

No. 18A831

**ORIGINAL**

Supreme Court of  
FED.

**FEB 08 2018**

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

HITOSHI OMBE, PETITIONER

vs

SUSANA MARTINEZ, ET. AL., RESPONDENTS

**APPLICATION TO TENTH CIRCUIT JUSTICE SONIA SOTOMAYOR  
FOR AN EXTENSION OF THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that an extension of the time to file PETITION FOR WRIT OF CERTIORARI be granted.

I am the petitioner pro se and I would like to apply to Tenth Circuit Justice Sonia Sotomayor for an extension of the time to file my PETITION FOR A WRIT OF CERTIORARI by Rule 13.5.

**Jurisdiction**

This case is from **federal courts**:

The date on which the United States Court of Appeals decided on my case was 11/08/18. A copy of the ORDER AND JUDGMENT appears at Appendix A. It is unpublished.

A timely petition for rehearing was denied by the United States Court of Appeals on 12/10/18. A copy of the ORDER denying rehearing appears at Appendix B.

The deadline to file PETITION FOR A WRIT OF CERTIORARI is 03/11/19, Rule 13.3. (Note the 90-th day 03/10/19 is Sunday. Rule 30.1.)

The jurisdiction of this Court is invoked under 28 USC Section 1254(1).

### Parties

For the complete list of parties (respondents), see the ATTACHED LIST OF PARTIES.

### Judgments and Orders to be reviewed

JUDGMENT AND ORDER (Appendix A) issued by the Tenth Circuit on 11/08/18,

Rule 58 Judgment (Appendix C) issued by the NM District Court on 01/25/18,

ORDER (Appendix D) issued by NM District Court on 02/20/18.

All the documents on file with NM District Court and Tenth Circuit are subject to possible review by the Court. Rule 58 Judgment means that all of the decisions and orders that led to the Rule 58 Judgment issued by the NM District Court are included. This interpretation is accepted by the Tenth Circuit as my notice of appeal is stated in the same way. However, the defendant Disability Rights New Mexico, Inc. disagreed with it by their denied motion. Here, I mention these three as my request of review. See the next section Justification regarding to my appeal point. More specific details of which particular interlocutory decisions and orders are to be included in the petition are still working in progress at this time. It is a very very difficult task for me.

## Justification

The main appeal point is not legal issues already argued in the lower courts. It is about my ability to litigate on my own without any help or support.

So I need to explain my mental disability. I am an individual with diagnosed autism spectrum disorder (DSM-5: pages 50 – 59). But, I am highly functional with an advanced education, PhD. I call myself the neuro-atypical (autism) minority or the neuro-atypical minority. I have legal mental disability (autism disability), “*autism substantially limits brain function*” 29 CFR 1630.2(j)(3)(iii). I am required to have Level 1 support.

*“Inflexibility of behavior causes significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organization and planning hamper independence.”* DSM-5, page 52.

The principle idea of the nature of autism disability is described by:

*“In determining whether an individual has a disability under the “actual disability” or “record of” prongs of the definition of disability, the focus is on how a major life activity limited, and not on what outcome an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.”* (underline added) 29 CFR 1630.2(j)(4)(iii)

It (autism) has broad and heterogeneous impairment or disability. However, it can be in large part organized as COGNITION AREA (impaired self-advocacy ability, theory of mind deficit, impaired communication ability) and EXECUTION AREA (executive function deficit, impaired self-management ability – not to be confused with self-care type of issues). As examples, impaired self-advocacy ability includes impaired pleading ability, impaired self-defense ability. The essence of these impairments is that *an affected individual, i.e., a neuro-atypical (autism) minority has significant difficulty with brain or mental function that a neuro-typical (normal) individual takes it for granted.* Again the idea of 29 CFR 1630.2(j)(4)(iii)

is important.

Because of theory of mind deficit, I am prone to anxiety and depression (DSM-5, page 55) . When I am depressed, the impairment of function becomes disability or total impairment. For example, totally disabled self-advocacy ability, totally disabled pleading ability, etc.

The case is about vocational rehabilitation with respect to autism disability and the main defendants are NM Division of Vocational Rehabilitation and Disability Rights New Mexico, Inc. The main factual issue is about total lack of effective communication. However, everybody has a wrong understanding of the meaning or definition of "*communication*." It is not about something like e-mails etc. "Communication" here has to do with deeper cognitive or psychological issues. Understanding it requires of some knowledge of cognitive psychology and more. However, everybody has been refusing it despite my attempts to bring their attention. I have been punished and psychologically victimized.

The main appeal point is because my impaired self-advocacy ability, which includes impaired pleading ability, was completely impaired or disabled. And the complete impairment or disability was due to depression attributed to the defendants, and later defense lawyers and the court. The appeal is centered around this issue. Of course, subsidiary and related questions to the main question may also be expected. As of now, the final questions are not fully formulated yet. In order to formulate final questions, I need someone to consult with. But I do not have one. It has been impossible to find a lawyer who could give me some advice. Even when I wrote to ask for just advice, responses are always "I cannot represent you." I have no idea why lawyers are impossible to communicate.

