

No. 18-9247

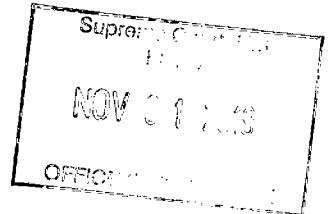
IN THE

**SUPREME COURT OF THE UNITED STATES**

HITOSHI OMBE --- PETITIONER

VS.

SUSANA MARTINEZ, ET. AL. --- RESPONDENTS



**MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

Under the penalty of perjury, I, Hitoshi Ombe, Petitioner Pro Se, declare that the following are true and correct to the best of my knowledge and understanding.

1. This motion with the affidavit is on file and less than twelve (12) month old.
2. There is no action taken on the motion, i.e., it is not denied.
3. There is no material change of my financial conditions since May 13, 2019.
4. There is no expectation or anticipation of material change of my financial conditions in the next twelve (12) months.
5. In short, my financial conditions have been the same for years.

RESPECTFULLY SUBMITTED,

*Hitoshi Ombe* *November 20, 2019*

Hitoshi Ombe, Petitioner Pro Se

Date

**No. 18-9247**

**IN THE**

**SUPREME COURT OF THE UNITED STATES**

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**HITOSHI OMBE – PETITIONER**

**VS.**

**SUSANA MARTINEZ, ET. AL. – RESPONDENTS**

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**ON PETITION FOR A WRIT OF CERTIORARI TO**

**United States Court of Appeals  
for the Tenth Circuit**

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**PETITION FOR THE REHEARING OF THE ORDER DENYING  
PETITION FOR A WRIT OF CERTIORARI**

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**Hitoshi Ombe**

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR THE REHEARING OF THE ORDER DENYING  
PETITION FOR WRIT OF CERTIORARI<sup>1</sup>

**A. Rule 44.2 Controlling Ground with Controlling Effect**

Depression is the controlling ground and has had controlling effect on my ability (thought process) to litigate: depression decimated my crucial ability to litigate<sup>2</sup>. I was traumatized for years. My recovery from the damage (depression) took until now<sup>3</sup>. All the interested parties, i.e., Defendants, Defense Lawyers, and NM District Court are responsible for the damage because of their total failure to exercise due care for years.<sup>4</sup> **The legal system made assumption that I was neuro-typical. But, I am neuro-atypical. I have been gravely victimized by the system without understanding of my autism disability. NM District Court completely failed to serve justice. Defendants completely failed to provide services.**

Defendants NM Division of Vocational Rehabilitation ("DVR") and Disability Rights New Mexico, Inc. ("DRNM") repeatedly denied eligible and agreed services because of autism disability. Total at least 11 times<sup>5</sup>. Concurrently, they totally lacked effective communications because they were persistently and continuously negligent or grossly negligent and sometimes deliberately by disregarding autism disability<sup>6</sup> for the same. I suffered from persistent and continuous depression and anxiety<sup>7</sup> for the same. All of these are in violation to the Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act ("Section 504").

NM District Court made me continue to suffer from continuous and persistent depression and anxiety for additional years. Concurrently, Defense Lawyers committed the same..

A trial court must be able to handle any circumstances and/or situations without creating any further issues and problems. NM District Court failed me in this case and committed gravely serious mishandling the case in three ways: (1) totally incorrect determination of the material fact, (2) further decimating my litigation ability, in particular, executive function (case management skills), and (3)

failure to do a competent and accountable review of my complaints under 28 USC 1915(e)(2).

**B. Population Impacted by the Material Issue of the Case**

This includes not only individuals with Autism Spectrum Disorder ("ASD")<sup>8</sup> but also individuals with Social (Pragmatic) Communication Disorder ("SCD")<sup>9</sup>. Thus, the impact of the present case should be much broader than one can imagine. It has been growing as well.

