

No. —

In the Supreme Court of the United States

AURA MOODY, on behalf of her minor child, JM,
Petitioner,

v.

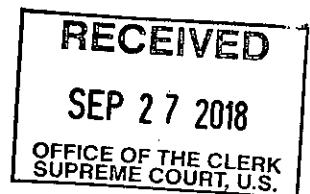
NATIONAL FOOTBALL LEAGUE,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The questions presented below are essential and deserve the United States Supreme Court's attention now. It gives this Court an opportunity to decide important questions of federal law regarding statutory standing doctrine in the context of a claim that is based on constitutional rights violations. The questions for this Court are:

1. WHETHER THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT AND THE CIRCUIT COURT'S AFFIRMATION OF SAME DEMONSTRATED THE FAILURE OF THE COURTS TO PROPERLY FOLLOW THE SUBSTANTIVE AND PROCEDURAL MANDATE REQUIREMENTS OF SECTION 504 OF THE REHABILITATION ACT, THE AMERICAN WITH DISABILITIES ACT, THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE XIV AMENDMENT TO THE CONSTITUTION, AS WELL AS OTHER APPLICABLE STATUTES, DESPITE THE PRESENCE IN THE RECORD OF A MULTITUDE OF VIOLATIONS OF THE SUBJECT STATUTES BY RESPONDENT IN THIS MATTER?
2. WHETHER THE DISTRICT COURT'S DECISION TO REMOVE PETITIONER'S NAME FROM THE CAPTION OF THE CASE AND AS A PARTY IN INTEREST WAS WARRANTED, IN ADDITION TO PREJUDICING PETITIONER'S RIGHTS IN THIS MATTER, DESPITE THE PRESENCE IN THE RECORD OF DUE PROCESS AND EQUAL PROTECTION VIOLATIONS BY RESPONDENT? WHETHER THE DISTRICT COURT FOLLOWED THE FEDERAL RULES OF CIVIL PROCEDURE AND COURT'S LOCAL RULES TO REMOVE

PETITIONER'S NAME FROM THE AMENDED COMPLAINT? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

3. WHETHER MAIN PLAINTIFF JULIAN MOODY'S AND PETITIONER'S CONSTITUTIONAL DUE PROCESS AND EQUAL PROTECTION RIGHTS WERE VIOLATED BY NOT GIVING THEM NOTICE PRIOR TO OR AFTER THE REMOVAL OF PETITIONER'S NAME FROM THE CAPTION OF THE CASE AND AS A PARTY IN INTEREST BY THE DISTRICT COURT? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

4. WHETHER PETITIONER CEASED TO BE A REPRESENTATIVE PARTY WITH STANDING TO APPEAL DESPITE HER CONTINUED RIGHTS AS A PARTY IN INTEREST IN THIS ACTION, CONSIDERING THAT SHE NEVER RESCINDED HER RIGHTS AS A PLAINTIFF? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

5. WHETHER PETITIONER'S OWN INTEGRAL CLAIMS, ALTHOUGH DIFFERENT FROM MAIN PLAINTIFF JULIAN MOODY, ARE MERITORIOUS AND WARRANTED REVIEW BY A JURY FOR AN ADJUDICATION OF THIS CASE ON THE MERITS? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE DISTRICT COURT AND THE CIRCUIT COURT?

6. WHETHER THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S OWN CLAIMS WITHOUT

AFFORDING HER A HEARING ON THE DISPUTED ISSUES OF FACTS THAT SHOULD HAVE BEEN LEGALLY SUBMITTED TO A JURY FOR AN ADJUDICATION OF THIS CASE ON THE MERITS WAS WARRANTED? WHETHER THE ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

7. WHETHER THE DISTRICT COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW WHEN THE MATTER WAS SETTLED WITH MAIN PLAINTIFF JULIAN MOODY BASED ON TRICKERY MISINFORMATION AND FAILURE TO HONOR THE PRE-REQUISITE CONDITIONS TO THE MEDIATION, AND THE DISTRICT COURT'S FAILED TO VACATE THE SETTLEMENT DESPITE PROPER AND TIMELY NOTIFICATION BY PETITIONER OF THE IRREGULARITIES DURING NEGOTIATION THAT LED TO THE UNFAIR AND BAD FAITH SETTLEMENT? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

8. WHETHER PETITIONER HAS STANDING TO APPEAL THE ORDERS OF THE DISTRICT COURT AND CIRCUIT COURT AND IS ENTITLED TO RELIEF IN THIS CASE IN LIGHT OF THE LOWER COURTS' FAILURE TO REVIEW AND ADDRESS THE ISSUES PRESENTED FOR REVIEW ON HER BEHALF IN THIS MATTER?

9. WHETHER RESPONDENT'S UNTIMELY FILING OF ITS BRIEF WITHOUT A PRIOR CONSENSUAL EXTENSION OF TIME TO FILE AND RESPONDENT'S FAILURE TO SERVE PETITIONER WITH ACKNOWLEDGMENT AND NOTICE OF

APPEARANCE CONSTITUTES A VIOLATION OF FEDERAL RULES OF APPELLATE PROCEDURE AND COURT'S LOCAL RULES, IN ADDITION TO PREJUDICING PETITIONER'S RIGHTS IN THIS MATTER? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

10. WHETHER THE DISTRICT COURT'S AND THE CIRCUIT COURT'S DISREGARD OF THE FACTS AND EVIDENCE RAISED IN PETITIONER'S COMPLAINT, AMENDED BRIEF, REPLY BRIEF AND PETITION FOR PANEL REHEARING AMOUNTS TO A VIOLATION OF PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE CONSTITUTION, AS WELL AS FEDERAL RULES OF CIVIL PROCEDURE AND FEDERAL RULES OF APPELLATE PROCEDURE IN THIS MATTER? WHETHER THE LOWER COURT'S FAILURE TO REVIEW THE WEIGHT OF THE EVIDENCE IN THE RECORD PREJUDICED PETITIONERS' CONSTITUTIONAL RIGHTS?

11. WHETHER THE DISTRICT COURT AND THE CIRCUIT COURT VIOLATED PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE CONSTITUTION BY FAILING TO AFFORD HER AN OPPORTUNITY TO BE HEARD ON THE ISSUES PRESENTED TO THEM FOR REVIEW ON HER BEHALF IN THIS MATTER?

12. WHETHER THE CIRCUIT COURT'S SUMMARY ORDER STANDS IN CONTRADICTION AND SHARP CONTRAST TO THE LONG LINE OF DECISIONS BY THE UNITED STATES SUPREME COURT, OTHER CIRCUIT COURTS AND THE

SECOND CIRCUIT COURT AS REGARDING THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE XIV AMENDMENT TO THE CONSTITUTION IN THIS MATTER?

13. WHETHER THE DISTRICT COURT'S AND COUNSEL FOR BOTH PARTIES' DISREGARD OF THE POWER OF ATTORNEY GIVEN TO PETITIONER BY HER SON TO ACT ON HIS BEHALF PREJUDICED HER RIGHTS AND INTERESTS, AS WELL AS MAIN PLAINTIFF JULIAN MOODY'S ABILITY TO RESOLVE HIS CASE ON THE MERITS AND TO HIS BENEFIT? WHETHER THEY FOLLOWED FEDERAL RULES OF CIVIL PROCEDURE AND COURTS LOCAL RULES TO REVOKE THE POWER OF ATTORNEY? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE CIRCUIT COURT?

14. WHETHER RESPONDENT AND COUNSEL FOR BOTH PARTIES ENGAGED IN BAD FAITH AND UNETHICAL BEHAVIORS THAT VIOLATE RESPONDENT'S INTERNAL PROCEDURES, RULES, AND THE CODE OF ETHICS THAT GOVERN THESE ATTORNEYS PROFESSIONAL CONDUCT? WHAT BEHAVIORS DID THEY EXHIBIT AND DID THOSE BEHAVIORS FIT UNDER THE DEFINITION OF PROFESSIONAL MISCONDUCT? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE DISTRICT COURT AND THE CIRCUIT COURT?

