:31 AM
VRACTION FOR DISCOVERY	10/21/2021	07:26 AM
VRJUDICIAL ORDER MOTION FOR CONTINUANCE	10/21/2021	07:28 AM
VRTO BE SCHEDULED FOR CRIMINAL APPEARANCE DOCKET	10/21/2021	07:34 AM
VRCORRESPONDENCE FROM E-MAIL	10/21/2021	07:37 AM
VRLEA, NOT GUILTY	10/21/2021	08:43 AM
VRCORRESPONDENCE FROM E-MAIL	10/21/2021	02:31 PM
VRACTION FOR DISCOVERY	10/28/2021	02:31 PM
VRATTORNEY LETTER OF REPRESENTATION	10/28/2021	02:31 PM
VRATTORNEY ADDED TO CASE	10/28/2021	02:31 PM
VRTO BE SCHEDULED FOR ATTORNEY DOCKET	10/28/2021	02:31 PM
VRCORRESPONDENCE FROM E-MAIL	10/28/2021	02:33 PM

UNITED STATES 5th CIRCUIT APPELLATE COURT

Julian M. Reyes  
Plaintiff

v.

§  
§ Appellate Case no. 21-50013  
§ Originating Case no. 1:19-cv-00367

OFFICERS QUINT SEBEK, Badge  
3454, SGT VALLEJO, CAPN  
RYAN, AUSTIN POLICE  
DEPARTMENT, and other  
responsible "JOHN DOE"  
parties to be named later through the  
proper discovery of evidence,  
all individually and in their official  
capacities

§  
§  
§  
§

Defendants

**Motion for Reconsideration of Extension of Time to file Sufficient Brief, citations, appendix and record excerpts**

I, Julian Reyes, pro se, request an extension of time of for 30-90 additional days to file the appellant’s brief. Time to be able to file it sufficiently, hopefully, including citations, appendix and record excerpts. Legal techniques and legal process that I still do not understand well enough to accomplish without legal assistance. Legal assistance that I have been unable so far to afford, and legal assistance which the Court has not been willing to assist this indigent pro se

complainant with to date. The Court having previously denied my motions and pleas for appointment of sufficient Counsel or legal aide.

I am currently still very ill due to the the diagnoses of Covid-19 Pneumonia. And I have fever, body aches, headache, and problems regulating my temperature. I have low Oxygen and my energy is depleted due to this illness as well. I am forced to shelter in place and trying to get well as much as possible. I have been prescribed Albuterol inhaler and urged by the Doctor and the Nurse to report to an emergency room immediately and get on a regimen of intravenous antibiotics. There is a possibility that I could die in my sleep from the fluid in my lungs, according to the doctor on the phone, unless I go to an Emergency Room at the Hospital and seek immediate care. The U.S.A. and Austin are both still in pandemic emergency and CDC guidance for the Covid-19 pandemic. I seek leniency and understanding on this case for this reason and all the legal access reasons that I previously stated and are found below. **See Exhibits A, B**

Before I filed the last motions for extension of time. I was instructed by the case team to file the motion for extension of time and extension of time to file a sufficient brief. And then the same team member seems to have denied my motion without consideration of the amount of limitations that this pro se indigent plaintiff

is under or my sickness or even provide an oral hearing over Zoom to present my arguments in a better forum, as I requested Oral Argument in all my motions.

One major limitation and cause of needing time is that I have not had access to an attorney or research staff. As the defenses' legal team from the City of Austin Legal Department has ready access to almost unlimited resources at their disposal, creating many advantages and immunities to law, transparency and accountability of public servants working with the public.

All the while the Travis County Law Library, where my research lies, remains closed due to Covid closures. When I spoke to them this week they told me they do not have an ETA or plan for when they will reopen from the Covid closure. **See Exhibit C.** And that is another reason I have had limitations on access to law and any assistance or resources there for the brief, for rules, opinions and procedures and to cite relevant case law. Which also seems to not be considered by the Court and clerks.

I still feel an overwhelming need to have an attorney to assist with this case and the brief for this case. Which I do not understand. I will continue to ask about legal advise or an available attorney on my own. I will continue to study and work on the brief and try to obtain access to actually research relevant case law, wait for

the Travis County Law Library to reopen. Albeit case research has proven very difficult to read and use I have found. **See Exhibit C**

This case did not have the assistance of counsel and that is why it struggled under the rules, deadlines and complexity of the law itself. The complexity of laws, procedures, rules and lack of access to law is not the fault of this pro se indigent. It is the fault of the system and the law. The law, rules, procedures present an ever-growing complex of barriers against the access of law for indigent laymen and people in the U.S.A. in similar conditions.

Though this case's merits met the scrutiny of the District Court. The reason that I have appealed the decisions of the District Court is access to the law and legal counsel in the interests of Justice and Equality under the law. Access to law should not be this complicated, complicit to injustice, or a barrier itself to Justice and Equal Justice under the Law. There are unresolved complicated but very important inalienable constitutional issues and basic rights at risk in this case, including but not limited to 1st amendment rights of free speech and free press, transparency of government, accountability of public servants, access to law and the courts, access to a path for indigent pro se litigants to access to counsel and the law, and our rights to a forum in court for discovery of evidence and a right to a redress of grievances should we have our rights stripped by public servants

working as confederates together in conspiracy of parties against our rights. Also there are unresolved essential and inalienable Constitutional questions of Citizens' rights to protections under the 4th, 14th, 5th, and 8th amendments to the Constitution of the U.S.A. in this case that are at risk of losing without justice and access to law, counsel and the court. The barriers I have noticed in this case being rules, procedure and inability to access legal help. Which prevented even discovery of evidence, a basic process of our rights to justice and accesses listed above.

