

No. _____

**In The
Supreme Court of the United States**

◆

WILSON J. SOTO NIEVES,
MARITZA G. RIVERA, et al.,

Petitioners,

v.

DEPARTMENT OF THE FAMILY OF
THE COMMONWEALTH OF PUERTO RICO, et al.,

Respondents.

◆

**On Petition For Writ Of Certiorari To
The Supreme Court Of Puerto Rico**

◆

PETITION FOR WRIT OF CERTIORARI

◆

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May 15, 2019

QUESTION PRESENTED

Whether the courts of the Commonwealth of Puerto Rico can obviate the mandate of the 14th Amendment of the U.S. constitution prohibiting a state to deprive a citizen of its liberty interest in accessing information deemed public information by allowing an insufficient process to remain in place therefore depriving the citizen of due process of law.

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Wilson J. Soto Nieves, Maritza G. Rivera and the Conjugal Partnership comprised by both of them, Petitioners.
2. Lisa M. Agosto Carrasquillo, Director, Centro Estatal de Protección a Menores (Commonwealth of Puerto Rico), Respondent.
3. Mr. Carlos Gerena, Mrs. Glenda Gerena, Respondents, Administración de Familias y Niños (Commonwealth of Puerto Rico), Respondents.
4. Administración de Familias y Niños (Commonwealth of Puerto Rico), Respondent.
5. Glorimar Andujar, Esq. Secretary of the Family, Respondent.
6. Department of the Family (Commonwealth of Puerto Rico), Respondent.
7. Isaías Sánchez Báez, Esq., Solicitor General (Commonwealth of Puerto Rico), Celia M. Molano Flores, Esq. Assistant General Solicitor (Commonwealth of Puerto Rico), Respondents.
8. Wanda Vázquez Garced, Esq. Secretary of Justice (Commonwealth of Puerto Rico), through Ninoshka G. Picart Pérez, Esq. Respondent.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Petitioners state as follows:

All Petitioners are individuals.

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The Department of the Family, Families and Children Administration, entered an administrative decision that was reviewed by the Court of Appeals of the Commonwealth of Puerto Rico, the decision dated January 29, 2018, is unreported, a certified translation is reproduced at App. 12-18. The opinion of the Court of Appeals of the Commonwealth of Puerto Rico is unreported but available at 2018 PR App. LEXIS 1303, and a certified translation of that opinion is reproduced at App. 1-11. The relevant resolutions of the Court of Appeals denying reconsideration, App. 19-20 and the Supreme Court of Puerto Rico, denying review of the judgment of the Court of Appeals, App. 21-22, and denying reconsideration, App. 23-26, are unreported and certified translations of those orders are reproduced at App. 19-26.



JURISDICTION

The Court of Appeals of the Commonwealth of Puerto Rico issued its opinion on May 31, 2018, App. 1-11, after a timely motion for reconsideration, App. 30-44, the Court of Appeals denied reconsideration on June 22, 2018, App. 19-20. A timely petition for certiorari was filed with the Supreme Court of Puerto Rico which denied review on October 5, 2018, App. 21-22, two motions for reconsideration were filed, as allowed by Rules of the Supreme Court of Puerto Rico, which were denied on November 9, 2018, App. 23-24, and,

lastly, on January 18, 2019. On April 5, 2019, Justice Breyer extended the time for filing a petition for writ of certiorari to and including May 20, 2019. This Court’s jurisdiction rests on 28 U.S.C. § 1258.

Rule 13.1 of the Rules of this Court state that: “A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.” Rule 47 indicate that the term “state court” when used in these rules, includes the . . . “Supreme Court of the Commonwealth of Puerto Rico, . . .”. The instant petition seeks review of a judgment of a lower state court subject to discretionary review, however, since 28 U.S.C. § 1258, contrary to 28 U.S.C. § 1257, authorizes review from judgments or decrees of the Supreme Court of the Commonwealth of Puerto Rico and not the “highest court of state in which a decision could be had” the petition is for a writ to the Supreme Court of Puerto Rico that by denial of discretionary review affirmed the judgment of the lower court.



CONSTITUTIONAL PROVISIONS INVOLVED

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amendment XIV.



STATUTORY PROVISIONS INVOLVED

I. In relevant part, Article 21 of Act 246 of December 16, 2011, 8 L.P.R.A. § 1131, states (English version of the statute is available at Advance.Lexis.com, 8 L.P.R.A. § 1131, all subsequent reference to Puerto Rico statutes will be to this source):

All persons shall be required to immediately report cases of actual or suspected child abuse, institutional abuse, neglect, and/or institutional neglect, or if a child is at risk of being a victim thereof.

...

The information furnished by virtue of this section, as well as the identity of the person who furnishes the same, shall be kept strictly confidential, except in cases of unsubstantiated reports in which false information has been knowingly provided.