**C. NM District Court Made Totally Incorrect Determination of the Material Fact<sup>10</sup>**

**This must never be what the authorities (judges) and officers of court (lawyers) should be doing. I am the gravely serious victim of their total unaccountability, and total ignorance of autism. However, after the case was over, District Judge admitted his incorrect determination based on information I submitted already, and voluntarily issued my appeal right<sup>11</sup>. The Court must take its responsibility for this. Just issuing my appeal right is most insufficient because their actions already decimated my crucial ability to litigate. NM District Court decision that Defendants are in compliance with ADA is completely incorrect and the case must be back to NM District Court for further processing.**

The material fact is "*total lack of effective communication.*" Here "communication" is nothing to do with something like e-mails, appointment reminders, etc as NM District Court determined<sup>12</sup>. It is to do with autism disability<sup>13</sup>.

This is a major disaster because Judges and Defense Lawyers totally lack material knowledge of the case. Defense Lawyer MB deliberately committed totally unconscionable and insulting act that he did not send me his motion<sup>14</sup> with the same until after the case was over. Throughout my life of 60+ years, I could never deal with this kind of people: an aspect of living with autism. I have lived in the shadow of the society. I request the Court to improve this through the case at bar. I am certain that the entire autism community and more appreciate it greatly.

**D. The Autism Minority and Work Standard (Executive Function Deficit)<sup>15</sup>**

**Magistrate Judge failed to exercise due care by disregarding my request of discussing**

my autism disability needs on 03/03/17 and 07/27/17. This was her gravely serious mishandle of the case and resulted in further decimation of my crucial ability to litigate. This is abridgment of my First Amendment right to petition to the Government, in particular, substantive equal participation right<sup>16</sup>, without due process in violation to Fifth Amendment right. Thus, the process by NM District Court is not only unconstitutional but also continued to decimate my crucial ability to litigate. The case must be back to NM District Court for further processing.

It resulted in the question of work standard of the autism minority. Because of my failure of case management, the Court may have the impression that I would be lazy and irresponsible<sup>17</sup>. It is because the Court does not know autism.

*The work standard of the autism minority is most seriously misunderstood by the authorities without background of autism, such as managers supervising the autism minority in workplace. Judges facing the autism minority, and more are the same.*

My request to the Court is to understand that it is always misunderstood without an opportunity to fully understand the situation in question. My disability request must never be misunderstood as requesting substantial deviation from the established procedural rules and practices. My request is very much same as the rule "*pro se litigant pleadings are interpreted liberally.*" All of my requests are matter of the Court desire and willingness. But, because of every interested party's attitude, I have never been able to convey my message at all.

It is essential to accept that the autism minority does have different communication needs from the normal majority<sup>18</sup>. This is due to atypical development of central nerve system. Generally speaking, most important point is that judges and lawyers are too assuming<sup>19</sup>.

Magistrate Judge failure of exercising due care was definitely not what a judicial personnel should be doing. I am the victim of her unaccountability, when very tiny willingness to accommodate my need or request should have saved all of these appeal process.

**Too assuming** may not be serious issue for the normal majority. But for the autism minority, in particular, the depressed autism minority, this is a gravely serious issue and becomes gravely serious

mishandling of the case by completely disregarding the disability. I stress the importance that these and more committed by NM District Court and Defense Lawyers<sup>20</sup> contributed to **the further decimation of my crucial ability to plead, litigate, manage the case, and so on.**

What I am saying sounds to be a poor excuse. It is completely wrong. This is a perfect example of how the autism minority is misunderstood with respect to his work standard by authorities.

When you are confused or depressed, you cannot do good work. You cannot think or concentrate at all. This is true for everybody. But, the autism minority is extremely prone to these. "Concentrating and thinking" are two of life major activities, 42 USC 12102; 29 CFR 1630.2. In other words, any act that depressed me made my born disability of these much more severe.

If you treat him well, the performance of the autism minority may prove to be top class. He is very responsible and accountable. If you do not treat him well, irrespective of the reason for it, his work performance can be disaster. All or nothing. There is nothing in between. This all-or-nothing is a peculiarity of autism psychology. If the authority ignores this, the autism minority gets depressed and suffers from persistent anxiety. Then the situations get disaster.