15. WHETHER COUNSEL OF RECORD MISREPRESENTED PETITIONER'S CONSTITUTIONAL RIGHTS AS A PARTY IN

INTEREST TO THE ENTITLED JULIAN MOODY V. NATIONAL FOOTBALL LEAGUE CASE,? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE DISTRICT COURT AND THE CIRCUIT COURT?

16. WHETHER THE UNITED STATES DEPARTMENT OF EDUCATION-OFFICE FOR CIVIL RIGHTS AND THE UNITED STATES DEPARTMENT OF JUSTICE VIOLATED PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS BY FAILING TO COMPLY WITH BASIC NORMS AND PRINCIPLES THAT GOVERN THE INVESTIGATION OF DISCRIMINATION COMPLAINTS? WHETHER THIS ISSUE WAS PROPERLY REVIEWED AND ADDRESSED BY THE DISTRICT COURT AND THE CIRCUIT COURT?

LIST OF PARTIES TO THE PROCEEDINGS

The following individuals and entity are parties to the proceedings below:

The Petitioner in this case is Aura Moody (hereinafter referred as the “parent”, “mother”, “Ms. Moody”, “Aura”, “Plaintiff”, “Appellant”, “Petitioner”) on behalf of herself and her minor child, JM (hereinafter referred as the “student”, “son”, “Mr. Moody”, “Julian”, “main Plaintiff”). Petitioner is acting Pro Se.

Julian Moody is an American Citizen of Colombian and African-American descent. He was diagnosed with Type 1 Diabetes Mellitus on March 26, 2007. At the time the incident that led to this action took place, Julian was a student at Bayside High School in Queens (a public school run by the New York City Department of Education, referred hereinafter as “DOE”), where he was the starting Quarterback on the school’s football team. He was an active member of the National Football League/High School Player Development Program (referred hereinafter as “HSPD”).

Aura Moody is a Black Hispanic woman. She is the mother of Julian Moody, who originally commenced this action on his behalf and herself. Although Julian was an adult at the time this suit was filed, Petitioner did have representative capacity to prosecute claims on his behalf. Following retention of counsel, Julian provided his mother with a durable Power of Attorney to act on his behalf, and he never revoked or terminated it. Petitioner practically made all the decisions since the inception of this case, but she was

excluded by counsel when it came to the mediation and settlement.

The Respondent is the National Football League (hereinafter referred as the “NFL”, “Defendant”, “Appellee”, “Respondent”). Respondent is represented by Brewer Attorneys & Counselors.

The National Football League is an American football league consisting of 32 teams. It is the highest professional level sport league of American football in the world. The HSPD is an independent program run by the NFL. Respondent hired and compensated the football coaches for their work in the HSPD program. The coaches were also employed by the DOE.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	i
LIST OF PARTIES TO THE PROCEEDING	vii
TABLE OF AUTHORITIES	xiii
INTRODUCTION	1
OPINIONS AND ORDERS BELOW	
JURISDICTION	
CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE PETITION	
CONCLUSION	
APPENDIX	
Appendix A Summary Order in the United States Court of Appeals for the Second Circuit (February 15, 2018)	App. 1
Appendix B Order Denying Petition for Panel Rehearing and Rehearing En Banc (April 25, 2018)	App. 6
Appendix C Transcript of Civil Cause for Status Conference Before the Honorable Frederic Block in the United States District Court Eastern District of New York (September 15, 2016)	App. 8

Appendix D	Declaration of Jerry Horowitz in the United States District Court Eastern District of New York (March 7, 2015)	App. 21
	Exhibit 1: Medical Form	App. 24
Appendix E	Letter to Honorable Viktor V. Pohorelsky from The Law Offices of Stewart Lee Karlin, PC (July 22, 2015)	App. 29
Appendix F	Letter to Honorable Frederic Block from Aura Moody (January 12, 2016)	App. 31
Appendix G	Letter to Honorable Frederic Block from Aura Moody (August 15, 2016)	App. 36
Appendix H	Letter to Honorable Frederic Block from Aura Moody (September 20, 2016)	App. 46
	Exhibit 2: E-mails between Mr. Karlin and Ms. Moody, dated 8/31/16 - 9/16/16	App. 69
	Exhibit 3: Letter of Recommendation for Julian Moody from Head Coach Jason Levitt	App. 76
	Exhibit 4: Letter To Whom It May Concern from Ms. Moody, dated 8/1/12	App. 78

Exhibit 5: Queens Courier Newspaper article,
dated 12/27/12 App. 81

Exhibit 6: E-mails among Ms. Moody and NFL officials,
dated 6/26/12 - 7/31/12 App. 84

Exhibit 7: Letters and E-mails,
dated 8/30/12 - 6/24/13 App. 145

Exhibit 8: Julian's Interscholastic-Sports Examination forms,
dated 7/29/11 and 4/24/12 App. 180

Exhibit 9: E-mails between Ms. Moody and Mr. Karlin,
dated 1/2/16 - 8/12/16 App. 194

Exhibit 10: Letters and E-mails,
dated 5/21/13 - 12/18/14 App. 204

Exhibit 11: E-mails between Ms. Moody and Mr. Karlin, dated 10/30/14 - 10/31/14 and E-mails to Ms. Kapitanova from Ms. Moody,
dated 6/29/15 - 11/1/15 App. 228

Exhibit 12: Power of Attorney,
dated 11/27/15 App. 236

Exhibit 13: E-mails between Ms. Moody and Ms. Kapitanova,
dated 7/21/15 - 9/25/15 App. 239

Exhibit 14: E-mail to Ms. Kapitanova and Mr. Karlin from Ms. Moody,
dated 7/10/15 and Memorandum to

High School Principals from Mr. Goldstein dated 2/5/13; Important Notice to Parents/Guardians on NYSED Regulations for students participating in interscholastic sport activities	App. 246
Appendix I Letter to Honorable Frederic Block from Michael L. Smith (January 13, 2017)	App. 257
Appendix J Letter to Honorable Frederic Block from Aura Moody (January 19, 2017)	App. 261
Appendix K Letter to Honorable Frederic Block from Aura Moody (February 9, 2017)	App. 267
Appendix L Constitutional, Statutory, and Rule Provisions Involved	App. 271

TABLE OF AUTHORITIES**CASES**

<i>Anderson News LLC v. am Media Inc.,</i> 680 F3d. 162 (2d Cir. 2012), <i>cert denied</i> 133 S. Ct. 846 (2013)	26, 28
<i>Ashcroft v. Iqbal,</i> 556 U.S. 652 (2009)	26
<i>Bell Atlantic Corp. v. Twombly,</i> 550 U.S. 544 (2007)	28
<i>Board of Directors of Rotary International v.</i> <i>Rotary Club of Duarte</i> , 481 US 537 (1987)	32
<i>Carey v. Population Services International,</i> 431 U.S. 678 (1977)	32
<i>Cent. States Se. Areas Health & Welfare Fund v.</i> <i>Merck-Medco Managed Care, LLC,</i> 433 F.3d 181 (2d Cir. 2005)	23
<i>Chambers v. Mississippi,</i> 410 U.S. 284 (1973)	4, 5
<i>Chan v. City of New York,</i> 1 F.3d 96 (2d Cir. 1993)	30
<i>City of Akron v. Akron Center for Reproductive</i> <i>Health Inc.</i> , 462 U.S. 416 (1983)	32
<i>Conley v. Gibson,</i> 355 U.S. 41 (1957)	24, 25
<i>Crispim v. Athanson,</i> 275 F. Supp. 2d 240 (D. Conn. 2003)	23

<i>Dodge v. Woolsey</i> , 59 U.S. 331 (1855)	6
<i>Fitzgerald v. Barnstable School Committee</i> , (2009)	23, 24
<i>Franklin v. Gwinnett County Public Schools</i> , (1992)	25, 26
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	16, 18, 24, 29
<i>Hagar v. Reclamation Dist.</i> , 111 U.S. 701 (1884)	16, 24
<i>Hispanic Soc'y of the N.Y. City Police Dep't v. N.Y. City Police Dep't</i> , 806 F.2d 1147 (2d Cir. 1986)	20
<i>H.L. v. Matheson</i> , 450 U.S. 398 (1991)	32
<i>Khulumani</i> , 504 F.3d at 277	31
<i>Lehr v. Robertson</i> , 463 U.S. 248 (1983)	32
<i>Maher v. Roe</i> , 432 U.S. 464 (1977)	32
<i>Michael H. v. Gerald</i> , 491 U.S. 110 (1989)	31, 32
<i>Minnesota v. Clover Leaf Creamery Co.</i> , 449 U.S. 456 (1981)	5
<i>Neitzke v. Williams</i> , 109 S. Ct. 1827 (1989)	24, 25

