

MAPPING THE CIVIL JUSTICE GAP IN FEDERAL COURT

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Unrepresented litigants make up a sizable and normatively important chunk of civil litigation in the federal courts. Despite their importance, we still know little about who these pro se litigants are. Debates about pro se litigation take place without sufficient empirical information. To help fill some of the gaps in our understanding of pro se litigants, this Article takes a new approach by mapping where pro se litigants live.

Using a massive dataset of 2.5 million federal dockets from a ten-year period, we obtained addresses of nonprisoner pro se litigants. We then geolocated these addresses and cross-referenced that information with demographic and economic census data. This approach does not tell us anything about pro se litigants directly, but it allows us to describe where pro se litigants live and identify the communities they inhabit. While this method has limitations, it avoids many drawbacks of other methods.

We stress two main findings. First, most pro se litigants are profoundly ordinary. Typically, they do not hail from demographic or economic outliers. For example, most pro se litigants do not live in either the wealthiest or the poorest neighborhoods. Instead, their neighborhoods represent the middle class, with a few outliers that match the distribution of the population. Our findings present pro se litigants as a radically democratic element in federal courts. Pro se litigants, perhaps more than any other type of litigant, force federal courts into contact with a surprisingly representative

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sample of the general public. Second, there are two notable exceptions to this representativeness. Even after accounting for population and income, pro se litigants are more likely to reside in communities that are not homogeneously white. And numerous rural communities feature fewer pro se litigants than expected. These findings deepen and complicate conventional narratives about pro se litigation and provide new impetus for doctrinal and policy debates about how the federal courts and Congress can and should respond to self-represented litigants.

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INTRODUCTION

Unrepresented litigants make up a sizable and normatively important chunk of civil litigation in the federal courts that merit further study. In recent years, more than a quarter of nonprisoner civil cases filed in federal district courts were filed pro se.¹ Yet we

1. Authors’ calculation based on Administrative Office of the U.S. Courts data. See U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2021, at 1 (2021), https://www.uscourts.gov/sites/default/files/data_tables/

know precious little about who these pro se litigants are. Meanwhile, judges, lawyers, and academics debate what should be done about unrepresented litigants, despite this dearth of data.² This Article sheds some light on these litigants by documenting where they live.

All too often, legal scholarship about courts proceeds in nonphysical abstraction, as if courts, litigants, and lawsuits do not have a corporeal manifestation in space that is relevant and revealing. Instead, legal scholarship typically treats the words of court opinions and the motions of litigants as disembodied voices on an abstract, ethereal plane. The first contribution of this Article is to provide a theoretical counterpoint to this dominant approach. We take the theoretical insights of critical cartography and apply them to the study of courts.³ This approach makes explicit the political and economic dimensions of space, representations of space, or the lack of such representations. The “critical” aspect of critical cartography, as in critical race theory, is a reminder to interrogate the submerged social and structural features of law and society that create and

jb_c13_0930.2021.pdf (reporting 102,605 nonprisoner pro se civil cases of 296,898 total nonprisoner civil cases); U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2020, at 1 (2020), https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2020.pdf (reporting 217,672 nonprisoner pro se civil cases of 414,386 total nonprisoner civil cases); U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2019, at 1 (2019), https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2019.pdf (reporting 25,846 nonprisoner pro se civil cases of 242,859 total nonprisoner civil cases); U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2018, at 1 (2018), https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2018.pdf (reporting 26,148 nonprisoner pro se civil cases of 228,802 total nonprisoner civil cases); U.S. CTS., TABLE C-13: U.S. DISTRICT COURTS—CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2017, at 1 (2017), https://www.uscourts.gov/sites/default/files/data_tables/jb_c13_0930.2017.pdf (reporting 25,333 nonprisoner pro se civil cases of 210,084 total nonprisoner civil cases).

2. See generally Michael Correll, *Finding the Limits of Equitable Liberty: Reconsidering the Liberal Construction of Pro Se Appellate Briefs*, 35 VT. L. REV. 863 (2011) (exploring the available assistance and waiver options for pro se litigants); Joseph M. McLaughlin, *An Extension of the Right of Access: The Pro Se Litigant’s Right to Notification of the Requirements of the Summary Judgment Rule*, 55 FORDHAM L. REV. 1109 (1987) (discussing the pro se litigant’s right to access the court); Drew A. Swank, *In Defense of Rules and Roles: The Need to Curb Extreme Forms of Pro Se Assistance and Accommodation in Litigation*, 54 AM. U. L. REV. 1537 (2005) (arguing that proponents of greater pro se assistance programs are “wrong”).

3. Critical cartography connects geographic knowledge with power. See Jeremy W. Crampton & John Krygier, *An Introduction to Critical Cartography*, 4 ACME 11, 15 (2005).

perpetuate inequality and inequity.⁴ We use critical cartography to critique the absence of representations of power in space when scholars, the bench, and the bar contemplate pro se litigation. We explain and demonstrate how critical cartography can be used as a tool to examine power in real space and illuminate the work of courts, procedure, and litigation. We do so in the context of pro se litigation but hope that future researchers will incorporate critical cartography insights into their methodological repertoire in a broad range of contexts.⁵ We want to investigate who federal pro se litigants are and how their particular residence shapes their access to federal courts.

Our theoretical contribution is made possible by our access to a massive dataset of 2.5 million federal docket sheets spanning a decade that far surpasses previous scholarship on this topic.⁶ With this dataset, we are able to make a second contribution by introducing novel spatial methods to the study of pro se litigation. We began by extracting addresses of nonprisoner pro se litigants from these federal dockets. We then geolocated these addresses and intersected that information with demographic, economic, and social data drawn from the U.S. Census Bureau. This approach allows us to describe where pro se litigants live and what kind of communities they inhabit. We can see whether they and their neighbors are more likely to be poor or rich, whether the area is urban or rural, the level of educational attainment of residents, the racial composition of the area, and a host of other revealing factors. To be sure, our indirect approach has limitations, but it also has advantages over survey methods where people might misremember, misrepresent, or simply not respond.

Theoretical insights based on critical cartography paired with this new dataset and new methodology allow us to develop new insights about unrepresented litigants in the federal courts. As such, this Article makes another contribution by drawing a fresh portrait of federal pro se litigants that dispels many dominant assumptions and reveals new and unexpected complexities. Our empirical analysis yields three headline findings.

First, our analysis suggests that most pro se litigants are profoundly ordinary. Typically, they do not hail from either the wealthiest or the poorest neighborhoods. Instead, their

4. Traditionally, the term “critical cartography” has been used to interrogate the “hidden agendas of cartography.” J.B. Harley, *Deconstructing the Map*, CARTOGRAPHICA, Summer 1989, at 1, 3. Maps are not neutral images of reality but rather representations of an endless series of value-laden choices. *Id.* at 7.

5. Traditionally, critical cartography uses a set of discursive practices like counter-mapping to reexamine common mapping practices. Theo Kindynis, *Ripping Up the Map: Criminology and Cartography Reconsidered*, 54 BRIT. J. CRIMINOLOGY 222, 227–28 (2014). We want to utilize these insights in the context of pro se litigation. There, interrogating and remediating the absence of spatial representations is the critique.

6. See *infra* text accompanying notes 126–27.

neighborhoods represent the middle class, with a few outliers that match the distribution of the population.⁷ Similarly, pro se litigants are located in communities whose education levels, age, and gender earnings ratios largely mirror the rest of the general population.⁸ Overall, our findings present pro se litigants as a radically democratic element in federal courts. They, perhaps more than any other type of litigant, put federal judges, court staff, and lawyers in contact with a surprisingly representative sample of the general public. The communities where pro se litigants live mirror the United States as a whole.

Second, even after accounting for population and income, pro se litigants are more likely to reside in communities that are not homogeneously white.⁹ Though often located close to federal courthouses and in metropolitan areas with lawyers nearby, these pro se litigants seem unable to find representation, perhaps because of a discounting of their narratives. This finding, then, provides additional reasons for alarm at the failure of the legal profession and our civil legal system to respond to the legal needs of minority communities.

Third, numerous rural communities feature fewer pro se litigants than expected.¹⁰ Also, while pro se plaintiffs are the norm elsewhere, numerous rural communities have far more pro se defendants than plaintiffs. Our data highlight often-overlooked rural communities and their difficulties in accessing distant federal courthouses, not to mention that legal representation is increasingly difficult to obtain in rural America.

These three primary findings deepen and complicate the conventional narrative on pro se litigants and provide new impetus for doctrinal and policy debates about how courts and Congress can respond to self-represented litigants. To ensure that federal courts are meaningfully open to those who cannot afford or otherwise acquire counsel, the legal profession needs to know more about who is litigating in these courts pro se. We need to move past the debunked commentary that there is a tidal wave of federal pro se litigants¹¹ and focus on learning more about who these pro se litigants are and what neighborhoods they come from.

7. *See infra* Subpart IV.A.

8. *See infra* Part III.

9. *See infra* Part III.

10. *See infra* Part III.

11. *See, e.g.*, Mark D. Gough & Emily S. Taylor Poppe, *(Un)Changing Rates of Pro Se Litigation in Federal Courts*, 45 *LAW & SOC. INQUIRY* 567, 574 (2020) (“[T]he volume and proportion of cases involving at least one pro se party remained stable over the observed twenty-year period. While the volume of pro se litigation fluctuates somewhat over time, there is no evidence of a steady increase or decrease.”).

To do so, this Article proceeds in four parts. Part I contextualizes our inquiry by painting the necessary backdrop: namely, the conventional wisdom among lawyers and academics that there has been a dramatic and problematic increase in the number and proportion of pro se litigants in federal court over the last few decades. With that context in mind, Part II describes our empirical strategy and emphasizes its limitations. Part III lays out our findings with the aid of maps of federal pro se litigants. Finally, Part IV returns to the debates laid out at the start of the Article, this time equipped with our findings. There, we explain how geographic insights can help orient judges, lawyers, and academics in the ongoing debate about how the federal courts should respond to unrepresented litigants.

I. WHAT WE (THINK WE) KNOW ABOUT PRO SE LITIGANTS IN FEDERAL COURT

While the lion's share of civil litigants in the United States (including unrepresented ones) are in state court, litigants also often act as their own advocates in federal courts.¹² These pro se litigants raise unique practical, doctrinal, and normative concerns for the legal academy, the bar, and the federal bench. Scholars and judges debate whether and where otherwise uniform procedures must bend to accommodate diverse litigants.¹³ For example, the complexity and nonintuitive features of, say, pleading rules, summary judgment standards, or default judgments clash with norms of accessibility, fairness, and participation when it comes to pro se litigants.

A. *Why Study Pro Se Litigation?*

The lack of counsel in federal courts matters for a number of reasons. First, federal courts play a unique role in our democracy. Individuals can file claims in these courts to vindicate fundamental rights under the Constitution and other federal law.¹⁴ Some of the most common types of cases in federal court make that lofty rhetoric real. Lawsuits against allegedly discriminatory employers, illegal police conduct, and improperly processed disability claims are three of the most common types of cases arising under federal law.¹⁵ Given

12. See, e.g., Anna E. Carpenter et al., *Studying the "New" Civil Judges*, 2018 WIS. L. REV. 249, 256 (2018); Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 746 (2015); Gillian K. Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM URB. L.J. 129, 131 (2010).

13. Ronald W. Staudt & Paula L. Hannaford, *Access to Justice for the Self-Represented Litigant: An Interdisciplinary Investigation by Designers and Lawyers*, 52 SYRACUSE L. REV. 1017, 1019–20 (2002).

14. U.S. CONST. art. III, § 2.

15. See *EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (Feb. 26, 2021), <https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2020-enforcement-and-litigation-data> ("The

that special function, we should be concerned if some people cannot vindicate their civil rights because they struggle to navigate the country's court system on their own.

Second and related, the United States relies heavily on private civil litigation for the enforcement of public law.¹⁶ As a result, ordinary people, acting as private attorneys general, help protect others—such as consumers, workers, and shareholders—as well as public goods, like the environment, through lawsuits.¹⁷ If the federal courts are not accessible to these kinds of claims, the American public law system, reliant as it is on private litigation, cannot function properly.

Third, while state courts sometimes offer an additional forum, state litigation is often an inadequate substitute for federal litigation.¹⁸ Even assuming parity of federal and state litigation, concurrent jurisdiction, with the related possibility of removal, often means that cases that start in state court find their way to federal court.¹⁹

U.S. Equal Employment Opportunity Commission (EEOC) today released detailed breakdowns for the 67,448 charges of workplace discrimination the agency received in Fiscal Year (FY) 2020. The agency secured \$439.2 million for victims of discrimination in the private sector and state and local government workplaces through voluntary resolutions and litigation.”); Christina Carrega, *Millions in Lawsuit Settlements Are Another Hidden Cost of Police Misconduct, Legal Experts Say*, ABC NEWS (June 14, 2020, 10:12 AM), <https://abcnews.go.com/US/millions-lawsuit-settlements-hidden-cost-police-misconduct-legal/story?id=70999540> (“Law enforcement liabilities made up 43.1% of lawsuits filed against the city [of Los Angeles] during the 2018–2019 fiscal year according to the risk management’s annual report.”); JONAH GELBACH & DAVID MARCUS, *A STUDY OF SOCIAL SECURITY LITIGATION IN THE FEDERAL COURTS* 49–50 (2016) (noting the high number of social security denial appeals relative to the overall federal caseload).

16. See SEAN FARHANG, *THE LITIGATION STATE: PUBLIC REGULATION AND PRIVATE LAWSUITS IN THE U.S.* 7–9 (2010).

17. See, e.g., Stephanie Bornstein, *Public-Private Co-Enforcement Litigation*, 104 MINN. L. REV. 811, 820 (2019); Zachary D. Clopton, *Redundant Public-Private Enforcement*, 69 VAND. L. REV. 285, 293–99 (2016); Sean Farhang, *Public Regulation and Private Lawsuits in the American Separation of Powers System*, 52 AM. J. POL. SCI. 821, 823–28 (2008); Margaret H. Lemos, *Privatizing Public Litigation*, 104 GEO. L.J. 515, 529–30 (2016); see also John C. Coffee, Jr., *Understanding the Plaintiff’s Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 COLUM. L. REV. 669, 669 (1986) (“American law relies upon private litigants to enforce substantive provisions of law that in other legal systems are left largely to the discretion of public enforcement agencies.”).

18. Cf. Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can’t Solve Inequality*, 148 DAEDALUS 128, 133 (2019) (arguing that state civil courts have become the “the government branch of last resort”).

19. See Zachary D. Clopton, *Procedural Retrenchment and the States*, 106 CALIF. L. REV. 411, 443 (2018) (pointing out the importance of federal procedure for state litigation due to the possibility of removal). See generally STEPHEN B.

Fourth, since these litigants have been, and will continue to make up, a sizable percentage of parties in federal court,²⁰ federal district judges and court staff will have to respond to them. The default mode of American adversarial legalism and its concomitant conception of a judge's role do not line up with reality when one party does not have the benefit of counsel or knowledge of procedural and substantive law. We should prioritize how these unrepresented parties navigate the federal courts because they will be litigating in these fora for decades to come. Their presence in federal court will continue to provoke systematic and haphazard responses from the judiciary.

To contextualize our inquiry, we recount how judges and scholars have thought about unrepresented litigants in the federal system over the last few decades. This review of both institutional response and the scholarly literature typically feeds into two intertwined narratives: first, that there has been a dramatic increase in the number of pro se litigants and second, that courts should alter procedures to respond to this allegedly burdensome group of litigants.

B. "Pro se litigants are . . ."

Federal litigants have had the right to appear pro se since the Judiciary Act of 1789.²¹ Yet it was not until the last half century that judges began to publicly bemoan pro se litigants appearing in court in large numbers.²² To be sure, this development in the history of the federal courts is part of a broader trend in the increase in federal litigation after World War II.²³ But while there were rumblings of the increasing prevalence of pro se litigants in the federal system, scholars often point to the mid-1990s as a turning point. In 1995, the Judicial Conference of the United States published its Long Range Plan, which, among other things, attempted to address the perceived increase in pro se litigation.²⁴ In its Long Range Plan for the Federal

BURBANK & SEAN FARHANG, RIGHTS AND RETRENCHMENT: THE COUNTERREVOLUTION AGAINST FEDERAL LITIGATION (2017) (discussing a range of procedural changes in federal court).

20. See *supra* note 1 and accompanying text.

21. 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.") (corresponds to the Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 92).

22. Andrew Hammond, *The Federal Rules of Pro Se Procedure*, 90 FORDHAM L. REV. 2689, 2700–02 (2022) (discussing judicial responses to pro se litigants in the years leading up to the Long Range Plan by analyzing articles in *Judicature*, *The Judges' Journal*, and the *ABA Journal*).

23. Marin K. Levy, *The Mechanics of Federal Appeals: Uniformity and Case Management in the Circuit Courts*, 61 DUKE L.J. 315, 321 (2011) ("Between 1950 and 1978, the annual filings per judge in the federal courts of appeals nearly doubled.").