The essential point is to give him complete and precise direction. Problem can be started by simple seemingly insignificant questions<sup>21</sup> such as "How to file a document?" "How to determine the timelines?" When these are resolved completely, then very soon he feels comfortable and is relaxed. If these kind of things are not treated completely at the beginning, he suffers from insecurity of uncertainty. This results in persistent and continuous anxiety and depression. Then he cannot do anything well. Sooner or later, he gets seriously depressed and his performance gets disaster. This is the peculiarity of autism. NM District Court is too sloppy and needs to be back to basics.

**There are only two judicial personnel with good communication with me so far.** They are Anthony, a lawyer, from Tenth Circuit and Steve from New Mexico Court of Appeals.<sup>22</sup>

When everybody communicates like Anthony and Steve, almost all problems and issues should have been resolved quickly and the case should have been resolved quickly. If all the Defendants had done the same, the case should not be in any court. This is the very nature of autism

disability. However, I have not encountered anybody who can say something like "PETITION FOR THE REHEARING should be prepared in the same format as PETITION FOR WRIT OF CERTIORARI. However, you are not required to resubmit appendices on file.<sup>23</sup>"

Ultimately, what Magistrate Judge did is a perfect example that: when you do not handle seemingly unimportant small details, it can become gravely serious mishandling. It injures him: anxiety and depression, and it decimates his litigation ability completely. Defense Lawyer MJ concurrently contributed to this<sup>24</sup>. NEVER be too assuming.

**E. Magistrate Judge failed a competent and accountable review under 28 USC 1915(e)(2).** This is a silent contradiction<sup>25</sup>. By approving my complaint, NM District Court said that it was adequately written. But Defendants said it failed to state claims. This had detrimental effect because of the disability: cognitive inflexibility. This made me confused. This made my performance disaster as in SECTION D<sup>26</sup>. The Court must take its responsibility for this. This is another reason that the case must be back to NM District Court for further processing. 28 USC 1915(e)(2) review must be more complete to eliminate avoidable problems like this.

One of the effects of this review is to clearly protect pro se litigant because majority of people would not have good pleading skills<sup>27</sup>. It is a daunting task for the autism minority to make a good pleading. For the depressed autism minority, it is impossible to make a good pleading. This is a hard core of autism disability. The autism minority is intolerable of sloppiness like this and gets easily depressed like me.

**F. CONCLUSION**

PETITION FOR THE REHEARING should be granted and the entire case should be back to NM District Court for further processing.

**RESPECTFULLY SUBMITTED,**

 November 20, 2019  
\_\_\_\_\_  
Hitoshi Ombe, Petitioner Pro Se      Date

- 1 I do not have clear idea as to the need of these endnotes. What NM District Court and Tenth Circuit did does not fully convince me these are not needed.
- 2 I have born inability to verbalize and articulate thoughts, ideas, and feelings of myself and others. This is crucial to be able to plead, form my assertion, litigate, etc. These can be improved by learning (school, life experiences). But, depression regressed all the improvement.
- 3 It was around 10/01/19 that I noticed further improvement of my thought process.
- 4 Everybody focused on procedural standard instead of focusing on respective mission.
- 5 These are denials of service by DVR. On 11/04/11, Counselor GL denied the service by taking advantage of autism disability (impaired self-advocacy ability)(DVR Case Note); 09/27/12, Supervisory Reviewer LM denied service by scapegoating his disastrous failure of the meeting on 09/12/12 (Supervisory Report); 11/18/12, Field Operation Director TD denied service by abandoning her efforts to remedy the situations (My Fax to her); 01/28/13, Program Manager RG denied service by disregarding the main problem "total lack of effective communication" known to him (His Letter); 11/23/13, Internal Staff Lawyer RL denied service by making it impossible to present my case at the mediation by disregarding my disability(unrecorded); 12/09/13, Field Operations Director & Deputy Director JF denied service by disregarding all the problems known to him in his proposed settlement (Proposed Settlement); 03/27/14 Director RV denied service by closing the case (Letter); 06/07/14 Fair Hearing Officer EP denied service by disregarding my disability need at forthcoming Pre-Hearing Conference (His Order); and 06/07/14 Governor SM denied service by refusing my request of meeting (Her Letter).  
These are denials of service by DRNM. On 10/10/12, Chief Advocate BC denied service by abandoned her service (e-mails); 09/15/13 Director JJ denied service by refusing to respond to my request of service at the mediation on 11/23/13 (My Fax to him); 04/18/14 Chief Advocate BC denied service by closing case (Letter).
- 6 The nature of autism disability can be summarized as "*language and communication are always serious issues of the disability.*" This can be seen from this incomplete list:
  - (a) Limited or no listening comprehension (auditory attention deficit);
  - (b) Limited or no reading comprehension (visual attention deficit);
  - (c) Deficit to understand non-literate or ambiguous language;
  - (d) Deficit to understand what is not explicitly stated;
  - (e) Limited or no fluency of speaking (weak verbal fluency);
  - (f) Difficulty with abstract concepts (the inability to make the leap from symbolic to the real world).