As you can see by the parties in my complaint I still have not been provided with any evidence that would shed a light of day on the officers involved or even Captain Ryan's actual name for over a year now in this case, so that I could properly name all the responsible and harming parties that retaliated for my free speech, filming, and free press rights causing me harm to my other constitutional protections the 4th, 14th, and 8th amendments as well as USC 1985 conspiracy of parties to deprive me of my first amendment rights listed above. See title and parties. And also see the dismissal disposition without prejudice from the lower District Court of Austin.

Though I have been reading the FRAP and confused by them, the language, the nuances of the rules and law, and rules behind them and surrounding them. I

have concentrated on the brief rules and found them overly cumbersome, the rules on the brief outlines, the technical details for appendix and citations and not to mention finding relevant case law. In fact some of the rules not only contradict established case law, like access to counsel and the courts. Some of the rules , it appears to me, create barriers to justice and civil rights, also creating injustice in themselves, outside of the Judicial Review system created by the case law and constitutional law system itself. Rules should not supersede or be a barrier of Justice and our Rights to access. Instead the court's rules should enhance and support justice and our rights to access to law, the courts and counsel. In the interest of justice for all. Not just for those that have ample funds to hire lawyers. Creating a class based system that supports the status quo and bars the indigent, pro se persons' rights and justice. If all people are created equally, with equal access, regardless of a person's unequal access to the US dollar stacks in their coffer and BAR cards.

In contacting the Appellate Court's Law Library they did not have any information to assist indigent pro se litigants with the brief. They referred me to find counsel or do my own legal research. A barrier to justice and access. This should be remedied immediately for all pro se litigants seeking help with cases in this court.

As I am an indigent layman all the above were all further barriers for legal, rules, case law and research for me. I have been unable to access research materials and law that are I feel required to my filing a sufficient and successful brief to allow me to find justice in the court. The process and rules of the Court have proven laborious barriers to me as I am without counsel, without proper legal training and the pandemic has more severely limited any real access to the law and research of the law and this appellate law. Which, if resolved, should have led to the best results of Justice for all and support of the rights of regular Citizens of the U.S.A.. To support the Citizens' rights, justice and the Constitution of the U.S.A.. Many public servants swore an Oath to defend the people and Constitutional law of the U.S.A. and yet there are judicially constructed barriers to those Oaths being fulfilled. We must review and scrutinize those barriers to truly have freedom, rights and justice for all in the U.S.A. for the people that the law is meant to serve, the citizen, the indigent, the regular Joes of America, like myself.

I still do not understand the brief well or have access to case law and tools of legal research.

These are the details that take up time. Counsel, if I had counsel, would already be familiar with rules, procedures, legal research, briefs and would have access to specialized research tools, templates, forms and legal research subscriptions, legal publications that are readily available for lawyers and are expensive. That cost is a barrier to access for indigent pro se people like myself. If I had counsel this case would have in turn been already expedited to proceed on it's merits and questions of constitutional basis under Constitutional issues of the 1st, 4th, 14th and 8th amendments, U.S.C. 42 sections 1983 and 1985. Not bogged down like it is now, dismissed prematurely, due to rules, technicalities and complexities of the process of law for me, an untrained layman indigent Citizen.

After conversation with the Appellate Court's Case Team I decided to request these extensions of time. Which are to presently being denied and impacting my case, with multiple dismissals. I filed this as instructed by the clerk at the time of the pending deadline. Because the brief still remains more complex than I had realized and the appendix, excerpts are not to be delayed after filing the brief as I had previously thought from my readings of the rules of procedure. Which would have provided me more time, as I had read some place previously online.

Presently the record excerpts and appendix rules are still confusing to me. And I would not be able to get much done before the brief's deadline with extensions of time. It's overwhelming and inaccessible to me presently, without counsel or access to law and the courts.

I would like to request a reconsideration to the answer to the Motion to Appoint Counsel that is the primary limitation of access to law and justice in this case keeping it from a righteous conclusion under law. And the limitation to my completing a sufficient brief, etc.

As I am still just a layman without good working knowledge of the processes, procedures, briefs and rules of the Courts. Having no formal access or training in law. And facing the team of attorneys of the Defense that work for the City of Austin, Inc. in a complex case involving rules, laws, procedures, legal wording, constitutional protections, significant constitutional questions of lawful rights, important discovery of evidence and a myriad of case law and research that I have no good working knowledge of or meaningful and ready access to such knowledge, subscriptions, and tools. Most especially because I am pro se and indigent. I have been chronically homeless for over 20 years now, off and on.

In the interests of Justice and in the interests of the Court to process and progress this case to it's due justice and equitable access to Justice and resolution of these issues of law that impact many citizens' inalienable rights, transparency of government, accountability and justice for all, including indigent pro se litigants like me.