24. See JUD. CONF. OF THE U.S., LONG RANGE PLAN FOR THE FEDERAL COURTS 63 (1995).

Courts, the Judicial Conference declared that “a large proportion of recent caseload increases is due to pro se filings”²⁵ and that “[p]ro se litigation places great stress on the resources of the federal courts.”²⁶ In particular, “the district courts must face numerous practical difficulties in dealing with unrepresented litigants.”²⁷

The next year, Congress enacted the Prison Litigation Reform Act (“PLRA”), which focused on reducing the number of pro se claims brought by prisoners in federal court.²⁸ The PLRA sought to fundamentally reshape prison litigation in federal court, by, among other things, creating additional procedural barriers to lawsuits brought by prisoners themselves.²⁹ Proponents of the legislation argued that the PLRA would filter out weaker claims and preserve the meritorious claims for prison officials to resolve or allow prisoners to vindicate statutory and constitutional claims in federal court.³⁰ Scholars suggest that the impact of the PLRA has been to reduce the frequency of prisoner litigation generally and consign prisoners to sometimes faulty grievance procedures within a prison’s walls.³¹

Since the publication of the Long Range Plan and the enactment of the PLRA, many who staff and study the federal courts continue to talk of a pro se crisis in the civil legal system.³² Some emphasize concerns that these litigants will be unable to navigate procedural

25. *Id.*

26. *Id.*

27. COMM. ON LONG RANGE PLAN., JUD. CONF. OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS 59 (1995).

28. Prison Litigation Reform Act of 1995, Pub. L. No. 104–134, §§ 801–10, 110 Stat. 1321, 66–77 (1996).

29. *See id.* §§ 801–810; 18 U.S.C. §§ 3624, 3626; 28 U.S.C. §§ 1346, 1915, 1915A, 1932; 42 U.S.C. §§ 1997a–1997c, 1997e–1997f, 1997h; *see also* Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1627–32 (2003) (discussing the PLRA’s provisions).

30. Schlanger, *supra* note 29, at 1633–34, 1644.

31. *See* Margo Schlanger, *Trends in Prisoner Litigation, as the PLRA Enters Adulthood*, 5 U.C. IRVINE L. REV. 153, 153–55, 162 (2015) (discussing the impact of the PRLA); Catherine T. Struve, *The Federal Rules of Inmate Appeals*, 50 ARIZ. ST. L.J. 247, 296–99 (2018). *See generally* KITTY CALAVITA & VALERIE JENNESS, *APPEALING TO JUSTICE: PRISONER GRIEVANCES, RIGHTS, AND CARCERAL LOGIC* (2014) (detailing the many ways the PLRA has restricted inmate access to justice).

32. *See, e.g.*, Candice K. Lee, Note, *Access Denied: Limitations on Pro Se Litigants’ Access to the Courts in the Eighth Circuit*, 36 U.C. DAVIS L. REV. 1261, 1280 (2003) (noting that one judge referred to the increase as a “floodtide”); *see also* Lois Bloom & Helen Hershkoff, *Federal Courts, Magistrate Judges, and the Pro Se Plaintiff*, 16 NOTRE DAME J.L. ETHICS & PUB. POL’Y 475, 479 (2002) (explaining that filings in federal courts have increased dramatically and that a significant percentage of those filings involve pro se litigants); Staudt & Hannaford, *supra* note 13, at 1018 (describing an increase in pro se filings over the 1990s).

rules³³ and thereby clog the courts.³⁴ Others point to research that suggests that unrepresented litigants are less likely to win than represented litigants, raising the concern that the right to be heard may be undermined by the lack of counsel.³⁵ Others worry about the unequal bargaining power of represented litigants over their unrepresented adversaries.³⁶ Others still point out that judges and lawyers associate unrepresented litigants with weaker claims.³⁷

Meanwhile, the Judicial Conference's official position on pro se litigation has not changed since the publication of the Long Range Plan over twenty-five years ago. In 2010, the Judicial Conference adopted its Strategic Plan for the Federal Judiciary.³⁸ In that document and its updated version in 2015, the Judicial Conference continued to identify pro se litigation as one of its most pressing concerns.³⁹

Despite this persistent conception of pro se litigants as burdensome, the evidence that federal pro se litigation has increased since the mid-1990s is mixed. In 2020, two researchers reviewed all civil case filings in the federal district courts since 1999 and found no

33. See McLaughlin, *supra* note 2, at 1119 (claiming, without evidence, that “[m]ost pro se litigants are uneducated” and this “augment[s] the futility of expecting them to recognize complex procedural requirements without at least notification of those requirements”); see also Correll, *supra* note 2, at 863 (arguing that pro se litigants constitute “a class of court-users ill-equipped to handle many of the greatest difficulties of navigating the judicial forum”).

34. Swank, *supra* note 2, at 1548.

35. See D. James Greiner et al., *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 903, 903–04 (2013); Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC’Y REV. 419, 419 (2001). See generally Rebecca Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. FOR SOC. JUST. 51 (2010) (describing both anecdotal and empirical evidence of the success of unrepresented litigants).

36. Deborah J. Cantrell, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 FORDHAM L. REV. 1573, 1582 (2002) (explaining that the most prevalent pro se claims include landlord-tenant and family law, where there are inherent power imbalances). The Supreme Court acknowledged the problems when one side is represented and the other is not in *Turner v. Rogers*, 564 U.S. 431, 446–47 (2011).

37. See Kathryn M. Kroeper et al., *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, 26 PSYCH. PUB. POL’Y & L. 198, 198 (2020); Victor D. Quintanilla et al., *The Signaling Effect of Pro Se Status*, 42 LAW & SOC. INQUIRY 1091, 1091 (2017).

38. JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 14 (2010) (identifying a goal to “[d]evelop best practices for handling claims of pro se litigants in civil and bankruptcy cases”).

39. *Id.*; JUD. CONF. OF THE U.S., STRATEGIC PLAN FOR THE FEDERAL JUDICIARY 14 (2015) [hereinafter 2015 STRATEGIC PLAN] (identifying an identical goal with regards to pro se cases).

evidence of a rise in pro se litigation.⁴⁰ We have not seen any other data to convince us otherwise in the district courts, but there is some evidence that pro se litigation now is a larger share of the appellate docket in most circuit courts.⁴¹

C. “. . . and therefore we must . . .”

In response to this perceived increase in pro se litigation, federal courts and their state counterparts have responded with rule changes, new institutions, and increased resources for unrepresented litigants.⁴² In the federal system, most of that activity has occurred not in the Supreme Court or the Judicial Conference, but in the lower courts.

While some courts appear to be less forgiving of errors made by pro se litigants, the Supreme Court has instructed lower courts to hold pro se complaints, “however inartfully pleaded, . . . to less stringent standards than formal pleadings drafted by lawyers.”⁴³ The Federal Rules of Civil Procedure only mention pro se litigants—and the related in forma pauperis status—once.⁴⁴ To be sure, the Judicial Conference has addressed the issue of pro se litigants in the federal courts repeatedly. Starting with the Long Range Plan, the federal

40. Gough & Poppe, *supra* note 11, at 575 (finding “little evidence of a lasting pro se explosion measured in absolute number or proportion of filings since 1999”).

41. Merritt E. McAlister, “Downright Indifference”: *Examining Unpublished Decisions in the Federal Courts of Appeals*, 118 MICH. L. REV. 533, 555 (2020) (noting that “in almost every circuit pro se litigation is a greater percentage of the courts’ workload than it was two decades ago”).

42. See, e.g., Anna E. Carpenter et al., *Judges in Lawyerless Courts*, 110 GEO. L.J. (forthcoming 2022) (manuscript at 4–5) (on file with authors) (discussing responses in state courts); Jona Goldschmidt, *How Are Courts Handling Pro Se Litigants?*, JUDICATURE, July–Aug. 1998, at 13, 14–15.

43. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam); see also *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (per curiam) (citing *Haines* and characterizing this rule as “settled law”).

44. See FED. R. CIV. P. 5.2(b)(6) (exempting pro se filings brought under 28 U.S.C. §§ 2241, 2254, or 2255 from Rule 5’s redaction requirement); FED. R. CIV. P. 4(c)(3) (requiring courts to order a United States marshal or another officer of the court to serve process on behalf of in forma pauperis litigants). The Federal Rules of Civil Procedure do mention “unrepresented” parties in Rules 4, 11, 16, and 26, but only to include them in rules applying equally to represented parties. The Supreme Court does shape this area of federal practice, such as with its standard that a pleading “filed *pro se* is to be liberally construed.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). *But see* *McNeil v. United States*, 508 U.S. 106, 113 (1993) (claiming that “we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel”). See generally Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L.J. 1478, 1499 (2019) (discussing the treatment of low-income litigants in the judicial code and the Federal Rules of Civil Procedure).

judiciary published a series of documents promising a comprehensive strategy for the federal judiciary.⁴⁵ All of these documents discuss self-represented litigants.⁴⁶ The 2015 Strategic Plan, the Judicial Conference's most recent iteration, includes the commitment to "[e]nsure that the federal judiciary is open and accessible to those who participate in the judicial process."⁴⁷ Yet there have been few systematic attempts by the Judicial Conference to adapt federal procedures to address the needs of unrepresented parties. Instead, the Judicial Conference specifically identified the goal of "[d]evelop[ing] best practices for handling claims of pro se litigants in civil and bankruptcy cases" in the 2015 plan.⁴⁸ Perhaps in line with that effort, the Federal Judicial Center has published guidance on managing nonprisoner, self-represented litigants.⁴⁹

However, not all of the recent system-wide efforts seem animated by the Judicial Conference's stated purpose of accessibility. The same year the Judicial Conference avowed to adopt best practices for pro se litigants, it removed all but two of the sample forms that accompanied the Federal Rules of Civil Procedure.⁵⁰ These forms, which helped lawyers and litigants fill out a complaint and other run-of-the-mill documents, were particularly useful for those unfamiliar with federal practice.⁵¹

45. *Long Range Plan for the Federal Courts*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/publications/long-range-plan-federal-courts> (last visited Feb. 1, 2022) ("In 2010, the Strategic Plan for the Federal Judiciary succeeded the Long Range Plan as the strategic plan for the Judicial Conference and its committees. However, its recommendations and implementation strategies include many statements of Judicial Conference policy that, unless superseded by later Judicial Conference action, remain in effect to this day.").

46. See JUD. CONF. OF THE U.S., *supra* note 24, at 63–66.

47. 2015 STRATEGIC PLAN, *supra* note 39, at 13.

48. *Id.* at 14.

49. See generally JEFRI WOOD, FED. JUD. CTR., PRO SE CASE MANAGEMENT FOR NONPRISONER CIVIL LITIGATION (2016), https://www.fjc.gov/sites/default/files/2017/Pro_Se_Case_Management_for_Nonprisoner_Civil_Litigation.pdf; JONA GOLDSCHMIDT ET AL., AM. JUD. SOC'Y, MEETING THE CHALLENGE OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS (1998).

50. FED. R. CIV. P. 84 (2014) (abrogated 2015); Kathryn Hull, *For Whom the Bell Tolls: The End of Rule 84 (and Form 18 Patent Pleading Standards)*, GORDON & REES (Jan. 8, 2016), <https://www.ip-blitze.com/2016/01/for-whom-the-bell-tolls-the-end-of-rule-84-and-form-18-patent-pleading-standards/>.

51. See A. Benjamin Spencer, *The Forms Had a Function: Rule 84 and the Appendix of Forms as Guardians of the Liberal Ethos in Civil Procedure*, 15 NEV. L.J. 1113, 1137 (2015); Adam N. Steinman, *The End of an Era? Federal Civil Procedure After the 2015 Amendments*, 66 EMORY L.J. 1, 9–10, 51–52 (2016) (noting that the Administrative Office did post additional forms on its website, but these forms are advisory and so may not suffice per Rule 84). For a list of current forms, see *Forms*, U.S. CTS., <https://www.uscourts.gov/services-forms/forms?k=&c=4> (last visited Feb. 1, 2022).

Beyond the rulemaking and guidance of the Judicial Conference, individual courts of appeals and district courts have also established task forces, pro se help desks, and formal partnerships with legal aid organizations.⁵² Regardless of (or maybe because of) the Judicial Conference's position on pro se litigants, individual circuits and district courts exhibit significant variation in procedure and practice when it comes to self-represented litigants.⁵³ For the courts of appeals, some circuits have adopted procedures that treat self-represented litigants differently, and not just in prison litigation.⁵⁴ Many circuits rely on staff attorneys to help the appellate courts manage cases set for disposition with short or no oral argument.⁵⁵ Some research has suggested that the courts of appeals are less likely to hear oral argument when one side proceeds pro se.⁵⁶ And most circuit courts do not allow self-represented litigants to participate in mediation.⁵⁷

There is more pro se-related activity (and even greater variation) among the federal district courts. Nearly every one of the ninety-four district courts has some pro se-specific rule in its local rules.⁵⁸ Seventy-two district courts exempt pro se litigants from various filing requirements, in part because the federal court system relies heavily on its own electronic filing system, Case Management/Electronic Case Files ("CM/ECF").⁵⁹ Some district courts provide additional guidance to judges in assessing a pro se complaint along the lines of the Supreme Court's aforementioned admonition in *Haines v. Kerner*.⁶⁰ As for other pretrial matters, over a dozen district courts permit parties to file discovery materials with the court when the case involves a pro se party.⁶¹ In addition to these local rules, several district courts have published procedural guides for pro se litigants

52. See, e.g., NINTH CIR. JUD. COUNCIL TASK FORCE ON SELF-REPRESENTED LITIGANTS, FINAL REPORT 1 (2005).

53. See generally Levy, *supra* note 23 (discussing rule variation among five circuits); Hammond, *supra* note 22, at 2704–21 (discussing rule variation among the ninety-four district courts).

54. See McAlister, *supra* note 41, at 537 (noting that many pro se appeals receive unpublished decisions rather than the higher-tiered published opinions given to represented litigants).

55. *Staff Attorney Offices Help Manage Rising Caseloads*, NONPUBLICATION, <http://www.nonpublication.com/stffattys.htm> (last visited Jan. 11, 2022); see also Levy, *supra* note 23, at 323 (discussing this practice); McAlister, *supra* note 41, at 548 (same).

56. Levy, *supra* note 23, at 334.

57. See JUDITH A. MCKENNA ET AL., CASE MANAGEMENT PROCEDURES IN THE FEDERAL COURTS OF APPEALS 179 (2000).

58. Hammond, *supra* note 22, at 2692, 2704.

59. *Id.* at 2708–10.

60. *Id.* at 2710–11; see also *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *supra* note 43 and accompanying text.

61. Hammond, *supra* note 22, at 2711.

on their websites, some of which include sample forms.⁶² Nineteen district courts run a pro se help desk that is either operated by court staff or voluntary attorneys, and a dozen courts have some kind of partnership with a legal aid office or a law school clinic.⁶³

Moving beyond the local rules, pro se guidebooks, and help desks in the federal district courts, three models of judicial responses to pro se litigation deserve further emphasis. Courts have sought to respond systematically in three ways: (1) through pro bono panels, (2) changes to the judge's role, and (3) the creation of specialized courts. Federal courts have experimented with the first, made incremental steps for the second, and ignored the third. Incidentally, some scholars have suggested that these three models are at odds with one another, but we need not weigh in on that debate here.⁶⁴ We highlight these models now because later in the Article we return to what our data suggests for each.

First, and by far the most common, federal courts have responded to pro se litigants by trying to appoint more lawyers to represent them. Approximately forty courts manage some kind of pro bono panel in which the court appoints lawyers to represent litigants for free.⁶⁵ These pro bono panels vary in terms of which lawyers comprise the available pool.⁶⁶ The panels also vary as to whether attorneys can

62. *Id.* at 28–29. See generally Gillian K. Hadfield & Jamie Heine, *Life in the Law-Thick World: Legal Resources for Ordinary Americans*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 21 (Samuel Estreicher & Joy Radice eds., 2016) (describing barriers to obtaining legal information for pro se litigants).

63. Hammond, *supra* note 22, at 2716–18.

64. Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227, 1270–73 (2010) (noting that there are critics of pro se litigation reform); Benjamin H. Barton & Stephanos Bibas, *Triaging Court Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PA. L. REV. 967, 987–90, 994 (2012) (noting that though court-initiated pro se reform is needed, recreating the judicial system is not the answer); Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access to Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 FORDHAM L. REV. 969, 970, 976 (2004) (articulating both a proposal for changing the role of the judge in pro se cases and the drawbacks to this proposed method); Nourit Zimmerman & Tom R. Tyler, *Between Access to Counsel and Access to Justice: A Psychological Perspective*, 37 FORDHAM URB. L.J. 473, 473, 507 (2010) (noting different actions taken by the courts to address pro se issues).

65. Hammond, *supra* note 22, at 2718; see also Clare Pastore, *A Civil Right to Counsel: Closer to Reality?*, 42 LOY. L. REV. 1065, 1076 (2009) (pointing out that, while trial judges have inherent power to appoint counsel for poor litigants, they infrequently use it).

66. Hammond, *supra* note 22, at 2718–20 (identifying some district courts that require all attorneys admitted to the court's bar to be included in the pro bono panel, others that require all attorneys admitted to the trial court's bar, others that exempt government and legal aid attorneys, and others that fill the pool of lawyers entirely with volunteers).

decline an appointment for any reason or essentially for good cause.⁶⁷ Some district courts further limit their pro bono panels to only assisting with certain types of cases.⁶⁸ This variation should not obscure the fact that several federal district courts are compelling members of their local bars to address the justice gap in their respective districts.⁶⁹ In light of this significant effort across the federal judiciary, it is worth considering whether the Judicial Conference should build out and deepen these pro bono panels.