The main problem is that nobody has any measurable background or knowledge of autism. The defendants are legally required to have such background or knowledge:

*“... personnel have specialized training and experience that enables them to work effectively with individuals with disabilities ...” 34 CFR 361.18(c)(2)(ii)*

Judges and lawyers do not have it, either. I tried to bring it to the attention of the courts. They are not interested in the autism disability at all. They all neglected my needs. As a consequence, I suffered from continuous or systematic psychological abuse, resulting in psychological trauma or victimization, persistent or chronic depression and anxiety in addition to lost opportunity. Thus, I temporarily got second legal mental disability, depression, 29 CFR 1630.2(j)(3)(ii). These literally made me crazy. I have not had any occasion to discuss my needs as required by 29 CFR 1630.2(o)(3) for 8.5 years: 04/28/10 – 11/13/18.

*“To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate informal, interactive process with individual with a disability in need of the accommodation. The process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitation.” (underline added)* 29 CFR 1630.2(o)(3)

The date 11/13/18 is when I received ORDER AND JUDGMENT (Appendix A) denying my appeal issued by the Tenth Circuit. It includes its response to a related issue. After that I began to regain my lost ability. Of course, the process of regain the ability of this nature from the lost ability is never overnight. It always take at least some months.

I am finally getting to understand various information in a manner more suitable to present to any court. For example, I am evaluating if the US Magistrate Judge committed psychological abuse on 03/03/17 and 07/27/17. I am pretty sure that the defense lawyer MJ committed psychological abuse: in fact around September/October 2017, my state of mind

was extreme misery, extreme hopelessness, or extreme helplessness with extreme pressure and I was literally crying in my mind. It was emotionally or mentally too painful to pick the court documents for sometimes. They broke natural law, a constitutional liberty (?). These are scandals because nobody must commit injurious or harmful behavior to anybody and judges and lawyers must adhere much higher standard of their behavior to exemplify to the society. But, they actually happened. What can I do?

Generally speaking, I do not have innate ability to do with psychological terms (*impaired ability to identify and conceptualize feelings and thoughts of others and myself: theory of mind deficit and impaired ability or subclinical inability to identify and describe feeling state: alexithymia*) without some help. Most luckily, I have a counselor with extensive knowledge of and experience with autism. But, I cannot see her every day.

Because of these situations and very slow thinking (theory of mind deficit), I would not be able to organize the entire document in time in a coherent manner (weak central coherence) with 40 page limit, Rule 33.2. I do not have ability to deal with time pressure (theory of mind deficit).

One major difficulty is that I do not know how to organize information on psychological concepts. It is absolutely needed to explain them somewhere because nobody knows them. But the requirement of brevity makes it extremely difficult to incorporate them into the petition. It all depends upon the Court's knowledge of the subject matter. The mess created by NM District Court in this area has been immeasurable extra undue burden on me. This all started on 03/03/17 when the US Magistrate Judge disregarded the matter completely despite my attempt to bring the court attention: depression made it impossible to do anything

meaningfully.

### Merit of Appeal

By my determination, this appeal should satisfy Rule 10(c): national importance. General lack of acceptance of autism disability. My research so far indicates there is no precedent to this appeal. So far I found only one case with similar issue: Indiana v. Edwards, 128 S.Ct. 2379. It is a criminal case and the Court determination is

*"United States Constitution permits states to insist on upon representation by counsel for those who are competent enough to stand a trial but who still suffer from severe mental illness to the point where they are not competent enough to conduct trial proceedings by themselves." (underline added)*

If the issue of the case is about the executive function ability of depressed individual regarding to do with case management, then the same issue exists in my appeal. If so, Rule 10(c) is more directly applicable here as the Tenth Circuit disregarded it.

Even though autism disability has been on ADA book for 10 years, in reality, it has been forgotten and not been accepted as disability. In fact, the JUDGMENT AND ORDER (Appendix A) proves that the Tenth Circuit does not accept autism and depression as legal disabilities for pro se litigant. In other words, the Tenth Circuit supposedly enforces ADA with respect to autism and depression, but it refuses to observe the same principle for its own practice, a self-contradiction. In order to observe the same principle, apply natural law, a constitutional liberty because conventional law ADA would not apply here. An alternate to natural law is equitable principle. Alternately, it is an expressive exclusion of the neuro-atypical (autism) minority from the federal court system.

Judges and lawyers preach civil and constitutional rights through their practices. So

they are supposed to be leaders of protecting the rights. The same is true for the defendants because they are disability specialists. But, in this case, the judges and lawyers as well as the defendants are violators of (adult) autism right. This is because they are not seeing hidden disabilities. Everybody lacks prudence: the backbone to protect people with mental ailment is to observe natural law. But nobody observes it. In particular, observing it is essential, when interacting with the neuro-atypical minority, i.e., individuals with high functioning autism. This appeal would shed light on the issue.