Information provided in good faith by any person, official, or institution required to furnish information regarding child abuse, institutional abuse, neglect, and/or institutional neglect, as provided in this chapter, may not be

used against him/her/it in any civil or criminal proceedings that may be initiated as a result of said action. The information reported by school or hospital employees and law enforcement officers who are required to allow the Department to intervene pursuant to the provisions of § 1114 of this title may not be used against them, either.

II. In relevant part, Article 25 of Act 246, 8 L.P.R.A. § 1135, provides:

The subject of the report shall be entitled to request the Department, in writing, that a copy of the information about his/her case found in the Central Register be provided to him/her. The Secretary, or the person designated by him/her, shall furnish such information insofar as this does not go against the best interests of the minor, and if the necessary steps have been taken to protect the confidentiality of the person who, in good faith, reported the case or cooperated during the investigation thereof.

If the information request is denied, the person affected by the Secretary's decision may resort to the Court of Appeals within a period not to exceed thirty (30) days after the decision is notified.

III. In relevant part the "Judiciary Act of the Commonwealth of Puerto Rico of 2003", as amended, section § 3.002(d), 4 L.P.R.A. § 24s(d):

The Supreme Court or each of its courtrooms shall hear on the following matters:

(a) . . .

(b) . . .

(c) . . .

(d) Through a writ of certiorari, to be issued discretionally, shall review the other judgments or resolutions of the Court of Appeals within the terms provided in the rules of procedure or in special laws.

(e)

(f) . . .

(g) . . .

(h) . . .



STATEMENT OF THE CASE

Introduction

The United States Constitution requires that before a person is deprived of a recognized liberty interest he/she must be afforded due process of law. In the instant case the Petitioners understand that they have a liberty interest in obtaining certain information concerning a referral for a negligence complaint as to their minor child that was found to be without grounds. App. 2. The liberty interest rests in the plain language of the statute and depends on a finding that the information provided by the informant and that led to the referral

was false information submitted knowingly¹, hereinafter “bad faith” information. If the information was submitted in good faith Petitioners concede that they would have no access to it under the statute or, if disclosed, could not be used against the person who submitted it in civil or criminal proceedings.

The liberty interest also rests on the notion that the statute also seeks to protect the right of a person to be free of false accusations of mistreatment, and Petitioners have a right to that protection or that the elements that enable the protection remain in place. The statute accomplishes this by discouraging the submission of false reports by expressly excluding the false information furnished under Act 246 and the identity of the informant from the mantle of “strict confidentiality” that, otherwise, covers all other information furnished under the Act, thus, allowing that it be used in criminal and civil proceedings.

Since, the key element in determining if Petitioners have a right to the requested information and a liberty interest is the presence or absence of good faith of the informant; *the determination of that presence or absence* had to have been subjected to the requirements of due process of law under the 14th Amendment of the U.S. Constitution.

Due process under the Fourteenth Amendment of the U.S. Constitution is flexible but requires providing meaningful participation by the holder of the interest

¹ Article 21, Act 246, 8 L.P.R.A. § 1131.

before the state deprives it of said interest². Meaningful participation requires procedures to reduce the possibility of mistakes in the adjudication. This is the gist of Soto-Nieves request for review; the state denied them that meaningful participation in the decision that determined if their liberty interests existed and were enforceable.

Statement of the Case

After being cleared of wrongdoing by the Department of the Family, Petitioners, Wilson J. Soto-Nieves, Maritza G. Rivera and Conjugal Partnership comprised by both of them, hereinafter “Soto-Nieves,” requested a copy of the complaint initiating the referral and related information. The agency did not provide the requested information and after various proceedings, App. 3-4, the agency issued a decision on January 29, 2018, denying the request.

The decision stated:

After having reviewed Mr. Soto and Mrs. Rivera’s request and pursuant to the applicable legal provisions, we reiterate our position in not giving them the information provided by the informant in Referral R16-03-13063 and the information and identity of said informant, as established in Law Number 246, Regulation Number 8319 and the Manual of Rules and Procedures. This is because referral

² *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976).

R16-03-13063 had a Without basis [without grounds] outcome and not an Unfounded outcome, and therefore the information provided by the informant, by virtue of Article 21 of Law Number 246, must be kept in strict confidentiality, as well as his/her identity. App. 17.

Therefore, in adjudicating the controversy the agency made a unilateral determination that the “outcome” of the referral had been Without Grounds, a determination that indicates that there was no sufficient evidence of negligence or abuse³, but that does not say anything concerning the good or bad faith submission of information, which would have been the case had the outcome been “Unfounded.”⁴ App. 17.

Confronted with this determination, Soto-Nieves sought to have the Court of Appeals reverse the agency determination, App. 2, because they understood that since they sought to obtain information to which they only had a right, if submitted in “bad faith,” the agency had to explain their decision by providing enough facts and evidence so that Petitioners, and the court, could be satisfied that the determination was correct. In the writ of review, Soto-Nieves stated that: “Otherwise one would be leaving in the hands of the Departamento de la Familia [Department of the Family] the capacity to decide by itself the existence or not of good faith, and

³ App. 17, second paragraph.

