

No. 18-393

In the Supreme Court of the United States

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

JULIAN MOODY,
Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE,
Respondent.

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

PETITION FOR REHEARING

AURA MOODY
Pro Se Petitioner
112-26 197th St.
Saint Albans, NY 11412
(718) 465-3725
quinonesmoody@aol.com

Becker Gallagher • Cincinnati, OH • Washington, D.C. • 800.890.5001

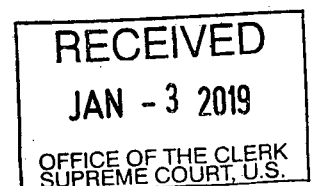


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PETITION FOR REHEARING

Aura Moody, in her individual capacity and as the mother of main plaintiff Julian Moody, respectfully petitions for rehearing this Court's denial of her Petition for Writ of Certiorari issued on December 3, 2018 before a full Bench, with merits briefing and oral argument. Petitioner moves this Court to grant this petition on the grounds that she has meritorious claims based upon the facts and laws of the United States Constitution, specifically the Fourteenth Amendment, in that her name was illegally removed from the initial lawsuit without her consent and/or notification, although she has her own claims separate and apart from her son Julian, and that her claims were ignored, and she was not given an opportunity to bring said claims forward for adjudication on the merits. As a result, Petitioner was denied due process and equal protection under the law, in violation of the Fourteenth Amendment and other relevant statutes-regulations. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision.

BACKGROUND

Petitioner assumes this Court's familiarity with the underlying facts, procedural history, issues on appeal and evidence, as set out in the **Petition and Appendix**. Before the case was closed, Petitioner invoked in her pleadings that Julian and Aura are the parties-plaintiffs involved in this action, as verified on the Circuit Court's caption. On February 2, 2015, Petitioner brought a discrimination lawsuit against the NFL behalf of Julian (a then **16 year old insulin-dependent diabetic**) and herself for violations of

federal, state and city laws by depriving Julian of his right to represent New York Jets in a national tournament held in July 2012 in Indianapolis, without justification and parental notification. On July 7, 2015, the complaint was amended to substitute Julian as the sole plaintiff, without Petitioner's consent-notification. On January 6, 2016, **Julian reached an agreement with the NFL (a multi-billion dollar institution and the most popular sports league in America) and settled his case for \$1,000.00.** Petitioner did not settle her case. On September 24, 2018, **Petitioner filed a Petition for Writ of Certiorari asking this Court to consider 16 questions regarding the lower Courts' actions in this case.** Respondent did not respond. The Petition was denied on December 3, 2018.

Petitioner believes that justice has not been served. The Courts' decisions are not in agreement with the law under the United States Constitution, and international treaties on human rights and procedural due process ratified by different countries, to wit, the United States is a member. Rehearing is appropriate. **This case has been followed and had news coverage by different media such as Law360, Daily News, Court Listener and FindLaw.**

GROUND FOR REHEARING

There is legal sufficiency showing that **Petitioner is a victim of the judicial system. She challenges the constitutionality of the procedures used by the District Court to remove her name as a plaintiff from the amended complaint, without her consent-notification, despite the presence in the record of viable claims under the equal protection and due process clauses, as well as a claim for loss of consortium, which entitle her to relief.** Unfortunately, Petitioner's 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 illegally removed. Petitioner should have remained as joined party to this action instead of being inappropriately substituted. **The Circuit Court denied review.**

Due process and procedural claims like those of this case involve protected rights such as the deprivation of life, liberty, and/or property, and the right to notice and hearing before certain deprivation can take place. **Under the Fourteenth 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*, 257 U.S. 312 (1921) that the due process clause requires that every man shall have his day in court.

In *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972), the Supreme Court defined the property interest protected by the 14th Amendment as a "legitimate claim of entitlement" to the item of benefit in question. *Id.* Such "entitlements" are "created and their dimensions are defined by existing rules or

understandings that originate from an independent source such as state laws, rules or understandings that support claims of entitlement to those benefits.” *Id.*

In this case, the rules-regulations that governed students-players’ participation in the national tournament were those from the winning team. Since Julian was a member of the winning team, under *Roth*, he was entitled to receive the benefit of participating because established rules created a legitimate claim of entitlement based on the fact that he came from a winning team. When Julian was denied that opportunity, he was denied due process and equal protection under the law. Likewise, Petitioner’s due process rights were also denied, since Julian was a minor at the time he was replaced with a student-player from a losing team without any notice to his parent, thereby denying both their due process rights.

In *Perry v. Sinderman*, 408 U.S. 593,602 (1972), the companion case to *Roth*, the Court held that in some cases the expectation of receiving benefit can be a property interest that supports a due process claim when the potential plaintiff has been deprived of a procedure to vindicate that expectation. *Id.* at 602-03. In other words, if a party is aggrieved by a certain decision [like Respondent’s decision to **replace Julian with a non-winning team member**, denying him the participation that the rules said he was entitled to as a member of the winning team] made against them, they must [not may] be given a chance to prove the legitimacy of their claim to such entitlement, in light of the policy and practice of institutions like the NFL, and the accompanied program that they sponsor and excluded Julian from.

