

18-924 **ORIGINAL**

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme
Court
of the
United
States

MAY 08 2013

OFFICE OF THE CLERK

Hitoshi Ombe – PETITIONER

vs.

Susana Martinez, et. al. – RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR A WRIT OF CERTIORARI

Hitoshi Ombe

Pro Se Petitioner

PO Box 3893

Truth or Consequences, NM 87901-7893

Phone: 575-497-0422

QUESTIONS PRESENTED

Question 1: Does the depressed autism minority have adequate competency or ability to litigate on his own (pro se) without any help or support? The competency includes both cognitive ability (pleading, comprehending motions, and forming response assertions) and case management ability/skills (executive function).

Question 2: Is it required for a presiding judge to have proper knowledge of depressed autism disability, when the depressed autism minority as pro se litigant appears before him with or without any help or support? Is it required for a defense lawyer to have proper knowledge of depressed autism disability, when the depressed autism minority as a pro se litigant appears before him with or without any help or support?

Subsidiary Question to Question 2: What is an appropriate response to the situation, when the depressed autism minority as pro se litigant appears before a judge or defense lawyer with or without any help or support?

Question 3: Are the defendants liable for emotional damages by instrumental aggression? In particular, are the defendants liable for emotional damages by instrumental aggression, when the defendants do not even have proper and legally required knowledge of autism disability?

LIST OF PARTIES (1/2)

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.

Last Known Address on Record

Mark D. Standridge

PO Box 344, Las Cruces NM 88004-0344

(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

LIST OF PARTIES (2/2)

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

Last Known Address on Record

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

TABLE OF CONTENTS (1/2)

A. OPINION BELOW	1
B. JURISDICTION	1
C. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
D. STATEMENT OF THE CASE	2
E. REASONS FOR GRANTING THE PETITION	5
REASON I: This case is a national importance because there is no justice at all for the autism minority, in particular, the depressed autism minority, as a pro se litigant	5
REASON II: Defendants' insidious emotional abuse by instrumental aggression resulted in emotional trauma.	9
REASON III: NM District Court disregarded my First Amendment right to petition to the Government and Fifth Amendment right to due process	17
REASON III (1): The depressed autism minority does not have adequate ability to make to plead, comprehend, and respond promptly	19
REASON III (2): The depressed autism minority does not have reasonable case management ability.	23
REASON III (3): The process of NM District Court and Defense Lawyers was nothing but further emotional traumatization and destabilization of executive function.	24
REASON IV: I never had any occasion to discuss my disability needs for 8.5 years: 04/28/10 ~ 11/13/18. This alone was continuous and persistent distress and psychological abuse by instrumental aggression.	32
REASON V: Tenth Circuit refused to understand the case correctly and made arbitrary decision.	32
REASON VI: The whole issue is a question of basic right of the neuro-atypical minority.	37

TABLE OF CONTENTS (2/2)

REASON VII:	Closing Argument and Answers to the QUESTIONS PRESENTED	39
F.	CONCLUSION	40
PROOF OF SERVICE		

LIST OF APPENDICES (1/1)

Appendix A "JUDGMENT AND ORDER" issued by Tenth Circuit on 11/08/18

Appendix B "Rule 58 Judgment" issued by NM District Court on 01/25/18 (Document 195)

Appendix C "ORDER" issued by NM District Court on 02/20/18 (Document 198)

Appendix D "ORDER" denying a timely petition for rehearing issued by Tenth Circuit on 12/10/1

Appendix E Letter of 02/15/19 from the Clerk of the Court to approve an application for an extension of time to file the petition for a writ of certiorari

Appendix F "MEMORANDUM OPINION AND ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS AND CONSOLIDATING CASES" issued by NM District Court on 10/15/14 (Document 6)

Appendix G "ORDER" issued by NM District Court on 02/11/15 (Document 53)

Appendix H "ORDER DENYING MOTIONS FOR APPOINTMENT OF COUNSEL" issued by NM District Court on 02/17/15 (Document 57)

Appendix I "MEMORANDUM OPINION AND ORDER" issued by NM District Court on 05/28/15 (Document 83)

Appendix J "MEMORANDUM OPINION AND ORDER" issued by NM District Court on 08/21/15 (Document 93)

Appendix K "MEMORANDUM OPINION AND ORDER" issued by NM District Court on 09/03/15 (Document 96)

Appendix L "MEMORANDUM OPINION AND ORDER" issued by NM District Court on 01/24/18 (Document 193)

Appendix M "MEMORANDUM OPINION AND ORDER" issued by NM District Court on 01/24/18 (Document 194)

Appendix N "MEMORANDUM OPINION AND ORDER OF DISMISSAL" issued by NM District Court on 11/20/17 (Document 34), Case 16-CV-1114-RB-LF

Appendix O "ORDER" issued by JUDICIAL COUNCIL OF THE TENTH CIRCUIT on 03/07/19

Appendix P Rule 14.1(f) The constitutional provisions, statutes, and regulations

Appendix Q Rule 14.1(i)(vi) Legal Definition of Autism Disability (29 CFR 1630.2(j)(3)(ii) expanded)