<i>New York, New York Mortgage Corporation v. Clotar Const. Corp.,</i> 254 N.Y. 128, 172 N.E. 265 (1930)	29
<i>Paris Adult Theater v. Slaton,</i> 413 U.S. 49 (1973)	32
<i>Parham v. J.R.,</i> 442 U.S. 584 (1979)	32
<i>Pierce v. Society of Sisters,</i> 268 U.S. 510 (1925)	17
<i>Santosky v. Kramer,</i> 455 U.S. 745 (1982)	17, 29
<i>Vernonia School District 47J v. Acton,</i> 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995)	32
<i>Talisman,</i> 582 F.3d at 258-59	31
<i>Thornburgh v. American College of Obstetricians and Gynecologists</i> , 476 U.S. 747 (1986)	32
<i>Troxel v. Granville,</i> 530 U.S. 57 (2000)	19
<i>Truax v. Corrigan,</i> (1921)	15
CONSTITUTIONAL PROVISIONS, STATUES AND REGULATIONS	
U.S. Constitution, Amendment XIV	<i>passim</i>
Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12111	<i>passim</i>

Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794	<i>passim</i>
Section 1983 of the Civil Rights Act ("Section 1983"), 42 U.S.C. § 1983	23, 30
Federal Rules of Civil Procedure – FRCP	<i>passim</i>
Federal Rules of Appellate Procedure – FRAP	2, 14, 27
New York State Executive Law, Article 15, Human Rights Law	1
New York General Obligations Law, Article 5, title 15, Section 5-1513 - Power of Attorney . .	32
New York City Department of Education - Regulation of the Chancellor A-830 ("Regulation A-830")	35
New York City Department of Education - Regulation of the Chancellor A-421 ("Regulation A-421")	35
National Football League/High School Player Development Program Regulations ("HSPD Regulations")	8, 35
Public Schools Athletic League Regulations ("PSAL Regulations")	35
New York Rules of Professional Conduct - 22NYCRR§1210.1 - Client's Bill of Rights . . .	33
OTHER AUTHORITIES	
Clark and Stone, <i>Review of Findings of Fact</i> , 4 U. of Chi.L.Rev. 190 (1937)	29

INTRODUCTION

The United States of America is considered to be the pioneer in the promulgation and preservation of civil and human rights in the world. As such, it is expected that the judicial branch enforce the laws that protect its own Citizens, particularly of those with special needs.

Upon information and belief, in a certiorari proceeding, the U.S. Supreme Court (hereinafter referred as "Supreme Court", "this Court") is required to determine whether the decisions of the U.S. Court of Appeals for the Second Circuit ("Court of Appeals", "Circuit Court") and the U.S. District Court for the Eastern District of New York ("District Court") were supported by competent substantial evidence, whether there was a departure from the essential requirements of the law, and whether due process was accorded.

This lawsuit arose as a result of Respondent's violations of a number of federal, state and city laws by depriving Julian (a then 16 year old insulin-dependent diabetic) of his right to represent the New York Jets in a National Tournament held from July 12 through July 15, 2012 in Indianapolis, Indiana ("National Tournament"), on the basis of his disability, denying him a once in a lifetime opportunity to be exposed to a national experience that could have led to possible recruitment and scholarship offers by colleges in this country. On June 25, 2012, Julian was humiliated in front of his teammates by his NFL/HSPD coach, removed from his winning team and replaced by a player from the losing team, without justification and parental notification.

Petitioner believes that the HSPD coach's cruel action and Respondent's indifference amount to negligence, child abuse/neglect and breach of fiduciary responsibility, among other misconducts, pursuant to NYS Executive Law, NYS Human Rights Laws, NYS Education Laws, NYS Child Abuse and Neglect Laws, NYC Human Rights Laws, NYC Education Laws, as well as the regulations of the NFL and Public Schools Athletic League ("PSAL") and the American Diabetes Association. When the NFL and its executives learned about the HSPD coach's maltreatment that endangered Julian's welfare, they had a legal and moral duty to take action but failed to do so. They did not even offer an apology to Julian and his family. They should be held accountable for breaching the law. Shame on them!

On February 2, 2015, Petitioner, through counsel, brought a discrimination action against the NFL on behalf of Julian and herself. The Complaint alleged that the NFL prohibited Julian from competing with his team at a National Tournament because of his diabetes, in violation of Section 504 of the Rehabilitation Act ("Section 504"), the American with Disabilities Act ("ADA") and other relevant statutes. During the proceeding, it came to light that Julian was an adult. On July 7, 2015, the Complaint was amended to substitute Julian as the sole Plaintiff, without Petitioner's consent and/or notification by the Court or counsel, in disregard of FRAP 25 and Court's local rules. On January 6, 2016, **Julian reached an agreement with the NFL and settled his case for \$1,000.00 and a ticket to watch a football game.** **Pt.App.257.** On January 12, 2016, Petitioner addressed a letter to the Court regarding the

irregularities/improprieties she observed during the mediation that led her to believe that Julian was pressured to accept the first offer that was put on the table before him. **Pt.App.31-35.** Respondent in conjunction with counsel and the mediator used mental games and behavioral ploys to force out of Julian a decision that was contrary to his interests. On August 12, 2016, the action was dismissed by the District Court, without Petitioner being served with a substitution of parties and/or transfer of interest motion (if there was one). Petitioner did not seek voluntary dismissal and never signed a stipulation of dismissal. It is undisputable that the NFL is a powerful organization, but “no one should be above the law.”

On July 7, 2016⁵, an injustice was perpetrated against Petitioner. Her name was removed as a Plaintiff and party of interest from the Amended Complaint by the District Court, without her consent and/or notification, although she has meritorious claims against Respondent.¹ After Petitioner learned about the removal, she expressed her strong objection by writing letters to the District Court and filing a motion for reconsideration, but her concerns were not addressed. On December 12, 2016, the District Court issued an Electronic Order stating that it will take no further action in this case, without affording Petitioner

¹ The Complaint involves claims for injunctive relief, retaliation, intimidation, obstruction of justice, breach of contract, concealment/tampering of evidence, failure to investigate allegations of child abuse and neglect, cover up, intentional and negligent infliction of emotional distress, among others. The NFL’s actions were deliberate, capricious and intentionally discriminatory, causing harm to both Plaintiff-Petitioner Julian and Aura Moody.

a hearing. Petitioner's motion for reconsideration was denied on January 19, 2017, without explanation or analysis. Petitioner appealed the Court's December 12th and January 19th decisions, but the Circuit Court denied review via Summary Order dated February 15, 2018 and affirmed the judgment of the District Court, without conducting oral argument. Petitioner asked for further panel review, but her request was denied. The Circuit Court affirmed the judgment of the District Court by issuing a Mandate on May 3, 2018. It is Petitioner's good faith belief that lower Courts' decisions were not conducted in accord with the relevant federal, state and city statutes/laws, as decided by the Supreme Court in **Chambers v. Mississippi** (1973) 410 US 284.

Petitioner respectfully submits this Petition for a Writ of Certiorari to challenge the constitutionality of the procedures used by the District Court and Circuit Court. Petitioner asks for unsettled issues in important federal questions with public importance, related to violations of Petitioner's procedural and substantive due process and equal protection rights guaranteed under the XIV Amendment to the Constitution and other statutes, including this Court's supreme power of rule-making to remedy the present situation, thus invalidating the judgments of the lower Courts to allow her assume her rightful place as a Plaintiff in this action and continue her individual claims against Respondent, in the interest of justice.

OPINIONS AND ORDERS BELOW

The District Court's Order Dismissing Case is reported in its record under Docket entry No. 22.