⁴ Unfounded is defined as: “There is information and evidence that the informant made a referral, even though he/she knew that the information offered is/was false.” App. 17, second paragraph.

therefore, of its obligation to provide the information that is being requested without said finding being able to be the object of judicial review. Said result is not possible and if it were, would be unfair and would violate the rights of the parties to not be the object of attacks to their honor and to the due process of law, under the Constitution of Puerto Rico as well as that of the United States.” App. 43-44 (Footnote No. 4, from App. 37).

Despite the aforementioned, the Court of Appeals issued a judgement, App. 1-10, in which it acknowledged that there is a general right to access public information and that Act 246 has an exception that withholds confidentiality from bad faith information. App. 5-7. Nevertheless, and to the Soto-Nieves’ surprise, concluded that information under Act 246 is confidential because the law declared it so and it dealt with the identity of an informer⁵. The court stated that because of these considerations “the legitimacy of the claim for the confidentiality of the state is not in discussion, *especially when the same aspires to have the incidents of mistreatment to minors to be reported by the citizens without fear of reprisals.*” App. 9-10 [emphasis added]. It further concluded that attempts by Soto-Nieves to review the designation of “outcome” as Without Grounds and not Unfounded were an unwarranted attempt to obtain additional information, rather than, what it was, a request for the agency to

⁵ As discussed in the Motion for Reconsideration, a person providing bad faith information cannot be considered an “informer” so that his/her identity is protected. App. 35.

justify an unsubstantiated denial of the Petitioner's request. App. 9-10. The court seems to have concluded that the designation of the outcome as Without Grounds was itself *a fact*, and not a conclusion based on undisclosed underlying facts ("It based its decision on the fact that the Referral turned out to be *Without Grounds* . . .", App. 4). Therefore, the Court of Appeals did not discuss the need for the agency to provide facts or evidence allowing for the review of the categories of Without Grounds or Unfounded, as was requested by Petitioners.

On reconsideration, App. 30-44, Soto-Nieves called the Court of Appeals attention to the need to justify the designation of Without Grounds versus Unfounded; that reliance in "aspirations" of promoting the reporting of incidents of mistreatment did not consider the statute or the damages caused by said behavior, App. 34-35, and that there were due process considerations under the 14th Amendment of the U.S. Constitution, App. 37-41. It was also indicated that the result was not warranted since local law required that administrative decisions *had to be upheld* by substantive evidence arising from the administrative file *so parties are afforded an opportunity to challenge the correction of the agency decision*, which is, precisely, what did not take place in this case. App. 36, 37, 43.

The Court of Appeals dismissed the motion of reconsideration indicating that they "dealt" with it, but that "the arguments stated in the same do not adduce cause, reason why we must vary our May 31, 2018 decree." App. 20. The Resolution, thus, set aside the due

process arguments after giving them due consideration.

The Soto-Nieves understand that the Agency's decision not to provide facts and evidence to sustain its decision, forcing them to *blindly trust the agency's conclusion, as if by faith*, without any chance of reviewing to ascertain the possibility of error is as clear a violation of due process as can be envisioned, particularly, confronted with the explicit text of the statute that establishes that bad faith information is not confidential and Petitioners have a right to access it.

At no time did the Soto-Nieves claim an unfettered right to obtain confidential information, but that denial of their request had to be upon presenting enough facts and evidence that the referral was not based on bad faith to allow for judicial review, as that was the only opportunity for due process included in the statute⁶. See App. 31-32.

No reasonable explanation for the outcome of the Petitioners' request to review the agency's determination, or the lack of acknowledgement of due process considerations, can be gleaned from the judgment of the Court of Appeals other than a reluctance to confront the agency's action, even if that requires avoiding discussing due process protections under the U.S. Constitution, thus, denying the same.

Soto-Nieves sought review of the determination of the Court of Appeals in the Supreme Court of Puerto

⁶ Article 25 of Act 246, 8 L.P.R.A. § 1135.

Rico. Review is discretionary as per the “Judiciary Act of the Commonwealth of Puerto Rico of 2003”, as amended, section § 3.002(d), 4 L.P.R.A. § 24s(d).

