No._____

In The

**Supreme Court of the United States**

Melissa Poirier

*Petitioner*

v.

Massachusetts Department of Corrections

*Respondent*

On Petition For Writ Of Certiorari

To The United States Court of Appeals For the First Circuit

# PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

In this case the petitioner whom is of female gender and a Citizen of the United States of America was terminated from her employment as a correction officer for being in contact with a former inmate while off duty and failure to cooperate during an investigation while several correction officer's whom are of male gender have had contact with former inmates while off duty have maintained employment. The questions presented to this Court are to reassess the need for change in the current federal law, state law, case law in relation to filing timely, whether the respondents abused the motion for reconsideration process and respondent's protection under claim preclusion. Should there be no change in these laws then discrimination eradication is nonexistent. The outcome of this case does not only affect the petitioner whom has been and continues to be a victim of gender discrimination; it affects all United States of America Citizens whom are victims of discrimination in all facets ie: race, religion etc...across this Country.

The questions presented are:

To clarify the validity of the right-to-sue letter issued to the petitioner from the EEOC.

To clarify if the US District Court Worcester, Massachusetts appropriately approved the respondents motion for reconsideration when they presented *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994).*

To clarify the need for the Federal Case Law change of *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994).*

To clarify the need for Massachusetts State Law change in *Mass. Gen. Law Chapter 151 B Section 9.*

To clarify if the respondents are protected under claim preclusion.

## PARTIES TO THE PETITION

The parties involved in the proceedings were the Petitioner Melissa Poirier, Pro Se and Respondent Massachusetts Department of Correction whom was and is represented by Attorney Daniel G. Cromack, Assistant Attorney General.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Melissa Poirier respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First District.

## OPINIONS BELOW

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Memorandum and Order on the Defendants Motion to Dismiss, US District Court of Worcester, Massachusetts, dated February 4, 2016. (App.13,14,15,16,17, 18,19, 20, 21)

Memorandum and Order, US District Court of Worcester, Massachusetts, dated July 27, 2015. (App. 22, 23,24)

## JURISDICTION

The Judgment of the en banc court of the US Court of Appeals For the First Circuit Boston, Massachusetts was entered on February 22. 2018 and on May 4, 2018 when the US Appeals Court For the First Circuit denied petitioners request for a rehearing. This Court has jurisdiction over this timely filed petition pursuant to 28:1331 – other civil rights ie: gender discrimination; U.S. Constitution Amendment XIV, Section 1.

## CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Citizenship Clause of the Fourteenth Amendment provides:

> "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. Constitution Amendment XIV, Section 1



## STATEMENT OF THE CASE

Petitioner worked as a correction officer for approximately fifteen years with the Massachusetts Department of Corrections netting positive reviews from her supervisors throughout her tenured employment. On or about April 22, 2004 petitioner submitted written notification of her contact with a former inmate to the former superintendent of the facility of which petitioner was assigned. Petitioner was never advised to cease contact and continued to work as a correction officer without incident. On or about the first or second week of July 2004 petitioner attempted to reach the former commissioner via telephone to obtain additional guidance in regard to her relationship status with the former inmate and was unable to speak with her. The former administrative assistance to the commissioner advised petitioner to submit a written letter to the former commissioner. On or about July 15, 2004 petitioner notified the former commissioner in writing that she had come to know the former inmate on a more personal level and requested permission for the former inmate to reside at her residence. Petitioner attempted to reach the former commissioner via telephone post submitting said letter to obtain additional guidance and was unable to speak with the former commissioner. Petitioner continued to work without incident.

On or about August 26, 2004 petitioner was placed on administrative leave status with pay for reasons unknown, coincidently at this time there was a "shift" in the administration and a new superintendent was appointed to oversee the running of the facility as the former superintendent of whom the petitioner submitted her original letter of notification regarding her contact with a former inmate was