Autism disability affects life major activities "*speaking, learning, reading, concentrating, thinking, and communicating.*" 29 CFR 1630.2(i)(1)(i). Naturally, these are very intangible and nobody notice the disability readily. By the EEOC determination, **the main accommodation is to maintain OPEN COMMUNICATION, EEOC vs. Tarsadia Hotels dba Comfort Suites, Case No. 10-CV-1921-DMS-BGS, US District Court, District of Southern California (This case is settled.)**

- 7 The autism minority is prone to anxiety and depression. (DSM-5, page 55). Here is an example how easily I get depressed:

*"On 07/24/19, I had a motion hearing in the state district court Hitoshi Ombe vs. Sierra Collision & Towing Services, LLC et. al. It is a small claim case against the local body shop. I was in a good spirit and had no depression but not quite fully regained regressed ability, probably 95%. I was prepared according to the court official announcement of the list of the motions. At first, the court tried to accommodate my disability. Soon the opposing lawyer dominated and pushed to put her motions priority without my input. One of them was unlisted. I was totally unprepared for it. So my mind got chaos for about 100 minutes. I got depressed for about 10 days or so. I had to make an urgent care appointment with mental healthcare provider. Of course, it ruined my days for 10 days*

*or so. My life major activity 'thinking' was badly impaired" NM Courts.gov, D-721-CV-2018-00151.*

For the 100 minutes of the event, I suffered from depression for 10 days or so. My thinking was damaged to do anything like this. Although depression is the controlling ground with controlling effect, anxiety was inseparable part of my illness.

8 DSM-5, pages 50-59

9 DSM-5, pages 47-49. Endnote 6 (c) & (d) are to do with SCD.

10 This is new. Depression prevented me from bringing this issue before.

11 Appendix C

12 Appendix M

13 Endnote 6

14 There appeared to have had mail problem. See "OPENING BRIEF" Tenth Circuit.

15 PETITION FOR WRIT OF CERTIORARI ("PETITION") at pages 24-32 has relevant examples without legal argument. Presenting full argument and reason is new. This is an example that depression had controlling effect on my ability.

16 For example, under the best of circumstances, the autism minority can speak only half of the materials of what the normal majority, in particular, lawyers, can speak in the same amount of time. Often he loses words completely. Endnote 6 (e).

17 PETITION at pages 24-32

18 Appendix M: autism thinking is different from normal thinking.

19 See for example, Endnote 6, (c) & (d).

20 Defense Lawyer MJ continuously and persistently beat my depressed autism disability from March 2017 to around October/November 2017. PETITION at page 29-32

21 PETITION at page 24, Section 1.

22 There are two more potential positive individuals from Las Cruces Courthouse of NM District Court.

But, I have not had conversation by which I can measure their performance of kind of communication at issue.

23 I am not saying this understanding of rule is correct. I am saying the nature of response. People say incomplete and unorganized list of items. This makes it impossible to do anything with confidence and comfort.

24 PETITION at pages 29-32

25 It is impossible for the depressed autism minority to deal with this kind of unstated contradiction.

Endnote 6 (d)

26 PETITION at pages 24-32

27 Since a pro se litigant faces great difficulty to do good pleading due to its highly technical nature, it is necessary to have a protective mechanism. As it stands, a great many pro se litigant would not be able to overcome this hurdle without some kind of mechanism. As an example, NM Rules of Civil Procedure, 1-012(E), NMSA, is for that purpose.