In the Petition for Certiorari to the Supreme Court of Puerto Rico, Soto-Nieves reiterated the arguments presented to the Court of Appeals⁷, indicating as findings of error the following:

- (1) The Honorable Court of Appeals erred when it entered judgment confirming the determination of the Department of the Family denying copy of the grievance or referral due to reasons of confidentiality. By action in this manner, it totally ignored that the determination on the part of the Agency was not supported in the file and that the law establishes an exception in cases in which there was bad faith with regard to the confidentiality of the documents. For said exception to have any effect, the Agency should have made findings of fact regarding said matter prior to concluding that the documents were confidential.
- (2) The Honorable Court of Appeals erred by not evaluating that the due process of the Petitioner is being violated when an

⁷ The following portions of the Petition for Writ of Certiorari to the Puerto Rico Supreme Court, filed on July 25, 2018, are part of Certified Translation by Patricia Beckerleg, Certified Court Interpreter and Translator, Administrative Office of the U.S. Courts.

administrative determination without grounds in the administrative record is upheld, in effect delegating the adjudicative function regarding the confidentiality of the documents on functionaries whose actions would not be, then, subject to judicial review.

In the Petition Soto-Nieves argued that:

In the writ that was presented before the Court of Appeals, it was warned that it violated the due process of law under the Constitution of Puerto Rico and that of the United States to have the agency solve the matter in controversy without said action being able to be reviewed by the courts.

In its judgment, the Court of Appeals did not discuss said argument. We insisted on it in the motion for reconsideration where we explained that amendment fourteen of the Constitution of the United States prohibits a state from depriving a person of a liberty or proprietary interest if the procedure followed for the deprivation are constitutionally insufficient. *See Peace v. Burns*, 719 F. Supp. 2d 143, 151 (U.S.D.C. Mass 2010). In *Mathews v. Eldridge*, 424 U.S. 319, 334-335, 96 S. Ct. 893, 903, 47 L.Ed. 2d 18, 33 (1976), the Supreme Court of the United States required that the following factors be considered, the interest that would be affected by the state, action, the risk of a mistaken deprivation on the basis of

the procedure followed, the value of the additional procedural guarantees and the interest of the government.

In the present case, the appellants interest to know the circumstances of the grievance or referral and know whether there was in effect bad faith is evident, prevent the recurrence of said action, if, in effect, there was bad faith, protect oneself from the person acting in that manner and indemnify damages caused. One person, truly, has a liberty interest in not being the object of false accusations of mistreatment. The risk of losing that interest is huge because upon the upholding of the Department's action of not making some finding of acts relevant and upheld in the record, there would be no way of verifying whether there was good or bad faith and the information that is being presented would not be obtained, if, in effect, there was bad faith.

Avoidance of the problem of due process would be resolved modifying the procedure so that the Department justifies fully the action taken, submitting findings of fact, supported in the record, that allow for the evaluation of the presence or absence of good faith. The government interest is not affected since Act 246 itself establishes that the information offered in bad faith *is not confidential*.

In the writ, we discussed why the so-called "findings of facts" on the part of the Department were insufficient to evaluate the core matter of the absence or presence of good

faith and that no evidence whatsoever was presented with regard to the matter. We added that without that, it was not possible to make a finding of confidentiality. When the Court of Appeals validated said actions on the part of the agency and allowed a determination to be made about the confidentiality of the information without any basis whatsoever on the file (since it is not known whether the finding of without grounds instead of unfounded has any rational basis whatsoever in the record), contrary to the norms for the review of agency decisions and on the basis of an “aspiration” that, at least with regard to the information offered in bad faith, lacks support in Act 246, the right of the appellants to the due process of law would be violated.

By means of the May 31, 2018 judgment, the Court of Appeals fails in not recognizing that the procedure followed by the agency does not comply with the minimum requirements of providing finding of facts based on the file, which is equivalent to a constitutional violation.

Keep in mind that it does not correspond to the appellants to place the court in disposition about this matter because these do not have access to the totality of the administrative file. The same is under the control of the Department of the Family which does not even make findings of facts relevant and pertinent on the basis of the same.

If the Department of the Family is not required to support its finding of Without Grounds in the File, the impunity of those who abuse the system is being facilitated and the constitutional rights of the appellants are being violated.

This Honorable Court should not rely, as the Appellate Forum did, on attractive “aspirations” that the citizens report incidents of mistreatment, but without taking into consideration those who abuse the right to do damage. Especially when that is contrary to Act 246 which regulates said matters. The few facts known suggest to our judgment, bad faith on the part of the informant. If the court is not able to reach that conclusion with all the available facts, the Department should have been required to uphold its finding under Rule 83.1 of the Regulations of the Court of Appeals.

We reiterate, the central finding the referral was without grounds or unfounded is one that should be able to be reviewed by the courts, since it's the basis for denying information that is not confidential, if in effect it was offered in bad faith. Otherwise, that part of Act 246 that establishes that the mantle of confidentiality does not proceed with regard to false information provided on purpose would be unheeded and the Department would become a final and unappealable forum for that type of finding in violation of the reviewing function of this [sic] Court of Appeals

and of the appellants' right to the due process of law.

The prayer to the Supreme Court of Puerto Rico was as follows:

It is respectfully requested that the finding of the Court of Appeal be repealed and that the Department of the Family, Administration of Families and Children, Assistant Administration for Social Protection be ordered to provide the information that is being requested, except that it be established in a manner with grounds that there existed good faith in the filing of referral #R16-03-13063.