retiring. On or about the beginning of September 2004 petitioner was ordered to appear at the respondent's headquarters for an investigative interview with Investigator Saucier related to the letter dated July 15, 2004 that petitioner submitted to the former commissioner. Petitioner was cooperative. It was during this investigative interview that the petitioner advised the investigator that she advised the former superintendent back in April 2004 that she was in contact with a former inmate as the investigator asked the petitioner if she had notified any department head of her contact with a former inmate prior to the her submitting her letter to the commissioner requesting permission to have a former inmate reside at her residence. The investigator never advised the petitioner of her alleged wrong doing, petitioner was never afforded the opportunity to respond to the alleged allegations nor was the petitioner ordered to write a detailed report which is in direct violation of the respondent's investigation policy. Petitioner strongly asserts that the respondents violated their own investigation policy evidenced by the supporting documentation which has been put into the record at the US District Court Worcester, Massachusetts. On or about September 23, 2004 post the investigative interview petitioner received a letter via the US mail from the former commissioner denying the petitioners request for the former inmate to reside at her residence of which petitioner was compliant; the former commissioner never advised petitioner to cease contact in said letter. Petitioner remained on administrative leave with pay. On or about January 20, 2005, petitioner was ordered to appear at the respondent's headquarters for a second investigative interview with Investigators Saucier and Goins. Petitioner was cooperative however post this investigative interview petitioner was deemed uncooperative and petitioner's administrative leave status changed to being detached without pay. Again, the investigators never advised the petitioner of her alleged wrong doing, petitioner was never afforded the opportunity to respond to the alleged allegations nor was the petitioner ordered to write a detailed report which is in direct violation of the respondent's investigation policy. Again, as mentioned prior; petitioner strongly asserts that the respondents violated their own investigation policy evidenced by the supporting documentation which has been put into the record at the US District Court Worcester, Massachusetts. On or about January 26, 2005 petitioner was notified for the first time in writing from the respondents what the allegations were against her. The respondents alleged that petitioner violated rules 8 (c) and 19 (c) of the employee handbook and the matter was being referred over to the deputy director of employee relations for a commissioners hearing. On or about February 11, 2005 petitioner was notified to attend a commissioners hearing on March 3, 2005 (which was postponed to April 1, 2005) for allegedly violating rules 8 (c) and 19 (c) and a new charge of violating rule 6 (d) of the employee handbook where the

former commissioner alleged she gave the petitioner a directive to not associate with a former inmate. On April 1, 2005 petitioner attended a commissioners hearing and to the best of the petitioner's knowledge the respondent was alleging that the petitioner never initially notified the respondents of her original contact with the former inmate. The petitioner provided proof that she in fact notified the former superintendent of her contact with the former inmate by providing a copy of the fax transmission page that was sent to the former superintendent's direct fax line per the request of former superintendent's administrative assistant. The petitioner was in agreement to allow Investigator Saucier to make a copy of the fax transmission page supporting that the petitioner did in fact follow the policy and notified the respondents of her contact. On August 11, 2005 petitioner was notified that she was terminated from the Massachusetts Department of Corrections for violating Rule 8 (c) "conduct unbecoming a correction officer for knowingly associating with a former inmate off-duty," and Rule 19 (c) "failure to cooperate in the investigation" and the petitioner continues to employ male officers who violated the same rules that the petitioner was terminated for. Rule 6 (d) was dismissed (not sustained) because no directive was given from the former commissioner to the petitioner to cease contact with the former inmate. At the time of petitioner's termination; she was unaware that she was being discriminated against and had no way of knowing she was being discriminated against unless she was clairvoyant which is an unrealistic expectation to place on any person; hence the need for the laws to change. Petitioner viewed her termination unjust due to the respondent alleging she violated a rule that she in fact did not violate evidenced by the letter she submitted to the former superintendent advising him of her contact with a former inmate.

On or about April 26, 2006 petitioner filed suit in United States District Court Boston, Massachusetts for the violation of her First and Fourteenth Amendments to the United States Constitution which was dismissed and also dismissed on appeal. *Poirier v. Massachusetts Department of Correction and Kathleen Dennehy, (Case # 06-10748, D. Mass. Boston, Dismissed 2008) and (Case # 08-1290, First Circuit, Boston, Affirmed 2009).*