In fact I was arrested for a class c, fine only, misdemeanor this Sunday for my free speech on a public sidewalk. And this is one of about 10 so arrests by Austin Police agents, acting together, to deprive me of my rights to free speech and free press, transparency of government, accountability of police, and due process rights. There has been a clear pattern of deprivation of rights in the same manner in all these cases. So as you see the City and it's police are continually keeping me busy in court defending my rights and my person from unlawful and unnecessary retaliatory imprisonment and punishment for clearly and well established constitutional rights. The federal civil courts are the venue for justice for all in this matter. See Exhibits D, E.

I currently have 8 or 9 open retaliatory (police abuse) arrests in 2 courts in Austin, some in County Court 9, Judge Kim Williams is aware of the police retaliation in my cases. As I have informed her several times. And 2 more cases in the Municipal Court system. All misdemeanor arrests for filming the police depriving poor people of their rights except this Sundays' arrest which was for protesting for

homes for the unhoused people of Austin and for corporate funding of housing, as the cost of rent is way too high in Austin for the common person who lives here without fat stacks of cash to live here anymore. Myself and others became unhoused due to rent, evictions and chronic illness, without a safety net. So I was arrested for my free speech and the case is pending. In the current covid state of procedures and backlog in the courts it could be 2 more years of time spent waiting and working these cases. That alone is too much for me. I do have pro bono indigency criminal defense attorneys. But they do not know how to connect me with Civil Rights attorneys, although we have been trying to contact several to date. So the punishment for free speech and filming by the Austin Police Department and their agents is ongoing, constant, and formidable. That is why I filed this complaint case, as no other means of accountability of justice worked. This court has the responsibility for justice and access to law in this case. I am overwhelmed and ill with pneumonia still. See Exhibits D, E.

### **PLEAS**

1. This pro se plaintiff also requests process and legal leniency from the Court. As I am only a pro se litigant seeking Justice. I am presently without an attorney, in this case trying to keep up with this case's legal requirements without

proper access to the law as I stated above. All during a pandemic with current closures and stresses still under cover restrictions in Austin. **See Exhibit C**

2. I also pray that the Court will grant me time to complete and submit a sufficient and complete brief, record excerpts, and appendix, etc.

3. I also request the Court review and reconsider my previous Motions for Appointment of Counsel, please, thank you. For the Brief to be filed sufficiently, and by the enormous burden of the regulations and rules regarding this and the case law, legal opinions, to support my appeal. To handle the complexities of evidence and matters of law and to assist this indigent pro se layman seeking remedy under law for his grievances against these officers and the pattern and practice of abusing several of our constitutionally protected rights outside of the law, listed above. For access to evidence in this case. And to move towards my day in Court. Probably my only prayer and chance for actual Justice and access to the Court and law. Assignment of Counsel. as there is a submitted Motion for Appointment of Counsel, that would satisfy these needs. Please help to expedite this case in Justice and the Court, with appointment of counsel, which would be an actual asset to Justice for all parties including the Court itself.

4. I pray and request the court to please allow me in this case meaningful access to law. With access to meaningful justice. And to facilitate the flow of Justice in this case. Proceeding in an orderly manner to it's speedy and equitable, just and fair conclusion.

5. I believe that I have a right to an indigent counsel in this appeals case and court because I believe this case involves grievances against agents of the government and that this case involves important, inseparable fundamental constitutional rights.

6. In fact Federal Civil Courts regularly appoint counsel to represent indigents in civil matters. And I believe that the Court has this power to do so in this and every indigent case. Especially considering the important constitutional considerations of this case. It should be that no indigent person, or human, in this land should be denied the meaningful access, opportunity to have their legal claims decided fairly.

7. It is not remotely fair or just when the City of Austin has almost unlimited resources and attorneys and yet I cannot get justice due to this barrier of no counsel and no access. Creating an unfair limited access to justice and law on serious constitutional issues herein. In the interest of judicial fairness and access for this

indigent pro se litigant, without legal access or counsel, as they know the rules, procedures, case law and practice of law, with law education and BAR cards. They don't get their cases dismissed on technicalities, like I do. I am just a pro se litigant without access to legal education, training, BAR card, case law access, or meaningful access to the Court and it's rules and procedures, etc. which I find very confusing and voluminous. This can be shown in how this case and others in Civil court have been dismissed repeatedly for the same access issues and technicalities, despite my best efforts. The key is access to the law and counsel.

**8.** Our fundamental rights are at risk in this case. Well-established protected rights have been taken including freedom to travel freely, free speech, freedom of the press, protection from unlawful arrest, search and seizure, protection from police retaliation, abuse, cruel and unusual punishment, due process of law, conspiracy of parties and 42 U.S.C. section 1983 originally called the Klu Klux Klan Act which was the Congress' law to curb deprivation of Rights in the post Civil War, Civil Rights era of United States of American history. These rights are not only fundamental, they protect our persons, property, abilities, and our very lives are at risk.