Second, federal courts have made incremental steps toward relaxing the typical expectations that judges will remain wholly impartial. These developments in federal court are part of a broader trend in American civil litigation.⁷⁰ In 2007, the American Bar Association revised the impartiality canon of the Model Code of Judicial Conduct by allowing judges to “make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.”⁷¹ There is little evidence that the federal judiciary as a whole has adopted a policy or standard that guides federal judges in how to alter their work to meet the needs of pro se litigants or addresses whether they should do so at all. Several district courts have rules that require that a court (or the moving party) provide pro se litigants with additional information about the nature and consequences of a summary judgment motion.⁷² This type of rule suggests that a judge cannot simply expect an unrepresented litigant to understand the nature and possible result of a dispositive motion. It also raises the question of whether similar rules are not necessary for other aspects of federal motion practice.

67. *Id.* at 2720 (discussing these differences).

68. *Id.* app. 2, at 2755–75 (documenting pro bono panels’ differences in allowed case type).

69. *See Court Programs*, AM. BAR ASS’N, https://www.americanbar.org/groups/probono_public_service/policy/judicial-participation/court-programs/ (last visited Apr. 8, 2022).

70. *See* Carpenter et al., *supra* note 42 (manuscript at 8–15) (describing in detail the judicial role reform as a proposed solution to the problem of access to justice in civil litigation).

71. MODEL CODE OF JUD. CONDUCT r. 2.2, cmt. 4 (AM. BAR ASS’N 2020); *see also* Anna E. Carpenter, *Active Judging and Access to Justice*, 93 NOTRE DAME L. REV. 647, 664 (2017); Rebecca Albrecht et al., *Judicial Techniques for Cases Involving Self-Represented Litigants*, JUDGES’ J., Winter 2003, at 16, 18, 43; Russell Engler, *And Justice for All—Including the Unrepresented Poor: Revisiting the Roles of the Judges, Mediators, and Clerks*, 67 FORDHAM L. REV. 1987, 2028–31 (1999); Russell Engler, *Ethics in Transition: Unrepresented Litigants and the Changing Judicial Role*, 22 NOTRE DAME J.L. ETHICS & PUB. POL’Y 367, 367–68 (2008); Richard Zorza, *The Disconnect Between the Requirements of Judicial Neutrality and Those of the Appearance of Neutrality when Parties Appear Pro Se: Causes, Solutions, Recommendations, and Implications*, 17 GEO. J. LEGAL ETHICS, 423, 427 (2004).

72. Hammond, *supra* note 22, at 2711–12.

Related to whether judges should shift from their default passivity, federal courts have experimented with and to what extent courts should require or relieve pro se litigants from the duty to confer or opportunities to engage in mediation or other forms of dispute resolution.⁷³ Here, too, the role of a judge in encouraging and shaping a settlement in a dispute where one side is unrepresented raises distinct concerns, but the Federal Judicial Center suggests that judges “encourage settlement” in pro se cases.⁷⁴

Third, while Congress has created specialized courts to deal with intellectual property,⁷⁵ national security,⁷⁶ and tax controversies,⁷⁷ among others, it has shown little interest in creating specialized courts to deal with pro se litigants. Of course, some district courts funnel self-represented litigants to a specific judge in the district court, and others relegate all pro se cases to magistrate judges.⁷⁸ But federal courts, and even state courts on the civil side, have not embraced specialized, let alone problem-solving, courts in the ways that state criminal courts have.⁷⁹

As this Part has shown, the presence of pro se litigants in federal courts has provoked responses from Congress, the Judicial Conference, and most frequently, individual courts. These varied institutional responses, though, would benefit from a stronger empirical foundation, which we provide in the next two Parts of this Article.

II. EMPIRICAL STRATEGY, DATA, AND LIMITATIONS

In this Part we explain our basic methods, data, and their limitations. We begin by explaining the core methodological idea

73. See DONNA STIENSTRA, FED. JUD. CTR., *ADR IN THE FEDERAL DISTRICT COURTS: AN INITIAL REPORT* 7 (2011), <https://www.fjc.gov/sites/default/files/2012/ADR2011.pdf> (identifying eighteen district courts that authorize the use of mediation for nonprisoner pro se cases).

74. See WOOD, *supra* note 49, at 47–51.

75. See, e.g., John M. Golden, *The Federal Circuit and the D.C. Circuit: Comparative Trials of Two Semi-Specialized Courts*, 78 GEO. WASH. L. REV. 553, 555 (2010); Melissa F. Wasserman & Jonathan D. Slack, *Can There Be Too Much Specialization? Specialization in Specialized Courts*, 115 NW. U. L. REV. 1405, 1408 (2021).

76. See, e.g., Stephen I. Vladeck, *The FISA Court and Article III*, 72 WASH. & LEE L. REV. 1161, 1166–67 (2015).

77. See, e.g., Leandra Lederman, *Tax Appeal: A Proposal to Make the United States Tax Court More Judicial*, 85 WASH. U. L. REV. 1195, 1200–01 (2008).

78. See Hammond, *supra* note 22, at 2707.

79. Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 LAW & POL'Y 125, 128 (2001); Nora Freeman Engstrom, *A Dose of Reality for Specialized Courts: Lessons from the VICP*, 163 U. PA. L. REV. 1631, 1631–34, 1715 (2015); Jessica K. Steinberg, *A Theory of Civil Problem-Solving Courts*, 93 N.Y.U. L. REV. 1579, 1581 (2018) (noting an example of state problem-solving courts).

behind this Article: to learn about pro se litigants based on where they live. We began by using federal dockets to obtain addresses of pro se litigants, then geotagged these addresses and census-intersected them. This allows us to learn more about the neighborhoods of pro se litigants, their locations, demographic composition, and a variety of economic and social indicators. Paired with the concept of homophily,⁸⁰ this allows us to make indirect claims about pro se litigants. Of course, this approach entails a fundamental limitation: none of our claims speak to the characteristics of pro se litigants directly, only indirectly.

A. *The Challenge of Studying Pro Se Litigation*

We believe there is no single way to study pro se litigation. Instead, there are many methods that, together, help to paint an accurate portrait of civil pro se litigation. Our focus in this Article is on the characteristics of pro se litigants. Judges, legislators, and academics often make assumptions about pro se litigants. Yet it is difficult to draft rules, doctrines, court orders, and policy recommendations without a sense of who pro se litigants are. To inform our understanding of pro se litigants and attendant doctrinal implications, it is essential that we learn more about pro se litigants beyond isolated anecdotes.

But pro se litigants are difficult to study. Most of the conventional tools deployed to study litigants are of limited usefulness in this context. For example, researchers might be inclined to conduct a survey of pro se litigants and ask them about, say, their education levels, incomes, or employment statuses. However, it might be difficult to find and reach many pro se litigants (perhaps because they are no longer at the addresses on file with the court). Even if found, response rates will likely be low and create a risk of masked bias. Whatever the response rate, the survey might be too small to allow for fine-grained distinctions (say, among pro se litigants in different types of cases or different parts of the country). As with all survey work, there is also the risk of faulty memory and misrepresentations.

Even if we were to overcome those methodological challenges, it would be difficult to precisely time our inquiry.⁸¹ Litigants may give different answers to questions at the beginning, middle, or end of litigation—or long after the case has concluded. Also, while it might be easier to locate pro se parties who have active cases in court,

80. See *infra* notes 87–108 and accompanying text.

81. Of course, courts could collect data on civil litigant demographics. See generally DOROTHY A. BROWN, *THE WHITENESS OF WEALTH* (2021) (describing the effect of race in the context of tax returns); Megan Doherty Bea & Emily S. Taylor Poppe, *Marginalized Legal Categories: Social Inequality, Family Structure, and the Laws of Intestacy*, 55 *LAW & SOC'Y REV.* 252 (2021) (describing how social classifications affect different groups' access to a treatment under the law).

surveying them at that time raises other ethical issues, and it could draw the ire of the opposing party or the presiding judge. We would also be at risk of affecting litigation outcomes. For these reasons, we decided not to conduct a survey of pro se litigants for the purposes of this Article.⁸²

Another potential approach is to use qualitative interviews, which would be a wonderful tool to get rich and detailed information that could help us explore more about motivation and specific barriers. In the pro se context, there are places where this approach has yielded important insights.⁸³ However, such granularity comes at the cost of a limited sample that would prevent claims about national patterns.⁸⁴ Given our national focus on pro se litigants themselves, rather than judges or lawyers, qualitative interviews would likely have yielded unacceptably low response rates, indeterminate results, and concerns about affecting ongoing litigation.

Instead of using surveys or qualitative interviews, this Article implements a geographic approach.⁸⁵ The core methodological idea behind this Article is to learn about pro se litigants indirectly by analyzing where they live. We began by using federal dockets to obtain addresses of pro se litigants. We then geolocated these addresses and intersected that information with Decennial Census and American Community Survey (“ACS”) data.⁸⁶ This approach allowed us to describe where pro se litigants live and what kind of communities they inhabit—for instance, whether these neighborhoods are poor or rich, urban or rural, and White or Black.

This indirect approach is built on the sociological concept of homophily.⁸⁷ Homophily refers to the observable tendency of people

82. Of course, for different purposes, survey work on pro se litigants might be appropriate.

83. See, e.g., Carpenter, *supra* note 71, at 647 (conducting qualitative interviews with judges on the District of Columbia administrative court to ascertain degree and nature of active judging practices).

84. See, e.g., *id.* (focusing solely on the District of Columbia).

85. See Roger Michalski, *MDL Immunity: Lessons from the National Prescription Opiate Litigation*, 69 AM. U. L. REV. 175, 196 (2019) (“Geography is information-rich, multifaceted, and underutilized.”).

86. Both the Decennial Census and ACS are administered by the United States Census Bureau. See *Decennial Census of Population and Housing*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/decennial-census.html> (last visited Mar. 15, 2022); *About the American Community Survey*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/acs/about.html> (last visited Mar. 15, 2022).

87. See generally Peter V. Marsden, *Homogeneity in Confiding Relations*, 10 SOC. NETWORKS 57 (1988) (examining patterns of homophilic relationships in Americans); Miller McPherson & Lynn Smith-Lovin, *Homophily in Voluntary Organizations: Status Distance and the Composition of Face-to-Face Groups*, 52 AM. SOCIO. REV. 370, 370 (1987) (finding in a study examining how group

to associate with others who are similar to themselves in socially significant ways.⁸⁸ Put crudely: many people have neighbors and friends that are more likely to share a host of characteristics with them than a random individual drawn from the general population. Few people are heterophilous (i.e., living with or near people unlike themselves).

The concept of homophily has been used in a variety of contexts,⁸⁹ but the one most relevant for our purposes is housing.⁹⁰ This tendency to self-segregate is acute in the American context, shaped, reinforced, and often mandated by decades of de facto and de jure segregation by race, ethnicity, and class, practices that still exist today.⁹¹ Homophily is a way to describe “the extent to which society

composition relates to friendship that the homogeneity of a group strongly determines its homophily).

88. See McPherson & Smith-Lovin, *supra* note 87, at 370 (describing homophily as the way in which similar people connect at a higher rate than dissimilar people).

89. See, e.g., Herminia Ibarra, *Homophily and Differential Returns: Sex Differences in Network Structure and Access in an Advertising Firm*, 37 ADMIN. SCI. Q. 422, 422 (1992) (examining homophily in the context of the way in which men and women occupy different organizational positions in the workplace); Miller McPherson et al., *Birds of a Feather: Homophily in Social Networks*, 27 ANN. REV. SOCIO. 415, 416 (2001) (examining homophily in the context of types and dimensions of relationships); Ray Reagans & Ezra W. Zuckerman, *Networks, Diversity, and Productivity: The Social Capital of Corporate R&D Teams*, 12 ORG. SCI. 502, 502 (2001) (examining homophily in the context of diversity and effectiveness of corporate research and development teams).

90. Housing is also a good proxy for the type of neighborhoods where most people spend their time. See generally Qi Wang et al., *Urban Mobility and Neighborhood Isolation in America’s 50 Largest Cities*, 115 PROC. NAT’L ACAD. SCI. U.S. 7735, 7735 (2018) (“Residents of primarily black and Hispanic neighborhoods—whether poor or not—are far less exposed to either nonpoor or white middle-class neighborhoods than residents of primarily white neighborhoods. . . . The results suggest that even though residents of disadvantaged neighborhoods travel far and wide, their relative isolation and segregation persist.”).

91. See Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173, 176 (2019) (“The United States has a long and complicated history of racial segregation in housing, enforced through public policies, individual acts of discrimination, and mob violence.” (citations omitted)); Michelle D. Laysner, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 963–67 (2018) (explaining the way in which changes to low-income housing tax credits can reduce racial and economic segregation); Stacy E. Seicshnaydre, *The Fair Housing Choice Myth*, 33 CARDOZO L. REV. 967, 981 (2012) (discussing the way in which the Fair Housing Act’s nondiscrimination provisions cannot change consumers’ preference for living among people of their own race). See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) (exploring de facto and de jure segregation in America and arguing that desegregation is a constitutional and moral obligation); Sarah

is predisposed towards self-segregation.”⁹² Sociologists have documented the extent to which people sort geographically by social class,⁹³ race,⁹⁴ ethnicity,⁹⁵ immigration history,⁹⁶ sex,⁹⁷ religion,⁹⁸ and political orientation.⁹⁹ Humans, it seems, have a near infinite capacity to self-segregate, even when the law does not require that they do so.¹⁰⁰ As a consequence, geography is informative.

Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934 (2015) (exploring the way in which the design of cities contributes to racial and economic segregation).

92. Nema Dean & Gwilym Pryce, *Is the Housing Market Blind to Religion? A Perceived Substitutability Approach to Homophily and Social Integration*, 54 URB. STUD. 3058, 3059 (2017).

93. See, e.g., Douglas S. Massey, *Social Class and Ethnic Segregation: A Reconsideration of Methods and Conclusions*, 46 AM. SOCIO. REV. 641, 642–43 (1981).

94. See generally, e.g., William A.V. Clark, *Residential Preferences and Neighborhood Racial Segregation: A Test of the Schelling Segregation Model*, DEMOGRAPHY, Feb. 1991, at 1 (mathematically examining persistent patterns of segregation in large American cities); Daniel Lichter et al., *Together but Apart: Do US Whites Live in Racially Diverse Cities and Neighborhoods?*, 43 POPULATION & DEV. REV. 229 (2017) (examining whether White people become integrated with their non-White neighbors).

95. See, e.g., Jessie Bakens & Gwilym Pryce, *Homophily Horizons and Ethnic Mover Flows Among Homeowners in Scotland*, 34 HOUS. STUD. 925, 925 (2019) (“This article analyses mover flows in Glasgow and the role of ethnic homophily, the tendency for movers to be drawn to areas with similar ethnicities to their own.”).

96. See generally, e.g., David M. Cutler et al., *When Are Ghettos Bad? Lessons from Immigrant Segregation in the United States*, 63 J. URB. ECON. 759 (2008) (examining neighborhood segregation among first-generation immigrants in the United States).

97. Where people live does not tend to be strongly affected by gender, but where they spend time is. See Gregorio Caetano & Vikram Maheshri, *Gender Segregation Within Neighborhoods*, 77 REG’L SCI. & URB. ECON. 253, 253 (2019) (“Using novel data from Foursquare, a popular mobile app that documents the activity of millions of people, we document robust, highly localized gender segregation within neighborhoods: most venues (e.g., shops, restaurants, parks, museums) in eight major US cities are highly gender segregated, and over half of the gender segregation across cities occurs within Census blocks.”).

98. See, e.g., Dean & Pryce, *supra* note 92, at 3059 (comparing “the level of perceived homophily with respect to religion vis-à-vis the physical attributes of neighborhoods”).

99. See, e.g., Corey Lang & Shanna Pearson-Merkowitz, *Partisan Sorting in the United States, 1972–2012: New Evidence from a Dynamic Analysis*, 48 POL. GEOGRAPHY 119, 119 (2015) (examining “the extent to which the change in geographic [political] polarization is due to the migratory patterns of the electorate”).

100. None of this is meant to suggest that everybody who lives in segregated neighborhoods chooses to do so. More likely, many people want, or at least do not mind, self-segregating along some dimension (e.g., education, age, aesthetic

We utilize this well-documented insight to learn about pro se litigants by learning about the neighborhoods they inhabit. For example, a pro se litigant who lives in a neighborhood with high levels of educational attainment is more likely to have such an education herself than a pro se litigant from a neighborhood of people with relatively lower educational attainment.¹⁰¹ This connection might not be true in any given case, but likely holds true on average. Our approach would be useless if where people live was randomly assigned. However, this is not the case. The stronger homophily is in neighborhood selection and assignment, the more confident we are in our approach and the findings it yields.

Homophily is, of course, not invariable. Some neighborhoods are more diverse, across many dimensions, than others. Some neighborhoods mix people with all kinds of different characteristics. But many neighborhoods do not. They are not a random sample of people in the Country, or State, or even that County.