On or about January 8, 2010 petitioner had a chance meeting with Correction Officer McLaughlin and he informed the petitioner that he was involved with a former inmate, had notified and met with his superintendent about his situation and no action was taken against him. The respondent advised him in writing that he could continue his contact. Correction Officer McLaughlin advised petitioner that he had knowledge that petitioner's original letter notifying the respondent of her contact with a former inmate that she submitted was pulled from her file so when the investigator went looking for it, it wouldn't be there; hence this

is why Investigator Saucier needed to obtain a copy from the petitioner at her termination hearing. Officer McLaughlin advised the petitioner that he received this information from Correction Officer Ferreira whom was a union steward at the time. Based on this newly discovered evidence on or about January 20, 2010, the petitioner filed timely a gender discrimination claim with MCAD against the respondent for gender discrimination. On or about February 2010 petitioner contacted the retired former superintendent whom she submitted her original letter to regarding her contact with a former inmate and he advised petitioner that no Massachusetts Department of Corrections investigator contacted him in regards to him receiving the letter petitioner submitted. On or about March 19, 2010 EEOC received notification of petitioner's case being filed with MCAD via MCAD. On or about November 7, 2013 (of which is past the three year statute of limitations period under state law) petitioner received notification from MCAD of a lack-of-probable cause finding of which the petitioner asserts is the outcome of pitting one state agency against another as the petitioner also submitted into evidence with MCAD during the investigation process documentation of the civil service findings up holding the Massachusetts Department of Correction discipline of suspending three other male correction officers whom were in contact with former inmates, suspension of a forth male officer if he had attended said hearing and also Correction Officer McLaughlin's contact with two additional former inmates which resulted in termination and then being reinstated. Said documentation was put into record with the US District Court Worcester, Massachusetts. This petitioner was terminated not suspended for having contact with a former inmate where the above mentioned officers all maintained employment despite suspensions. This evidence was obtained post the petitioner filing with MCAD. This exhaustion of statute of limitations was to no fault of the petitioner as she was mandated by Massachusetts law to proceed through the administrative process. On or about January 8, 2014 EEOC was notified of the MCAD findings and the case was under review with EEOC. On or about May 8, 2014 EEOC adopted the findings of MCAD and issued the petitioner a right-to-sue letter. On or about July 2014 petitioner was advised by a former inner perimeter security officer whom is now retired about the respondent given Correction Officer Lavoie approval to have contact/association which consisted of possible cohabitation and romantic involvement with a former inmate back in the 1990's. This unconfirmed approved contact was withheld by the respondents during the petitioner's prior civil law suit not affording the Honorable Judges reviewing said case to make an informed decision and also withheld from MCAD hindering their ability to find petitioner to be similarly situated with a male correction officer. The only difference between Correction Officer Lavoie and the petitioner is gender. The petitioner strongly asserts that if the respondents did in fact approve

Correction Officer Lavoie's contact with a former inmate then they ultimately perjured themselves with the US District Boston, Massachusetts, the US Court of Appeals for the First Circuit Boston, Massachusetts and MCAD. This example of Correction Officer Lavoie is a prime example of the respondent's modus operandi of operating under their "catch me if you can" practice and complete disregard of the law.

On or about August 1, 2014 petitioner filed a gender discrimination suit in US District Court Worcester, Massachusetts against MCAD and respondent. On or about July 27, 2015 US District Court Worcester, Massachusetts Judge Hillman issued a memorandum and order to dismiss MCAD as a defendant as the petitioner was "unable to state a claim for relief against MCAD" and ordered the clerk to issue summons to the respondent. (App. 22,23,24) On or about November 2, 2015 the defendant filed a motion to dismiss with memorandum in support based on Claim Preclusion and Untimeliness; at no time did the respondents dispute the facts of the complaint. On or about December 7, 2015 petitioner filed an opposition in response to the respondents motion to dismiss. On or about January 29, 2016 both parties attended a hearing in US District Court Worcester, Massachusetts before Judge Hillman in relation to the respondents motion to dismiss. On or about February 4, 2016 US District Court Worcester, Massachusetts Judge Hillman issued a memorandum and order denying the respondents motion to dismiss. (App. 13,14,15,16,17,18,19,20,21) On or about March 1, 2016 respondents filed a motion for reconsideration with a memorandum in support requesting US District Court Worcester, Massachusetts Judge Hillman to reverse his order based on a manifest of error that did not exist. The respondents for the first time introduced *Morris v. Gov't Dev. Bank of Puerto Rico, 27 F. 3d 746 (1st. Cir. 1994)* which sets the precedence for when the statute of limitations clock begins to tick under federal law affording the respondents the opportunity to introduce new evidence post US District Court Worcester, Massachusetts Judge Hillman making his findings final which is not the purpose of a motion for reconsideration hearing. On or about March 15, 2016 official transcript of hearing held on January 29, 2016 is available. On or about April 13, 2016 petitioner submitted an opposition in response to the respondents motion for reconsideration. On or about May 10, 2016 US District Court Judge Hillman issued a memorandum and order dismissing the petitioner's case on untimeliness only; not claim preclusion. (App. 7,8,9,10,11,12)