**9.** Unlike in some criminal cases, there is no well established right to appointed counsel for pro se plaintiffs who have filed civil rights cases in federal court. It is however a practice that is done regularly and by the courts for indigent cases with constitutional issues at risk. This power comes from 28 U.S.C. §1915(e)(1), which reads in full, "The court may request an attorney to represent any person unable to afford counsel." (Emphasis added.)x

**10.** This Court still has jurisdiction of 1983 cases in the 5h Circuit which includes Austin, Texas. The Courts have seen that this 1983 case has merits and is not frivolous.

**11.** This case is complex with many parties, evidentiary discovery, depositions, complicated and obscure procedures, rules, barriers and pitfalls for premature dismissal, as you can see on the record from the Austin Federal District Court to this Appellate Court, 5th Circuit. This is only compounded by the lack of access and barriers and illness listed above. Which I cannot do alone without counsel, as seen by the multiple errors and my inability to file a sufficient brief.

**12.** One should not represent themselves in a Court, let alone in an Appellate Court, without counsel and legal support. Even the Case Team and the Law librarians and the information from the library and online all say the same mantra. Get a lawyer. Don't do this on your own it's too difficult for the layman and the indigent.

If a hearing would be necessary, I pray for that opportunity to show and state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advice or counsel. **Oral Argument Requested.** No rights waived, all rights reserved.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_ October \_\_\_\_\_, 2021 \_\_\_\_\_.

Respectfully submitted,

\_\_\_\_\_  
Signature Pro Se

Mr. Julian Reyes  
512 785-1749  
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Suite 160c Box 147  
Austin, Texas, U.S.A. 78759  
[justicenowpeople@protonmail.com](mailto:justicenowpeople@protonmail.com)  
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**Certificate of Conference**

I, Julian Reyes, pro se litigant, have conferred with counsel for defense, Mr. David May and Mr. Gray Laird and received the following response from the email servers:

“I'm sorry to have to inform you that your message could not be delivered to one or more recipients. It's attached below.”

...

“ <David.May@austintexas.gov>: host gatekeeper.austintexas.gov[162.89.0.15] said:

550 5.7.0 Local Policy Violation (in reply to RCPT TO command) “

...

“ Final-Recipient: rfc822; David.May@austintexas.gov  
Original-Recipient: rfc822;David.May@austintexas.gov  
Action: failed  
Status: 5.7.0  
Remote-MTA: dns; gatekeeper.austintexas.gov  
Diagnostic-Code: smtp; 550 5.7.0 Local Policy Violation “

And from Mr. Gray Laird:

\_\_\_\_\_, pro se

**Certificate of Service**

I, Julian Reyes, pro se litigant, hereby certify that I have communicated this motion/document with the 5th Circuit Court of Appeals using the CM/ECF filing system, which will cause a copy of the document to be electronically delivered to Appellant’s attorney, Mr. David May, defendants’ counsel.

\_\_\_\_\_, pro se

**Certificate of Compliance**

I, Julian Reyes, pro se litigant, hereby certify on. \_\_\_\_\_, 2021 that,

1. This document complies with the word limit of Fed. R. App. P.27(d)(2) (A) because this document contains approximately 2500 words or does not exceed 20 pages.

2. This document complies with the typeface requirements of Fed. R.App. P. 27(d) (1)(E) and 32(a)(5) and the type-style requirements of Fed. R. App. P. 27(d)(1) (E) and 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Apple Pages version 5.6 in 14-point Times New Roman.

, pro se

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

October 29, 2021

Mr. Julian M. Reyes  
We The People  
10900 Research Boulevard  
Suite 160C, Box 147  
Austin, TX 78759

No. 21-50013      Reyes v. Sebek  
USDC No. 1:19-CV-367

Dear Mr. Reyes,

We will take no action on your motion for reconsideration because it is untimely. The time for filing a motion for reconsideration under **5TH CIR. R. 27** has expired.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Melissa V. Mattingly, Deputy Clerk  
504-310-7719

cc: Mr. Henry Gray Laird III

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**UNITED STATES COURT APPEALS  
FOR THE FIFTH CIRCUIT**

Julian M. Reyes,  
Plaintiff-Appellant,

v.

OFFICERS QUINT SEBEK, BDGE  
3454, SGT VALLEJO, CAPN  
RYAN, AUSTIN POLICE  
DEPARTMENT, and other  
responsible "JOHN DOE" parties to  
be named later through the proper  
discovery of evidence, all  
individually and in their official  
capacities

Defendants-Appellees.

No. 21-50013

Case No.: 1:19-cv-00367  
U.S. District Court, Western District of  
Texas-Austin Div.

**APPELLANTS' MOTION TO REOPEN  
APPEAL**

THE HEMMING FIRM  
222 WEST 6<sup>TH</sup> STREET, STE 400  
SAN PEDRO, CA 90731

Krista R. Hemming, SBN 304213  
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Attorney for Plaintiff  
JULIAN REYES  
Plaintiff-Appellant

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**I. LEGAL STANDARD**

The Federal Rules of Appellate Procedure mandate that the clerk must dismiss appeals for want of prosecution, in cases where the appellant fails to file a brief or excerpts of the record. Fed. R. App. P. 42.3.2. However, if the case is dismissed without prejudice, the clerk may reinstate the appeal upon request from any party.

In this case, the clerk dismissed the appeal on October 13, 2021, for want of prosecution under Fifth Cir. R. 42.3. In the order, the clerk allows for appellant to move to “reopen the appeal” if “record excerpts and a sufficient brief” accompany the motion to reopen. Appellant now seeks to reopen their appeal.