The District Court's Scheduling Order issued on August 31, 2016 is reported in its record under Docket Entry No. 23.

The District Court's Order-Transcript of Civil Cause for Status Conference held on September 15, 2016 is included as **Appendix C** to this Petition. It is reported in PACER.

The District Court's Electronic Order issued on December 12, 2016 is reported in its record under Docket Entry No. 24.

The District Court's Electronic Order issued on December 20, 2016 is reported in its record under Docket Entry No. 24.

The District Court's Electronic Order issued on January 19, 2017 is reported in its record under Docket Entry No. 30.

The Circuit Court's Summary Order dated February 15, 2018 is attached as **Appendix A** to this petition. The decision can be located through FindLaw.

The Circuit Court's Order dated April 25, 2018 is included as **Appendix C** to this petition.

The Circuit Court's Summary Order dated February 15, 2018 (issued as Judgment Mandate on May 3, 2018) is included as **Appendix A** to this Petition.

JURISDICTION

Upon information and belief, the jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The Supreme Court has jurisdiction to review issues of denial of due process by the State Court, e.g.

Chambers v. Mississippi (1973) 410 US 284, and issues of equal protection clause violation, e.g. **Minnesota v. Clover Leaf Creamery Co. (1981) 449 US 456**. Jurisdiction is also invoked pursuant to 28 U.S.C. §1257(a) where the validity of statutes, orders and appellate procedures of State is drawn in question on the ground of its being repugnant to the First and XIV Amendment of the Constitution on civil rights. **Dodge v. Woolsey (1855) 59 U.S. 331**. This Court is requested to exercise its rule-making power rendered by the Congress Pursuant to 28 U.S.C. §2071 to resolve any conflict of law in the State on appeal right involving Petitioner's removal of her name as a Plaintiff from the Amended Complaint without her consent and/or notification.

The final judgment of the Circuit Court was entered on February 15, 2018. A Petition for Rehearing was denied on May 3, 2018 via Mandate. On May 18, 2018, Justice Ginsberg extended the time within which to file a Petition for a Writ of Certiorari to and including September 24, 2018.

CONSTITUTIONAL, STATUTORY AND RULE PROVISIONS INVOLVED

The relevant statutory and regulatory provisions are set out in the Appendix at **App.271-272**.

STATEMENT OF THE CASE

Petitioner assumes the Court's familiarity with the underlying facts, the procedural history of the case and the issues on appeal, to which she refers only as necessary.

In the Spring 2012, Julian was selected to participate in the HSPD program via the recommendation of his football coach from Bayside High School (Mr. Jason Levitt), which initially consisted of nearly 200 students-athletes. **Pt.App.76-83,145-160,176-178.** Julian advanced throughout all the phases of the Citywide competition. On June 23, 2012, the HSPD had a final football game, and Julian's team was victorious. As instructed by the HSPD coaches/organizers, on June 25, 2012, Julian and the other players on the winning team reported to Roy Wilkins Park in Queens for practice and trip arrangements. On that date, Mr. Willie Beverly (HSPD coach, who was the coach of August Martin High School's football team) unexpectedly informed Julian that he was not going to participate in the National Tournament but could stay for practice. This happened in the presence of Mr. James Desantis (HSPD coach, who was the coach of Flushing High School's football team) and his teammates. Julian was replaced by a player from the losing team, a member of Jamaica High School's football team. Feeling humiliated in front of his peers, deeply shocked, saddened and devastated by this sudden turn of events, in a zombie like state, Julian took the bus home. He later called the trip back home as "**the longest ride of my life.**" When the events occurred, Julian was a minor child. However, his parents were not notified of the HSPD's decision prior to or after he was given the news. **Pt.App.78-80.** Respondent claimed that the football coaches were unaware of Julian's diagnosis. This denial is egregious! Julian submitted the proper medical documentation prior to engaging in the physical sport. There is no mystery or omission that Julian's medical record was in the custody of Respondent. **Pt.App.21-28,180-193.**

Petitioner believes that Julian was used as an escape-goat. Respondent read his medical records, saw that he has diabetes and decided to use his condition as a means to exclude him from playing in the National Tournament. Needless to say, although Section 504 requires that an institution make reasonable accommodation for those with a disability to enable them to perform their essential functions, no accommodation was made by Respondent for Julian.

When Julian's parents learned that the NFL had mistreated him and violated his trust as a minor, they contacted various officials, ranging from HSPD Coach Al Tongue to Commissioner Roger Goodell. These contacts took place via phone calls and emails. **Pt.App.84-144.** Parents asked for an investigation of the incident, a meeting with the parties involved and the HSPD governing rules, but Respondent denied their requests. **Pt.App. 246-256.** Considering that the parents' efforts to exhaust administrative remedies failed, on December 26, 2013, Petitioner retained the services of the Law Firm of Stewart Lee Karlin PC to represent the Moody family in this action. The attorneys assigned for the record were Mr. Stewart Lee Karlin and Ms. Natalia Kapitanova.

Congress has emphasized that it is extremely important that agencies rigorously observe applicable procedural requirements when making decisions that affect the U.S. Citizens, including but not limited to provide the requisite notice to the parties involved. **Under both the First and XIV Amendments,** Respondent was required to provide Petitioner with certain procedures and notices before Julian was deprived of his rights.

PRIOR PROCEEDINGS

Prior to embarking in this lawsuit, Petitioner sought administrative remedies by filing Complaints with the U.S. Department of Education-Office for Civil Rights (“OCR”) and U.S. Department of Justice (“DOJ”). Both agencies disregarded the basic norms and principles that govern the investigation of discrimination complaints. Their cases were closed without involving Petitioner during the course of their investigations and serving her Respondents’ responses or giving an opportunity for rebuttal, in violation of her XIV Amendment rights. **Aplt.Apx.137-167,182-194.**

PETITIONER’S COMPLAINT AGAINST THE DOE AND NFL FILED WITH OCR

On August 3, 2012, Petitioner filed a Complaint with OCR against the DOE and NFL pursuant to the ADA and Section 504, on the basis of Julian’s disability (**Case Number 02-12-1303**). In its unilateral investigation, OCR determined that the HSPD is operated by the NFL and closed the case without Petitioner being involved.

PETITIONER’S COMPLAINT AGAINST THE NFL FILED WITH THE DOJ

Following the OCR’s dismissal of the Complaint against the DOE, and while Petitioner was exhausting all levels of appeal, OCR referred the case to the DOJ for an investigation against the NFL pursuant to the ADA. The DOJ requested that the NFL respond to a questionnaire of 12 questions. The DOJ closed the Complaint solely based on the information obtained from Respondent. **Pt.App.145-179,204-227.**

THE COURT PROCEEDINGS**COURSE OF THE PROCEEDINGS IN THE
NYS SUPREME COURT AND DISTRICT
COURT AGAINST THE DOE**

On March 28, 2014, Petitioner's counsel commenced a lawsuit against the DOE in the Supreme Court of the State of New York, County of Queens ("NYS Supreme Court"), with Aura Moody as Plaintiff and the DOE as Defendant (**Index #: 702100/2014; USDC Docket #: 1:14-cv-02763-RMM-RML**). On May 2, 2014, the case was removed to the District Court. During the pendency of this case, the DOE claimed not to play any role in the HSPD program, as per an email sent to Mr. Karlin on June 5, 2014 by Mr. Porter (Assistant Corporation Counsel, NYC Law Department). Petitioner was informed by counsel about the imposition of sanctions by the Court if the case was not withdrawn. Out of fear, it was discontinued via Stipulation on October 29, 2014, despite Petitioner's objections. This decision was made under the compromise that the case would be pursued against the NFL. Because Petitioner was prohibited to write down "in dissent" when she signed the Stipulation, on October 30, 2014, she sent an email to Mr. Karlin confirming her position. Petitioner gave her attorneys instructions to incorporate other claims and parties into the Complaint against the NFL, but they proceeded against her wishes. **Pet.App.230-235**.