Appendix R Rule 14.1(i)(vi) Notes

TABLE OF CITED AUTHORITIES (1/2)

CASES

Indiana vs. Edwards, 128 S.Ct. 2379 (2008)	7
Thompson R2-J School District vs. Luke P. et. al., 540 F.3d 1143 (2008)	36
Luke P. et. al. vs. Thompson School District, 129 S.Ct. 1356 (2009)	36
Endrew F. et. al. vs. Douglass County School District RE-1, 137 S.Ct. 988 (2017)	36

UNITED STATES CONSTITUTION

First Amendment right to petition	13, 25, 26, 27, 31, 33, 34, 35, 38
Fifth Amendment right to due process	25, 27, 35
Fourteenth Amendment rights to due process and equal protection	13, 25, 31

STATUTES

Americans with Disabilities Act	10, 11, 12, 13, 13, 16, 17, 27, 32, 36
ADA Amendments Act	8,
Section 101(a)(7) of the Rehabilitation Act	9, 10, 13
Section 504 of the Rehabilitation Act	10, 11, 12, 13, 16, 17
Section 1983 of the Civil Right Act	14,
Section 1981 of the Civil Right Act	14,
Title VI of the Civil Rights Act of 1964	14,
Age Discrimination in Employment Act	14

REGULATIONS

29 CFR 1630.2-Definitions	13, 18, 37
29 CFR 1630.2(j)(1)(viii)	1
29 CFR 1630.2(j)(3)(iii)	2, 6, 6, 14, 21, 33
29 CFR 1630.2(j)(4)(iii)	6

TABLE OF CITED AUTHORITIES (2/2)

REGULATIONS (continued)

29 CFR 1630.2(k)(2)	5
29 CFR 1630.2(o)(3)	10, 11, 32
34 CFR 361.5(c)(4)	14
34 CFR 361.18(c)(2)(ii)	10
34 CFR 361.18(c)(2)(ii)(A)	2, 6, 10, 33

RULES

Rule 12(b)(6) of the Federal Rules of Civil Procedure	20, 28
Rule 11(c)(1)(A) of the Rules for Judicial Conduct and Judicial-Disability Proceedings	25

OTHER

Tort	14
------	----

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to the judgment and order below.

A. OPINION BELOW

This case is from federal courts.

The opinion "JUDGMENT AND ORDER" of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion "Rule 58 Judgment" of the United States district court appears at Appendix B to the petition and is unpublished.

The opinion "ORDER" of the United States district court appears at Appendix C to the petition and is unpublished.

The nature of this petition is not about legal issues argued in the lower courts, but about my ability of the depressed autism minority as a pro se litigant. Thus, any other relevant opinions and orders issued by the courts or administrative agencies are listed in Rule 14.1(i)(ii) appendix.

B. JURISDICTION

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

A timely petition for rehearing was denied by the United States Court of Appeals on 2/10/18. A copy of the ORDER denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including 05/09/19 on 02/15/19 in Application No.18A831. A copy of the letter of the Clerk of the Court appears at Appendix E.

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

C. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution First Amendment – petition to the Government

United States Constitution Fifth Amendment – due process

United States Constitution Fourteenth Amendment – due process, equal protection

Section 101(a)(7) of the Rehabilitation Act of 1973, as amended

Section 504 of the Rehabilitation Act of 1973, as amended

Title II of the Americans with Disabilities Act of 1990, as amended

Section 1983 of the Civil Rights Act of 1871

Title VI of the Civil Rights Act of 1964, as amended

Section 1981 of the Civil Rights Act of 1866

Age Discrimination in Employment Act

D. STATEMENT OF THE CASE

The case is about vocational rehabilitation with respect to autism disability¹. 29 CFR 1630.2(j)(3)(iii), 34 CFR 361.18(c)(2)(ii)(A). The main practical disability at issue is impaired self-advocacy ability (n1)², in particular, impaired communication ability (or communication disability) because of impaired cognitive ability or Theory of Mind Deficit (Appendix Q).

I, the petitioner pro se, had difficult life even though I have advanced education through graduate school with my PhD and university teaching experiences. Late in my life, I found that I have autism disability (n2) and sought assistance from the defendants NM Division of Vocational Rehabilitation (DVR) and Disability Rights New Mexico, Inc. (DRNM). (Appendix M pages 1-2)

My first visit of DVR was on 04/28/10 (n3). On 06/29/11, DVR put my case on the waiting list based on priority group 1, Most Significantly disabled (n4). DVR held the active case of mine from 11/04/11 (n5) to 03/27/14 (n6). During that period, I had three Counselors Gary Lucas, Carol Day, Tanya Shatz, Supervisory Review Report (n7) by Lee Martinez dated 09/27/12, one meeting with Field Director Terri

1 There is no organized information on this. See Appendix Q. Format of citation of the materials from Appendix Q may not consistent because of the complexity.