The Supreme Court of Puerto Rico declined to review the Judgment of May 31, 2018. Two motions for reconsiderations were denied. None of these determinations discussed the merits of Soto-Nieves's request for review. *See App. 21-26.*



REASON FOR GRANTING THE WRIT

This Court should grant the writ to correct a gross deviation from due process of law's principles under the Fourteenth Amendment of the U.S. Constitution by the courts of the Commonwealth of Puerto Rico. It is a widely held and undeniable principle of law that for a decision of any administrative body, or court, to be valid and afford due process, the parties must have access to the facts underlying the decision to ascertain that the decision is correct and allow for meaningful

judicial review, if warranted. The Fourteenth Amendment of the U.S. Constitution comes into play when there is a proprietary or liberty interest at stake⁸ and its denial constitutes a constitutional violation.

1. Procedural due process under the Fourteenth Amendment.

a. Liberty interest arising from state law in obtaining information offered in bad faith.

This Honorable Court stated in *Paul v. Davis*, 424 U.S. 693, 710-712 (1976):

It is apparent from our decisions that there exists a variety of interests which are difficult of definition but are nevertheless comprehended within the meaning of either “liberty” or “property” as meant in the Due Process Clause. These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law, and we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the state seeks to remove or significantly alter that protected status. []

In each of these cases, as a result of the state action complained of, a right or status previously recognized by state law was distinctly altered or extinguished. It was this alteration, officially removing the interest from the

⁸ See *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976).

recognition and protection previously afforded by the state, which we found sufficient to invoke the procedural guarantees contained in the Due Process Clause of the Fourteenth Amendment. . . .

In this case, Act 246 establishes in Article 25, 8 L.P.R.A. § 1135, that the subject of the report (the Soto-Nieves) shall be entitled to request the Department, in writing, that copy of the information about his/her case found in the Central Register be provided to him/her. The article states that the Secretary [of the Department of the Family] or the person designated *shall* furnish the information, “insofar as this does not go against the best interest of the minor, and if the necessary steps have been taken to protect the confidentiality of the person who, in good faith, reported the case or cooperated during the investigation thereof.” Therefore, the agency is obligated to furnish the information about his/her case, except if this will go against the best interest of the minor, and to protect the confidentiality of the person who “in good faith” reported the case or cooperated during the investigation. At no point the agency has alleged that furnishing the information, in this particular case, is against the best interest of the minor nor was this an issue that was discussed by the agency in its decision or the Court of Appeals. As to the protection of the person who “in good faith” reported the case, that is the crux of the matter presented for review, how was the “good faith” standard applied in this case to deny the requested information as confidential.

As previously indicated, Article 21 of Act 246, 8 L.P.R.A. § 1131, clearly states that the requirement of “strict confidentiality” does not apply to the information provided by any person in cases of “unsubstantiated reports in which false information has been knowingly provided.” Only information provided in “good faith” can’t be used against the informer in civil or criminal proceedings. *Id.*

Stated simply, “a state creates a protected liberty interest by placing substantive limitations on official discretion.” *Olim v. Wakinekona*, 461 U.S. at 249. A state may do this in a number of ways. Neither the drafting of regulations nor their interpretation can be reduced to an exact science. Our past decisions suggest, however, that the most common manner in which a state creates a liberty interest is by establishing “substantive predicates” to govern official decision-making, *Hewitt v. Helms*, 459 U.S. at 472, and, further, by mandating the outcome to be reached upon a finding that the relevant criteria have been met. *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 462 (1989).

Therefore, by expressly excluding from the mantle of “confidentiality” information of unsubstantiated reports in which false information was knowingly provided, information provided in “bad faith,” the information becomes then public information that can be requested by the citizens, as the Court of Appeal correctly discussed in espousing the general rules of management of public information, see App. 5. The state’s

discretion to deny that information is, therefore, curtailed.

As a result, Soto-Nieves has a statutory right, and therefore a liberty interest, to request access to public information (assuming it was provided in bad faith)⁹ except if the state establishes that the interest of a minor will be affected, or if it establishes that there was not bad faith. In the instant case, the state, through the Department of the Family's decision of January 29, 2018, App. 12-18, sought to remove and extinguish this statutorily protected right¹⁰ by denying the Soto-Nieves the requested information by unilaterally deciding that the outcome of the referral had been Without Grounds, not Unfounded, in effect concluding, without any showing of facts or evidence, that there was no evidence that false information was provided knowingly, App. 17, thus, potentially, denying the liberty interest of Petitioners to access that information, or to allow for meaningful judicial review, which is a denial of due process.

b. Liberty interest in not being the subject of false accusations of mistreatment or negligence.

The liberty interests of Soto-Nieves are not limited to obtain the information produced in bad faith; under Act 246 they also have a liberty interest in not being the object of false accusations of mistreatment, App.