Think of where you live. Likely, the people in your immediate neighborhood are more like you than most of us are comfortable to admit. For example, our neighbors are likely to share our education level.¹⁰² If you are reading these words, you likely have completed a college degree. Most people have not.¹⁰³ Yet most of your neighbors, again, likely, will also be college graduates. Similarly, property values are not randomly distributed across the country or even towns.¹⁰⁴ This contributes to more geographic sorting of people along dimensions of wealth and income.

Legal scholars who are not directly familiar with the academic literature on homophily nevertheless likely know its many nasty effects. Schooling and housing segregation are widespread and insidious, in significant part due to homophily.¹⁰⁵ If people chose addresses using random number generators, segregated neighborhoods and elementary schools would be unlikely. Homophily helps to generate and perpetuate islands of concentrated poverty,

preferences, wealth) and are less inclined to segregate along other dimensions (e.g., race or national origin). Sadly, unintended and, alas, intended nasty consequences abound.

101. See generally Kyle Walker, *Educational Attainment in America*, TEX. CHRISTIAN UNIV. CTR. FOR URB. STUD., <https://personal.tcu.edu/kylewalker/maps/education/#7.61/40.088/-75.526> (last visited Jan. 16, 2022).

102. See *id.*

103. U.S. CENSUS BUREAU, U.S. DEPT' OF COM., *BACHELOR'S DEGREE ATTAINMENT IN THE UNITED STATES: 2005 TO 2019*, at 3 (2021), <https://www.census.gov/library/publications/2021/acs/acsbr-009.html>.

104. Kendra Bischoff, *Geography of Economic Inequality*, WASH. CTR. FOR EQUITABLE GROWTH (Oct. 31, 2016), <https://equitablegrowth.org/geography-of-economic-inequality/> (noting that neighborhoods tend to be grouped by income).

105. Ann Owens & Jennifer Candipan, *Social and Spatial Inequalities of Educational Opportunity: A Portrait of Schools Serving High- and Low-income Neighbourhoods in US Metropolitan Areas*, 56 URB. STUD. 3178, 3178–79 (2019).

racial segregation, and a toxic slew of other harmful effects.¹⁰⁶ Zoning rules can create, protect, or ameliorate the effects of homophily. Some legal interventions, like various United States Department of Housing and Urban Development programs, are aimed at countering homophily.¹⁰⁷ Others exacerbate it.¹⁰⁸

A vibrant conversation in law and other disciplines debates how much of human sorting is voluntary self-sorting and how much of it is done by force.¹⁰⁹ We do not take a position on this question for the purposes of this Article. The mere existence of homophily is enough to ground our approach. The stronger homophily effects are, the stronger are our findings. Homophily, while normatively troubling, is methodologically useful.

B. *Limitations and Caveats*

Of course, this approach entails a fundamental limitation: none of our claims speak to the characteristics of pro se litigants directly, only indirectly. This is an important limitation of this Article and raises bias concerns.

Bias might creep in because it is possible that pro se litigants are systematically atypical of the neighborhoods in which they live. For example, it could be the case that the one poor person in a neighborhood ends up being its one pro se litigant. Or, conversely, that the odd rich person in a poor neighborhood ends up being that neighborhood's lone pro se litigant. We have no way to directly rule out these possibilities. Indeed, we suspect that there are instances where this is the case. If widespread, such atypicality could systematically bias our results (without ways to determine the degree or even direction of bias and thus without the possibility of correction). We encourage readers to keep this possibility in mind and adjust their confidence in our findings accordingly, using other studies and data points to confirm and contest our findings.

Overall, we are not unduly worried about the potential for widespread atypicality. To bias our findings, the atypicality would have to be substantively significant and systematically in one direction or another (e.g., it is always the poor residents of a rich community that act as pro se litigants). More likely, pro se litigants

106. DIONISSI ALIPRANTIS, FED. RESRV. BANK OF CLEVELAND, RACIAL INEQUALITY, NEIGHBORHOOD EFFECTS, AND MOVING TO OPPORTUNITY 2–4 (2019).

107. See George Galster, *Neighbourhood Social Mix as a Goal of Housing Policy: A Theoretical Analysis*, 7 EUR. J. HOUS. POL'Y 19, 20 (2007) (analyzing various western European housing policies aimed at countering homophily).

108. See generally Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 788, 823–25 (2020) (describing how a “web of policing-based housing restrictions” affects where people who had contact with the criminal justice system can live).

109. D.Y. Yuan, *Voluntary Segregation: A Study of New Chinatown*, 24 PHYLON 255, 256, 260–62 (1963).

tend to be both below average and above average. We think it is unlikely that pro se status is significantly correlated with a person's position within a small neighborhood (e.g., the sole non-college-degree holder in a well-educated neighborhood). More likely, pro se status has something to do with a person's position overall (e.g., she is not intimidated by a court's formality due to significant educational attainment).

This view is bolstered by the fact that for most of this Article we are using Census Block Groups and Census Blocks as our unit of analysis. A Census Block Group has between 600 to 3,000 people in it, and there are more than 200,000 Block Groups.¹¹⁰ A populated Census Block usually has around 50 people in it,¹¹¹ and there are more than 11 million Blocks.¹¹² In short, our unit of analysis captures relatively small areas—neighborhoods and even slices of a particular neighborhood. In that sense, our study benefits from the fact that the Census Bureau tries to make these boundaries socially relevant.¹¹³ The small size of our units of analysis enhance our confidence that they cohere, and this, in turn, makes it less likely that the pro se litigants in these neighborhoods are systematic outliers.

Furthermore, we believe that processes that force neighborhoods to mingle are relatively rare. For example, there are instances of neighborhoods in transition, such as from gentrification.¹¹⁴ In those periods of transition, neighborhood data is an unreliable indicator of what kind of people live in the neighborhood. However, this would not bias our findings because it does not necessitate directionality. It would merely weaken the confidence we have in our findings. Additionally, while neighborhoods in transition undoubtedly exist, they are relatively rare.¹¹⁵ Most neighborhoods are frustratingly

110. *Glossary*, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/programs-surveys/geography/about/glossary.html>; *2010 Census Tallies*, U.S. CENSUS BUREAU (Oct. 8, 2021), <https://www.census.gov/geographies/reference-files/time-series/geo/tallies.html>.

111. Authors' conclusion based on personal observations and calculations.

112. *2010 Census Tallies*, *supra* note 110. Some of the Blocks are empty; they currently do not contain residents. Katy Rossiter, *What Are Census Blocks?*, U.S. CENSUS BUREAU (July 11, 2011), <https://www.census.gov/newsroom/blogs/random-samplings/2011/07/what-are-census-blocks.html>.

113. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COM., GEOGRAPHIC AREAS REFERENCE MANUAL 11-18 (1994), <https://www2.census.gov/geo/pdfs/reference/GARM/Ch11GARM.pdf>; *cf.* John M. Clapp & Yazhen Wang, *Defining Neighborhood Boundaries: Are Census Tracts Obsolete?*, 59 J. URB. ECON. 259, 260–61 (2006) (arguing that new empirical techniques allow for departures from fixed census boundaries and optimally place boundaries to control for neighborhood characteristics).

114. *See* JASON RICHARDSON ET AL., NAT'L CMTY. REINVESTMENT COAL., SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES 4 (2019), <https://nrc.org/gentrification/>.

115. *Id.* (noting that during the study's observation period most neighborhoods did not undergo gentrification).

static.¹¹⁶ Alas, this is cause for concern as a normative matter, but it is again methodologically useful here.¹¹⁷

Similarly, state housing interventions—such as rent control, housing vouchers, source of income ordinances, and public housing—might mingle neighborhoods and increase the chance of atypicality.¹¹⁸ Again, we believe there are relatively few neighborhoods impacted by these effects, and the effects are likely weak. For example, public housing does not drop out of the sky. Frequently, there are fierce political battles about where to site public housing.¹¹⁹ Rich communities tend to have more resources to resist these initiatives.¹²⁰ Even if public housing units were built in a rich community, the composition of the neighborhood would likely normalize over time.¹²¹

C. Data

To quantify our methodological insight and build a geographic account of federal pro se litigation, we collected and combined data from two sources: federal docket sheets and census data.

Our approach focuses on where pro se litigants live as an indirect way to gain a better understanding of pro se litigants themselves. Luckily for us, all litigants in federal courts must designate an address¹²² that is listed on docket sheets—a kind of cover page for each federal civil case file.¹²³ For pro se litigants, this address is

116. *Id.*

117. *See supra* notes 101–09 and accompanying text.

118. *See* Tim Devaney, *Obama Making Bid to Diversify Wealthy Neighborhoods*, THE HILL (June 11, 2015), <https://thehill.com/regulation/244620-obamas-bid-to-diversify-wealthy-neighborhoods> (explaining that a main goal of government affordable housing is to create diversity in neighborhoods).

119. CTR. FOR HOUS. POL'Y, DON'T PUT IT HERE! DOES AFFORDABLE HOUSING CAUSE NEARBY PROPERTY VALUES TO DECLINE? 1 (2009), https://furmancenter.org/files/media/Dont_Put_It_Here.pdf.

120. *See* Corianne Peyton Scally & J. Rosie Tighe, *Democracy in Action?: NIMBY as Impediment to Equitable Affordable Housing Siting*, 30 HOUS. STUD. 749, 749, 758 (2015).

121. *See* Rachel Garshick Kleit & Nicole Bohme Carnegie, *Integrated or Isolated? The Impact of Public Housing Redevelopment on Social Network Homophily*, 33 SOC. NETWORKS 152, 152 (2011) (“The high expectations for social network benefits of income mixing housing programs should be tempered.”).

122. FED. R. CIV. P. 4(a)(1)(C) (“A summons must . . . state the name and address of the plaintiff’s attorney or—if unrepresented—of the plaintiff.”); *see also Pro Se Complaint for a Civil Case*, U.S. CTS. (Dec. 2016), https://www.uscourts.gov/sites/default/files/complaint_for_a_civil_case.pdf (“Provide the [address] information below for each plaintiff named in the complaint.”).

123. *See* FED. R. CIV. P. 79(a)(1) (“The clerk must keep a record known as the ‘civil docket’ in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.”); *see also* FED. JUD. CTR., GUIDELINES FOR DOCKETING CLERKS: A TRAINING AND REFERENCE RESOURCE FOR FEDERAL

typically their home address.¹²⁴ Courts also encourage pro se litigants to keep their addresses up to date.¹²⁵

We harvested these addresses of pro se litigants from a gargantuan database of federal docket sheets generously made available by Professor Jonah Gelbach. The data was obtained through a grant from the Oscar M. Ruebhausen Fund at Yale Law School, which “funded a contract between Yale and Thomson Reuters, owner of Westlaw, to provide direct access to the universe of federal district court docket reports for civil cases filed beginning on January 1, 2005.”¹²⁶ As such, the database covers around 2.5 million civil actions filed over a ten-year span. It is an almost unimaginable bounty of data far exceeding anything previously utilized to study pro se litigation.¹²⁷

The underlying data exists in XML files that we processed case-by-case. For each case, we examined whether the address field contained a “pro se” marker.¹²⁸ This yielded around 350,000

DOCKET CLERKS 2 (1979), <https://www.fjc.gov/sites/default/files/2012/DockClrk.pdf> (“There are very few requirements imposed on the Clerk as to how docketing should be performed. . . . Most docketing procedures are the result of tradition or practices used in a court, proved effective, and adopted by other courts.”).

124. We suspect that for many of them that is the only address where they can reliably receive mail.

125. *See, e.g.*, U.S. DIST. CT. FOR THE DIST. OF ALASKA, NOTICE OF CHANGE OF ADDRESS, <https://www.akd.uscourts.gov/sites/akd/files/forms/PS23.pdf> (last visited Mar. 2, 2022); *see also* U.S. DIST. CT. FOR THE E. DIST. OF MO., PRISONER LITIGATION HANDBOOK 5, https://www.moep.uscourts.gov/sites/moed/files/documents/ProSePrisonerHandbook.EDMO_.pdf (last visited Mar. 2, 2022) (“You must file a change of address with the court every time your address changes. Failure to do so will prevent the court from notifying you of developments in your case. If any mail is returned to the court without a forwarding address and you do not notify the court of the change of address, the court may dismiss the case.”).

126. *See* Jonah B. Gelbach, *Material Facts in the Debate over Twombly and Iqbal*, 68 STAN. L. REV. 369, 393 (2016).

127. Before receiving access to all of this data, we originally collected pro se litigant addresses by hand, proceeding district by district and month by month. Despite heroic efforts by research assistants and our own tedious work, we were only able to collect data on a handful of districts for a very limited time range. We mention this here to underscore our gratitude to Professor Gelbach for giving us access to such wonderful data.

128. We wanted to flag for future researchers that this approach suffers from a blind spot. Pro se litigation is not a binary “yes” or “no” question. Most litigants are represented or unrepresented throughout the entirety of their lawsuits. However, some litigants might proceed without representation for only part of their lawsuits. For example, a pro se litigant might survive the pleading phase and hire an attorney to help with discovery. Or perhaps after a jury verdict, a represented party decides to handle enforcement of a judgment on her own. More ambiguous still, a formerly represented party might ask a judge for a one-week extension on a motion to have enough time to hire a new attorney. That party litigated pro se (i.e., appeared at a court hearing without a legal representative)

nonprisoner pro se cases. Beyond prisoner suits, we also excluded from our database cases involving various other subject matters: habeas, immigration/deportation, naturalization, and bankruptcy. We excluded these cases not because they are unimportant, but because they are so important that they deserve focused treatment and raise unique issues that are beyond the scope of this Article. For example, most prisoner suits list the pro se litigant's address as a correctional facility, often located in a remote area.¹²⁹ We think it would be highly misleading in this context to describe the pro se prisoner litigants as inhabiting these neighborhoods.¹³⁰ Conversely, we included cases that other researchers might want to separate: tax suits, Internal Revenue Service third-party suits, and Social Security Disability suits. After also excluding duplicate entries, we were left with around 20,000 cases per year. These numbers roughly match¹³¹ the officially reported numbers,¹³² giving us confidence that the “pro

but does not fit neatly into the usual understanding of pro se litigation. We suspect that most, though not all, pro se litigants are unrepresented throughout the entirety of their lawsuit(s). But clearly, more work needs to be done on the prevalence of partial pro se litigation.

129. See Jacob Kang-Brown & Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America*, VERA INST. JUST. 2 (June 2017), <https://www.vera.org/downloads/publications/out-of-sight-growth-of-jails-rural-america.pdf> (noting that “[d]uring the past decade, the use of jails has *declined* sharply in urban areas while it has *grown* ever-higher in rural areas”).

130. This practice has pernicious effects. For the related context of how some states count incarcerated persons in their places of confinement rather than at their home addresses in the redistricting process, see, for example, Dale E. Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 STAN. L. & POL'Y REV. 355, 355–56 (2011).

131. We caution against one-to-one comparisons. For example, a suit with a pro se plaintiff and a defendant will only count as one case in the Federal Judicial Center (“FJC”) database but will count as two separate addresses in most of our analysis. Conversely, a pro se plaintiff that files multiple suits counts multiple times in the FJC database but only generates one address for most of our analysis.

132. See, e.g., U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2014, at 1 (2014), https://www.uscourts.gov/sites/default/files/statistics_import_dir/C13Sep14.pdf (reporting a total of 24,274 nonprisoner pro se cases for the twelve-month period ending September 30, 2014); U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2013, at 1 (2013) (reporting a total of 24,708 nonprisoner pro se cases for the twelve-month period ending September 30, 2013); U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2012, at 1 (2012) (26,859 cases); U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2011, at 189 (2011) (25,795 cases); U.S. CTS., TABLE C-13: CIVIL PRO SE AND NON-PRO SE FILINGS, BY DISTRICT, DURING THE 12-MONTH PERIOD ENDING SEPT. 30, 2010, at 78 (2010) (24,319 cases).

se” docket marker is of sufficient importance to judges and docket clerks to warrant care.¹³³

For each case, we also determined the length of litigation and the role of the pro se litigant. Most pro se litigants act as plaintiffs but, of course, many are also defendants and, very rarely, act in other roles (e.g., as a third-party defendant).¹³⁴ For this Article, we did not collect data on how pro se litigants behave (e.g., whether they file more or fewer summary judgment motions than represented parties), but we believe this would be an inquiry worthy of significant future work.

Having collected this information from the federal docket sheets, we geolocated the pro se litigants based on the addresses that they used.¹³⁵ Next, we census-intersected these addresses, placing pro se litigants into common census geographies: States, Counties and County-equivalents, Census Tracts, Block Groups, and Census Blocks.¹³⁶ For each of these geographic units, the Census Bureau collects and publishes demographic and economic data.¹³⁷ Decennial census data is supposed to count each individual within the geography;¹³⁸ data from the ACS comes from continuous monthly

133. Differences in the number of counted pro se litigants can arise because some pro se litigants (like non-pro se litigants) file multiple lawsuits in a given year. This raises methodological questions that quickly implicate normative matters. Take, for example, a pro se litigant that files fifteen separate lawsuits against the same defendant on the same day. The court quickly consolidates and dismisses all causes of action. Should we treat this situation as if fifteen separate pro se litigants sued fifteen separate defendants? Or would that misleadingly inflate the number of pro se cases that originate from a single location? Especially in sparsely populated areas, a lone pro se litigant that actively files cases could single-handedly skew per capita measures of pro se litigation activity. But then again, perhaps this pro se litigant really has suffered multiple actionable injuries that a represented party could pursue in separate actions. Worse still, even if we read all filings in all of these cases, we would still not know which story captures reality more closely (because of endogeneity problems). On the whole, given the focus of our Article, we examined pro se litigants rather than pro se litigation.