2 (n1), (n2)... refer to notes given as Appendix R

Douglass on 10/24/12 (n8), and one mediation with respect to my complaint to Office of Civil Right of US Department of Education on 11/23/13 (n9). I withdrew from fair hearing on 06/20/14 (n10). Governor Susana Martinez refused my request of meeting on 06/25/14 (n11).

I applied for services from Client Assistance Program of Disability Rights New Mexico, Inc. (DRNM) on 02/08/12 (n12). Advocate Bernadine Chavez abandoned her duty and responsibility on 10/10/12 (n13). The case was closed on 04/18/14 (n14).

Through these process, absolutely nothing was accomplished with respect to fundamental protocol of vocational rehabilitation. Absolutely no conversation or activity took place to precisely determine my functional limitation (n15) required of 29 CFR 1630.2(o)(3). This no conversation lasted for 8.5 years. The only information related to this is implicitly included in JUDGMENT AND ORDER (Appendix A). This alone victimized me psychologically, in particular, anxiety and persistent and chronic depression (n16).

The core problem during these process was total lack of effective communication (n17) because everybody disregarded my disability needs in violation to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. It was a silent insidious and gradual process of systematic psychological and emotional abuse by generally instrumental aggression (n18).

By the date 09/27/12 of the Supervisory Review Report, my disability was fully developed to depressed autism disability, significantly more severe and serious disability than autism disability, and a court case was established but not filed yet. On 10/10/12, DRNM had established its own court case. However, I did not had an idea or thought to file a court case. My mind was totally distressed and chaotic.

After 10/10/12, I was trying to navigate the system with disabled self-advocacy ability, in particular, disabled effective communication ability (not just impaired self-advocacy ability) or depressed autism disability with appearance of full competency of effective communication (Appendix Q) . The disability required of third party intervention, but without any meaningful help or support from competent individual at all. Of course, Defendants continued psychological and emotional abuse: continued and persistent extreme distress without any rest of my brain which was most seriously needed. Field Director Terri Douglas knew the problems (n19) but abandoned it shortly after 11/18/12 (n20). Program Manager Reyes Gonzales knew the problems no later than 01/28/13 (n21) but neglected them completely. The mediation

held on 11/23/13 was emotionally traumatic and a continuation of emotional abuse primarily by Defendant (Internal Staff Lawyer) Rosa Lima. Its proposed settlement of 12/09/13 (n22) by Deputy Director in Fact John Fullinwider lacked transparency by avoiding the known problems (n23) altogether and it was another source of psychological and emotional abuse. Fair Hearing Officer Ernest Pacheco refusal to consider my request of in-person prehearing conference (n24) was added traumatization when I had been emotionally and psychologically damaged already. Governor Susana Martinez refusal of my request of meeting on 06/25/14 added the damages further.

I filed the first case against DVR (and other State Defendants) on 08/22/14 (n25), the second case against Fair Hearing Officer on 09/19/14 (n26), while the case against DRNM (and other defendants) was filed on 09/19/14 (n27). The process by NM District Court was nothing but continuation of psychological and emotional abuse. In particular, US Magistrate Judge Karen Molzen and Defense Lawyer Mark Jarmie personally committed psychological and emotional abuse. By around September/October of 2017, I was suffering from extreme state of mind: extreme helplessness, extreme hopelessness, extreme pressure, extreme anxiety, total powerless, just name it. I was literally crying in my mind. It was too painful to go to my PO Box to pick up case documents. (n28). On 01/15/18, I managed to go to the Box (n29). NM District Court dismissed the entire consolidated case on 01/25/18 (Appendix B), and issued the ORDER (Appendix C) and permission to appeal on 02/20/18. I did not get a copy of the State Defendants' Motion for Summary Judgment (n30) until after the case was over.

On 11/08/18, Tenth Circuit issued JUDGMENT AND ORDER (Appendix A) denying my appeal by completely disregarding my depressed autism disability. It supported NM District Court terribly incompetent mishandling.

All of these taken from 04/28/10 to 11/08/18 are due to the fact that nobody has taken autism disability and depressed autism disability seriously, ever though both disabilities are on ADA book since 01/01/09 or for 10 years. Naturally everybody disregarded my needs consistently and persistently for 8.5 years.

Everybody drove me "insane" or "crazy". I have been processed, but NEVER been served. I have never been any part of proceeding at all. My case was closed and dismissed without any meaningful

opportunity at all for all these years. Total nonsense.

E. REASONS FOR GRANTING THE PETITION

In what follows, the autism minority³, or simply the minority is the group of people with high functioning autism (DSM-5: Autism Spectrum Disorder at pages 50 – 59) with high potential of successful vocational rehabilitation, while the normal majority or simply the majority is the group of people without any mental ailment. The depressed autism minority or the depressed minority means the minority who also has depression. Disability for an individual with other mental ailment needs to be discussed separately and is excluded here.

Legal disability is defined as "*impairment of life major activity is severe enough relative to most people in the general population*, 29 CFR 1630.2(k)(2)." However, reasonable accommodation for autism disability varies and need more refined understanding. This is because autism disability involves multiple functions with different degrees of impairment. For this reason, I provide these definitions.