The concept of due process represents legal fairness and procedures that are supposed to prevent arbitrary and/or unfair decisions. In this case, Petitioner was denied the ability under *Roth and Sinderman* to become a named plaintiff in this case when her name was removed from the caption of the complaint and jury trial demand filed with the District Court, although she was and still is a party in interest. The decision to remove Aura's name without her consent-permission is a violation of due process and equal protection under the law. As a party in interest who is entitled to be named as a plaintiff jointly and severally with Julian, the removal of her name from the complaint as an aggrieved party denied her a legal forum to assert and prosecute the claims and causes of action that she personally has against Respondent, thereby foreclosing and depriving her of a chance to prove the legitimacy of her entitled claims.

Due process is such an important protection of the United States citizens that fundamental rights are also found under due process. **What are fundamental rights?** Fundamental rights are a group of rights recognized by the Supreme Court as requiring a high degree of protection from government encroachment. These rights are identified in the Constitution [especially the Bill of Rights] and in fact involve the right of privacy, to vote, and in particular, of access to the courts, among others. The fundamental right of access to the courts is essentially important here because as part of procedural due process, Petitioner had a right to use the courts to adjudicate her claims against the NFL, such right having included the right to a formal hearing in a court of competent jurisdiction, the opportunity to present witnesses and evidence in

support of her case, a written decision that reflects the state of the law regarding her claims, and the ability to appeal a final decision whether by the District or Circuit Court. While Petitioner is entitled to and absolutely has the fundamental right of access to the courts and should have been able to exercise such right freely, she was not given the opportunity to do so. Her repeated attempts via letters, motions and briefs to the Courts seeking to restore her name to the original complaint and allowing her to proceed with her own claims against Respondent as a party in interest have fallen on deaf ears, and have been legally ignored by the lower Courts, depriving her of her fundamental right of access to the courts, in violation of her due process and equal protection rights under the Constitution. The due process clause is meant to ensure that the procedures by which laws are applied are evenhanded to prevent arbitrary exercise of power. Due process is also meant to minimize substantially unfair and/or mistaken deprivation of one's protected interests. ***Fuentes v. Shevin*, 407 U.S. 67,81 (1972); Hagar v. Reclamation Dist., 111 U.S. 701,708 (1884).** Petitioner gave the Courts an opportunity to reverse the removal of her name illegally and invalidate Julian's settlement by filing pleadings, unsuccessfully. Counsel bypassed the Court rules by illegally removing Petitioner's name whereas the Courts failed to take proper action to remedy the situation. Such actions by the lower Courts essentially served to deny Petitioner proper access to the courts, and in the process completely denied her of full and fair consideration of her claims and her status as a party in interest to this lawsuit.

The Supreme Court is the highest tribunal in the nation for all cases and controversies arising under the Constitution or the laws of the United States. As the “final arbiter of the nation’s constitutional conflicts from the slavery question during the antebellum era to abortion, gay and immigrant rights in more recent times,” it also has the ultimate [and largely discretionary] appellate jurisdiction over all federal courts and cases that involve a point of federal constitutional or statutory laws. ***The History of the U.S. Supreme Court, Timothy S. Huebner, Online Publication dated January 2018.*** As a citizen of the United States, Petitioner has brought her grievance and claims to the lower Courts for resolution, but they have not given her day in court by any means. The District Court’s dismissal of the complaint of main plaintiff Julian without adding Aura as a plaintiff to same was done in error, as petitioner via her fundamental right of access to the courts was entitled to be given the proper access to present her individual claims against Respondent to the courts. The affirmation of that dismissal by the Circuit Court essentially trampled Petitioner’s constitutional rights under the Fourteenth Amendment, making this case ripe for review by this Court. As such, Petitioner is asking this Court to use its ultimate appellate jurisdiction power to right the wrong done by the lower Courts in their failure to address this matter beyond a blanket denial of all legal documents filed by Petitioner to seek proper redress of her constitutional rights. In essence, Petitioner is now petitioning this Court to reassert the principles of fairness, justice and equity that are at the very core of the due process protection. Consistent with this view is the recognition by this Court that a full and fair consideration of Petitioner’s

claims should at the very least include one evidentiary hearing to assess whether she has a valid claim, which would in turn create an entitlement and constitutional obligation for the court to allow her access to redress her claims, and in turn receive the benefit that she is entitled to, to wit, damages for her claims. All the Courts have done so far is short-circuit her right of access to them, while denying her due process right of an opportunity to be heard. As the Court can clearly tell from the history in this case, Petitioner has not been given an opportunity to state her claims against Respondent, and the lack of such clearly violates her due process and equal protection rights under the Constitution. In the long line of cases listed below that goes as far back as 1864, this Court has consistently defended the basic principles of due process for every litigant with a viable claim that came before it. Petitioner just wants this Court to do the same for her.