On or about May 19, 2016 petitioner filed timely with the US Court of Appeals for the First Circuit Boston, Massachusetts her notice of appeal of the US District Court Worcester, Massachusetts reconsideration of its own order and reversing itself and dismissing petitioner's case on the untimeliness of filing only. (App. 5) On or about August 4, 2016 petitioner filed her appeal brief with the US

Court of Appeals For the First Circuit Boston, Massachusetts. On or about October 19, 2016 petitioner filed her response brief with the US Court of Appeals For the First Circuit Boston, Massachusetts. On or about February 22, 2018 US Court of Appeals For the First Circuit dismisses petitioner's case. (App 3,4) On or about March 6, 2018 petitioner filed a petition for rehearing with the US Court of Appeals For the First Circuit Boston, Massachusetts. On or about May 4, 2018 US Court of Appeals For the First Circuit Boston, Massachusetts denied petitioner's rehearing. (App. 2) On May 14, 2018 US Court of Appeals For the First Circuit issued their Mandate. (App 1)

## REASONS FOR GRANTING THE PETITION

A. **This Court review is warranted to resolve the conflict as to whether or not the US District of Worcester, Massachusetts and the US Court of Appeals For the First Circuit Boston, Massachusetts inappropriately deemed petitioner right-to-sue letter from the EEOC not valid and finding that the petitioner was not timely in filing her complaint.**

The petitioner filed a complaint with MCAD in January 2010 based on newly discovered evidence which supports that the petitioner was in fact discriminated against based on her female gender; of which is acceptable under Massachusetts State Law. *Silvestris v. Tantasqua Reg'l Sch Dist., 847 N.E.2nd 328, 336 (Mass. 2006)*. Petitioner's complaint was also filed timely with EEOC. Both MCAD and EEOC accepted the petitioner's complaint as timely and did not dismiss complaint as untimely. MCAD rendered a lack-of-probable-cause finding in November 2013 which subsequently exhausted the petitioner's statute of limitations to seek relief under Massachusetts State Law. EEOC adopted the findings of MCAD and issued the petitioner a right-to-sue letter on May 8, 2014 advising the petitioner that she had ninety-days to file a suit in one of three Federal District Courts. Petitioner filed her complaint on August 1, 2014 which is within the ninety-day window for filing. Petitioner exhausted her administrative remedies prior to filing her complaint in the US District Court Worcester, Massachusetts. "Exhaustion of administrative remedies is a prerequisite to suing in federal court under Title VII. *Franceschi v. U.S. Dep't of Veteran Affairs, 514 F. 3d 81, 85 (1st Cir. 2008)*" per Judge Hillman's opinion dated February 4, 2016. (App. 20) "Most recent date of adverse employment action in this case was plaintiff's termination on August 11, 2005; she did not file with MCAD until January 20, 2010. However, the MCAD reviewed her case on the merits and did not reject it as untimely, presumably on the basis of her then- recent

discovery of male colleagues allegedly being treated disparately. After disposition by MCAD, plaintiff's complaint was transferred to the EEOC. EEOC reviewed the merits of plaintiff's claim, adopted the findings of MCAD, and issued a letter, dated May 8, 2014, giving plaintiff the right to sue. Plaintiff filed her complaint in this court on August 1, 2014, which was within the ninety-days of the date of the EEOC's letter. Thus, plaintiff appears to have properly exhausted her administrative remedies, and her suit is timely" per Judge Hillman's opinion dated February 4, 2018. (App. 21)

Because petitioner filed her complaint timely post receiving her right-to-sue letter from EEOC; the issue that needs reconsideration, clarification and amending is whether this Court deem the petitioner's complaint was filed timely and amend the state law to reflect that when a case is in the administrative process the time should be stayed/on hold which would afford the case to proceed through the administrative process without statute of limitations being affected and ultimately affording the victim of discrimination their due process to seek relief within the court system.