134. Of course, given our joinder rules (e.g., counterclaims), these labels must be used with caution.

135. A few pro se litigants listed P.O. boxes as their addresses of record. These pro se litigants could not be geolocated, and we excluded them from all subsequent analysis.

136. See generally GEOGRAPHY DIV., U.S. CENSUS BUREAU, GEOGRAPHIC ENTITIES AND CONCEPTS, <https://www.census.gov/content/dam/Census/data/developers/geoareaconcepts.pdf> (last visited Jan. 17, 2022) (defining and depicting geographic entities). For a more complete description of this methodology, see Joshua S. Sellers & Roger Michalski, *Democracy on a Shoestring*, 74 VAND. L. REV. 1079, 1097 (2021).

137. See Sellers & Michalski, *supra* note 136, at 1097–98.

138. See U.S. CONST. art. I, § 2; *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 341 (1999) (describing the census as the “linchpin of the federal statistical system . . . collecting data on the characteristics of individuals, households, and housing units throughout the country” (quoting

samples over a multiyear period.¹³⁹ We primarily rely in this Article on ACS data because it is more fine grained,¹⁴⁰ and, in some ways, more reliable, than the decennial census data. The U.S. Census Bureau provides data at different levels of geographical scope ranging from Blocks, to Block Groups, to Tracts, Counties, States, Divisions, Regions, and the Nation (as well as a range of more specialized geographic units like Congressional Districts, Public Use Microdata Areas, and the like).¹⁴¹ Smaller geographic units (like Blocks) provide for more precision, but the Census Bureau makes some variables (e.g., household income) unavailable at the level of high-resolution geographies.¹⁴² As such, use of any one census unit requires trade-offs between precision and explanatory power. To ameliorate this dilemma, we utilize different census units for different parts of the analysis and, wherever possible, duplicate our analysis at multiple levels side by side.¹⁴³

For each of these census units, we also calculated their distance to the nearest federal courthouse. To do so, we first obtained a list of addresses of all 296 federal district courthouses¹⁴⁴ from the official

NAT'L RSCH. COUNCIL, COUNTING PEOPLE IN THE INFORMATION AGE 1 (Duane L. Steffey & Norman M. Bradburn eds., 1994)).

139. See *Decennial Census and American Community Survey*, U.S. CENSUS BUREAU (Nov. 23, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/census-acs.html>.

140. Until 2000, the decennial census included a short-form and long-form version. *Id.* The long-form version added more questions to the basic census questions. *See id.* Since 2010, the decennial census has included the “short form” only. *Id.* The more fine-grained demographic and economic work of the long-form version has been accomplished since 2005 by the ACS. *Id.* As such, the decennial census is focused on constitutional requirements (e.g., voting apportionment), while the ACS tends to be more useful for up-to-date, fine-grained, accurate demographic and economic data. *Id.*

141. See GEOGRAPHY DIV., *supra* note 136, at 4 (depicting a hierarchy of census geographic entities).

142. This is in part because of privacy concerns. For example, in 2010, Block 1031, Block Group 1, Census Tract 62.02 (also known as the White House) contained five individuals that the Census identified as “Black or African American alone.” *Id.* at 7–9. If the Census Bureau provided more detailed information, it would not be difficult at this level of granularity to match additional information with specific individuals. However, the same information at the Census Tract level (mingled in with, say two thousand other individuals) poses less of a privacy concern.

143. See, e.g., *infra* Table 2 (utilizing Census Block Groups, Tracts, and Counties).

144. As such, we did not inquire into the distance to courts of appeals or bankruptcy courts. Notice also that there are instances where separate federal districts, with separate addresses, share the same building. For instance, note the following two district court addresses:

United States Courts website¹⁴⁵ and geolocated them.¹⁴⁶ We then calculated the distance¹⁴⁷ between the census unit geography centroids¹⁴⁸ and the geolocated courthouses. This provides a proxy of how accessible federal courthouses are in different parts of the country.

III. FINDINGS

The result of our data collection and processing is that we can locate pro se litigants in real space. This allows us to make claims about the neighborhoods where pro se litigants live and where they do not live.

U.S District Court for the Western District of Arkansas
 United States Courthouse and Post Office Building
 500 North State Line Avenue
 Texarkana, AR 71854-5961

U.S. District Court for the Eastern District of Texas
 United States Courthouse and Post Office
 500 North State Line Avenue
 Texarkana, TX 71854-5957

Court Location: Texarkana, U.S. DIST. CT. FOR THE W. DIST. OF ARK., <https://www.arwd.uscourts.gov/content/texarkana> (last visited Jan. 17, 2022); *Court Location: Texarkana*, U.S. DIST. CT. FOR THE E. DIST. OF TEX., <https://www.txed.uscourts.gov/?q=location/texarkana> (last visited Jan. 17, 2022).

145. *Federal Court Finder*, U.S. CTS., <https://www.uscourts.gov/federal-court-finder/search> (last visited Jan. 17, 2022).

146. Some of the district courthouses listed are rarely used for motion practice and trials but are available for filings. We included them in our analysis, but future researchers might want to utilize more fine-grained distinctions. *See, e.g., Court Location: Key West*, U.S. DIST. CT. FOR THE S. DIST. OF FLA., <https://www.flsd.uscourts.gov/content/key-west> (last visited Jan. 17, 2022) (“Due to limited staffing, regular Court hours do not apply to the Key West Office.”). Conversely, some courthouses have no active clerk’s office. *See, e.g., Court Location: Aberdeen*, U.S. DIST. CT. FOR THE DIST. OF S.D., <https://www.sdd.uscourts.gov/content/aberdeen> (last visited Jan. 17, 2022) (“There is no staffed clerk’s office in Aberdeen.”). Again, future researchers might want to make a different selection.

147. There are different planar and spherical calculations available to calculate distances between two points on a globe. For our Article, we used a planer method, but utilizing another method would not alter our findings.

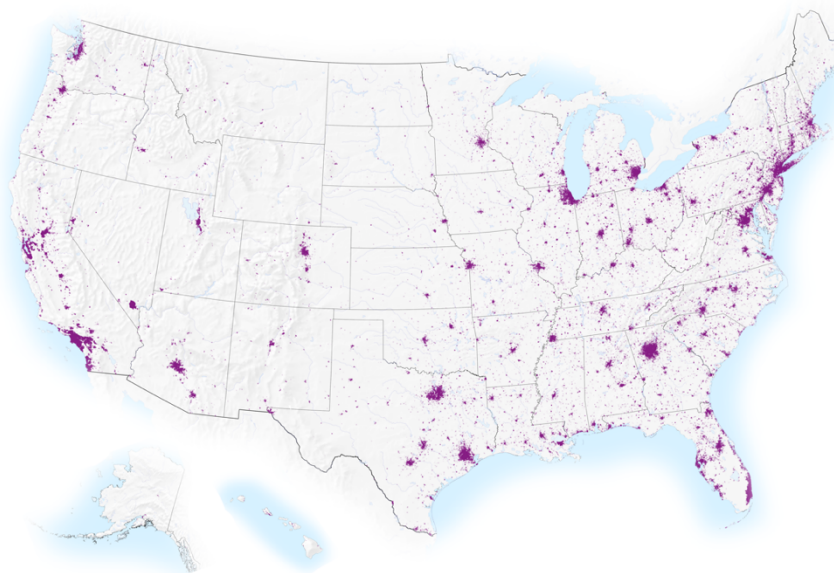
148. Centroids indicate the geometric center of mass of a geometry. Put crudely, they help us to locate the center of a geographic unit. For common polygons (e.g., squares or circles) this is “in the middle.” For some shapes the centroid could fall outside of the boundaries of a shape (e.g., for a doughnut or crescent shape). We experimented with alternative ways to determine geographic centers that would guarantee that the resulting point falls within the parent shape, but given how the Census Bureau determines census unit shapes, this rarely made much of a difference. Also, please keep in mind that geographic centers and population centers might not be the same.

We begin with a geographic description of where pro se litigants live. The main finding in this geographic account is that pro se litigants tend to be urban and located near federal courthouses. Next, we turn to demographic, economic, and social descriptions of the neighborhoods where pro se litigants live and where they do not live. Our main findings suggest that the neighborhoods of pro se litigants are profoundly ordinary. Typically, pro se litigants do not hail from the fringes of the monstrously rich or desperately poor. Instead, they are mostly middle class, with a few outliers that match the general population of outliers. Similarly, pro se litigants tend to be located in communities whose education levels, age, veteran status, and gender earnings ratios largely mirror the rest of the general population. The most notable outliers are race and proximity to federal courthouses. Pro se litigants are more likely to reside in communities that are less homogeneously White and less likely to reside in rural communities far from the nearest federal courthouse. Overall, our findings present pro se litigants as a radically democratic element in federal courts. They, perhaps more than any other type of litigant, bring the federal courts into contact with a surprisingly representative sample of the general public. For good and bad, the communities inhabited by pro se litigants significantly mirror the communities most Americans inhabit.

A. *The Geographic Distribution of Pro Se Litigants*

We begin here by mapping the distribution of pro se litigants across the country. Each dot in Figure 1 represents the address of one of around two hundred thousand pro se litigants who were involved in a civil action filed between 2005 and 2014.

FIGURE 1. LOCATIONS OF PRO SE LITIGANTS



Note: For a full-color version of Figure 1, please view the Article online.

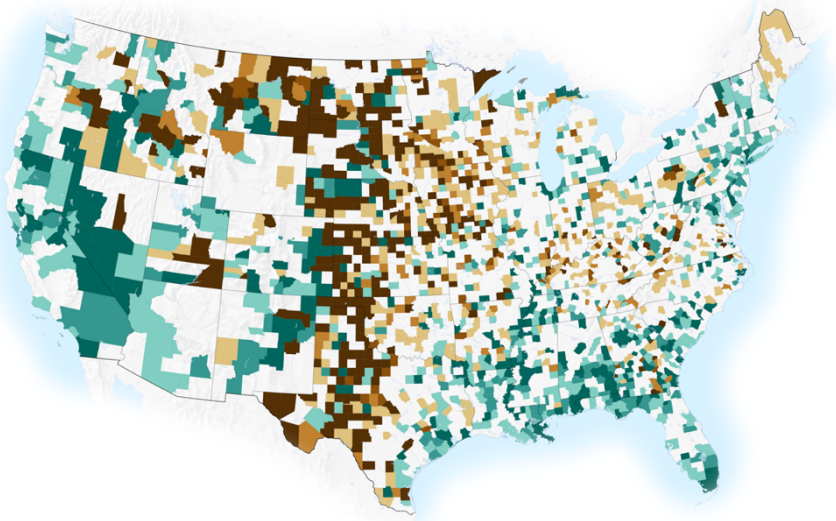
Figure 1 maps pro se litigants. The location of pro se litigants mirrors the location of major population centers. Pro se litigants cluster in predictable locations. For example, it is easy to locate major cities, like Atlanta and Phoenix, on the map, even though the map was constructed without reliance on where population centers are located. This suggests that many pro se litigants are located close to federal courthouses. Barring jurisdictional issues or transfers, many of these pro se litigants are able to litigate close to home. This alleviates concerns that many pro se litigants might find it unduly expensive to travel to court to partake in proceedings. The geographical distribution of pro se litigants also suggests that many of them do not live in lawyer deserts.¹⁴⁹ Whatever their reasons to proceed pro se, for many of them it is likely not from a lack of lawyers living or working nearby.

Of course, Figure 1 only tells us so much. Pro se litigants are located, by and large, where people are located. To examine where there are more or fewer pro se litigants than we would expect, we have to take a per capita measure. Figure 2 reproduces the information contained in Figure 1. However, this time we counted the number of pro se litigants in a given County or County-

149. Lisa R. Pruitt et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 HARV. L. & POL'Y REV. 15, 22 (2018) (noting that while 20 percent of the population lives in rural America, only 2 percent of small law practices are in rural areas, resulting in legal deserts where the demand for legal services exceeds available resources).

equivalent.¹⁵⁰ We then divided that number by the County's population to obtain a per capita measure. Finally, we compared this per capita measure for each County to the national average.¹⁵¹

FIGURE 2. DEVIATION FROM MEDIAN PER CAPITA PRO SE LITIGATION RATE BY COUNTY AND COUNTY-EQUIVALENTS



Notes: Browns indicate below-average per capita pro se litigation rates. Deeper browns indicate further distance from the average. Greens indicate above-average pro se litigation rates. Deeper greens indicate further distance from the average. Areas at or near the national average are left transparent. For a full-color version of Figure 2, please view the Article online.

Figure 2 reveals where there are more pro se litigants than we would expect based on population alone, and where there are fewer pro se litigants than expected. Locating this information in real space and representing it on a map allows us to show geographic patterns. Here, Figure 2 shows a broad column of Counties in the middle of the country where there are fewer pro se litigants than expected, based on population alone. The column rises from Big Bend National Park at the Texas-Mexico border and stretches north through the western parts of Oklahoma, Kansas, Nebraska, and the Dakotas with arms reaching into neighboring states.¹⁵² Conversely, Figure 2 also

150. Louisiana, for example, is divided into Parishes instead of Counties.

151. See generally Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277 (2020) (also using a comparison of local per capita measures to national averages in order to highlight regional variations).

152. This pattern is strongly reminiscent of patterns in other contexts. See, e.g., Roger Michalski & Stephen Rushin, *Federal (De)Funding of Local Police*, 110 GEO. L.J. ONLINE 54, 62 fig.1 (2021) (depicting a similar geographic column of higher per capita federal grants to local law enforcement agencies).

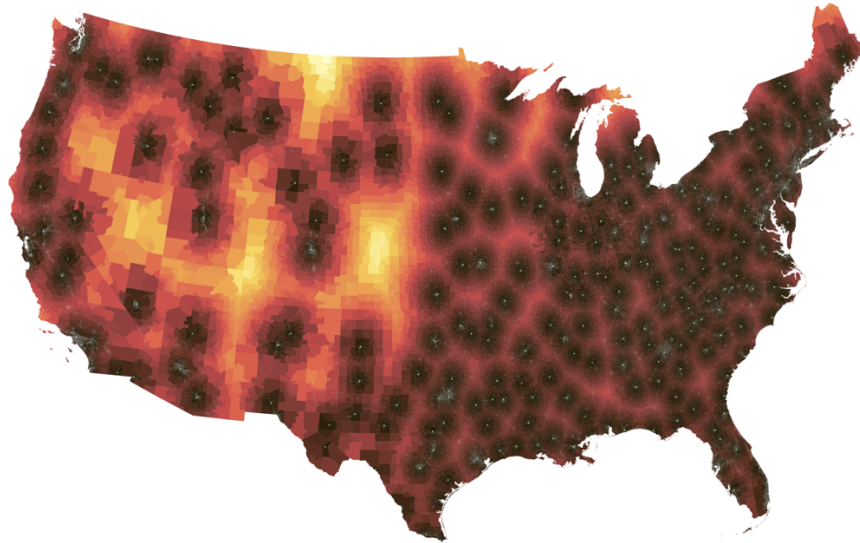
highlights a stretch along the Gulf of Mexico where there are more pro se litigants than we would expect. Similarly, parts of the West Coast and the New York metropolitan area are overrepresented on the federal pro se docket.

The concentration of pro se litigants in urban centers entails a lacuna of pro se litigants from rural areas. While rural pro se litigants exist, they are few and far between. Conceivably, it could be the case that incidents giving rise to litigation occur less frequently in rural communities, that they might resolve conflicts without use of courts, or that rural lawyers are more willing and able to represent rural constituents. All of these potential explanations strike us as unlikely. We believe that it is more likely that the potential pro se litigants in rural communities are more deterred from accessing courts than their urban counterparts. The current stock of pro se litigants suggests that rural populations are less likely to access federal courts on their own. This suggests that a renewed focus on providing access to justice in rural and remote areas of the country might be warranted.

Figure 2 raises the possibility that pro se activity might be connected to ease of access to a federal courthouse. For example, multiple federal courthouses are located a mere subway ride away in New York City, and even more are a short train ride out toward Long Island, north toward White Plains, or across the Hudson River in New Jersey.¹⁵³ Perhaps this ease of access lowers barriers for pro se litigants that have to, or expect to, appear in court. To explore the connection between distance to a federal courthouse and geography further, we calculated distances to the closest federal courthouse.

153. See *Federal Court Finder*, *supra* note 145 (displaying nine results after filtering by “U.S. District Courts,” “Southern District of New York,” “Eastern District of New York,” and “District of New Jersey”).