An impaired or impairment or deficit means one can overcome impairment or deficit with support or minor intervention. A disabled or total or severe impairment or severe deficit or no ability means one cannot overcome impairment or deficit without direct intervention such as someone takes over the situations on my behalf, e.g., he speaks for me.

REASON I: This case is a national importance because there is no justice at all for the autism minority, in particular, the depressed autism minority, as a pro se litigant.

1. General Discussion

This case is a national importance by Rule 10(c). The autism minority has been marginalized by the system because of impaired self-advocacy ability. Several millions of people are affected and the number is increasing (n31). There is no precedent to this case. The underlying problem is that nobody has taken legal autism disability seriously. Defendants are specialists of disability services, but do not know legal autism disability. Five Defendants-Lawyers with special interests of disability issues do not know legal autism disability. Five Defense Lawyers do not know legal autism disability. US District Judge and US

3 Minority refers to neuro-atypical development. See REASON VI

Magistrate Judge do not know legal autism disability. Chief of Tenth Circuit does not know legal autism disability. 20+ Circuit Judges do not know legal autism disability. **This case is clear miscarriage of civil justice. It is an explicit and complete exclusion of the (depressed) autism minority as pro se litigant from the federal court system because of the mental disability.**

The legal definition of autism disability is "*Autism substantially limits brain function.*" 29 CFR 1630.2(j)(3)(iii). Autism disability is one of the legally listed disabilities for vocational rehabilitation. 34 CFR 361.18(c)(2)(ii)(A). The problem is because autism has broad heterogeneous symptom with unknown etiology as saying

"When you've met one person with autism, you've met ONE person with autism."

In other words, you cannot generalize your experience with meeting one person with autism to another person with autism. On the other hand, a lawyer has a strong habit to immediately generalize his experience with meeting one person with autism as if he has had an extensive experience dealing with autism. US Magistrate Judge Karen Molzen did this on 03/03/17 (n32). Defense Lawyer Mark Jarmie did this on 03/17/17 (n33). From autism point of view, such a generalization is deceptive or fraudulent whether or not the Court agrees it. It is an insult and belittle committed by them. This is a major issue/problem. Keep in mind, autism disability is clearly hidden as can be seen from this general description.

"An affected individual, i.e., the autism minority has significant difficulty with what the normal majority takes it for granted."

Also the law is clear in this regard. 29 CFR 1630.2(j)(1)(viii), 29 CFR 1630.2(j)(4)(iii).

These regulations imply that the only way for anyone to claim his knowledge and understanding of the particular piece of law, 29 CFR 1630.2(j)(3)(iii) is to gain proper and insightful knowledge and understanding of autism and put into practices. In essence, not having proper knowledge of autism is the same as not knowing this piece of law.

The other equally important problem is that nobody knows fundamental law, Natural Law or Natural Rights. Some say the Bill of Rights is based on it. Others say it is a constitutional liberty(n34). Either way, ADA violations against autism disability can be greatly reduced, when people observe Natural Law or Natural Rights. This is because such violations very often or commonly start with simple negligence due to hidden disability. When such negligence persists, the autism minority gets injured: systematic

psychological or emotional abuse – persistent distress, not just stress – results in psychological trauma, including anxiety, and chronic and persistent depression. This is a silent insidious and gradual process by instrumental aggression. But the affected individual may not know that he has been psychologically victimized or even emotionally traumatized because of disability *alexithymia* (OC5). Healthcare provider may overlook it, too. My primary care physician overlooked clear sign of depression for four years (n35).

As to precedent, the closest case I found so far is Indiana v. Edwards, 128 S.Ct. 2379. It is a criminal case and the Court held that

"United States Constitution permits states to insist upon representation by counsel for those ... who still suffer from severe mental illness to the point who they are not competent to conduct trial proceedings by themselves."

This is essentially a question of executive function (n36). Although the standard for civil cases on this question may possibly differ from one for criminal cases – they are two different systems – this gives a hint to look into the question.

In the instant case at bar, the same question exists because autism disability includes executive function deficit (Appendix Q (AD3)). Tenth Circuit disregarded it completely. This is another reason that this case meets the Rule 10(c). The Court should review for a writ of certiorari.

Arguments on or reasons for my ability as my own attorney are the main component of the remainder of this petition. A subsidiary of these is the main point of this appeal: an abridgment of my First Amendment *right to petition to the Government for grievances of a redress without due process*.

2. Nobody knows autism disability and everybody injured me.

As I stated earlier, the most serious problem is “nobody knows autism disability.” Judges have made decisions without understanding relevant facts and law.

NM District Court does not have proper knowledge of autism disability. A summary of the facts from my Complaint is given at pages 1-4 of Appendix J. It has full of misunderstanding of what I wrote. An example is *“Plaintiff describes how unspecified defendant's use of term “benefits” was perplexing.”* Here *perplexing* may be correct understanding for the normal majority. However, for the (depressed) autism minority, this is an example of “none understanding” because “*benefits*” may have ambiguity. It generates awful lot of inner distress.