B. **This Court review is warranted to resolve the conflict as to whether or not the US District Court Worcester, Massachusetts appropriately approved the respondents motion for reconsideration with the outcome of the US District Court Worcester, Massachusetts reversing its own decision to dismiss this case based on a manifest of error that the respondents failed to bring forward prior to the US District Court Worcester, Massachusetts rendering its judgment on February 4, 2016. This petitioner presented this question to the US Court of Appeals For the First Circuit Boston, Massachusetts on two occasions and both times the US Court of Appeals For the First Circuit Boston, Massachusetts never provided their position/opinion on this matter.**

"A court appropriately may grant a motion for reconsideration 'when the movant shows a manifest error of law....'" per Judge Hillman's opinion dated May 10, 2016. (App 8) "In my order on February 4, 2016, I denied the DOC's motion to dismiss for claim preclusion and untimeliness. After further consideration, I find that my decision on the timeliness issue was incorrect. It is on that ground only that I reverse my previous findings" Per Judge Hillman's opinion dated May 10, 2016. (App. 8) "The DOC brings my attention to a First Circuit Court decision, *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994)*, which is dispositive of the timeliness issue with regard to plaintiff's federal claim" per Judge Hillman's opinion dated May 10, 2016. (App. 9)

Plaintiff understands and agrees with clarifying misunderstandings of facts, exhibits, pleadings, law or case law that were submitted to the US District Court Worcester, Massachusetts for review prior to the US District Court Worcester, Massachusetts making a final judgment; however, respondents failed to bring forward *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994)* prior to their motion for reconsideration plea; essentially arguing an old argument in a new plea which is not acceptable under a motion for reconsideration plea.

The *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994)* case is twenty plus years of age; thus, it clearly is not newly discovered evidence and with Attorney Cromack being an experienced attorney, this case clearly was obtainable for him to argue in his previous pleas/motions and orally prior to filing for the motion for reconsideration. Attorney Cromack provided no rationale to the US District Court of Worcester, Massachusetts for not being capable of acquiring this information and presenting said information to the US District Court Worcester, Massachusetts for review prior to the US District Courts judgment on February 4, 2016. (App. 13,14,15,16,17,18,19,20,21)

The issue that needs reconsideration, clarification and amending is the appropriate time for a court to approve the utilization of the motion for reconsideration process. Was it appropriate for the respondents to introduce a case that was available prior to the US District Court rendering a final judgment? Petitioner is in hopes that this Court agrees that the respondents with the US District Court Worcester, Massachusetts approval inappropriately utilized the motion for reconsideration process as this was the trump card pulled as a last resort to have the case dissolved at the US District Court level. Should this Court deem that the respondents appropriately utilized the motion for reconsideration process, it is important to note that the petitioner avers the US District Court Worcester, Massachusetts acceptance of the respondents claim of *Morris v. Gov't Dev. Bank of Puerto Rico, 27 F. 3d 746 (1st. Cir. 1994)* as circuit precedent when based upon its own judicially found fact and facts as pled of which was verified in petitioner's complaint of which are not a manifest of error but rather an arguable point of view of circuit law.

C. **This Court review is warranted to resolve the conflict as to whether *Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994)* in relation to the federal statute of limitations clock begins to tick or does this Court set new precedence with this case in regards to amending case law to reflect the statute of limitations begins to run when the claimant learns of the improper motives, not when the claimant learns of the adverse employment actions.**

*Morris v. Gov't Bank of Puerto Rico, 27 F.3d 746 (1st Cir. 1994)* is not a title VII case with a right-to-sue letter in hand from the EEOC as the petitioner's case that sits before this Court is and does. Petitioner's case is a title VII case and has a right-to-sue letter in hand from EEOC. The petitioner has strong merits to support that she was discriminated against because she is of female gender and had no way knowing the underlying reason for her termination in 2005 until her encounter with Correction Officer McLaughlin in 2010.