**COURSE OF THE PROCEEDINGS IN THE
DISTRICT COURT AGAINST THE NFL**

On February 2, 2015, Petitioner's counsel initiated a lawsuit in the NYS Supreme Court with Aura Moody

as Plaintiff and the NFL as Defendant (**Index Number 700890/2015**). On March 2, 2015, the case was removed to the District Court. It was assigned to Judge Block. On March 9, 2015, Respondent filed a motion to dismiss the complaint. On June 3, 2015, a pre-motion conference was held before Magistrate Judge Pohorelsky; the Complaint was deemed Amended to substitute Julian as Plaintiff and settlement was encouraged. **On July 7, 2015, without Petitioner being served with a Substitution of Parties motion and/or Transfer of Interest motion, together a notice of hearing, the Amended Complaint was filed by counsel, listing Julian as Plaintiff and removing Petitioner's name without her consent and/or notification, in disregard of FRCP 25 and Court's local rules. Petitioner was not served with the Amended Complaint** nor afforded an opportunity to immediately appeal the decision. On September 11, 2015, a pre-motion conference was held before Judge Block. Attorneys were to notify the Court if they would agree with mediation. On September 22, 2015, the Court issued an Order referring the case for mediation. On October 30, 2015, Respondent's counsel addressed a letter to Judge Block regarding the mediation schedule. Both parties were required to establish preconditions that were basic to the commencement of negotiation, being one of them the production of Respondent's response to the DOJ Complaint filed by Petitioner on May 21, 2013. In addition to a monetary award and reimbursement of attorney fees, Julian was offered an Internship with the NFL. **Pt.App.204-235.** Considering that Petitioner had not been served with the Amended Complaint, on January 2, 2016, she sent an email to counsel asking for it. **Pet.App.240.** On

January 6, 2016, a mediation conference was held despite Respondent's failure to satisfy the prerequisites. **Pet.App.194-203.** Julian was told that the NFL could not give him the promised internship because they are based on merit. Respondent also refused to reimburse Petitioner for the paid legal fees (**more than \$7,000.00**). On January 12, 2016, Petitioner addressed a letter to the Court regarding the improprieties of the mediation. **Pt.App.31-35.** She followed up by calling the Court to inquire about the status of her letter, and she was always informed that the Court had not taken any action. On August 12, 2016, Petitioner reached out to the Court again and learned for the **first time** that the case had been closed earlier that day, prompting her to address a second letter to the Court on August 15, 2016 asking that the settlement agreement be vacated. **Pt.App.36-45.** On August 31, 2016, the Court issued a Scheduling Order. On September 15, 2016, a Status Conference was held before Judge Block to discuss Petitioner's August 15th letter. At that time, Judge Block offered Julian the opportunity to reopen his case, but he declined to proceed with the adjudication on the merits out of fear. Petitioner raised the issue of the removal of her name from the Amended Complaint and advised the Court about the need to restore her name as a Plaintiff since she has her own claims against Respondent, but her concerns were not addressed. However, Respondent's application to seal Petitioner's August 15th letter was granted. **Pt.App.8-20.** On September 20, 2016, Petitioner addressed a third letter to Judge Block requesting that the Court reopen the case under her name. **Pt.App.46-68.** On December 12, 2016, Judge Block issued an Electronic Order stating that the Court would not take further action in this case, without

justification or analysis. On December 20, 2016, Judge Block issued an Electronic Order asserting that the Court had decided to unseal Petitioner's January 12th and August 15th letters. On the same date, the Court issued a Notice of Filing of Official Transcript of Proceedings held on September 15, 2016. On December 24, 2016, Petitioner filed a motion for reconsideration as to the December 12th Court Order. On January 13, 2017, Respondent addressed a letter to Judge Block asking that Petitioner's motion for reconsideration be rejected and requested that if the motion was to proceed, a conference be convened to discuss a briefing schedule and the right of Respondent to recover expenses incurred in connection with this appeal. **Pt.App. 257-260.** Respondent's January 13th letter was not addressed by the Court. On January 19, 2017, Petitioner addressed a fourth letter to Judge Block in response to Respondent's January 13th letter and requested that Respondent produce its response to her DOJ Complaint. **Pt.App.261-266.** On January 19, 2017, Judge Block issued an Electronic Order denying Petitioner's motion for reconsideration, without explanation or analysis. On February 9, 2017, Petitioner addressed a fifth letter to Judge Block inquiring about the status of her January 19th letter. **Pt.App. 267-270.** The Court did not make a determination.

COURSE OF THE PROCEEDINGS IN THE CIRCUIT COURT

On December 24, 2016, Petitioner filed a notice of appeal as to the December 12th Court Order. On June 30, 2017, Petitioner filed her Brief and Appendix. On July 6, 2017, the Circuit Court issued a notice of

defective filing. Petitioner was instructed to cure the defect(s) and resubmit the document(s). On July 20, 2017, Petitioner submitted her Amended Brief and Amended Appendix. On July 26, 2017, the Circuit Court issued a notice of defective filing. Petitioner was instructed to cure the defect(s) and resubmit the document(s). On August 14, 2017, Petitioner submitted her Amended Brief. On September 28, 2017, Respondent submitted its untimely Response Brief. On November 13, 2017, Petitioner filed her Reply Brief. On February 15, 2018, the Circuit Court dismissed Petitioner's appeal for lack of jurisdiction, without conducting Oral Argument pursuant to **FRAP 34**. On March 29, 2018, Petitioner filed a Petition for Panel Rehearing and Rehearing En Banc under **FRAP 40**. It was denied on May 3, 2018, without explanation or analysis.

REASONS FOR GRANTING THE WRIT

Firstly, Petitioner seeks certiorari review of the District Court's judgment that disposes of all claims with respect to main Plaintiff Julian but failed to address the claims of Aura. The District Court failed to secure Petitioner's consent to remove her name as a Plaintiff from the Amended Complaint, failed to properly notify Petitioner and Julian of such decision, failed to convene a hearing and denied Petitioner's motion for reconsideration. Secondly, Petitioner seeks certiorari review of the Circuit Court's Summary Order dismissing the appeal for lack of jurisdiction. The Circuit Court failed to conduct oral argument, and further summarily denied panel rehearing despite of the statutory mandates. Insomuch, a review of this matter by this Court is warranted because Petitioner

has meritable and viable causes of action, individually and separate from Julian, that in good faith should have been allowed to proceed to litigation on the merits. Unfortunately, through no fault of her own, Petitioner's opportunity to plead those causes of action was short-circuited by counsel on record. The Circuit Courts' decisions should be reversed to allow her to assume her rightful place as a Plaintiff in this lawsuit.

In support of her Petition, Petitioner offers the following facts and arguments to the best of her ability. Considering that she is not an attorney, the cited cases should be looked at with caution. Petitioner respectfully requests that this Court apply the pertinent caselaw of standing Courts' decisions.

QUESTION 1.

Congress has stressed the importance for agencies to follow substantive and procedural requirements when making legal decisions that affect the U.S. Citizens. **Under the XIV Amendment**, neither the federal government nor state governments may deprive any person "of life, liberty, or property without due process of law." The Court held in *Truax v. Corrigan* (1921) that "The due process clauses requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society. It, of course, tends to secure equality of law in the sense that it makes a required minimum of protection for every one's right of life, liberty, and property, which the

Congress or the Legislature may not withhold." These clauses provide for certain procedures and provision of notices before a person is deprived of life, liberty and property. The due process and equal protection Clause of the XIV Amendment are meant to ensure that the procedures by which laws are applied are evenhanded to prevent arbitrary exercise of power. *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884). They are also meant to minimize substantially unfair or mistaken deprivation of one's protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

Julian suffers from a **disability** as defined by the ADA, to wit, diabetes. Section 504 prohibits 'any program or activities receiving federal funding from discriminating against disabled individuals. As to the Indianapolis Tournament, Julian's qualification was based strictly on the established rules/standards that allow the team who won the Citywide final to play nationwide. Julian's team won. He was physically ready, willing and able to play. It was the NFL who chickened out for no apparent reason by targeting Julian based on his disability. The fact the Respondent's adverse action against Julian was not communicated to Petitioner as his parent and guardian, infringed upon her due process and equal protection rights. As such, Julian was discriminated against.