"Life is such a struggle; indecision over things that other people refer to as trivial results in an awful lot of inner distress." Tony Attwood page 221. (n37)

This example is to do with no imagination skills (DOC4). Judge Brack did not understand my intended meaning of what I wrote because his lacked knowledge and understanding of autism disability. For the autism minority, continuous repetition of this kind of communication deficits for prolonged period of time can be psychological and emotional abuse. It is a question of effective communication with autism minority. This is to do with Theory of Mind Deficit (AD1). It is very serious for the depressed autism minority as it makes depression worse.

Information on autism disability is scattered. I organized it as Appendix Q. Understanding the nature of autism disability requires of familiarity of the materials. Without it, nobody can do proper handling. Theory of Mind Deficit (AD1) is the center piece of the information, but not only one. Because of it, autism minority is prone to anxiety and depression. He gets distressed easily. When such distress continues and persists, the autism minority gets depressed. And he does not have self-advocacy ability such as effective communication ability at all, Appendix Q.

As to Appendix Q, there is a concern with respect to Rules 14.2 and 14.3. While the below gives the most crucial element of autism disability, it is insufficient to adequately understand the nature of autism disability. I consider this is not a separate brief within the meaning of Rule 14.2. Also by nature of subject matter, people easily disregard these information.

The important point is the meaning of legal mental disability. Our cognition requires to have the set of two abilities:

- (a) *the ability to identify and conceptualize the thoughts and feelings of others and themselves.*
- (b) *the ability to know facts intellectually.*

In the past, legal mental disability means intellectual disability, meaning that (b) has impairment. However, the current and complete understanding is that impairment of (a) is also legal mental disability, even though he may have appearance of normal because of (b). Laws recognizes this: ADA Amendments Act. In this regard, the Court is behind. For example, NM District Court's decision, Appendix M is NOT based on this understanding. I tried to bring it to the courts unsuccessfully (n38).

Although it is necessary to be familiar with the materials presented as Appendix Q, the main

theoretical disability of autism disability is Theory of Mind Deficit, i.e., impaired ability (a). For depressed autism disability, it is Severe Theory of Mind Deficit, i.e., no ability (a).

By its definition, emotional needs must be met to have effective communication with autism minority. Appendix Q. Everybody (Defendants, Defense Lawyers, Judges) failed on this and I was subjected to continuous and persistent distress for 8.5 years: 04/28/10 ~ 11/13/18. It was emotional abuse.

As to the requirement of plain language or terms of Rule 14.3, it is a very difficult question. If I do not introduce some technical terms, writing becomes lengthy and judges and lawyers do not understand and disregard important information to consider.

3. Summary

The best protection for anybody is to observe Natural Law or Natural Rights. Do not assume anything, if you have to deal with an individual with mental ailment. This is because you do not know what could happen with him. Do not overestimate your background of the ailment, even if the individual has an appearance of having necessary mental competency or capacity. Failure of observing this principle is the root of this litigation. It continued into NM District Court. Defendants do not have any excuse for their failure because they are specialists of disability services, while Defense Lawyers and Judges do not have any excuse for their failure because they are expected of high level of behavioral standard inherited from their positions. Nobody can injure anybody. But, everybody injured and disabled me.

The result of this case since the beginning of DVR process until now is due to the fact that nobody has ever accepted autism disability in any meaningful manner.

REASON II: Defendants' insidious emotional abuse by instrumental aggression resulted in emotional trauma⁴.

1. DVR has been operating illegally in violation to Section 101(a)(7) of the Rehabilitation Act.

By nature of autism disability, it is necessary for anybody to have proper knowledge and understanding of autism as explained by REASON I and Appendix Q. The regulation 34 CFR 361.18(c)(2)

⁴ Here it is important that the standard of distress vs simple stress for the autism minority is different from the normal majority. The autism minority is much more prone to distress, instead of simple stress.

(ii) of Section 101(a)(7) requires that (vocational rehabilitation) personnel have specialized training and experiences. Autism and mental illness are two of the listed disabilities for vocational rehabilitation. 34 CFR 361.18(c)(2)(ii)(A).

Advocate Bernadine Chavez (DRNM) knew that DVR does not have properly trained counselor in violation to Section 101(a)(7) of Rehabilitation Act (n39), and DVR has been operating illegally. The DVR took my case without qualified counselor. At the absolute minimum, DVR and DRNM have professional responsibility and duty to inform me the situations. The DVR and DRNM completely failed on this and I am the victim. Both DVR and DRNM clearly knew this litigation was coming. They must take full responsibility for their failure, including damages. Nothing More, Nothing Less. PERIOD.

2. DVR has disabled my self-advocacy ability by systematic psychological and emotional abuse by 09/27/12.

On 11/04/11, First Counselor Gary Lucas activated the case with totally unexpected fraud or deception (psychological abuse) by saying that he could not help me getting more suitable job because I had a surviving cashier job at a gas station in hostile work environment (n40). He refused to provide services by taking advantage of impaired self-advocacy ability, in particular, impaired self-assertive ability in violation to Americans with Disabilities Act and Section 504 of Rehabilitation Act. His records (DVR Case Notes 11/04/11 & 02/03/12) are nothing to do with my request of vocational rehabilitation service. They are just for fabricated bureaucracy.