US District Court Worcester, Massachusetts Judge Hillman summarizes the complexity of this case most appropriately "According to plaintiff's filings, she did not have a reason to seek information about the treatment of any male colleagues until 2010, when Officer McLaughlin told her of his own situation. The record currently before me shows that, until 2010, plaintiff was under the impression that she had been terminated pursuant the DOC's policies, albeit with an allegedly shoddy investigative procedure. She had no reason to suspect that she had suffered any form of discrimination. Thus, until her encounter with Officer McLaughlin in 2010, no amount of due diligence could have caused plaintiff to gather information about male corrections officers who had personal relationships with former inmates. In order to have known to seek this information, plaintiff would have to have been clairvoyant" per Judge Hillman's opinion dated February 4, 2016. (App. 19,20) (emphasis added)

The issue that needs reconsideration, clarification and amending is when the statute of limitations period begins to run under federal law. "In an employment discrimination case under federal law, the limitations period begins to run when the claimant learns of the adverse employment action, not when a plaintiff learns of the improper motives. Thus, I am constrained to find that plaintiff's Title VII claim is time-barred, because she filed her complaint with the EEOC more than 300 days after she was terminated" per Judge Hillman's opinion dated May 10, 2016. (App. 10)

It is an unrealistic expectation that victims of discrimination are made aware that they have been discriminated against at the time of their adverse employment action; instead the petitioner is in hopes that this Court agrees that the statute of limitations period should run when the victim learns of the improper motives affording victims of discrimination their due process in law. It is implausible for federal law to have the expectation that a victim of discrimination is to be clairvoyant. In Judge Hillman's opinion dated May 10, 2016 he wrote "Upon reconsideration, I erred in my initial decision by accepting Plaintiff's claims as timely. Based on the facts alleged by the Plaintiff's complaint, it is understandable that she waited until 2010 to initiate the administrative process and until 2014 to file suit. As she alleges, she did not have reason to know, prior to 2010, that her

termination may have been motivated by discriminatory animus. Moreover, she no doubt thought it prudent to wait until the conclusion of the MCAD proceedings before bringing a lawsuit, and she needed the EEOC letter before she could assert her federal claim. Unfortunately, I am bound by the timing requirements of the admittedly convoluted administrative schemes, as well as case law of this circuit." (App 11) (emphasis added)

D. This Court review is warranted to resolve the conflict as to whether *Mass. Gen. Law Chapter 151 B Section 9* in relation to the state statute of limitations law of three years to file a suit being exhausted or does this Court set new precedence with this case given the fact that the petitioner was required by law to file her complaint with MCAD and EEOC of which petitioner's filing was timely based on newly discovered evidence and EEOC (which is a Federal Agency) issued a right-to-sue letter to petitioner whom filed timely within the ninety-day period. State law should be amended to reflect that the statute of limitations time be stayed/on hold while the case is in the mandated administrative review process.

"Under state law, "pursuant to the so-called 'discovery rule,' the statute of limitations for a particular cause of action does not begin to run until the plaintiff knows, or should have known, that she has been harmed by the defendant's conduct. *(Silvestris v. Tantasqua Reg'l Sch Dist., 847 N.E.2nd 328, 336 (Mass. 2006)'* per Judge Hillman's opinion dated May 10, 2016. (App 10) "Under state law there is also a three-year limitations period for filing civil actions based on state-law discrimination claims. *Mass. Gen. Laws ch. 151 B, section 9.* Here, plaintiff learned of the potential discrimination in January of 2010, but did not file her complaint with this court until August of 2014, which was four and a half years later. Therefore, it was not timely. I am aware that the MCAD did not issue its lack-of-probable-cause finding until November of 2013, which was after the expiration of the three-year limitations period for filing a civil suit, and that plaintiff did not receive her right-to-sue letter from EEOC until spring of 2014. But, the statute of limitations for filing civil claims under state law runs separately from MCAD's and EEOC's processes" per Judge Hillman's opinion dated May 10, 2016. (App. 11)