⁹ See *Paul v. Davis*, 424 U.S. at 710-712.

¹⁰ *Id.*

38. This, because the only plausible reason why Act 246 states at Article 25, 8 L.P.R.A. § 1135, that information offered in bad faith is not confidential and that only information produced in good faith cannot be used in criminal and civil proceedings, is to allow the victim or subject of false information provided knowingly, to initiate criminal and civil actions against the person that produced the information. The existence of this option serves as a deterrent against the person providing false information on purpose. Therefore, the statute allows the “outcome” of deterring the filing of false reports of mistreatment or negligence by allowing the information to be used in civil or criminal proceedings, once the “relevant criteria have been met,” which is that the information was found to have been provided in bad faith. *See Kentucky Dep’t of Corrections v. Thompson, supra*. For that outcome (the deterrent effect of the statute) to be enforceable, a finding that the information was or was not offered in bad faith must be made, and that finding must be reviewable or no due process would result.

It must be considered, that by mandating reporting of child abuse cases, the state created a system that engages its resources to interfere with the private domain of the citizen, a system strengthened by a requirement of strict confidentiality. Probably realizing the possibility of abuse of such system, the statute, affirmatively, seeks to limit the state action to prevent abuses by withdrawing all claims to confidentiality from persons submitting false information knowingly and by allowing such information to be used against

the informer in civil and criminal proceedings *for the benefit of the victim of such actions*. A person who has been subjected to such intrusion in his/her private life has a liberty claim to benefit from the possibility of filing criminal and civil procedures, if warranted, if his/her interest to be free from false accusations is to have any meaning. If such a right is taken away without due process, because the Petitioners lose access to pertinent information that could allow him/her to enforce his/her rights, the deterrence value implicit in the statute, and the victim's right to seek redress would be taken away.

This is not merely an inconvenience to the victim, a false accusation of negligence or mistreatment has severe consequences since the family is subject to a government intervention affecting their peace and forcing them to engage in expenses and emotional costs, also affecting the minor involved. App. 34-35. *See also Humphries v. County of L.A.*, 547 F.3d 1117, 1121 (9th Cir. 2007):

In addition, there is a great human cost in California, as elsewhere, to being falsely accused of being a child abuser. These costs are not only borne by the individuals falsely accused, but by their children and extended families, their neighbors and their employers. Indeed, with the same passion that California condemns the child abuser for his atrocious acts, it has an interest in protecting its citizens against such calumny.

Allowing the agency to make ineffective the limitation of confidentiality would render the statute a weapon permitting anyone to place unfounded referrals to cause harm to innocent persons, while shielding the perpetrator behind the requirement of “strict confidentiality.” This would be the practical result of blunting the judicial review of the agency’s decision by allowing it to unilaterally determine that there was no bad faith, without having to provide the underlying facts supporting the decision.

The interest of the state in discouraging the filing of false reports to prevent citizens from becoming victims of false accusations of negligence or mistreatment, and the correspondent liberty interest in not being, at least, an *easy* target of such actions, will be turned on its head if the decision of the Court of Appeals is allowed to stand. As a consequence, the filing of such unsubstantiated reports will be facilitated, as the possibility of anyone finding out and taking action against the perpetrator will be greatly diminished if no meaningful review is allowed.

2. A liberty interest cannot rest on the unilateral unreviewable actions of the state.

In *Mathews v. Eldridge*, 424 U.S. 319, 332-333 (1976), this Court stated that:

Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause

of the Fifth or Fourteenth Amendment . . . The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” (citations omitted).

The state action of finding that the outcome of the referral as Without Grounds, instead of Unfounded, is a determination necessarily made on the basis of the facts underlying the referral and could be subjected to error and various other subjective considerations. Therefore, due process demands that the Petitioners be heard “at a meaningful time and in a meaningful manner” as to the correctness of determining that the outcome was Without Grounds instead of Unfounded since that determination could deprive them their liberty interest. Additionally, “procedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of the cases, . . .” *Id.* at 344.

As also mentioned in *Mathews v. Eldridge*, *supra*, citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), “due process is flexible and calls for such procedural protections as the particular situation demands.” This requires the consideration of the following factors: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any of additional or substitute procedural safeguards; and finally, the Government interest, including the function involved and the fiscal and administrative burdens that the additional

or substitute procedural requirement would entail.” *Id.* at 335.

As mentioned earlier, no fault was found with the Soto-Nieves, yet they were subjected to an unwarranted state intervention upon claims that, they understand, were knowingly false, and yet they are precluded from exercising their right to initiating any civil or criminal procedures to protect themselves, or claim any other remedies they might have, since the statute expressly prohibits the use of information provided in good faith. By labeling the outcome of the referral as Without Grounds and claiming its confidentiality, the agency is effectively declaring, *without any proof other than their unilateral declaration*, that the information was provided in good faith, effectively terminating Soto-Nieves’s rights and their liberty interest, without any “meaningful” possibility of review, since the basis of the agency’s decision was withheld.