**II. FACTUAL ANALYSIS**

On or about March 29, 2019, Appellant in pro se filed a federal civil right complaint in the above captioned case. On or about December 18, 2020, the U.S. District Court dismissed the matter, and the Appellant timely filed a notice of appeal. Briefing was ordered, however Appellant, who was in pro se was unable to properly and timely file a correctly formatted brief and excerpts of the record. While the appellant did continue to communicate with the Court, by requesting and receiving 30-day extensions, and requesting appointment of Counsel, which was denied on July 1, 2021.

On September 16, 2021, Appellant filed a brief deemed insufficient by the

1 Court, and on October 13, 2021, the Clerk dismissed the case for want of  
2 prosecution. In In the order, the clerk allows for appellant to move to “reopen the  
3 appeal” if “record excerpts and a sufficient brief” accompany the motion to  
4 reopen. Appellant has contracted with the below signed counsel to prosecute and  
5 litigate this appeal. Appellant’s undersigned counsel has filed an opening brief and  
6 excerpts of the record in accordance with the Clerk’s dismissal, and now moves to  
7  
8 reopen this appeal.

10 **III. CONCLUSION**

11 Appellant has retained counsel to prosecute and litigate this appeal. As  
12 required by the court, an Appellant’s opening brief and excerpts of the record have  
13 been filed with the court concurrently. Therefore, Appellant respectfully requests  
14 that the Court reconsider and reopen Appellant’s appeal.  
15  
16

17  
18  
19 THE HEMMING FIRM



20  
21  
22 DATED: April 13, 2022

23 Bv: KRISTA R. HEMMING  
24 Attorneys for  
25 **PLAINTIFF-APPELLANT**  
26 **JULIAN REYES**  
27  
28

THE HEMMING FIRM  
222 WEST 6<sup>TH</sup> STREET, STE 400  
SAN PEDRO, CA 90731

**CERTIFICATE OF COMPLIANCE**

This motion complies with the type-volume limitation of Fed.R.App.P. 27(d)(2) because, pursuant to the word-count feature of the word processing program used to prepare this motion, this motion contains 352 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(f).

This motion complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word, in 14-point, Times New Roman.

DATED this 13 day of April, 2022.

Bv:   
KRISTA R. HEMMING  
Attorneys for  
**PLAINTIFF-APPELLANT**  
**JULIAN REYES**

THE HEMMING FIRM  
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**CERTIFICATE OF SERVICE FORM FOR ELECTRONIC FILINGS**

I hereby certify that on April 13, 2022, I electronically filed the foregoing document with the United States Fifth Circuit Appellant Court using the CM/ECF system. I certify that all parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system.



Bv: \_\_\_\_\_

**KRISTA R. HEMMING**  
Attorneys for  
**PLAINTIFF-APPELLANT**  
**JULIAN REYES**

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**No. 21-50013**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

JULIAN M. REYES,

*Plaintiff-Appellant*

v.

OFFICER QUINT SEBEK, et al.,

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Western District of Texas-Austin  
No. 1:19-cv-00367-LY  
Hon. Lee Yeakel

---

**APPELLANT'S OPENING BRIEF**

---

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Tel: 657-342-1488  
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*Attorneys for Appellant  
Julian M. Reyes*

## CERTIFICATE OF INTERESTED PERSONS

In accordance with the Federal Rule of Appellate Procedure 26.1, and Fifth Circuit Rule 28.2.1, I certify that the following individuals may have an interest in the outcome of this case:

1. Hon. Lee Yeakel – *U.S. District Court Judge*
2. Hon. Mark Lane – *U.S. District Court Magistrate Judge*
3. Julian M. Reyes – *Appellant/Plaintiff*
4. Quint Sebek – *Appellee/Defendant*
5. Carlos Vallejo - *Appellee/Defendant*
6. Captain Ryan - *Appellee/Defendant*
7. City of Austin – *Appellee/Defendant*
8. Austin Police Department – *Appellee/Defendant*
9. Anne Morgan – *City Attorney*
10. Meghan L. Riley – *Deputy City Attorney*

The Hemming Firm,

/s/ Krista R. Hemming

Krista R. Hemming  
*Attorneys for Appellant Julian M. Reyes*

**STATEMENT REGARDING ORAL ARGUMENT**

If the Court believes that oral arguments would be beneficial in understanding or deciding the underlying issues, or if the questions presented reveal a new and novel issue, Appellant respectfully requests oral arguments be conducted.

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## INTRODUCTION

This case arises from an incident which occurred on or about April 1, 2017, between Appellant Julian M. Reyes (hereinafter “Appellant” or “Mr. Reyes”) and several City of Austin (hereinafter “The City” or “City”) Police Officers. On that occasion Mr. Reyes was stopped and subsequently arrested because he was filming City Police Officers. Mr. Reyes was arrested, but later released. No charges were filed.

In March of 2019, Mr. Reyes, filed a federal lawsuit in *pro se*, against Defendants City of Austin (hereinafter “City”), Austin Police Department (hereinafter “PPD”), and several Austin Police Department Officers, (collectively known as “Defendants”) for violations of Mr. Reyes Constitutional and Civil Rights.