To no fault of the petitioner; MCAD held her case beyond the statute of limitation period before they released the case to EEOC. The petitioner was not educated by the MCAD staff whom she filed her complaint with that MCAD and EEOC's processes run separately from state and federal law; which clearly is an issue that needs to be addressed and amended to reflect that federal and state laws run parallel; instead petitioner was informed that her case would be processed

through the MCAD investigative process; if the results were not in petitioner's favor EEOC would review the complaint and again if the results were not in favor of petitioner she would then have the right to appeal in Court; however she needed to exhaust MCAD and EEOC processes before she could file a claim in Court. MCAD staff also advised the petitioner that she did not need to obtain an attorney. At no time did MCAD advise the petitioner that there was a statute of limitations of three years to file a suit in Court and nor did they advise the petitioner that they would hold the case in their investigative process beyond the statute of limitations period. To know fault of the petitioner it took MCAD over three years to process her claim which exhausted petitioner's statute of limitations and took away petitioners right to file suit in US District Court. It should have been (and continue to be) the responsibility of MCAD to either process this case (along with current and future cases) within appropriate time frames or release this case (along with future and current cases) to EEOC within appropriate time frames so the statute of limitations would not have been (or be) exhausted. It should also be the responsibility of MCAD to advise filers to contact an attorney instead of educating filers that they do not need an attorney. Contemporary news reports, *Boston Herald Thursday June 30, 2016* which is a local newspaper printed an article titled "Bump rips MCAD over recurring deadline failures" in relation to MCAD's inability to complete investigations timely; hence this case that sits before this Court now is the victim of a broken state agency and the petitioner has potentially lost her legal right to due process due to "timing requirements of the admittedly convoluted administrative schemes" per Judge Hillman's opinion dated May 10, 2016 (App. 11) (emphasis added)

The issue that needs reconsideration, clarification and amending is whether or not the statute of limitations should be stayed/on hold while the case is in the mandated administrative process. Petitioner is in hopes that this Court is in agreement that state law should be amended to reflect that the statute of limitations time is stayed/on hold while the case is in the mandated administrative review process. Understandably the Courts are overburdened and there is a need for the current placement of an administrative process; it is also understandable that the Court system cannot micro manage state and federal agencies in charge of the administrative process as to what policies and procedures need to be in place for their work load to be competed timely; hence the importance for changing the law regarding placing the statute of limitations on hold/stayed while the case is in the mandated administrative review process.

E. **This Court review is warranted to resolve the conflict as to whether the respondents are protected under claim preclusion as the petitioner already**

**hurdled this jump with the US District Court not finding that the respondents are protected under this umbrella and that petitioner's case was solely dismissed from the US District Court Worcester, Massachusetts on a timeliness issue only and the US Court of Appeals For the First Circuit Boston, Massachusetts reopens this once closed issue.**

Petitioner is respectfully requesting this Court to not reopen the door that was closed by the US District Court Worcester, Massachusetts affording the respondents protection under claim preclusion as US District Court Worcester, Massachusetts Judge Hillman denied the respondents motion on claim preclusion evidenced by "Here, the two lawsuits arose from overlapping events. The first arose from Plaintiff's relationship with a former inmate, the DOC's year-long investigatory process, and the termination of Plaintiff's employment. She challenges her termination in both suits, but under different legal theories. However, the second suit relies on additional facts; namely, the DOC's allegedly disparate treatment of male correction officers who also had personal relationships with former inmates... According to Plaintiff's filings, however, she did not have reason to seek information about the treatment of any male colleagues until 2010, when Officer McLaughlin told her if his own situation. The record currently before me shows that, until 2010, Plaintiff was under the impression that she had been terminated pursuant to the DOC's policies, albeit with an allegedly shoddy investigative procedure. She had no reason to suspect that she has suffered any form of discrimination. Thus, until her encounter with Officer McLaughlin in 2010, no amount of due diligence could have caused Plaintiff to gather information about male correction officers who had personal relationship with former inmates. In order to have known to seek this information, Plaintiff would have to have been clairvoyant" per Judge Hillman's opinion dated February 4, 2016. (App. 19,20) (emphasis added) "In my order of February 4, 2016, I denied the DOC's motion to dismiss for claim preclusion and untimeliness. After Further consideration, I find that my decision on the timeliness issue was incorrect. It is on this ground only that I reverse my previous findings" Per Judge Hillman's opinion dated May 10, 2016. (App. 8)

The Plaintiff's record in its entirety submitted to United States District Court Worcester, Massachusetts and US Court of Appeals For the First Circuit Boston, Massachusetts and this current Court is completely accurate, provides factual documentation and speaks volumes of the fact that the petitioner was discriminated against due to her female gender and the deceitful tactics by the respondents during the investigative process ie: not following their own investigation policy, alleged removal of the petitioner's original letter submitted to the former superintendent of

her contact with a former inmate and the year-long investigation process to cover up they were sexually discriminating against the petitioner of which the petitioner is entitled to "equitable tolling" per *Jenson v Frank, 912 F.2d 517, 521-522 (1st Cir. 1990) and* qualifies for relief under this case because it wasn't until 2010 that the petitioner was made aware that she was discriminated against and had no way of knowing that she was discriminated against until her encounter with correction officer McLaughlin in 2010.