The Supreme Court has acknowledged several family-related rights, including the rights of parents to raise their children as they see fit. As the parent and guardian of Julian, Petitioner was compelled to advocate on his behalf while seeking relief for Respondent's adverse action. In the Santosky case, the

Court recognized a “fundamental liberty interest of natural parents in the care, custody, and management of their child.” Parents also have a fundamental right to keep their family together, as well as to control the upbringing of their children... When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. *Santosky v. Kramer*, 455 US 745, 753 (1982). In the Pierce case, the Supreme Court upheld that the parents have the fundamental right to direct the upbringing of their children. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). The District Court did not follow the procedural requirements when dismissing the Complaint.

QUESTION 2.

Petitioner’s name was removed of the caption of the case and as a party in interest without her consent and/or notification, in severe violation of FRCP 25, Court’s local rules and the due process and equal protection clauses of the XIV Amendment. This action prejudiced Petitioner’s rights. Upon information and belief, Julian did not consent to the removal of his mother’s name from the Complaint.

The due process clause stands for the proposition that “one who has been denied process due to one has been constitutionally deprived of their due process.” Pursuant to **FRCP 25**, “a motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4.” As to transfer of interest, FRCP 25(c) requires that “if an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the

original party. The motion must be served as provided in Rules 25(a)(3)." The due process and equal protection clauses are also meant to minimize substantially unfair or mistaken deprivation of one's protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

Petitioner challenges the constitutionality of the procedures used by the District Court to remove her name as a Plaintiff from the Amended Complaint despite the presence in the record of due process and equal protection violations by Respondent. Petitioner was not served with a **motion for substitution of parties and/or a transfer of interest motion, together a notice of hearing**. Petitioner did not seek voluntary dismissal. Petitioner never signed a stipulation of dismissal nor was she served with a notice of dismissal and/or the Amended Complaint (final document) when the decision was made. Petitioner was not notified by the Court or counsel that she was no longer a party in interest. Such notice would have at least given Petitioner an opportunity for rebuttal. Petitioner appealed the Court's decision but was not afforded an opportunity to be heard. Her name should have remained as joined party to this action instead of being inappropriately substituted. **In the absence of service of these documents, it was wrong for the District Court to amend the Complaint.**

QUESTION 3.

The Supreme Court has consistently protected parental rights, including those rights deemed fundamental. As a fundamental right, parental liberty is to be protected by the highest standard of review: the compelling interest test. The Court decisively

confirmed these rights in the case of *Troxel v. Granville*.

Petitioner was prejudiced by the District Court's Order to wrongfully remove her name from the Amended Complaint by not following substantive and procedural mandate requirements, in disregard of FRCP 25, Court's local rules and the XIV Amendment. Besides infringing upon Petitioner's rights, Julian's due process rights were violated. He was not given notice by the Court or counsel that his mother was no longer a party to this action. Procedurally, they had a right to notice of the action taken. Should Aura and Julian been notified in a timely manner, the outcome would have been different. Such notice would have afforded Petitioner an opportunity to rebut the decision. The Circuit Court erred.

QUESTION 4.

The District Court's removal of Petitioner's name from the Amended Complaint was incorrect. There are 2 Plaintiffs in this lawsuit, Aura and Julian. **Respondent acknowledged that Ms. Moody was a party to this action. Appellee's Response Brief at 14.** Petitioner's name was removed from the Amended Complaint although she has valid claims, as aforementioned. She obviously has an interest that was affected by the Court's judgment.

Although Julian's case was settled, Petitioner has not ceased to be a party in interest because she never rescinded her rights as a Plaintiff nor sought voluntary dismissal of this action. She was not served with the appropriate motions, together with a notice of hearing. The District Court's decision deprived Petitioner's

rights by not reopening this case and allowing her to re-plead her claims. The Circuit Court failed to address this issue.

QUESTION 5.

The facts alleged in the Complaint and that gave rise to this suit are sufficient to establish plausible claims for violation of the XIV Amendment, Section 504, ADA and other statutes. Petitioner has asserted that although Julian is the primary victim of Respondent's intentional actions, his family has also been affected. She considers herself a direct victim who has been damaged and is entitled to relief. Petitioner has been anguished and invested a lot of time and money. At the Status Conference, **Judge Block acknowledged that Ms. Moody had spent a great amount of time dealing with this matter. Pt.App.** Petitioner's claims are worthy and should have been legally submitted to a jury for adjudication on the merits.

Petitioner believes that she has standing to reinstate her own individual Complaint on the grounds that she has viable claims under the equal protection and due process clauses, as well as a claim for loss of consortium. ***Hispanic Soc'y of the N.Y. City Police Dep't v. N.Y. City Police Dep't*, 806 F.2d 1147, 1152 (2d Cir. 1986).** The issue of standing presupposes that a person has an actual stake in the outcome of the case. In order for a person to show that they have standing, they must show that the following 3 components can be met; (a) injury; (b) causation; and (c) redressability. **Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 39-44 (1976); Linda R.S. v. Richard D., 410 U.S. 614, 616-18 (1973).**

(a) The injury element can be met if the individual can show that has been or will be directly and personally injured by the action taken. Petitioner was clearly injured by Respondent's actions when Julian was excluded from the National Tournament after he worked very hard to qualify for but ended up being replaced by a less qualified student. The injury was Respondent's failure to notify Petitioner about the actions it intended to take. Under the due process and equal protection clauses, when Respondent decided to exclude Julian, it was at least required to offer a rational for the action to his parent. Petitioner attempted to exhaust administrative remedies by going through the proper channels to resolve this situation amicably, but Respondent and its high-power officials blocked her all the way. Respondent's decision directly injured Petitioner by not giving her proper notice and an opportunity to defend Julian against the wrongful decision, causing her a great deal of mental anguish/emotional distress and monetary damages. For everything that Petitioner experienced and learned about Respondent, as a member of a minority group, she believes that she would have never been treated differently if she was Caucasian.

(b) The causation element can be met if a connection can be shown between the alleged injury and the wrongful action. There is no doubt under the facts of this case that Respondent's action against Julian resulted in the violation of Petitioner's due process and equal protection rights, as previously outlined, creating a direct causal connection. But for the wrongful action of Respondent, Petitioner would not have been subjected to a deprivation of her XIV Amendment

rights. The injury suffered by Petitioner is directly traceable to the action taken by Respondent.

(c) The redressability component can be met if one can show that a favorable decision by the Court on behalf of the person bringing the suit would redress or relieve the injury. There is question that the injury here would be redressed by a Court's decision in favor of Petitioner. The reason why anyone brings a lawsuit in the first place is because a wrong was done against them causing them to be aggrieved. The record in this case is full of evidence of how much effort Petitioner made to redress the situation in an amicable manner. In her attempt to settle this matter out of Court, she wrote multiple letters to agencies that deal with these matters, including OCR and the DOJ. She also reached out to the NFL's Commissioner and counsel. Petitioner was basically ignored, as if her injury did not matter. She was forced into a position where she had to file a lawsuit to redress the wrong that was done to her and Julian.

Petitioner has met all of the elements of standing as outlined here, and due to the fact that she is in the zone of interests protected by the XIV Amendment, she has the proper standing to reinstate and file her own individual Complaint against Respondent. Petitioner has alleged sufficient legal interests and injury to participate in this lawsuit in her own individual capacity and on that basis has expressed the type of injury the Court can actually remedy. Petitioner has established that she has her own meritorious claims that should have been adjudicated by a jury on the merits. Unfortunately, through no fault of her own and without her consent and/or notification, her

opportunity to plead those causes of action was short-circuited by counsel on record with the approval of the District Court when her name was removed from the Complaint. Petitioner appealed the adverse decision, but was not afforded an opportunity to be heard.

QUESTION 6.