#### Amount of Time Extended

The maximum allowed extension by Rule 13.5 is 60 days, and appropriate because of three reasons. First, I do not wish to ask an extension twice, for example, 30 days and then 30 days. If I finish early I can submit it early. Also I do not know what could happen. For me, feeling of security is important, meaning no pressure. I sometimes get sudden anxiety, although it is not as often as used to be. This is autism.

Second, Rule 14.5 gives 60 days to correct petition prepared with good faith but does not meet the standard specified by Rule 14.1. This indicates the standard of the Court regarding to reasonable amount of time for certain task. Rule 14.4 is a challenge: in particular, brevity is very major challenge as a matter of autism disability (weak central coherence). Another challenge is translation from more factually oriented thinking to more legally oriented thinking. This is due to theory of mind deficit. This application is an clear proof of improvement in this regard compared with a month or two ago. Before it was impossible to do anything meaningfully for the case due to depression. With an extended time, I strongly expect that I should be able to prepare for a good petition.

Third, this case requires of some complex scientific information from scientific

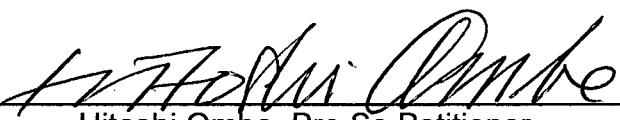
literature. At the district court level, some insightful understanding is needed. If it is done, a requirement at higher court is less because required information is selected and formulated, and parties understand what is talking about. But, this was not done at the district court. So it is a major challenge how to incorporate this into my petition.

Finally, the Court is advised that extended time is a very common strategy to support the neuro-atypical minority.

#### CONCLUSION

I request an extension of 60 days to file my PETITION FOR A WRIT OF CERTIORARI by Rule 13.5.

RESPECTFULLY SUBMITTED,



Hitoshi Ombe, Pro Se Petitioner

02/08/19

Date

No. \_\_\_\_\_

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SUPREME COURT OF THE UNITED STATES

HITOSHI OMBE, PETITIONER

VS

SUSANA MARTINEZ, ET. AL., RESPONDENTS

**APPLICATION TO TENTH CIRCUIT JUSTICE SONIA SOTOMAYOR  
FOR AN EXTENSION OF THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI**

**LIST OF PARTIES**

The following are the full list of respondents.

**(1) REPRESENTED BY JARMIE & ASSOCIATES** (Mark D. Jarmie, Mark D. Standridge, Matthew D. Bullock)

State of New Mexico,	NM Department of Public Education,	
NM Division of Vocational Rehabilitation,		
Susana Martinez,	Hanna Skandera,	Ralph Vigil,
Rosa Lima,	Richard Smith,	John Fullinwider
Terri S. Douglass,	Adrian Apodaca,	Susan J. Lopez
Reyes R. Gonzales,	Ava M. Gutierrez,	Lee M. Martinez,

Carol Day,

Gary T. Lucas,

Tanya Shatz,

Martha V. Jaramillo, Patricia Gulino,

Earnest O. Pacheco,

Note: Gary T. Lucas has not been served due to NM District Court confusing direction together with my state of mind – depression – at that time.

(2) **REPRESENTED by DOMENICI LAW FIRM, PC** (Peter V. Domenici, Jr., Jeanne Cameron Washburn)

Disability Rights New Mexico, Inc.

The Board of Directors of Disability Rights New Mexico, Inc.;

James (Jim) Jackson, Jason C. Gordon,

Nancy Koenisberg, Timothy (Tim) Gardner,

Bernadine Chavez.

**RESPECTFULLY SUBMITTED,**



02/08/19

\_\_\_\_\_  
Hitoshi Ombe, Pro Se Petitioner

\_\_\_\_\_  
Date

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

HITOSHI OMBE, PETITIONER

VS.

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**PROOF OF SERVICE**

I, Hitoshi Ombe, do swear or declare that on this date, February 8, 2019, as required by Supreme Court Rule 29, I have served the enclosed "APPLICATION TO TENTH CIRCUIT JUSTICE SONIA SOTOMAYOR FOR AN EXTENSION OF THE TIME TO FILE PETITION FOR WRIT OF CERTIORARI" and "MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*," on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calender days.

The names and addresses of those served are as follows:

Mark Standridge, PO Box 344, Las Cruces, NM 88004-0344

(for the State of New Mexico)

Pete Domenici, Jr., 320 Gold Avenue, Suite 1000, Albuquerque, NM 87102-3228

(for Disability Rights New Mexico, Inc.)

Both are the last known addressees on record.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 8, 2019,



A handwritten signature in black ink, appearing to read "Hitoshi Ombe", is written over a horizontal line. The signature is fluid and cursive, with a distinct 'H' at the beginning and a 'B' at the end.

Hitoshi Ombe