The issue that needs reconsideration, clarification and amending is to whether or not this once closed door was able to be reopened by the US Court of Appeals For the First Circuit Boston, Massachusetts as the petitioner never requested the US Court of Appeals For the First Circuit Boston, Massachusetts to render their opinion on an opinion/order that was already in favor of the petitioner.

## CONCLUSION

Petitioner continues to plead with this Court to make a radical decision to change federal law, state law and case law by laying to rest *Morris v. Government Development Bank of Puerto Rico, 27 F.3d 746, 749-51 (1st. Cir. 1994),* as *Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)* severely weakened the strength of the *Plessy v. Ferguson 163 U.S. 537 (1896)* which ultimately was laid to rest. *Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)* challenged and prevailed the "separate but equal" ruling of *Plessy v. Ferguson 163 U.S. 537 (1896)* deeming that "separate but equal" was unconstitutional. *Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)* supports that fact that case law does become outdated and a need to change is appropriate to stay current with time and bring equality to all individuals up and including being protected from all forms of discrimination not just sexual discrimination.

Petitioner is pleading to this Court to change federal law, state law and case law. The statute of limitations should start to tick on the federal level when the claimant is made aware of improper motives as this is the law on the state level, amend the laws for both federal and state to reflect that the time that the case is in the administrative review process it is stayed/on hold until a final decision is rendered at which time the clock will start to tick as Massachusetts is an administrative review process state to alleviate any additional burden on the already overwhelmed Court system affording the victim their right to due process.

Petitioner requests this Court to review and agree with US District Court Worcester, Massachusetts Judge Hillman's original opinions dated July 27, 2015

(App. 22,23,24) which was in favor of the petitioner and February 4, 2016 (App. 13,14,15,16,17,18,19,20,21) which was in favor of the petitioner. This petitioner also requests this Court to review Judge Hillman's opinion dated May 10, 2016 (App. 7,8,9,10,11,12) of which he was in support of the petitioner; however, he had to reverse is own decision to satisfy broken/outdated federal laws, state laws, case law and a state agency whom was unable to be timely on their investigation process. Judge Hillman's opinions in favor of the petitioner alone should warrant the need for change in federal, state and case law. Judge Hillman acknowledges that the system is broken and this petitioner is in hopes this Court will be in agreement with Judge Hillman.

The petitioner respectfully requests this Court to find in favor of the petitioner and afford her and other victims of discrimination their due process. In doing so this will also afford the respondents an opportunity to explain why they sexually discriminate against female gender employees, why the respondents violated their own investigation policy, why the respondents investigative process took a year, why the respondents suspended petitioners comparators and terminated petitioner, their plan of correction going forward so the sexual discrimination comes to a halt, confirm if the original letter the petitioner submitted in regards to her contact with a former inmate was removed from her file, confirm if they did in fact approve Correction Officer Lavoie's contact/cohabitation with a former inmate and if it is in fact confirmed as true then offer an explanation of why they deem it appropriate to perjury themselves and to be held accountable for breaking the law.

This request for change in the federal laws, state laws and case laws are not unrealistic and is very much needed to level the battlefield. The way the laws are in place now affords employers the ability to discriminate against individuals leaving the victims of discrimination with no due process essentially causing the victim to be victimized additionally from the judicial system which ultimately makes the judicial system part of the problem and not the solution. The laws on both federal and state level should be in place to protect the victims not the offenders. As it stands now with the way the current federal laws, state laws and case laws are written the victims have to move mountains that simply cannot be moved to receive their right to due process which is a miscarriage of justice. The time for change in now to eradicate discrimination.

For these reasons the petition for certiorari should be granted.

Respectfully Submitted,

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