The first example is that "Cashier is compatible with my mental abilities, i.e., PhD degree" (n41). This is not only total insult but also a prolonged underemployment in a hostile work environment contributed to depression (n42). Another example is a copy of textbook on my employment barrier based on casual understanding of autism disability = social disability (n43) and nothing to do with required assessment, 29 CFR 1630.2(o)(3) (n44). His Case Note of 02/03/12 is pretty much a duplication of his Case Note of 11/04/11 and another bureaucracy, not service. This issue of fraud or deception has never been resolved. Everybody totally irresponsibly evaded it. It was a serious source of anxiety and depression for the autism minority.

Second Counselor Carol Day was incompetent bureaucrat in serving my needs. She lacked

professionalism and prudence. She had not focused on fundamental protocol of vocational rehabilitation at all (n45). She totally lacked genuineness (OC6), the essential characteristic to maintain good relationship with the autism minority. Here are examples of her total nonsense.

Without any conversation on assessment, 29 CFR 1630.2(o)(3), all of sudden, totally unexpectedly, she brought up transcripts and associate degree (n46). She also talked about more degrees which I did never asked. I did more than enough schools and degrees. If needed, it is only for filling gaps. This was totally unexpected upset and insult. I never need this kind of advice.

Then another example is this. She is arguing and equating a college freshman with university professor (I have university teaching experiences) (n47). This is irrelevant for the purpose. This is another example of her failure to focus on her duties and responsibilities or no communication.

She repeated about more degrees on 06/29/12 (n48), and 07/26/12 (n49).

These are examples of Second Counselor Carol Day insults and put downs. I never need any of these advice and information, when she cannot follow the most basic protocol of vocational rehabilitation. This is her complete refusal of effective communication and services. Her bureaucratic and authoritarian thoughtless attitude or power imbalance is apparent. She completely failed to provide information and services I requested. Having clearly organized idea is important because of autism disability: Theory of Mind Deficit (AD1). These made me feel totally helpless, hopeless, insulted, and belittled. These resulted in being psychologically victimized or emotionally traumatized by extreme continuous distress. After she made me completely distressed to the level of absolutely no desire to deal with her, she sent me e-mails asking for an appointment on 08/14/12 (n50). She disregarded disability accommodation required by the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

By this time, my visual attention deficit was so severe that my reading comprehension was very limited. My verbal fluency was limited also. (DOC1)(a)&(v).

On 09/12/12 at 1:00PM, I had a supervisory review meeting with Reviewer Lee Martinez for about one hour at DVR – Quail. What he did is nothing but continuous emotional abuse by making me constant upset (n51), or distress without any room to breath mentally. He first disregarded what I submitted to him before the meeting, which includes about First Counselor Gary Lucas fraud or deception (n52). He then

maintained upper hand by mindless cold heart authoritarian and bureaucratic attitude by asking a series of totally unexpected questions such as "*What is the title of your dissertation?*" (n53) from his training manual without explaining his purposes of or reasons for them. I did not understand what was going on at all. He chose to refuse to communicate with me. Keep in mind the principle of effective communication, Appendix Q. It was clearly emotional abuse by hot (or at least instrumental) aggression.

Here are examples of his insulting, bureaucratic, falsified record to mislead for his defense instead of helping with MY vocational rehabilitation. His Case Note of 09/21/12 is a record of the meeting written 9 days after he worked on falsification to mislead and his Independent Supervisory Review Report dated 09/27/12 (n54).

While he admitted his total disastrous failure of the meeting in the Case Note (n55), in his Report he committed absolute fraud or deception by saying "*I believe our dialogue was informative and constructive*" (Report). His Report disregarded deception or fraud of Gary Lucas, and failure of Carol Day, and Susan Lopez to conclude these did not commit any misconduct (n56). Then he attempted to deceive me by "*Both Mr. Lucas and Ms. Day have been attentive to your case...*" (Report) This is clearly insult and belittling. Why did I have to demand change counselors? If they were indeed attentive to my case, I should not have needed to change counselors.

The most serious nonsense is this:

"Developing and maintaining a positive working relationship with your DVR Counselor is a critical aspect of the rehabilitation process. There needs to be good communication ..." (Report)

What is he talking about? All of these are repeated serious insult and belittling. He chose to fail to have effective communication by intentionally disregarding my disability needs completely in violation to Americans with Disabilities Act and Section 504 of Rehabilitation Act. All of these reflects apparent power imbalance. He had seriously abused his Government power and authority. Since effective communication with me requires of their accommodation in compliance with Americans with Disabilities Act, this "recommendation" is a clearly direct denial of service simply because of my autism disability or depressed autism disability. I never need to be advised the importance of good communication. What he did is total insult. I am educated enough. Lee Martinez totally lacked genuineness and openness, the essential

characteristic to interact with the autism minority, Appendix Q (OC6) (DOC6).

On 09/26/12, I reported Field Director Terri Douglass that the meeting was disaster (n57).