In *Joint Anti-Fascist Refugee Comm. v. McGath*, 341 U.S. 123,171-72 (1951), the Supreme Court held that “No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.” That bedrock principle was reinforced in *Fuentes v. Shevin*, 407 U.S. 67,80 (1972) [noting that the “central meaning of procedural due process” is the “right to notice and an opportunity to be heard...at a meaningful time and in a meaningful manner”]; *Bell v. Burton*, 402 U.S. 535 (1971) [holding that suspending a driver’s license requires prior “notice and opportunity for *hearing appropriate to the nature of the case*”]; *Baldwin v. Hale*, 68 U.S. 223,233 (1864) [recognizing a due process right to notice and hearing prior to court’s adjudication of

property rights]; *Wolff v. McDonald*, 418 U.S. 539,557-58 (1974) ["The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests"]; *Goss v. Lopez*, 419 U.S. 565,576 (1975) [noting that due process hearing rights attach to the suspension of a public school student for ten days or less].

Likewise, Petitioner has also been deprived of her Constitutional rights under the privileges or immunities clause, as well as the equal protection clause. **The Fourteenth Amendment** states in part that: "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." The equal protection clause does not only stand for a demand for fair and equal enforcement of laws; it was to express the demand that the law itself be "equal." *Yick Wo v. Hopkins*, 118 U.S. 356,369 (1886). In other words, the historical nature of the equal protection clause requires that all persons, including Petitioner, must stand equal before the law, and that justice must be blind as to wealth, color, rank or privilege. In *Washington v. Davis*, 426 U.S. 229 (1976), this Court defended the principle that the equal protection clause was not designed to guarantee equal outcomes, but rather equal opportunities. The language in *Davis* clearly provides support for the concept of why equal access to the courts is so important in the struggle to obtain justice.

The Supreme Court has repeatedly recognized that access to courts was a fundamental liberty within the meaning of the privileges and immunities clause. ***Blake v. McClung*, 172 U.S. 239,252 (1898)** ["The privileges and immunities, which the citizens of the same state would be entitled to under like circumstances.... includes the right to institute actions."]; ***Cole v. Cunningham*, 133 U.S. 107,113-14 (1890)** ["The intention of the Privileges and Immunities Clause was to confer on citizens of the several States a general citizenship ... and ***this includes*** the right to institute actions."]; ***Ward v. Maryland*, 79 U.S. [12 Wall] 418,430 (1870)** ["The Privileges and Immunities Clause plainly and unmistakably secures and protects the right of a citizen ... to maintain action in the courts of the State."]

All rights directly protected by the Constitution, such as First Amendment rights, or other constitutional rights that the Court has found to be fundamental for the purposes of due process and equal protection analysis, constitute privileged and immunities of citizenship. ***Crandall v. Nevada*, 73 U.S. [6 Wall] 35 (1867).**

In this case, Petitioner is simply seeking to file her own viable claims against Respondent, which she has a right to do. However, in light of the fact that counsel for herself and Julian removed her name as one of the plaintiffs in the original complaint without her consent-notification, and the lower Courts' refusal to grant her motion and/or petition to restore her name for proceeding with her claims, purposely undermined her ability and rights to seek judicial redress of her claims as a United States citizen. As the last arbiter of judicial

review and justice denied by the lower Courts, Petitioner implores this Court to grant her Petition for Writ of Certiorari. After all, **in the name of equal justice and fairness for all citizens, Petitioner is entitled to her day in Court.**

“EQUAL JUSTICE UNDER LAW.” These words, written above the main entrance of the Supreme Court building, express the ultimate responsibility of the Supreme Court of the United States. **As the final arbiter of the law, the Justices are charged with ensuring the American people the promise of equal justice under the law, thereby, also functions as the guardian and interpreter of the Constitution.**

From the beginning of this nation, jurists viewed the right of access to the courts as “fundamental.” First, in *Marbury v. Madison*, 5 U.S. 137 (1803), the Court recognized that a person who has suffered a legally cognizable injury has a right to obtain a remedy in court. The *Madison* Court went on to state that [“It is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded.”] *Id.* There is no question here that by filing this Petition, Petitioner is seeking the protection of the laws because of an injury she has received as a result of Respondent’s actions. Long ago in *Madison*, and applicable through today, the Court affirmed a core principle of the fundamental nature of judicial access, to wit, **“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he received**

injury. One of the first duties of government is to afford that protection." *Id.*

CONCLUSION

For the foregoing reasons, the Petition for Rehearing should be granted.

Respectfully submitted,

AURA MOODY
112-26 197th Street
Saint Albans, NY 11412
(718) 465-3725

Pro Se Petitioner

Dated: Saint Albans, New York
December 28, 2018

CERTIFICATION

I hereby certify that this petition for rehearing is
presented in good faith and not for delay.


AURA MOODY