The risk of erroneous deprivation of the liberty interest is enormous since the agency has no incentive to get it right. If the functionary errs in concluding that the information was not provided in bad faith and that the information is to remain confidential, there would be no procedure in place to allow for the review of the decision by the persons affected by it. The functionary or functionaries that make a determination of presence or absence of bad faith, we assume, examine the underlying facts and circumstances, and how they relate to each other, to *decide* if there is evidence of false information provided knowingly, since the evidence itself does not have a label stating that it is “false.” The

whole process is fraught with the possibility of error, carelessness, and bias due to various circumstances, from the workload of the functionary to the preferences of the agency, which (as the Court of Appeals seems to suggest, App. 9-10) would rather promote a policy of encouraging referrals. The risk of error in a setting in which unnamed functionary makes determinations upon information provided by third parties and upon unknown circumstances and influences is high and requires strong procedural guarantees. In the context of a disability decision, the Court in *Mathews v. Eldridge* made the following statements that are illustrative of Soto-Nieves' claim:

A further safeguard against mistake is the policy of allowing the disability recipient's representative full access to all information relied upon by the state agency. In addition, prior to the cutoff of benefits the agency informs the recipient of its tentative assessment, the reasons therefor, and provides a summary of the evidence that it consider most relevant. . . . These procedures, . . . , enable the recipient to "mold" his argument to respond to the precise issues which the decisionmaker regards as crucial. *Id.* at 346.

By not allowing the Soto-Nieves to respond to the issues that the agency might have regarded as crucial in its determination by granting access to the information relied upon by the agency, any "meaningful" participation in the decision was denied and the risk of error is multiplied as any incentive to prevent error is taken away.

What the Soto-Nieves seek is that some type of process be afforded to correct administrative error. See *Mackey v. Montrym*, 443 U.S. 1, 13 (1979) (“ . . . when prompt post deprivation review is available for correction of administrative error, we have generally required no more than that the pre deprivation procedures used be designed to provide a reasonably reliable basis for concluding that the facts justifying the official action are as a responsible governmental official warrants them to be”). In the instant case, no pre deprivation or post deprivation procedure has been afforded to allow Soto-Nieves to conclude that the facts underlying the official action support it.

The Government interest will not be affected since the Statute itself expressly states that information provided in bad faith is not confidential. In fact, the Government should have an interest in ensuring that the statute is not abused by persons submitting false reports, which appears to be the goal of the statute. Any additional fiscal or administrative burdens would be just those required to provide a meaningful participation by the citizens in the inquiry to determine if, in fact, there is a liberty interest at stake because false information was submitted knowingly.

Furthermore, “ . . . the right to procedural due process is ‘absolute’ in the sense that it does not depend upon the merits of a claimant’s substantive assertions, and because of the importance to organized society that procedural due process be observed” *Carey v. Piphus*, 435 U.S. 247, 266 (1978). Therefore, the Soto-Nieves have a right to verify the correctness of the

agency's decision, regardless of the possibility that the determination of Without Grounds might be or not be correct, and that right should not depend on the unilateral actions of the state.

3. This Court needs to intervene to ensure that state courts do not lightly affirm administrative actions that deprive citizens of due process of law under the Fourteenth Amendment by favoring particular policy positions contrary to statutory and constitutional considerations. In doing so, the decisions of the Courts of the Commonwealth of Puerto Rico conflict with applicable case law of this Court.

This Court has consistently upheld the principle that a citizen has a constitutional right to due process of law prior to deprivation of a liberty or proprietary interest, *Mathews v. Eldridge*, 424 U.S. at 332. The Court has intervened when decisions of lower courts run contrary to well-settled principles of constitutional law, see *City of Los Angeles v. David*, 538 U.S. 715 (2003). In the case at hand, the Court of Appeal declined to even discuss in any substantive way the Soto-Nieves argument that the Department of the Family could not deny Soto-Nieves request for information without, at least, providing the underlying facts upon which the decision was based, rendering null any possibility of reviewing the administrative decision and violating due process of law.

The right that Soto-Nieves, or any citizen, has to access information provided against them in bad faith is diminished to the point of extinction¹¹ if the agency will be the sole judge of deciding if the facts of the case establish that the evidence in any particular case was submitted in bad faith. A negative answer by the agency to provide the requested information (by labeling an outcome as Without Grounds), precludes any possibility of the citizen ascertaining the correctness of the decision, thus, preventing any meaningful participation in the decision as well as any attempt at judicial review.

The Court of Appeals, instead of explaining why the Soto-Nieves did not have a right to obtain information to review the designation of the referral as Without Grounds dismissed the petition for a writ of administrative review under the clearly erroneous argument that all information under Act 246 is confidential. Furthermore, despite the fact that the court was well aware that the Petitioners wanted to review the categories of Without Grounds and Unfounded to assess the correctness of the agency's decision, the request was dismissed as an unsupported attempt to obtain greater information.