All of the above are total refusal of communication and nothing but systematic psychological and emotional abuse – continuous and persistent extreme distress – by instrumental aggression resulting in psychological victimization and emotional traumatization: anxiety and chronic and persistent depression. This disabled my self-advocacy ability completely on 09/27/12. Or my disability became much more serious depressed autism disability instead of autism disability.

3. As of 09/27/12, DVR has established court cases by themselves.

- (1) On 09/27/12, DVR denied or abridged First Amendment right to petition to the Government for a redress of grievance by disabling my self-advocacy ability (in particular, pleading ability) and executive function (case management ability).
- (2) The DVR has been operating illegally in violation to Section 101(a)(7) of the Rehabilitation Act.
- (3) On 09/27/12, DVR denied eligible services by discriminating against my autism disability in violation to Title II of Americans with Disabilities Act of 1990, as amended, and to Section 504 of Rehabilitation Act of 1973, as amended. Thus the diminished earning potential has been established. The process resulted in emotional damages. Both have been without due process in violation to the Fourteenth Amendment.
- (4) As of 09/27/12, DVR has established its liability in accordance with Section 1983 of Civil Right Act of 1871 for damages (a) emotional damages and (b) lost earning potentials.
- (5) Other potential causes of actions are race, national origin, and age pertaining Title VI of the Civil Rights Act of 1964, as amended, Section 1981 of the Civil Right Act of 1866, Age Discrimination in Employment Act, and tort.

4. DRNM abandoned my case on 10/10/12 and established the court case by themselves.

By the mission and purpose of the organization, everybody from DRNM including the Board of Directors must have good understanding of Americans with Disabilities Act, in particular Definitions of disability 29 CFR 1630.2. Without it, nothing can be done meaningfully by DRNM in order to promote disability right. In particular, disability like autism requires such efforts because of the complexity. The main autism disability is impaired communication ability, Appendix Q. So nobody can do effective

advocation without proper knowledge and attitude: effective communication is always required. However, as demonstrated by Advocate Chavez, DRNM does not have good understanding of autism disability and depressed autism disability, which are legally protected by the law 29 CFR 1630.2(j)(3)(iii). She behaved inappropriately by disregarding autism disability in order to keep her self-esteem instead of working on the problems before her. She has strong self-serving bias. The operations of DRNM have been illegal. Their staff lawyers (Defendants-Lawyers) have not been doing anything measurable to protect and promote autism disability right. And I am the victim of these insulting and even belittling nonsense, which constitutes continuous psychological abuse and contributed to psychological victimization: persistent and continuous depression and anxiety.

By the e-mail of 10/10/12 (n58), I asked Advocate Chavez to attend the meeting with Field Director Douglass to be held on 10/24/12 (n59). However, she refused to respond to the e-mail. This is because she was scared after she had observed my constant upset at the meeting with Reviewer Martinez on 09/12/12. Simply she did not know what to do with my case. This added further traumatization, when I had been traumatized by DVR, in particular Reviewer Martinez already. She totally lacks professionalism and is totally irresponsible. She has no commitment to serve vulnerable population at all. Her letter of 04/18/14 (n60) is full of insulting nonsense. It is not coherent at all. She forced to create reasons for closing my case with superficial appearance to protect her. Of course, she totally lacked transparency, which is the same as deliberate refusal of communication, (OC6).

Here are examples of her insulting nonsense from her letter of 04/18/14.

She knew there was problem of lack of effective communication (n61). But she did absolutely nothing. To cover up her ignorance of autism, she copied DVR Manual Operations Article 1.4.3, Appropriate Mode of Communication. It is identical with 34 CFR 361.5(c)(4). It does not cover the issue. She transferred her responsibility to mine by fabrication: in the same letter she stated,

"The issue that you continued to have with DVR staff remained the inability to communicate with you due to your autism. I ask you if you knew of a specific person who could provide and facilitate that type of communication and you stated you did not."

I did not have any contact with her for about 1.5 years: from 10/10/12 until I contacted her related to the fair hearing. The second sentence is clearly fabrication and lie, while the first sentence is true. This is for her

defense and not service at all. She totally irresponsibly and deliberately abandoned the problem before her.

The second example is her attitude of imposing her perspective unitarily by disregarding my perspective (n62), which is essentially different from hers precisely because of autism disability, Appendix Q. This is because she had been refusing to communicate and was a continuation of psychological abuse. I did not have strength to interact with her meaningfully because of depressed autism disability (disabled self-advocacy ability), Appendix Q.

The third example is:

"(1) DVR has stated and documented that you refused to sign the IEP. (2) DVR cannot provide any services on an IPE when the IPE is not signed. (3) If you had a disagreement with the IPE you could have written that on the IPE but still signed it so that DVR could have moved forward with the agreed upon services. (4) As DRNM staff has stated to you many times, DVR can always do an amendment to add or change services." (The parenthetical numbers added)

For (1), this is her interpretation of the situation and there is no stated document. The (2) is a general statement. Related to (3) I have never been informed anything like this. I have never had any conversation to understand the DVR operational principle represented by (2) & (3). As of now, I do not know how the DVR system works when it comes this kind of the details. Nor I did not have capacity to think these because I had been severely traumatized and depressed. (4) is a total fabrication

These examples prove her strong self-serving bias and her lack of genuineness, Appendix Q (OC6) (DOC6), the essential element to interact successfully and meaningfully with the autism minority.