Under Section 504, IDEA, ADA and XIV Amendment, a parent may assert claims on her own behalf in federal court. **Cent. States Se. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC**, 433 F.3d 181 (2d Cir. 2005); Citing **Winkelman v. Parma City Sch. Dist., 500 U.S. 516 (2007)**, the Court asserts that the Supreme Court held that parents have standing to prosecute IDEA claims on their own behalf in federal court, based upon both procedural violations of the Act and the substantive denial of a “free appropriate public education” to their children. Section 1983 also provides remedy for Constitutional violations. ***Crispim v. Athanson, 275 F. Supp. 2d 240, 244 (D. Conn. 2003)***. In the Fitzgerald case, the Supreme Court ruled that the victim, in addition to seeking money damages from the school and school officials based on their violation of Title IX, may also seek money damages for violations on their rights under the Equal Protection Clause of the XIV Amendment using a federal law, titled 42 U.S.C. Section 1983, that provides for civil damages against institutions and institutional representatives. **Fitzgerald v. Barnstable School Committee (2009)**. In the Conley case, the Supreme Court held that it was error for the Courts to dismiss the Complaint for lack of jurisdiction. ***Conley v. Gibson, 355 U.S. 41, 45-46 (1957)***; also ***Neitzke v. Williams, 109 S. Ct. 1827***,

1832 (1989). In applying the Conley standard, the Court will “accept the truth of the well-pleaded factual allegations in the Complaint.”

The lower Courts failed to review Petitioner’s own claims, different from Julian. The dismissal of Petitioner’s claims without affording her a hearing on the disputed issues of facts was unwarranted. They should have been submitted to a jury for adjudication on the merits.

QUESTION 7.

Julian’s case should have been allowed to proceed on the merits. The due process clause is meant to ensure that the procedures by which laws are applied are evenhanded to prevent arbitrary exercise of power.

Hagar v. Reclamation Dist., 111 U.S. 701, 708 (1884). Due process is also meant to minimize substantially unfair and/or mistaken deprivation of one’s protected interests. It is also meant to ensure that the procedures by which laws are applied are evenhanded to prevent arbitrary exercise of power.

Fuentes v. Shevin, 407 U.S. 67, 81 (1972).

The District Court departed from the essential requirements of the law when Julian’s case was settled. Petitioner timely notified the Court of procedural violations and irregularities during the course of the mediation that led to the bad faith settlement of this case. **Pt.App.194-203.** Petitioner believes that Respondent, the mediator and counsel for both parties colluded to dupe Julian into signing a settlement that was contrary to his interests. **Counsel settled Julian’s case for \$ 1,000.00**, a much lower amount of what Petitioner paid as **retention fee (more than**

\$7,000.00), despite Petitioner's objections. Respondent failed to satisfy the preconditions to the mediation. The District Court erred by not addressing this issue.

QUESTION 8.

Petitioner has proven beyond a doubt set of facts in support of her claim that the lower Courts' Orders were incorrect in light of their failure to address the issues presented for review, examine and give weight to the evidence in the record.

There is legal sufficiency to show that Petitioner has standing for certiorari review. The appeal should have not been dismissed for want of appellate jurisdiction. In the Conley case, the Supreme Court held that it was error for the Courts to dismiss the Complaint for lack of jurisdiction. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); also *Neitzke v. Williams*, 109 S. Ct. 1827, 1832 (1989). In applying the Conley standard, the Court will "accept the truth of the well-pleaded factual allegations in the Complaint." In the Franklin case, the Supreme Court ruled that victims may sue a school for monetary damages and mandated that schools take corrective actions regarding discrimination for violation of federal law in athletic programs. "Gwinnett made it clear that victims of Title IX violations could also seek money damages, thus increasing the pressure on schools and athletics programs to ensure compliance with all aspects of federal law." *Franklin v. Gwinnett County Public Schools* (1992).

FRCP 8 requires that a complaint include facts giving ride to a plausible entitlement to relief. Id. According to Ashcroft v. Iqbal, 556 U.S. 652, 678

(2009), a claim has facial ‘plausibility’ when the plaintiff pleads ‘factual contents that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’ Id. The Supreme Court specifically indicated that in determining whether a complaint states a plausible claim for relief under this standard is ‘a context specific tasks that requires the reviewing court to draw on its judicial experience and common sense.’Id at 679.

In reviewing a complaint at the pleading stage, the question is not ‘whether there is a plausible alternative to plaintiff’s theory; the question is whether there are sufficient factual allegations to make the complaints claims plausible.’Anderson News LLC v. am Media Inc.,680 F3d. 162, 185 (2d Cir..2012), cert denied 133 S. Ct. 846 (2013). The Second Circuit structuring of the appropriate questions pinpoint that because the plausibility standard is lower than a probability standard, ‘there may therefore be more than one plausible explanation of a defendant’s words or conduct. Accordingly, although an unobjectionable interpretation of the defendant’s conduct may be plausible, that does not mean that the plaintiff’s allegations that the conduct was culpable is not also plausible.’Id. at 189-90.

QUESTION 9.

Respondent failed to comply with the requirements of **FRAP 31**, **FRAP 12** and Court's local rules, prejudicing Petitioner.

Respondent's Brief was filed untimely. Respondent's request for an extension of time was done by letter instead of a formal motion, was not accompanied by the Court's Form T-1080 and Petitioner was not contacted, which renders the Brief fatally defective. However, the Court accepted it. When Petitioner initially filed her motions for an extension of time to file her Brief, they were rejected as defective. As to service and filing pleadings and other papers, Respondent failed to serve Petitioner with the ACKNOWLEDGMENT and notice of appearance. Are the standards the same for Pro Se litigants and lawyers? Petitioner notified the Circuit Court of Respondent's violations, to no success.

QUESTION 10.

A review of the facts and evidence in this case reveals that Petitioner has her own meritorious claims that should have been adjudicated by a jury on the merits. Petitioner was not afforded oral argument/panel rehearing.

The lower Courts ignored controlling principles of law when rendering their decisions. They overlooked the facts, arguments and evidence in Petitioner's Complaint, Amended Brief and Reply Brief. The lower Courts' denial of a hearing amount to a violation of Petitioner's XIV Amendment rights, FRCP and FRAP as the Courts failed to recognize the injury she suffered as a direct result of Respondent's wrongful actions.

In determining whether a complaint states a claim that is plausible, the court is required to proceed 'on the assumption that all the factual allegations in the complaint are true,' even if their truth seems doubtful. *Id* at 185. quoting **Bell Atlantic Corp. v. Twombly**, **550 U.S. 544, 556, 570 (2007)**. In **Anderson News**, it was decided that because plaintiff is entitled to the benefit of the doubt, it is therefore 'not the province of the court to dismiss the complaint on the basis of the court's choice among plausible alternatives;' rather, 'the choice between or among plausible interpretations of the evidence will be a tasks for the factfinders.'

In the instant case, there is no question that the facts as presented support a finding of violation of Petitioner's XIV Amendment rights, which entitles her to relief. In the aforementioned arguments, Petitioner has repeatedly set out the facts of this case, and how they constitute a violation of her constitutional rights. Under **FRCP 8** and Supreme Court's precedent listed herein, it is clear that the factual allegations made by Petitioner are specific, plausible and have upon information and belief, for the most part been confirmed by the record. The Circuit Court's Summary Order is in contravention of the Supreme Court's precedents. As by the Summary Order, the Court has essentially declared that they do not accept the facts presented by Petitioner as truth, even though the Court is required to accept all factual allegations made in the Complaint as truthful. The Circuit Court's grant of a Summary Order basically ignored long standing well established Supreme Court cases that gave birth to the plausibility standard.

A judgment must be supported by findings of fact and conclusions of law, as required by **FRCP 52(a)**. "In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. In NYS, the review of findings of fact in all non-jury cases, including jury waived cases, is assimilated to the equity review: **New York, York Mortgage Corporation v. Clotar Const. Corp.**, 254 N.Y. 128, 133, 172 N.E. 265 (1930). For examples of an assimilation of the review of findings of fact in cases tried without a jury to the review at law as made in several states. **Clark and Stone, Review of Findings of Fact**, 4 U. of Chi.L.Rev. 190, 215 (1937). In the **Santosky case** the NY Supreme Court affirmed the application of the preponderance of the evidence standard as proper and constitutional in ruling that the parent's rights are permanently terminated.