FIGURE 3. DISTANCE OF CENSUS BLOCK GROUPS TO THE CLOSEST FEDERAL COURTHOUSE



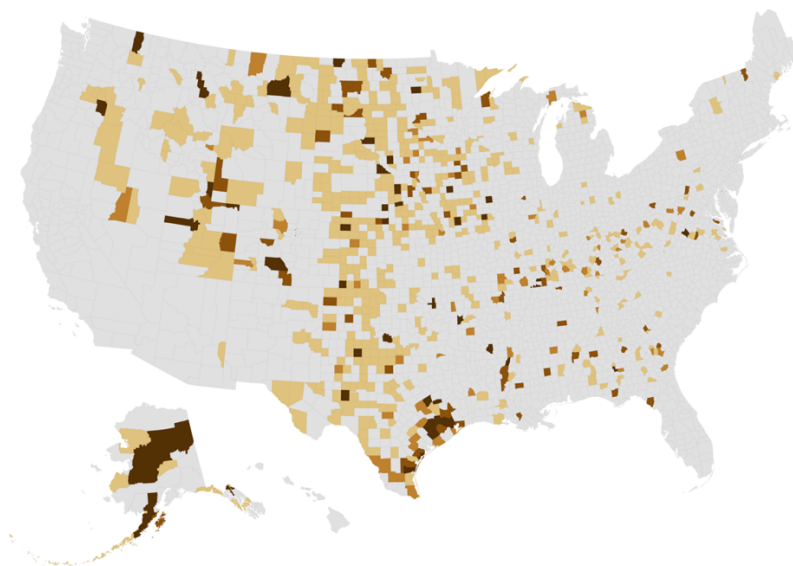
Notes: Small white dots indicate the location of active federal district courts. Block Groups in dark reds are located close to a federal district court; those colored in reds are further away; those in yellow are furthest away. For a full-color version of Figure 3, please view the Article online.

Figure 3 highlights areas of the country far from federal courthouses. Potential pro se litigants in those locations would have to travel for multiple hours to attend court proceedings. Distant proceedings are, of course, always a practical concern, as distance could entail litigation costs which, in turn, might skew outcomes. In non-pro se litigation such concerns are less pressing than in pro se litigation because parties can hire attorneys located wherever the proceedings take place, knowing that often there is little need for represented parties to be physically close to court proceedings.¹⁵⁴ Unrepresented parties, however, do not have that option.

All of the previous figures examined the location of all pro se litigants, no matter their role in litigation. But, of course, pro se litigants can appear in many roles, most notably as both plaintiffs and defendants. Figure 4 examines the relationship of geography to the role that pro se litigants play.

154. See Pruitt et al., *supra* note 149, at 136 n.737 (noting that lawyers must be available for in-person court appearances).

FIGURE 4. COUNTIES AND COUNTY-EQUIVALENTS WHERE PRO SE DEFENDANTS OUTNUMBER PRO SE PLAINTIFFS



Notes: Counties and County-equivalents where pro se plaintiffs outnumber pro se defendants are in gray. Yellow indicates that there are as many or more pro se defendants than pro se plaintiffs. Deepening browns indicate an increasingly skewed ratio. For a full-color version of Figure 4, please view the Article online.

In most of the country, pro se plaintiffs far outnumber pro se defendants.¹⁵⁵ However, Figure 4 highlights areas where pro se litigants, if they exist at all, are more commonly defendants than plaintiffs. Figure 4 echoes Figure 2, which showed a dearth of pro se litigants in the middle of the country. Figure 4 reveals that most of the fewer-than-expected pro se litigants in that geographic column are acting as defendants, not plaintiffs.

B. The Communities Where Pro Se Litigants Live

Having described the geographic distribution of pro se litigants, we will now turn toward demographic, economic, and social descriptions of the communities inhabited and not inhabited by pro se litigants. We have already seen that many of these communities tend to be in urban areas, but here we aim to describe them further

155. See Gough & Poppe, *supra* note 11, at 574 (“While it is generally known that pro se plaintiffs account for a higher percentage of pro se litigation, our results show that cases involving pro se plaintiffs are more than ten times as prevalent as cases with pro se defendants.”).

and, by portraying them, also draw an indirect portrait of the pro se litigants who hail from these communities.

Our units of analysis throughout this Part are different levels of census geographies. They range from the fairly small Census Blocks to the often large and sometimes populous County and County-equivalent level.¹⁵⁶ Our initial approach is to compare Block Groups that contain pro se litigants to Block Groups that do not. This provides an initial sense of why some communities might produce more federal pro se litigants than other communities.

TABLE 1. DESCRIPTIVE STATISTICS OF DEMOGRAPHICS BY CENSUS TRACTS (WITH AND WITHOUT ANY FEDERAL PRO SE LITIGANTS)¹⁵⁷

	Mean	SD	Min	P25	P75	Max	Mean by Any Pro Se Presence	
							With Pro Se	Without Pro Se
Distance to Nearest Federal Courthouse	0.020	0.024	0	0.006	0.027	1	0.018 (0.031)	0.027 (0.031)
Median Household Income	56,729	28,088	2499	37,664	69,167	250,000	57,298 (29,014)	55,134 (25,240)
Median Earnings	31,954	13,063	2499	23,413	37,797	161,607	32,447 (13,448)	30,582 (11,821)
Median Age	38.5	7.6	11.1	33.3	43.3	84.3	38.23 (7.4)	39.4 (8.1)
Average Household Size	2.65	0.51	1.03	2.33	2.89	10.75	2.65 (0.51)	2.64 (0.50)
Portion of Population:								
Non-White	0.265	0.254	0	0.070	0.380	1.00	0.292 (0.261)	0.191 (0.215)
Veteran	0.910	0.048	0	0.061	0.115	1.00	0.089 (0.044)	0.097 (0.056)
College Degree	0.278	0.185	0	0.136	0.382	1.00	0.286 (0.189)	0.256 (0.174)
Without Work Last Year	0.256	0.100	0	0.187	0.309	1.00	0.260 (0.099)	0.248 (0.104)
Receiving Public Assistance	0.031	0.035	0	0.008	0.040	1.00	0.032 (0.036)	0.028 (0.034)
Receiving SNAP Benefits	0.135	0.121	0	0.045	0.189	1.00	0.139 (0.124)	0.125 (0.110)
Hispanic/Latino	0.154	0.211	0	0.022	0.190	1.00	0.162 (0.211)	0.134 (0.211)
Not U.S. Citizen	0.067	0.086	0	0.009	0.090	1.00	0.071 (0.086)	0.055 (0.085)
Lives in Poverty	0.165	0.128	0	0.069	0.225	1.00	0.168 (0.129)	0.156 (0.127)
Has a Disability	0.128	0.060	0	0.086	0.161	1.00	0.127 (0.058)	0.132 (0.065)
With Health Insurance (public or private)	0.851	0.093	0	0.801	0.920	1.00	0.848 (0.093)	0.879 (0.094)
Born in State of Residence	0.560	0.185	0	0.467	0.744	1.00	0.583 (0.183)	0.631 (0.188)
Earnings Ratio Female/Male	0.742	0.335	0.032	0.590	0.850	45.96	0.751 (0.328)	0.720 (0.354)

Note: The descriptive statistics above are not describing the population but, instead, provide a measure of Census Tracts (in part to inform the work of Table 2). Some Census Tracts, especially those with small populations, can be heavily influenced by outliers.

Table 1 compares Census Tracts with any federal pro se presence to Tracts that have no pro se litigants. With more than seventy

156. See generally GEOGRAPHY DIV., *supra* note 136.

157. The descriptive statistics above are not describing the population but, instead, provide a measure of Census Tracts (in part to inform the work of Table 2). Some Census Tracts, especially those with small populations, can be heavily influenced by outliers.

thousand Census Tracts,¹⁵⁸ even small differences between the two are quickly statistically significant. As such, we are not only looking for statistical significance but also for meaningful substantive differentiation. For example, while there is a difference in the median household income of Tracts with and without pro se litigants, the difference is not very large, and it cuts against common expectations (pro se Tracts have a higher median household income). Similarly, the average household size in Tracts with and without pro se litigants is nearly indistinguishable. Conversely, Census Tracts with pro se litigants appear far more diverse than Census Tracts without pro se litigants.

Examining one demographic or economic indicator at a time can provide an initial and intuitive sense of how some variables might be implicated. However, it is inherently limited. For example, Table 1 compares Tracts with pro se litigants to those without. It cannot distinguish between Tracts that have just one pro se litigant and those that produce many. Similarly, it cannot untangle the complex relations between all of these variables (see the Appendix for a graphical display of a correlation matrix). Perhaps most importantly, it is not well-suited to examine competing explanations and the interaction of multiple variables. For example, imagine that we compared rich and poor neighborhoods and found that poor neighborhoods host more pro se litigants. It would be difficult to know whether this is due to differences in the demographic composition of the neighborhoods, their proximity to the nearest federal courthouse, or differences in education levels. Any differences in the number of pro se litigants between rich and poor neighborhoods might be due to demography, proximity, education, or a mix of all three. Accordingly, univariate analyses that focus on the relationship between the number of pro se litigants in a neighborhood and any one factor are inherently limited.

C. *Multivariable Regression Models*

To overcome these limitations, in this Subpart we utilize multivariate ordinary least squares (“OLS”) regressions. These regressions provide numerical models that can take into account the simultaneous effects of multiple factors and produce helpful measures of statistical reliability. In effect, the regression models allow us to tease out, in the above example, to what extent income, demography, proximity, or education are related to differences in the number of pro se litigants in different neighborhoods.

Rather than providing a single regression model, we provide in this Subpart a series of multivariable regression models. They act on different geographic units and different sets of independent variables. The Census Bureau makes some variables only accessible at broader

158. *2010 Census Tallies*, *supra* note 110.

geographic scales.¹⁵⁹ As a result, the different models present tradeoffs between fine-grained distinctions at the scale of small geographic units on the one hand, and more explanatory variables available only for larger geographic units on the other hand. We provide all of these models here because larger geographic units are often not able to capture the extremely nuanced distinctions between neighborhoods. For example, within even a small County of twenty thousand inhabitants there might be two or more radically different neighborhoods with different propensities to host pro se litigants.

Also, we provide three different models at the level of Census Block Groups. The first model acts on all pro se litigants, while the second focuses only on pro se plaintiffs and the third focuses only on pro se defendants.¹⁶⁰ We provide these three models to examine whether these types of pro se litigants hail from different neighborhoods and to start the process of developing differentiated accounts of pro se litigants in different roles.

We want to caution at the beginning that empirical work related to pro se litigation origins lacks a developed theoretical account that could be utilized to construct and ground a causal model. Without such a model, any account will likely miss confounding variables, hidden variables, and interactions among variables. In short, the literature on this topic leaves us with few tools to build a well-developed causal model. But instead of accepting this as an excuse not to try, we wanted to take steps towards developing richer theoretical models and to instigate more sustained empirical work. We believe that research on courts and litigation is best understood as an iterative dialogue, a back-and-forth, between theoretical, doctrinal, and a broad range of empirical work. We hope our account, though inherently limited, will launch a renewed theoretical focus on pro se litigation and prompt further methodological developments and refinements.

159. *Cf.* U.S. CENSUS BUREAU, 2010 CENSUS DEMOGRAPHIC PROFILE SUMMARY FILE 5-6 (2011), <https://www2.census.gov/programs-surveys/decennial/2010/technical-documentation/complete-tech-docs/summary-file/dpsf.pdf#page=21&zoom=100,0,0>.

160. As such, this leaves out pro se litigants who have been impleaded as third-party plaintiffs or defendants. *See* FED. R. CIV. P. 14.

TABLE 2. ORDINARY LEAST SQUARES—ANNUAL PER CAPITA (100,000)
UNIQUE PRO SE LITIGANTS IN CENSUS GEOGRAPHY

	(1) Block Groups All Pro Se	(2) Block Groups Plaintiffs Only	(3) Block Groups Defendants Only	(4) Tracts All Pro Se	(5) Counties All Pro Se
(Intercept)	7.138*** (0.329)	6.045*** (0.249)	0.494*** (0.115)	19.360*** (1.143)	6.058*** (1.722)
Distance to Nearest Federal Courthouse	-23.883*** (1.492)	-18.446*** (1.134)	-4.544*** (0.524)	-22.003*** (2.353)	-3.105*** (0.866)
Median Household Income (in ten-thousand dollars)	-0.031 (0.023)	-0.017 (0.0174)	-0.009 (0.008)	0.213*** (0.055)	-0.142 (0.125)
Median Earnings (in ten-thousand dollars)	0.276*** (0.040)	0.194*** (0.030)	0.0562*** (0.0139)	1.168*** (0.095)	0.105 (0.186)
Median Age	0.0139** (0.005)	0.003 (0.004)	0.014*** (0.0017)	-0.025* (0.0111)	-0.008 (0.014)
Average Household Size	-3.33*** (0.078)	-2.712*** (0.059)	-0.365*** (0.027)	-5.810*** (0.187)	-1.556*** (0.306)
Portion of Population:					
Non-White	8.563*** (0.144)	7.486*** (0.109)	0.989*** (0.051)	9.760*** (0.285)	6.072*** (0.372)
Veteran	-5.398*** (0.649)	-2.677*** (0.493)	-2.151*** (0.229)	-6.685*** (1.612)	2.369 (2.133)
College Degree	2.217*** (0.265)	0.698*** (0.202)	0.967*** (0.0932)	1.794** (0.636)	4.539*** (0.923)
Without Work Last Year	5.678*** (0.339)	4.170*** (0.257)	1.052*** (0.119)	7.631*** (0.872)	8.656*** (0.921)
Receiving Public Assistance	4.452*** (0.774)	5.464*** (0.588)	-1.560*** (0.272)	7.440*** (2.048)	1.581 (3.034)
Receives Food Stamps				-3.160*** (0.936)	1.278 (1.416)
Hispanic/Latino				3.048*** (0.434)	0.731 (0.515)
Not US Citizen				-3.927*** (1.185)	2.164 (2.092)
Lives in Poverty				7.320*** (0.909)	-7.077*** (1.741)
Has a Disability				6.448*** (1.614)	-1.229 (1.890)
With Health Insurance (public or private)				-11.074*** (0.948)	-0.364 (1.172)
Born in State of Residence				-1.683*** (0.397)	-2.550*** (0.412)
Earnings Ratio Female/Male	0.723*** (0.061)	0.580*** (0.046)	0.097*** (0.021)	1.313*** (0.199)	-0.177 (0.391)
Scale of Short to Long Litigation (-1 to 1)	8.556*** (0.061)	5.986*** (0.047)	2.232*** (0.021)	3.084*** (0.097)	1.324*** (0.123)
Observations	216,723	216,723	216,723	72,432	3,143
Adj. R ²	0.132	0.1279	0.0600	0.0951	0.2741

Notes: The distance to nearest courthouse is normalized to range from zero to one. Short litigation is operationalized as all cases that terminate within sixty days of the original filing or notice of removal. This cutoff is used rather than a

continuous measure of mean or median litigation length because some geographic units have few pro se litigants, and a single idiosyncratic outlier could skew a continuous measure and provide for a misleading indicator. A “-1” indicates that all pro se cases from those geographic units terminated in less than sixty days; “1” indicates that all terminated in more than sixty days. “Non-White” is defined as all census categories that are not indicated as “White.” *** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$.

Table 2 shows that many of the variables are statistically highly relevant, in part because of the large number of observations. Smaller geographical units number in the tens of thousands. This, paired with the large dataset of federal dockets over a ten-year span, purchases significant explanatory power. However, numerous variables lose statistical significance as we move from Block Groups and Tracts to Counties. This suggests that Counties are too large a geographic unit to capture many of the nuances between neighborhoods that are relevant in explaining where pro se litigants are located. While there are many Counties and County-equivalents (over three thousand) and they vary tremendously, distinctions within Counties are sufficiently significant to warrant moving to smaller geographic units. A County-level analysis features a higher adjusted R^2 likely because there are fewer Counties with no pro se litigants. This suggests that even though our dataset of federal dockets is massive, perhaps for low-probability events like federal pro se litigation, only extremely large datasets (by current standards) are able to tease out whether a Tract’s absence of federal pro se litigants is due to inherent features or simply the limited time range of the dataset.

We turn now from statistical significance to substantive significance. Here we ask not about confidence in the measurement but the size of a relationship. For example, median earnings are statistically significant in almost all models but are of limited substantive significance. In Model 1, increasing median earnings by a massive \$40,000 would typically add only one federal pro se litigant per one hundred thousand inhabitants, relatively little compared to the baseline of seven pro se litigants. Similarly, increasing the median age by as much as forty years does not significantly move the needle (only adding about half a pro se litigant). In contrast, distance to the nearest federal courthouse has a huge effect, capable of wiping out all gains made elsewhere. As Figure 4 showed, most Census Block Groups and Tracts are located near federal courthouses and are not significantly affected by this variable. However, for those further away, distance is the strongest predictor.

Also of notable substantive significance is the percentage of the population that is identified by the Census Bureau as non-White. Less homogeneously White neighborhoods feature significantly more pro se litigants. Similarly, neighborhoods where people were out of work in the last year or that received public assistance are more likely

to litigate pro se. Conversely, the presence of high percentages of veterans is associated with lower numbers of pro se litigants. Education levels impact pro se numbers, but perhaps not as much as expected. All else being equal, a Census Block Group with no college degrees features just two fewer pro se litigants (per one hundred thousand) than a Block Group where every single individual has a bachelor's degree. Similarly, gender earnings ratios between women and men can be read as a crude but important cultural proxy. A neighborhood where women earn half as much as men is different than one where they earn 1.5 times as much. Yet that huge change adds less than one pro se litigant per one hundred thousand.