On June 28, 2019, Mr. Reyes filed a Motion to Appoint Counsel, which was denied by Judge Mark Lane on November 1, 2019. On or about October 27, 2020, the court issued an Order to Show Cause why the case should not be dismissed for want of prosecution. The Court gave Mr. Reyes six days to respond, and then promptly dismissed the case on November 4, 2020. Mr. Reyes filed a Motion for Relief from final judgement on December 6, 2020, which was denied by the court on December 18, 2020. Plaintiff now appeals from final judgement.

## **JURISDICTIONAL STATEMENT**

The underlying action was brought pursuant to 42 U.S.C. § 1983 as well as the First, Fourth, and Fourteenth Amendments to the United States Constitution. The United States District Court for the Western District of Texas had jurisdiction over this action pursuant to 28 U.S.C. § 1331, and 28 U.S.C. § 1343. All events complaint of occurred in the County of Travis, State of Texas. This Court has jurisdiction over the resulting appeal based on 28 U.S.C. § 1291. A final order dismissing the underlying action and all parties was entered by the U.S. District Court on December 18, 2020, and a notice of appeal was filed on January 5, 2021.

## **ISSUES PRESENTED**

Whether the District Court erred in denying Mr. Reyes the appointment of counsel.

Whether the District court erred in dismissing the underlying suit; and not granting Mr. Reyes Rule60(b) Motion.

## STATEMENT OF THE CASE

On or about April 1, 2017, Mr. Reyes was filming Austin Police Officers while they were in the course and scope of their employment, when he was approached by Austin Police Officer Sebek (hereinafter “Sebek”). (EOR p. 2). Mr. Reyes indicated that he had a right and purpose to be on the public property, and that his actions, of filming the police, was a protected activity. (ERO p. 2). Nonetheless Officer Sebek arrested Mr. Reyes. Mr. Reyes was taken to jail and was released hours later without charges. (ERO p. 2).

In March of 2019, Mr. Reyes in pro se, filed a civil rights lawsuit in the U.S. District Court for the Western District of Texas. (EOR p. 1) Plaintiff also filed an Application to Proceed in Forma Pauperis and Financial Affidavit in Support of. (EOR p. 6). On April 2, 2019, in its Order on In Forma Pauperis Status and Report and Recommendation on the Merits of the Claims, the Court granted Mr. Reyes request to proceed *in forma pauperis* status. (EOR p, 10).

In May of 2019 the Clerk for the U.S. District Court for the Western District of Texas issued Summons for the individually named defendants, (EOR p. 32-36), which was returned executed on June 3, 2019, as to two of the three defendants (EOR p. 38-42). On June 13, 2019, Defendants Sebek and Vallejo filed an answer, and the case became at issue. (EOR p, 42).

On June 28, 2019, Mr. Reyes filed two motions. One was for the appointment of counsel (EOR p.46), and the other for assistance with Efile. (EOR p. 49). Both motions indicated the Mr. Reyes, as a layman in pro se, was having difficulty accessing the courts and/or prosecuting his case. Plaintiff's motions were referred to the U.S. Magistrate Judge Mark Lane, (EOR p. 51). In the Court's denial of Counsel, it notes that this is Mr. Reyes fourth civil rights suit. (EOR p. 53) In two other cases, Mr. Reyes requested counsel but was denied, and the cases subsequently dismissed (EOR p. 53-54). The Court also notes that in one case Mr. Reyes did receive appointed counsel, and the case was resolved through settlement. (EOR p.53). Ultimately the Court found that this case did not present new, novel or complex issues that go beyond Mr. Reyes abilities, and denied the motion. (EOR p. 55).

Mr. Reyes proceeded without the assistance of counsel, and on October 27, 2020 the Court issued an Order to Show Cause as to why the case should not be dismissed for lack of prosecution, as there had been no action on the case of nearly one year. (EOR p. 56). When Mr. Reyes failed to respond to the Order to Show Cause, the Court issued a Final Judgement on November 4, 2020 dismissing the entire action. (EOR p. 57).

On December 6, 2020, Mr. Reyes filed a Motion to Stay Order To Dismiss/Set Aside Final Judgement and Keep Case Open (EOR p. 58), which the

Court construed as a Fed. Rules of Civil Procedure Rule 60(b) Motion for Relief from Final Judgment. (EOR p. 74). In his motion Mr. Reyes cites several reasons why the case was dormant for one year, including: COVID-19, unable to access public libraries and law libraries; personal illness; and absence of assistance of counsel. (EOR p. 58-60). Mr. Reyes then included a proposed scheduling order, indicating he was ready and able to proceed with the matter. (EOR p. 61, 65). On December 18, 2020, the Court denied Mr. Reyes motion, (EOR p. 73), and Mr. Reyes promptly filed his notice of appeal. (EOR p. 75).

### **SUMMARY OF THE ARGUMENT**

The District Court erred in not appointing counsel for Mr. Reyes because Mr. Reyes is not adequately capable of presenting his case, nor is he in a position to adequately investigate his case and lacks the required skill in the presentation of evidence and in cross-examination.

Further, the District Court erred in denying Plaintiff's Rule 60(b) motion because extraordinary circumstances exist.