As Petitioner has outlined, she is qualified to maintain a lawsuit in her own individual capacity because she has met all 3 elements of standing required for her to seek redress with the Court. On that basis, it is incumbent upon the Court to scrutinize the many violations committed by Respondent and how a remedy to rectify the wrong that was done to Petitioner can only be fashioned by them. **Fuentes v. Shevin**, 407 U.S. 67, 81 (1972). In this case, Respondent's decision to exclude Julian from the National Tournament should have been communicated directly to Petitioner on his behalf. The due process clause entitled her the right to notice from Respondent so she

could have the opportunity to dispute and defend Julian's rights and interests. The fact that the exclusion was communicated directly to the minor was a clear violation of Petitioner's XIV Amendment rights that has not been rectified.

Petitioner's constitutional rights were also violated here in that the equal protection clause requires that similarly situated people be treated in the same manner. Julian was deprived of his right to participate in the National Tournament and was replaced by a less qualified player from the losing team. Respondent and its servants subjected Petitioner to irrational treatment as she persisted in her attempts to find out the true reason behind the decision, causing her mental anguish/distress.

QUESTION 11.

The lower Courts violated Petitioner's rights by failing to address the issues at hand and not affording her oral argument/panel rehearing. Petitioner was deprived of her XIV Amendment rights to be heard and treated equally on the issues presented for review. The due process clause of the **XIV Amendment** states that no person shall be deprived of life, liberty or property without due process of law. Likewise, the equal protection clause states that no State shall deny to any person within its jurisdiction the equal protection of the law. Petitioner is a Hispanic and Black female. To set forth a claim pursuant to **42 U.S.C. Section 1983**, plaintiff must plead that the defendants violated statutory or constitutional rights. *Chan v. City of New York, 1 F3d 96, 102 (2d Cir. 1993)*. This Court should allow Petitioner to reinstate her Complaint so she can assume her rightful place as a Plaintiff.

The fact that Julian's exclusion was communicated to the minor and not to his parent was a clear violation of her XIV Amendment rights that has not been remedied. The lower Courts' decisions continue the deprivation by not reopening this case and allowing Petitioner to re-plead her viable claims.

QUESTION 12.

The doctrine of judicial precedent is based on a principle called **stare decisis**. The term **stare decisis** means the standing by of previous decisions. This principle translates into the following: When a particular point of law is decided in a case, all future cases composing of the same facts and circumstances will be bound by that decision.

The Circuit Court's decision conflict other Courts' precedent decisions. It also places the Court at odds with the jurisprudence of other Circuit Courts. Petitioner's appeal was denied without oral argument. Subsequent petition for rehearing en banc was denied, **without explanation or analysis**. En ban review was necessary to reconcile conflicts within the Circuit's jurisprudence and Supreme Court's precedent and to ensure the provision of federal forum for the redress of law of nations' violations.

The lower Courts' decisions conflict with standing decisions of the Supreme Court such as in **Kiobel v. Royal Dutch Petroleum**, 621 F. 3d 111 (2d Cir. 2010). These decisions contradict prior guidance of this Court, including **Khulumani**, 504 f.3d at 277, and **Talisman**, 582 F.3d at 258-59; **Kiobel II and Daimler v. Bauman**, 143 S. Ct. 746 (2014). Supreme Court's decisions relevant to this case are: **Michael H.**

v. Gerald, 491 U.S. 110 (1989); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Vernonia School District 47J v. Acton*, 132 L.Ed.2d 564, 115 S.Ct. 2386 (1995); Am Jur 2d, Parent and Child § 10 (1987); *H.L. v. Matheson*, 450 US 398, 410 (1991); *Parham v. J.R.*, 442 US 584, 602-606 (1979); *Carey v. Population Services International*, 431 US 678, 684-686 (1977); *Paris Adult Theater v. Slaton*, 413 US 49, 65 (1973); *Lehr v. Robertson*, 463 US 248, 257-258 (1983); *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 US 747 (1986); *City of Akron v. Akron Center for Reproductive Health Inc.* 462 US 416, 461 (1983); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 US 537 (1987); *Maher v. Roe*, 432 US 464, 476-479 (1977).

QUESTION 13.

Pursuant to the NY General Obligations Law, a person can assign an agent to act on his behalf after signing a Power of Attorney before a notary public. If the person is revoking or terminating the agent's power of attorney, he should provide written notice of the revocation to the prior agent(s) and to any third parties who may have acted upon it, including the financial institutions where the accounts are located.

Julian was a minor when Respondent took an adverse action. While the case was pending, he reached the age of majority and provided Ms. Moody with a Power of Attorney to act on his behalf, and he never revoked or terminated it. **Pt.App.236-238.** Petitioner practically made all the decisions since the inception of this case, but she was excluded by counsel when it

came to the mediation and settlement. It was done despite Julian instructing counsel that settlement issues had to be discussed with his mother prior to him making a decision, as verified by an email sent to Petitioner by Ms. Kpitanova on July 24, 2015. **Pt.App.240.** Petitioner was not involved nor notified by the Court and/or counsel when the case was closed on August 12, 2016 via Stipulation. The disregard of the Power of Attorney prejudiced the rights of Petitioner and Julian's ability to resolve his case on the merits and to his benefit.

The District Court and counsel did not follow FRCP to revoke the Power of Attorney. Petitioner was never informed by the Court or counsel that she did not have representative capacity to assert claims on behalf of Julian. The Circuit Court miscarried justice by not addressing this issue.

QUESTION 14.

According to 22NYCR§1210.1, clients are entitled to be treated with courtesy and consideration by their lawyer; to have him/her handle their legal matter competently and diligently, in accordance with the highest standards of the profession; to have their lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest; to be kept informed as to the status of their matter and to promptly comply with their requests for information to allow them to participate meaningfully in the development of their matter and make informed decisions, etc.

Upon information and belief, Respondent and counsel for both parties engaged in bad faith and

unethical behaviors throughout the course of this proceeding, in violation of their Code of Ethics and NY Rules of Professional Conduct. Counsel failed to have Respondent comply with the terms and pre-conditions of the mediation. They disregarded the Power of Attorney given to Petitioner by Julian. **Pt.App.194-204-235,240.** Although Julian had settled his case, on January 24, 2017, he was threatened with payment of legal expenses if this lawsuit continues. **Pt.App.194,257.** Counsel's behaviors are reprehensible and violate the NYS Bar Association's Code of Conduct. They should be disqualified for being neglectful, untruthful and disloyal. Petitioner notified the lower Courts of these irregularities but did nothing to correct their practices.

QUESTION 15.

Petitioner believes that Counsel of record misrepresented her interests and those of Julian and violated the Code of Ethics that govern attorney's professional conduct, as aforesaid. Petitioner provided counsel with instructions on how to proceed with this case, but they disregarded her directives. They failed to secure Julian a fair settlement. They removed Petitioner's name from the Amended Complaint without her consent and/or notification, just to quote some unethical practices. **Pt.App.69.,194-235.** Petitioner should not be penalized for their actions.

QUESTION 16.

Prior to filing this lawsuit, Petitioner filed discrimination Complaints against Respondent with OCR and the DOJ. These governmental agencies were expected to ensure that their investigation complied

with OCR-Article III of the Case Processing Manual and DOJ-Regulations of the U.S. Attorney's Office. Unfortunately, both agencies violated Petitioner's due process and equal protection rights by closing the cases without her being involved in the course of their investigations. They failed to serve Respondents' responsive documents for her perusal and rebuttal. Petitioner appealed both decisions, to no avail.

Petitioner would like to bring to this Court's attention that Respondent has taken action when other incidents that involve publicity have arisen. In 2017, when the controversy over the National Anthem arose, the NFL took a position on the players who refused to honor our flag and country. Respondent and its executives knew about Julian's civil rights violations but failed to act. Upon information and belief, this case paved the way to the implementation of new policies in NYC and perhaps nationwide. During its pendency, the NFL, DOE and PSAL created/revised their policies and launched new programs in response to the issues raised by Petitioner. The NFL updated the HSPD rules. The PSAL set forth procedures for recruitment of students-athletes, staff conduct and appeal process. The DOE enacted Chancellor's Regulations A-830 and A-421, setting forth anti-discrimination policies and internal review procedures. **Pt.App.194-256. In all humility, it is entirely plausible that these changes have been made because of the instant case (Moody vs NFL).** However, Petitioner has not been acknowledged.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits and prays that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: Saint Albans, New York
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