The aforementioned, as well as the decision to conclude that categorizing the outcome of the referral as Without Grounds was a dispositive fact, when, as explained above, it is an unsupported conclusion of a functionary, allowed the Court of Appeals to evade

¹¹ *Paul v. Davis*, *supra*, 424 U.S. at 710-712.

confronting the need to review said “fact,” as if it did not merit any additional procedure despite being the only reason the agency gave to deny the Petitioners’ request.

The Due Process Clause also encompasses a third type of protection, a guarantee of fair procedure. A § 1983 action may be brought for a violation of procedural due process, but here the existence of state remedies *is* relevant in a special sense. In procedural due process claims, the deprivation by state action of a constitutionally protected interest in “life, liberty, or property” is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest *without due process of law*. *Parratt*, 451 U.S., at 537; *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (“Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property”). The constitutional violation actionable under § 1983 is not complete when the deprivation occurs; it is not complete unless and until the state fails to provide due process. Therefore, to determine whether a constitutional violation has occurred, it is necessary to ask what process the state provided, and whether it was constitutionally adequate. This inquiry would examine the procedural safeguards built into the statutory or administrative procedure of effecting the deprivation, and any remedies for erroneous deprivations provided by statute or tort law.

Zinerman v. Burch, 494 U.S. 113, 125-126 (1990).

The procedural safeguard provided by Act 246 was limited to requesting review by the Court of Appeals¹². Since the court did not examine the question of the lack of sufficient grounds to allow the review of the basis of the agency's decision, for the reasons mentioned above, the Soto-Nieves were left without any remedies to evaluate the correctness of the agency's decision, rendering the limited due process allowed by the statute insufficient.

The due process problem is compounded because the court seems to have acted to advance a policy of promoting reporting of mistreatment allegations ("... the legitimacy of the claim for the confidentiality of the state is not in discussion, especially when the same aspires to have the incidents of mistreatment to minors to be reported by the citizens without fear of reprisals" App. 9-10). A reasonable goal, except that it can lead to abuse and the statute, expressly, establishes an exception in cases in which false information is provided knowingly. An exception that also has the reasonable objective of discouraging false reports of mistreatment, which do not advance and even impede the government interest while causing anguish and emotional harm, to the person subjected to a false report.

In advancing a particular vision of what the statute ought to accomplish, by discarding a substantive part of the same, the Court of Appeals exceeds its

¹² Article 25, Act 246, 8 L.P.R.A. § 1135.

judicial function. That this happened despite the Petitioners' protestations that their due process rights were in jeopardy, denotes a disregard for the observance of constitutional restraints to state actions¹³.

As this Court stated long ago:

The words "due process of law," as used in the Federal constitution, do not mean the law and jurisprudence of the state by which the wrong is worked. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense. The people would say to the states, you shall not deprive any person of property without due process of law, but you shall be the judges of what is due process of law; in other words, you shall not do the wrong unless you choose to do it. Due process of law in each particular case means such an exertion of the power of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs. *Eldridge v. Trezevant*, 160 U.S. 452, 461 (1896).

Therefore, the state cannot, by deciding to interpret its laws in ways to accomplish particular results, run afoul of federal constitutional rights, particularly due process, which would take any vigor out of the U.S. Constitution. If the state's action has the potential consequence of depriving a citizen of liberty, due process

¹³ *Mathews v. Eldridge*, 424 U.S. at 332-333.

requires that due consideration be given to limit the possibility of error, as previously discussed, and the courts cannot set aside that analysis without explaining why due process considerations do not apply in this particular case.

The Court of Appeals' action goes beyond an error in interpretation of a settled question of law. The violation of constitutional restraints was plainly presented to the Court of Appeals and even after acknowledging that it "dealt" with them, it determined that the arguments, including the due process arguments under the 14th Amendment, did not adduce cause to vary their decree. App. 20. Thus, the Court of Appeals, in effect, resolved that the due process considerations did not apply or were not relevant to the controversy despite the liberty interest that might be lost if the agency's decision is allowed to stand, contrary to controlling case law of this Court.

Faced with the same grounds, the Supreme Court of Puerto Rico should have addressed these matters, but it chose not to intervene allowing a blatant denial of due process to remain in place. Should these practices of an intermediate court refusing to acknowledge due process considerations in their decisions, coupled with the Supreme Court of Puerto Rico's reluctance to intervene, the Commonwealth of Puerto Rico would become a U.S. Territory where the due process of law under the United States Constitution exist solely in law books, but not for the U.S. Citizens inhabiting the territory. This Court should not allow that to become the norm. Intervention is warranted to clarify that courts

and the state must give due consideration to the limits that the United States Constitution mandates and that the elements discussed in *Mathews v. Eldridge*, and related case law, must guide decisions in which liberty interests are present.



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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