Models 2 and 3 disaggregate Model 1 by the role that pro se litigants play. Model 2 uses pro se plaintiffs as an independent variable; Model 3 uses pro se defendants. These models help to tease out differences between the neighborhoods of pro se litigants in different roles, keeping in mind that generally there are fewer federal pro se defendants than pro se plaintiffs. The first notable difference between the two is that pro se plaintiffs seem more susceptible to distance to the nearest federal courthouse. Given the more involuntary nature of being a defendant in a suit, this conforms with our expectations. The next notable finding is that the extent to which a neighborhood is non-White matters much more for pro se plaintiffs than pro se defendants. Neighborhoods where more people were out of work in the last year generated more pro se plaintiffs and only slightly more defendants. More drastically still, reception of public assistance is associated with more pro se plaintiffs but reduces the number of pro se defendants (perhaps because more of them are judgment proof). Meanwhile, other variables like veteran status, age, and education are comparable across both categories.

The last variable in the model measures the ratio of pro se cases that terminated quickly to cases that took longer to resolve. The coefficients here require more interpretation. Our goal in including this variable was to account for variation in pro se litigation behavior. We wanted to make progress toward distinguishing pro se litigants who briefly visit federal courts (e.g., after a mistaken removal followed by a quick remand) and more long-term litigation. Pro se litigants are sometimes accused of repeated, frivolous litigation behavior,¹⁶¹ and this variable is a crude (and complex) proxy for that. We find, contrary to expectations, that neighborhoods that feature more long-term pro se litigants also produce more pro se litigants. A similar but smaller effect is at play for pro se defendants.

Moving from Block Groups (Models 1–3) to Tracts (Model 4) allows us to draw on a broader range of census variables, though at

161. Stephan Landsman, *The Growing Challenge of Pro Se Litigation*, 13 LEWIS & CLARK L. REV. 439, 442 (2009) (noting that 76.2 percent of pro se cases failed in one jurisdiction, and 56 percent were dismissed at the preliminary motion stage).

the cost of fine-grained resolution.¹⁶² Most of the direction and magnitude of the estimators in Model 4 echoes the findings of Model 1. Most notable among the new variables is the direction and magnitude related to health insurance. Tracts where many residents have health insurance are far less likely to harbor pro se litigants. We suspect that this is not due to a markedly reduced risk of legal injury. Rather, it could be indicative of a lower need to resort to courts to pay for medical expenses. This tentative finding could have important implications for the national debate on health insurance coverage.¹⁶³ Perhaps one of the currently undervalued benefits of expanding health care is a reduction in the need for costly court proceedings.

Similarly, neighborhoods where the population receives Supplemental Nutrition Assistance Program (“SNAP”) benefits (formerly known as food stamps) are less likely to produce pro se litigants. Some might argue that a social safety net (however frayed) reduces the urgency of resorting to courts. Others might suggest that people who are poor enough to qualify for SNAP benefits may not have the resources to pursue litigation, pro se or otherwise. Meanwhile, communities with high percentages of noncitizens are less likely to produce pro se litigants, perhaps in part because of unfamiliarity with the American legal system, fear of deportation, or distrust of government institutions, generally.

IV. IMPLICATIONS

There are various implications that can be drawn from our Article. What follows is an attempt to connect the data to some major themes, recognizing full well that readers may draw others. First, we consider what this data suggests about the persistent belief among many in the federal judiciary, bar, and legal academy that pro se litigation is a problem—one characterized by too many litigants with few resources and few, if any, meritorious claims.¹⁶⁴ Then, we use our data to reflect on how reform proposals should shift to meet the needs of communities of color and rural communities. Finally, we offer some preliminary thoughts on how civil procedure scholars could build a unified field theory at a time when the United States is both riven and racked with inequality.

162. A typical Tract contains about three or four Block Groups. See GEOGRAPHY DIV., *supra* note 136.

163. See generally Matthew Fiedler & Christen Linke Young, *Current Debates in Health Care Policy: A Brief Overview*, BROOKINGS (Oct. 15, 2019), <https://www.brookings.edu/policy2020/votervital/current-debates-in-health-care-policy-a-brief-overview/> (discussing the debates centered around health insurance coverage and cost).

164. See Landsman, *supra* note 161, at 442 (explaining that most pro se claims in one location were dismissed at the preliminary motion stage).

A. *The “Pro Se Crisis” Could Just Be a Diverse Group of People in Court*

As we explained in Part I, we are skeptical that there is significant evidence of a pro se crisis in the federal courts today—or at least not in the way many judges and commentators have characterized it. However, our data and our methodology do not produce evidence that there are more or less pro se litigants now than, say, in the 1980s or 1990s. Our data do suggest, however, that pro se litigants resist categorization as a distinctive socioeconomic group, with a couple noted exceptions.¹⁶⁵ Indeed, pro se litigants in federal court may be more representative than we previously thought because they appear to live in neighborhoods similar to those of the rest of the American people.

What does it mean for judges and lawyers to know that pro se litigants come from a representative sample of American neighborhoods? First, the federal judiciary should not see these litigants as a problem of strange outliers to manage, but as a public worth serving.¹⁶⁶ They are, on the whole, not population outliers but rather representative of the public at large. Second, this data could help educate judges and lawyers about the economic reality of most Americans.¹⁶⁷ More than one in four Americans, 92.4 million people, are poor or near poor.¹⁶⁸ In other words, our data suggests that pro se litigants come from representative neighborhoods across the United States, and the bench and bar need to remember that in a country where the median household income is \$68,703, those representative neighborhoods are full of people of modest means.¹⁶⁹

When faced with an opposing party who is unrepresented, a lawyer might be tempted to make similar assumptions about the merits of that litigant’s case. The legal profession is whiter,

165. Cf. Albert Yoon, *The Importance of Litigant Wealth*, 59 DEPAUL L. REV. 649, 670–71 (2010) (noting that the systems in place to assist lower-income litigants to effectively litigate do not fully provide access to the courts).

166. Alas, we believe that unrepresentative outliers are also worth serving, but perhaps it is easier to persuade busy judges to allocate strapped resources to the general public.

167. See Hammond, *supra* note 44, at 1523–25 (developing a similar argument in the context of in forma pauperis decisions).

168. See *Distribution of the Total Population by Federal Poverty Level (Above and Below 200% FPL)*, KAISER FAM. FOUND., <https://www.kff.org/other/state-indicator/population-up-to-200-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Jan. 15, 2021). Below 200 percent of the Federal Poverty Level is defined as an annual income of less than \$51,852 for a family of four. *United States Demographics of Low-Income Children*, NAT’L CTR. FOR CHILD. IN POVERTY, <https://www.nccp.org/demographic/> (last visited Feb. 3, 2022).

169. Jessica Semega et al., *Income and Poverty in the United States: 2019*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/publications/2020/demo/p60-270.html>.

wealthier, and more male than the rest of the United States population.¹⁷⁰ That positionality is exacerbated when lawyers are squaring off against an unrepresented adversary. Our findings could mitigate this sense of difference among lawyers. Pro se litigants appear to come from representative neighborhoods in many of the places where the lawyer practices, even if they might not be the lawyer's own neighbor. Moreover, our data suggests that pro se standards, forms, and guidance can and should be tethered to common expectations of the population.¹⁷¹ Resources could be used in a more targeted manner, identifying neighborhoods with less access to attorney networks.

One striking finding from this Article is that federal pro se litigants do not live in poorer neighborhoods than the general public. As discussed above, it is possible that some self-represented litigants are poorer than their neighbors, but the data in the aggregate suggests that that is unlikely across the federal system.¹⁷² To be sure, some would-be litigants who cannot afford legal services at market rates will find representation through various efforts, including through legal aid organizations that receive government funding and private donations, attorneys taking cases pro bono, and law school clinics.¹⁷³

170. See Kimberly Jade Norwood, *Gender Bias as the Norm in the Legal Profession: It's Still a [White] Man's Game*, 62 WASH. U. J.L. & POL'Y 25, 31 (2020); Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>; Noam Scheiber & John Eligon, *Elite Law Firm's All-White Partner Class Stirs Debate on Diversity*, N.Y. TIMES (Jan. 27, 2019), <https://www.nytimes.com/2019/01/27/us/paul-weiss-partner-diversity-law-firm.html>; see also Melissa Mortazavi, *The Cost of Avoidance: Pluralism, Neutrality, and the Foundations of Modern Legal Ethics*, 42 FLA. ST. U. L. REV. 151, 151 (2014) (discussing the drafters of the Model Code of Professional Responsibility's approach to handling the large number of minorities and women entering the legal profession). See generally DEBORAH L. RHODE, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION (2001) (reviewing the status of women in the American legal profession).

171. See Amy Salyzyn et al., *What Makes Court Forms Complex? Studying Empirical Support for a Functional Literacy Approach*, 15 J.L. & EQUAL. 31, 32–33 (2019) (examining court-form complexity for pro se litigants). But see Shanahan & Carpenter, *supra* note 18, at 131 (arguing that “[t]he socioeconomic needs that flow from inequality and push parties into civil courts cannot be simplified away within the judicial branch”).

172. See McPherson et al, *supra* note 89, at 426.

173. See *Civil Legal Aid 101*, U.S. DEPT OF JUST., <https://www.justice.gov/olp/civil-legal-aid-101> (last visited Jan. 10, 2022).

However, research suggests that these resources are not sufficient to address the unmet legal need in the United States.¹⁷⁴ The federal government, though a significant source of funding, has contributed less and less to legal assistance programs over the last forty years.¹⁷⁵ The Legal Services Corporation, the agency created by Congress to disperse grants to legal aid groups, calculates that for 86 percent of the civil legal problems reported by low-income Americans in 2017, those people received inadequate or no legal help.¹⁷⁶ As for volunteer attorneys, one study calculated that it takes fifty-nine pro bono attorneys to equal the year's work of a single legal aid attorney.¹⁷⁷ Similarly, law school clinics, although an increasingly powerful part of the public-interest landscape in the United States, are still a patchwork of various programs, restricted to working on certain issues in certain ways.¹⁷⁸

The dearth of “low bono” attorneys may be part of the explanation. Low bono refers to legal services for those clients who are not poor enough to be eligible for legal aid but are still too poor to secure an attorney at market rates.¹⁷⁹ Those would-be litigants can choose either not to enter the court or to do so pro se. In other words, perhaps legal services are unaffordable to a larger swath of Americans than we previously thought. Regardless, at least in the federal system, there are not so much justice deserts as there are isolated pockets—pro se litigants living amidst and among

174. One of us has written elsewhere why we should be skeptical that this mix of legal aid organizations, pro bono attorneys, and law school clinics can adequately meet the needs of low-income Americans. Andrew Hammond, *Poverty Lawyering in the States*, in *HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY* 215, 223–24 (Ezra Rosser ed., 2019); see also DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE* 12 (2005) (describing how lawyers historically provided minimal pro bono service and little financial support for legal aid organizations); Rebecca L. Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 *ANN. REV. SOCIO.* 339, 352 (2008).

175. BRENNAN CTR. FOR JUST., *RESTRICTING LEGAL SERVICES: HOW CONGRESS LEFT THE POOR WITH ONLY HALF A LAWYER* 18, 21 (2000).

176. *The Justice Gap*, LEGAL SERVS. CORP. (June 2017), <https://www.lsc.gov/media-center/publications/2017-justice-gap-report>.

177. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 *LAW & SOC'Y REV.* 79, 97 (2007); see also AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV., *SUPPORTING JUSTICE: A REPORT ON THE PRO BONO WORK OF AMERICA'S LAWYERS* 3, 6, 45 (Apr. 2018) (surveying over forty-seven thousand attorneys in twenty-four states and estimating that in 2016, American attorneys provided an average of 36.9 hours of pro bono services each).

178. Margaret Martin Barry, *Accessing Justice: Are Pro Se Clinics a Reasonable Response to the Lack of Pro Bono Legal Services and Should Law School Clinics Conduct Them?*, 67 *FORDHAM L. REV.* 1879, 1918 (1999).

179. Luz E. Herrera, *Rethinking Private Attorney Involvement Through a “Low Bono” Lens*, 43 *LOY. L. REV.* 1, 39–40 (2009).

represented litigants.¹⁸⁰ Our data suggests that many, if not most, federal pro se litigants live in urban areas. That suggests that physical distance from potential representation may not explain why people are litigating on their own in federal court.

One challenge here is the inscrutability of the nonclaimant in a private enforcement system. If individuals choose to bring civil lawsuits, then we have to account for when they choose to and when they refuse to do so. Other scholars have speculated as to why people choose not to bring claims.¹⁸¹ But this inscrutability invites various alternative hypotheses about the types of claims brought in federal civil litigation. Perhaps metropolitan areas, with their dense networks of government actors, corporations, and civil society groups, create an environment in which more individuals are aware of their rights under federal law.¹⁸² Or conversely, metropolitan areas, despite the concentrated presence of attorneys, relative to more rural areas, still do not have a sufficient supply of attorneys who can or will represent litigants who need alternative fee arrangements.¹⁸³

Then again, perhaps a litigant's pro se status does not signal their inability to pay for a lawyer, but rather, the weakness of their claim. Because of fee-shifting statutes that govern many types of federal question claims, attorneys who choose to represent litigants in these cases can secure reasonable fees and costs—as long as they win.¹⁸⁴ This method of financing litigation encourages lawyers to screen clients and cases, lest they take on too many cases with little likelihood of success.¹⁸⁵ More research is needed, particularly on the prevalence of the plaintiffs' bar in different legal markets in the United States, especially when it comes to the types of cases brought

180. See Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1288–89 (2016) (noting motivations for individual citizens in areas with otherwise sufficient geographical access to legal representation to avoid using the civil legal system to resolve problems).

181. See William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 LAW & SOC'Y REV. 631, 642–43 (1980); Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 LAW & SOC'Y REV. 525, 534–35 (1980); Rebecca L. Sandefur & James Teufel, *Assessing America's Access to Civil Justice Crisis*, 11 U.C. IRVINE L. REV. 753, 768 (2021); see also DAVID M. ENGLE, *THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE* 1–2 (2016).

182. See Erin York Cornwell et al., *Networking in the Shadow of the Law: Informal Access to Legal Expertise Through Personal Network Ties*, 51 LAW & SOC'Y REV. 635, 646–47 (2017).

183. See, e.g., Hadfield, *supra* note 12, at 144–45. See generally JOHN HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 43 (2005).

184. See Herbert M. Kritzer, *Contingency Fee Lawyers as Gatekeepers in the Civil Justice System*, JUDICATURE, July–Aug. 1997, at 22, 22–23 (1997).

185. See, e.g., *id.*

in federal court.¹⁸⁶ Only then will we have a better understanding of why there seems to be a mismatch between unrepresented litigants and cities that have a relative surplus of lawyers.

B. Reconceptualizing the Justice Gap for Communities of Color

Perhaps the most striking difference between neighborhoods that produce more-than-expected pro se litigants and neighborhoods with fewer pro se litigants is that the former are more likely to be communities of color. It appears that individuals from predominantly White neighborhoods who file cases in federal court are more likely to be able to secure counsel. That is not as common if these individuals live in more racially diverse neighborhoods. This finding has significant implications for how we conceptualize access to justice initiatives, legal networks, and civil litigation more broadly.

First, this finding of racial difference suggests that if the federal judiciary, local bar groups, and nonprofits want to address the most urgent needs of pro se litigants, they should focus on serving neighborhoods that are not homogeneously White.¹⁸⁷ Were a particular federal district court to establish a formal partnership with a law school clinic or legal aid organization, the chief judge or court staff overseeing that effort should inquire as to whether and how that organization serves neighborhoods and communities that are not homogeneously White, and perhaps ask that clinic or organization for evidence of some kind of track record for community engagement. Second, the American bar should take concrete steps to rise above its troubling history as a profession that shut out women and people of color.¹⁸⁸ A profession that is not representative of the public it serves will struggle to serve the public. Third, we should keep in mind that a civil legal system is not simply a set of formal rules and institutions, but one that is inextricably linked to the peculiarities and pathologies of the society in which it operates.

The empirical research of Professor Victor Quintanilla and others is particularly relevant here. Professor Quintanilla has

186. See generally Gillian K. Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 MICH. L. REV. 953, 1002–03 (2000) (discussing how a monopoly on the legal system affects access).

187. Brian Libgober, *Getting a Lawyer While Black: A Field Experiment*, 24 LEWIS & CLARK L. REV. 53, 56–57 (2020); Mary Nell Trautner, *How Social Hierarchies Within the Personal Injury Bar Affect Case Screening Decisions*, 51 N.Y. L. SCH. L. REV. 215, 219 (2006).