### **STANDARD OF REVIEW**

Plaintiff is appealing the decision of the U.S. District Court in: 1) denying Plaintiff's request for appointment of counsel; and 2) denying the Plaintiff's

Motion for Relief from Final Judgment, or 60(b) motion. Granting or denying a motion to appoint counsel and/or a Rule 60(b) is within the discretion of the district court and therefore is reviewed under the abuse of discretion. (*See; In re Grimland, Inc.*, 243 F.3d 228, 233 (5th Cir. 2001); *Baranowski v. Hart*, 486 F.3d 112, 126 (5th Cir. 2007); and *Halicki v. La. Casino Cruises, Inc.*, 151 F.3d 465, 470 (5th Cir.1998), cert. denied, 526 U.S. 1005, 119 S.Ct. 1143, 143 L.Ed.2d 210 (1999).

### ARGUMENT

Decisions that are left to the district courts discretions are therefore, “reviewable for ‘abuse of discretion.” *Pierce v. Underwood*, 487 U.S. 552, 558, 108 S.Ct. 2541, 101 L.Ed.2d 490 (1988); *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563–64 (2014). An appellate court would have abused its discretion if its ruling was based on an erroneous view of the law, or erroneous assessment of the facts, however, this standard does not preclude an appellate court from correcting a district court’s legal or factual error. *Id.*

- 1. The District Court Erred In Not Appointing Counsel For Mr. Reyes Because Mr. Reyes Is Not Adequately Capable Of Presenting His Case, Nor Is He In A Position To Adequately Investigate His Case And Lacks The Required Skill In The Presentation Of Evidence And In Cross-Examination.**

The Fifth Circuit Court of Appeals in *Ulmer v. Chancellor*, 691 F.2d 209 (5th Cir.1982), laid out a set of four factors that a district court should consider when ruling on Motion to Appoint Counsel. These four factors are: (1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination” *Jackson v. Dallas Police Dep't*, 811 F.2d 260, 261–62 (5th Cir. 1986); See Also *Ulmer*, 691 F.2d at 213. Additionally, the court should “consider whether appointed counsel would aid in the efficient and equitable disposition of the case.” *Id.*

**a. Mr. Reyes is not capable of adequately presenting his case**

Mr. Reyes has a basic education and works part time as an organic gardener, and artist. (EOR p. 47). On June 28, 2019, Mr. Reyes filed two motions. One was for the appointment of counsel (EOR p.46), and the other for assistance with Efile. (EOR p. 49). Both motions indicated the Mr. Reyes, as a layman in pro se, was having difficulty accessing the courts and/or prosecuting his case.

Without adequate access to systems like Efile, Mr. Reyes would not be able adequately prosecute his case. Further, Mr. Reyes indicated in both motions filed before the court that as a layman he was not versed in the law or in the prosecution

of civil rights cases. As this court is aware civil rights cases, especially those involving police officer often have specialized nuances like qualified immunity which take a trained legal mind to decipher. Mr. Reyes is simply not capable of that.

**b. Mr. Reyes is not in a position to adequately investigate his case**

Mr. Reyes operates on a limited budget and is homeless and indigent. (EOR p. 49). In this case he was granted permission to proceed *In Forma Pauperis* thereby waiving any requirement to pay fees (EOR p. 16). Mr. Reyes has limited resources and during the COVID-19 pandemic, was unable to access libraries, law libraries or internet cafes. (EOR p. 60). Based on his limited resources, experience and knowledge Mr. Reyes clearly would not be able to conduct an adequate investigation, nor would he be able to participate in the discovery process or conduct defendant depositions. Mr. Reyes indigent status made him an obvious choice for appointed counsel, therefore the district court abused its discretion in denying Mr. Reyes motion.

**c. Appointed Counsel would aid in the efficient and equitable disposition for the case and be able to bring the required skill in the presentation of evidence and cross-examination.**

As the court points out in its decision denying Mr. Reyes appointment of counsel, Mr. Reyes has had at least three other federal civil rights cases. The court

notes that in two other cases, Mr. Reyes requested counsel but was denied, and the cases subsequently dismissed (EOR p. 53-54). The Court also states that in one case Mr. Reyes did receive appointed counsel, and the case was resolved through settlement. (EOR p.53). It is clear that appointed counsel would aid not only Mr. Reyes, but also court and opposing counsel, in the efficient and equitable disposition for the case. Absent counsel, Mr. Reyes is denied his “day in court”, as the cases ultimately end in a dismissal for technical errors; such as the case here.

Further, it is equally clear from the record that Mr. Reyes is not able to bring the required skill need to effectively prosecute and present a federal civil rights case. Nor is Mr. Reyes skilled enough to cross examine a police officer. Police officer regularly appear in court and are well versed in giving testimony and facing hostile questions from opposing counsel. This case involves three police officer defendants (EOR p.27-32), each experienced and skilled in providing testimony and being cross-examined. Mr. Reyes does not possess the skill, knowledge, or experience to effectively question the defendants or percipient witnesses.

It is clear that appointed counsel would aid the progression and prosecution of the case; therefore, it was an abuse of discretion for the lower court to deny Mr. Reyes’ Motion for Appointed Counsel.

The lower court abused its discretion in denying Mr. Reyes appointed counsel, and he and the record clearly demonstrated a need for appointed counsel.

Further, the Court could have referred the case to the Pro Bono Panel, as there are thousands of Texas attorneys ready, willing, and able to provide pro bono hours. Mr. Reyes respectfully requests this Court remand the case for appointment of counsel or in the alternative a referral to the court's pro bono panel for appointment.

**2. District Court Erred In Denying Plaintiff's Rule 60(B) Motion Because Extraordinary Circumstances Exist.**

A party may seek Relief from a Final Judgment for a number of reasons including “mistake, inadvertence, surprise, or excusable neglect” or “any other reason that justifies relief” Fed. R. Civ. Pro. 60(b). “Implicit in the fact that Rule 60(b)(1) affords extraordinary relief is the requirement that the movant make a sufficient showing of unusual or unique circumstances justifying such relief.: *Pryor v. U.S. Postal Serv.*, 769 F.2d 281, 286 (5th Cir. 1985). See Also *Flores v. Proconier*, 745 F.2d 338, 339 (5th Cir.1984); *Vela v. Western Electric Co.*, 709 F.2d 375, 377 (5th Cir.1983); *Davis v. Safeway Stores, Inc.*, 532 F.2d 489, 490 (5th Cir.1976); cf. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 635–36, 82 S.Ct. 1386, 1391, 8 L.Ed.2d 734 (1962).

As a preliminary issue, it should be noted that the court issued an order to show cause on October 27, 2020, and mere eight days later dismissed the case for failure to respond to the Order to Show Cause. (EOR p56-57). As Mr. Reyes had

already notified the Court that he needed assistance with the e-filing system (EOR p. 54), it was unreasonable for the court to only allow eight days for Mr. Reyes to adequately respond to the order to show cause.

In response to the court dismissing his case, Mr. Reyes filed what the lower court construed as a Fed. Rules of Civil Procedure Rule 60(b) Motion for Relief from Final Judgment. (EOR p. 74). In his motion Mr. Reyes cites several reasons why the case was dormant for one year, including: COVID-19, unable to access public libraries and law libraries; personal illness; and absence of assistance of counsel. (EOR p. 58-60). It is undeniable that 2020 and 2021 were unprecedented times in the United States. As the COVID-19 pandemic raged on, many facilities were closed to the public, including libraries, law libraries and internet cafes. Mr. Reyes, and *pro se* litigant was at the whim of “stay-at-home orders” and mandated closures. As a result, Mr. Reyes was not able to access the resources he needed to adequately prosecute his civil rights case. Due to this excusable neglect the case went dormant for nearly a year. However, as the restrictions lifted, Mr. Reyes was able to access what he needed to continue with the case and indicated that he was ready and willing to do so by filing a “proposed scheduling order” (EOR p. 65).

Mr. Reyes demonstrated that unusual and extreme circumstances existed (the COVID-19 pandemic) which caused excusable neglect of his civil rights

cases. Therefore, the District Court erred in denying Mr. Reyes Rule 60(b) motion, and the case should be reinstated.

### CONCLUSION

The District Court erred in not appointing counsel for Mr. Reyes because he was not adequately capable of presenting his case, nor was he in a position to adequately investigate his case and lacks the required skill in the presentation of evidence and in cross-examination. Further, The District Court erred in denying plaintiff's rule 60(b) motion because extraordinary circumstances exist. For the forgoing reasons, Appellant respectfully requests this court reverse the lower court's decision to dismiss the matter and remand the case for the appointment of counsel.

Date: April 13, 2022

The Hemming Firm,

/s/ Krista R. Hemming\_\_\_\_\_

Krista R. Hemming  
*Attorneys for Appellant Julian M. Reyes*

### CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2.7(c), the undersigned certifies this brief complies with the type-volume limitations of 5th Cir. R. 32.2.7(b).

1. Exclusive of the exempted portion in 5th Cir. R. 32.2.7(b)(3), this brief contains well fewer than 13,000 words.
2. This brief has been prepared in proportionally spaced typeface using Word in Times New Roman typeface and 14 point font size.
3. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5th Cir. R. 32.2.7, may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

Date: April 13, 2022

The Hemming Firm,

/s/ Krista R. Hemming\_\_\_\_\_

Krista R. Hemming  
*Attorneys for Appellant Julian M. Reyes*

***United States Court of Appeals***  
FIFTH CIRCUIT  
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April 19, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

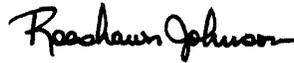
No. 21-50013      Reyes v. Sebek  
USDC No. 1:19-CV-367

The court has denied appellant's motion to reopen the appeal. Your appeal was dismissed on October 13, 2021, for failure to file a sufficient brief and failure to file record excerpts.

The Court normally will not reinstate a case dismissed by the clerk under **5<sup>TH</sup> CIR. R. 27.1.6** unless the default is remedied within 45 days from the date of dismissal. (See I.O.P. following **5<sup>TH</sup> CIR. R. 27**)

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Roeshawn Johnson, Deputy Clerk  
504-310-7998

Ms. Jeannette Clack  
Ms. Krista Hemming  
Mr. Henry Gray Laird III  
Mr. Julian M. Reyes