188. *Bradwell v. Illinois*, 83 U.S. 130, 139 (1872) (upholding Illinois' decision to deny women the right to practice law); *Pearson v. Murray*, 182 A. 590, 593 (Md. 1936) (holding that the University of Maryland's law school could no longer exclude Black students); see also KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER* 38–60 (2012) (describing the experience of Black lawyers during Jim Crow); Melissa Mortazavi, *Incivility as Identity*, 2020 MICH. ST. L. REV. 939, 939 (2020); Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1005 (2002).

demonstrated the extent to which judges, lawyers, and law students are unsurprisingly susceptible to bias.¹⁸⁹ Linking our findings with that line of research, proceduralists should continue to explore the extent to which attorneys evaluate the strength of a claim based on the race of the claimant. That might explain why, in this Article, we see more pro se litigants come from communities of color than we would otherwise expect. This hypothesis is consistent with research on the racial bias of other professional groups. For example, the persistently high and inequitable rates of Black maternal mortality raise concerns that physicians and other medical professionals discount Black women's symptoms and pain.¹⁹⁰ Employers have also been found to discriminate against Black and Latino job applicants with equivalent resumes to White applicants,¹⁹¹ as well as those who come from neighborhoods associated with many formerly incarcerated persons.¹⁹² All in all, pro se litigants present ample additional opportunities to study the many ways biases undermine our civil justice system.

C. *Pro Se Litigants in Rural Communities*

Our findings also call for renewed focus on rural access to justice. The work of Professors Lisa Pruitt, Hannah Haksgaard, and others is instructive here.¹⁹³ Importantly, Pruitt, Haksgaard, and others demonstrate that, despite common perceptions of rural America, many of these communities are racially and ethnically diverse, such as the predominance of Latinos in the Central Valley of California, Black Americans throughout the rural South, and American Indian tribes across the country.¹⁹⁴

These scholars and others have surveyed the particular challenges of meeting legal needs in rural America, including

189. See Quintanilla et al., *supra* note 37, at 1091; see also Kroeper et al., *supra* note 37, at 198; Victor D. Quintanilla, *Doing Unrepresented Status: The Social Construction and Production of Pro Se Persons*, 69 DEPAUL L. REV. 543, 547–55 (2020) (summarizing this research).

190. Bani Saluja & Zenobia Bryant, *How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States*, 30 J. WOMEN'S HEALTH 270, 27–71 (2021).

191. Roland G. Fryer, Jr. et al., *Racial Disparities in Job Finding and Offered Wages*, 56 J.L. & ECON. 633, 637–38 (2013).

192. See Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIO. 937, 937–38 (2003) (describing the difficulty formerly incarcerated people have with trying to gain employment).

193. See generally, e.g., Pruitt et al., *supra* note 149, at 72–74; Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219 (2010) (analyzing the different types of indigent criminal defense across Arizona); Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 ME. L. REV. 209 (2018).

194. Pruitt et al., *supra* note 149, at 118–19.

disproportionately high rural poverty rates,¹⁹⁵ lagging legal aid funding,¹⁹⁶ the challenges of creating economies of scale for legal services,¹⁹⁷ the attrition of lawyers in rural areas and the particular ethics issues, including conflicts of interest, that result when many rural lawyers are engaged in a mixed practice of civil and criminal cases.¹⁹⁸ Furthermore, the state-based surveys conducted by these scholars suggest that many lawyers practicing in these communities are retiring, and not enough new lawyers are replacing them.¹⁹⁹ Legal deserts in rural America are thus likely to get worse—and soon.²⁰⁰

Taken as a whole, this scholarship points to a lack of lawyers as a defining feature of rural America. These academic findings echo professional surveys of legal representation in rural areas.²⁰¹ However, this literature would lead us to expect more pro se litigation in these areas, and yet in our mapping of pro se litigation, we found less.²⁰² We think this discrepancy between our findings and what previous scholarship might suggest is worthy of further inquiry.

As with our findings of the disproportionately high number of pro se litigants coming from communities of color, our findings of the disproportionately low number of pro se litigants in rural communities demands more research. Perhaps there is a yet-unexplored relationship between the presence of lawyers in a community and rights-claiming by laypersons. In other words, perhaps living in a community with few lawyers might make people less likely to think that they can access the courts, including on their

195. *See id.* at 117.

196. *Id.* at 116.

197. Pruitt & Colgan, *supra* note 193, at 227–28.

198. Haksgaard, *supra* note 193, at 216–17; Pruitt & Colgan, *supra* note 193, at 294–98.

199. Pruitt et al., *supra* note 149, at 121.

200. AM. BAR ASS'N, ABA PROFILE OF THE LEGAL PROFESSION 2 (2020), <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf> (finding that “40% of all counties and county-equivalents in the United States—1,272 of 3,141—have less than one lawyer per 1,000 residents”).

201. Catherine Albiston et al., *Public Interest Law Organizations and the Two-Tier System of Access to Justice in the United States*, 42 LAW & SOC. INQUIRY 990, 992 (2017) (demonstrating that public interest legal organizations “are geographically distributed in ways that disadvantage rural and poor communities”); Lorelei Laird, *In Rural America, There Are Job Opportunities and a Need for Lawyers*, A.B.A. J. (Oct. 1, 2014), https://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between; AM. BAR ASS'N STANDING COMM. ON PRO BONO & PUB. SERV., RURAL PRO BONO DELIVERY: A GUIDE TO PRO BONO LEGAL SERVICES IN RURAL AREAS 7 (2003), https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/as/aba_rural_book.pdf (“Staff-based rural legal aid programs face similar difficulties because they cover a wider geographic region with fewer personnel than urban legal aid programs.”).

202. *See supra* Figure 2 and accompanying text.

own. Or perhaps it is not the lack of lawyers that explains the prevalence of pro se litigation in federal court, but physical proximity to a federal court. Potentially, the physical distance to federal courts could impact the ability of rural Americans to litigate in them. It would be worth exploring, then, whether what we observe in federal courts here is also true of state courts. However, since many unrepresented litigants in state courts are defendants, it seems unlikely that would-be plaintiffs in rural areas are consistently choosing to file cases in state courts instead of federal courts.²⁰³ Future research could also explore party identification and pro se litigation. As the two major political parties in America have become more polarized, they have also become more geographically distinct.²⁰⁴ Finally, we could also explore to what extent rural residents have fewer claims than urban residents, whether because of fewer torts or less actionable discrimination.

D. Courts as Democratic Infrastructure

To conclude our discussion of implications of our research, let's step back for a moment. It is an unsettling time in the United States. At the time of this writing, nearly one million Americans have died from COVID-19, more than in World War II, the Korean War, and the Vietnam War combined.²⁰⁵ At the start of the pandemic and in just a few months, over twenty million Americans lost their jobs.²⁰⁶ In the wake of the murder of George Floyd in Minneapolis, Americans demonstrated in over two thousand cities in the United States and sustained some of the most significant protests against racism and white supremacy in decades.²⁰⁷ And after one of the most divisive

203. See Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. (forthcoming 2022) (manuscript at 1) (on file with authors) (documenting how most civil cases in state courts are contract disputes in which a business that is usually represented by counsel brings a lawsuit against a consumer who is usually unrepresented).

204. See LILLIANA MASON, *UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY* 3 (2018); MATTHEW LEVENDUSKY, *THE PARTISAN SORT: HOW LIBERALS BECAME DEMOCRATS AND CONSERVATIVES BECAME REPUBLICANS* 2–3 (2009).

205. *Mortality Analyses*, JOHNS HOPKINS UNIV. & MED. CORONAVIRUS RES. CTR., <https://coronavirus.jhu.edu/data/mortality> (last visited Jan. 13, 2022); Heather Hollingsworth & Tammy Webber, *US Tops 500,000 Virus Deaths, Matching the Toll of 3 Wars*, ASSOCIATED PRESS (Feb. 22, 2021), <https://apnews.com/article/us-over-500k-coronavirus-deaths-4ffa86c709f6a843de9cf0711e7215cf>.

206. CONG. RSCH. SERV., R46554, *UNEMPLOYMENT RATES DURING THE COVID-19 PANDEMIC* 1 (2021), <https://fas.org/sgp/crs/misc/R46554.pdf>; *Effects of COVID-19 Pandemic on the Employment Situation*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/covid19/effects-of-covid-19-pandemic-and-response-on-the-employment-situation-news-release.htm> (last visited Jan. 13, 2022).

207. Audra D.S. Burch et al., *How Black Lives Matter Reached Every Corner of America*, N.Y. TIMES (June 13, 2020), <https://www.nytimes.com/interactive/>

elections in American history, an insurrection stormed the Capitol to prevent a joint session of Congress from certifying the winner of the presidency.²⁰⁸

It would be naive for any of us to ignore the swirl of recent events buffeting and reshaping our society. But it is equally important to contextualize them in a broader and longer trend of the unyielding and pervasive feature of American society today: inequality. The pandemic, the racial divisions, and the political acrimony have been fed by an increased sense among millions of Americans that their lives and livelihoods are threatened, precarious, and disposable. After fifty years of stagnation, American wages have only begun to budge.²⁰⁹ Union membership is half of what it was nearly forty years ago.²¹⁰ Student debt has doubled in the last decade, to the tune of \$1.7 trillion.²¹¹ These economic realities compound racial ones, leaving the typical Black family with a tenth of the wealth of a comparable White family.²¹² How courts respond to this unyielding and pervasive feature of American society today is worthy of more attention than a single article, but one can sketch at least three hypotheses, none of them mutually exclusive, on the relationship between civil litigation and inequality.

The first perspective views the courts as insulated from inequality, or at least more so than other legal and political institutions. This “courts apart” thesis points to the fact that federal judges—as salaried civil servants with life tenure—can ignore the

2020/06/13/us/george-floyd-protests-cities-photos.html (detailing the locations of protests from May 26, 2020, to June 9, 2020).

208. Kat Lonsdorf et al., *A Timeline of How the Jan. 6 Attack Unfolded—Including Who Said What and When*, NPR (Jan. 5, 2022), <https://www.npr.org/2022/01/05/1069977469/a-timeline-of-how-the-jan-6-attack-unfolded-including-who-said-what-and-when>.

209. Cf. JAY SHAMBAUGH ET AL., HAMILTON PROJECT, THIRTEEN FACTS ABOUT WAGE GROWTH i (2017) https://www.hamiltonproject.org/assets/files/thirteen_facts_wage_growth.pdf (describing how “[t]he U.S. economy has experienced long-term real wage stagnation and a persistent lack of economic progress for many workers”); Drew Desilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, PEW RSCH. CTR. (Aug. 7, 2018), <https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/> (noting that even though nominal wages may have increased, the purchasing power remains the same as it was forty years ago).

210. *Union Members Summary*, U.S. BUREAU LAB. STAT. (Jan. 22, 2021), <https://www.bls.gov/news.release/union2.nr0.htm> (noting that 10.8 percent of American workers were members of unions compared to 20.1 percent in 1983, the first year for which comparable data is available).

211. *Student Loans Owned and Securitized*, FED. RSRV. BANK OF ST. LOUIS, <https://fred.stlouisfed.org/series/SLOAS> (last visited Jan. 14, 2022).

212. Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> (comparing the net worth of the average white family (\$171,000) to that of the average Black family (\$17,150)).

winds and whims of contemporary politics and society. Judges need not worry about corporate influence or cross-class acrimony because they are shielded from political and economic forces. Short of impeachment, judges answer to no one. They need only uphold the Constitution and the laws of the United States, as interpreted by themselves and the other members of the judiciary. However, some in the judiciary itself have suggested that the salaries of judges are insufficient to insulate them from our increasingly unequal society. Chief Justice Roberts claimed that low judicial pay amounts to a “constitutional crisis.”²¹³ Paying federal judges upwards of \$210,000 a year is only a crisis if either you believe that judges need to be in the top 1 percent of earners, as opposed to the top 2 percent as they are now, or that the best judicial prospects in America are mostly or more likely to be practicing at large, corporate law firms.²¹⁴

The second is “the courts against” perspective, which claims that courts may be more open to claims of marginalized groups than majoritarian institutions like state legislatures and Congress. The federal courts, in particular, were indispensable fora for civil rights claims in the second half of the twentieth century.²¹⁵ Whether or not the faith in litigation was strategic or misplaced does not diminish the sheer number of lawsuits to define and enforce fundamental rights to education, work, and voting.²¹⁶ It is not inconceivable to think that the courts again could be the first branch of the federal government to see novel, creative theories, buttressed by social movements, push back against the ills of inequality. Indeed, courts could be more accessible to these claims than other government

213. JOHN G. ROBERTS, JR., 2006 YEAR-END REPORT ON THE FEDERAL JUDICIARY 1 (2007), <https://www.supremecourt.gov/publicinfo/year-end/2006year-endreport.pdf>.

214. In 2019, a federal district court judge’s salary was \$210,900, a federal circuit judge’s salary was \$223,700, and a Supreme Court Justice’s salary was \$258,900—Chief Justice Roberts earned \$270,700. *Judicial Compensation*, U.S. CTS., <https://www.uscourts.gov/judges-judgeships/judicial-compensation> (last visited Jan. 14, 2022); see also Albert Yoon, *Love’s Labor’s Lost? Judicial Tenure Among Federal Court Judges: 1945–2000*, 91 CALIF. L. REV. 1029, 1030 (2003); Andrew Van Dam, *What Percent Are You?*, WALL ST. J. (Mar. 2, 2016), <https://graphics.wsj.com/what-percent/>. Still, Chief Justice Roberts was right to suggest in a previous year’s report that if judicial compensation is not competitive in the profession, the judiciary could “come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large.” JOHN G. ROBERTS, JR., 2005 YEAR-END REPORT ON THE FEDERAL JUDICIARY 4 (2006), <https://www.supremecourt.gov/publicinfo/year-end/2005year-endreport.pdf>.

215. See David S. Clark, *Adjudication to Administration: A Statistical Analysis of Federal District Courts in the Twentieth Century*, 55 S. CAL. L. REV. 65, 141 (1981).

216. See *id.* (noting a high number of civil rights cases, even in the mid-1900s); Gough & Poppe, *supra* note 11, at 574–75 (noting that the number of pro se cases has been both steady and high).

bodies, in part, because litigants do not need legislative majorities or significant political influence to file a case. These features of the federal courts could allow them to hear cases by those who seek to push back against these forces of inequality.

The third is “the courts along” perspective, which treats the federal judiciary as one in a set of institutions that preserve privilege and influence for the political and economic elite of the country. This view tends to label the federal courts as pro-business.²¹⁷ This perceived cozying up to corporate America is enhanced by the sense that the Supreme Court, far and away the most politically salient and visible court in the country, has handed down decisions widely seen as favoring corporations and the wealthy.²¹⁸ Indeed, there are parallels to how many derided the federal courts from the 1880s to the 1930s.²¹⁹

In the most widely adopted procedural system among common law countries, it is best to admit that federal judges render decisions and behave in ways that support each of these three views. The challenge for civil procedure is that how federal judges relate and respond to these forces of inequality will shape how they think of the cases before them. This initial reaction will be especially true in pro se litigation, where judges lack the benefit of adversarial briefing. The challenge for us scholars is to pursue lines of inquiry that inform which procedural rules and practices should change—and how—in light of this epoch-making inequality. We suggest that scholars need to focus on the people using the courts—all the people, not just those who have the benefit of counsel—if we are to make sense of the current state of civil litigation in the United States.

217. See Lee Epstein et al., *How Business Fares in the Supreme Court*, 97 MINN. L. REV. 1431, 1449 (2013) (finding the Roberts Court to be the most pro-business court between 1946 and 2011); Lee Epstein et al., *When It Comes to Business, the Right and Left Sides of the Court Agree*, 54 WASH. U. J.L. & POL'Y 33, 33 (2017) (showing this pro-business trend includes increasingly unanimous and lopsided rulings for business litigants).

218. The fact that many of these decisions were considered to be clarifying procedural rather than substantive law may get lost in the political rhetoric around the Supreme Court and the lower federal courts. See, e.g., *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 342 (2011) (describing the key issue in the case as an interpretation of the Federal Rules of Civil Procedure); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (noting that the pivotal issue in the case was pleading standards, as dictated by the Federal Rules of Civil Procedure).

219. See REBECCA E. ZIETLOW, *ENFORCING EQUALITY: CONGRESS, THE CONSTITUTION, AND THE PROTECTION OF INDIVIDUAL RIGHTS* 69–71 (2006); EDWARD A. PURCELL, JR., *BRANDEIS AND THE PROGRESSIVE CONSTITUTION: ERIE, THE JUDICIAL POWER, AND THE POLITICS OF THE FEDERAL COURTS IN TWENTIETH-CENTURY AMERICA* 15 (2000); EDWARD A. PURCELL, JR., *LITIGATION AND INEQUALITY: FEDERAL DIVERSITY JURISDICTION IN INDUSTRIAL AMERICA, 1870–1958*, at 244–46 (1992).

CONCLUSION

We hope that this Article opens up new lines of inquiry for our field and the rest of legal academia. For proceduralists, our findings suggest we should further explore and interrogate the ways lawyers and paralegals act as gatekeepers for would-be plaintiffs in the federal system and the particular circumstances of litigants in rural areas. This Article also should spur more research on the geographic distribution of unrepresented litigants in other systems in American civil litigation, like state, tribal, and territorial courts.

We also believe our findings can inform how these same scholars—and perhaps more importantly, how judges and lawyers—conceptualize various access-to-justice initiatives, including how courts should structure resources for these litigants, like forms, handbooks, and help desks.

Beyond the particular context of federal civil litigation, critical cartographies can help map legal landscapes in other fields and provide generative insights and foundations to challenge the received wisdom in legal academia.

APPENDIX: CORRELOGRAM