All of the above is purposeful refusal of communication and of serving me because of my autism disability. She is belittling. The above is sufficient to establish a court case against DRNM with the same cause of actions as the one against DVR. See (1) ~ (5) of section 3.

4. After 10/10/12, I had to deal with Defendants with disabled or no self-advocacy ability, not mere impaired self-advocacy ability, without any meaningful help or support.

Since I was already traumatized and completely distressed, continued anxiety and depression persisted. I did not retain anything from the meeting with Field Director Douglass held on 10/24/12, Appendix Q (DOC1)(a) severe auditory attention deficit. My mind was completely blank. Her record of the day (n63) says "*He agreed with no objection to completing a neuropsychological evaluation.*" I have

absolutely no recollection on this. When Second Counselor Day wrote me "*I have been advised that you have agreed to the Neuropsychological evaluation recommended your Supervisory review.*" without stating any purposes or reasons for it on 10/31/12 (n64), this was my totally unexpected surprise as I did not understand what is stated in the Supervisory Review Report at all because I was traumatized already. When one is depressed, his major life activity of concentration is disabled and nothing is understood meaningfully or my reading comprehension was none, Appendix Q (DOC1)(v) severe visual attention deficit. Besides more, without clearly stated reason and purpose of the evaluation, DVR continued to abuse me emotionally, adding more anxiety, when I was suffering from emotional trauma already. It is total insult and belittling to say that I needed behavioral modification as in the Report (n65), when Reviewer Lee Martinez made me upset continuously by deliberately disregarding my depressed autism disability and committed emotional abuse.

On his letter of 01/28/13, Program Manager Reyes Gonzales informed me to have a psychological evaluation without explanation of the purpose. It included a usage "staffing" not found in dictionaries. I was not involved with the determination process. Thus, there was no effective communication at all (n66).

The same letter reveals that he knew there was the problem of effective communication (n67). He as the supervisor of Carol Day did absolutely nothing on the problem. He was completely negligent, or gross negligent. Keep in mind that I had depressed autism disability already by this time. In particular, my reading comprehension was limited because of severe visual attention deficit, Appendix Q (DOC1)(v). So sending me e-mails did not help anything unless someone has on-on-one meeting with carefully crafted discussion.

These are perfect examples how DVR failed to effectively communicate with me by disregarding autism disability, later depressed autism disability in violation to Title II of Americans with Disabilities Act and Section 504 of Rehabilitation Act. Thus, DVR had continued psychological and emotional abuse by instrumental aggression.

Appointments with Third Counselor Tanya Shatz were also meaningless and added continued psychological abuse by instrumental aggression. In particular, severe auditory attention deficit, Appendix Q (DOC1)(a) was the main reason for this and I hardly retained anything from appointments.

The mediation held on 11/22/13 was disaster. I had been suffering from depressed autism disability, Appendix Q, and had to face three unfamiliar individuals over the phone. Rosa Lima continuously interrupted me. Before I adequately completed my part of story, all of sudden she stated "*Oh this is just a poor service case.*" I could not respond it due to persistent distress or extreme anxiety (n68). Appendix Q (DOC2). This was emotional abuse by instrumental aggression (n69). It was complete nonsense and insult that DVR had hired a lawyer like her as Internal Staff Lawyer. She has absolutely no interests in legal disability issues, in particular, legal autism disability.

In this way, Defendants continued psychological and emotional abuse all the way until I filed the cases with NM District Court. The entire state of the case is direct consequence of Defendants continuous and persistent psychological and emotional abuse without any room to mentally breath.

The letter of 03/27/14 from Ralph Vigil (n70) to close my case ended with

"At this time, you are advised to stop any communications with DVR staff, either in person, by email or mail. Any attempt to communicate with any DVR staff will be reported to the appropriate authorities."

The letter of 04/18/14 from Bernadine Chavez (n71) to close my case ended with

"I am happy to set up time to discuss the over the phone with you. Please call my office and I will set up a time." (Underline added)

Both penalized me as a dangerous person based on my constant upset on 09/12/12. The upset was due to Lee Martinez deliberate violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The DVR and DRNM process made me seriously depressed for years. Everybody interested in his/her needs by completely disregarding my mental health needs completely. It was truly horrible or awful experience (n72). It is complete joke to say that DVR and DRNM are disability service organization. It is total insult. Do not forget that they disabled my vital ability to function as my own attorney. This is clear discrimination against the (depressed) autism minority, because my vocational rehabilitation is rather simple and straightforward with very high potential of success, if it is done professionally.

REASON III: NM District Court disregarded my First Amendment right to petition to the Government and Fifth Amendment right to due process.

Autism disability and depressed autism disability are consequences of the fact that the legal definition of mental disability has broadened by ADA Amendments Act of 2008. The definition is “One’s *brain function is substantially limited.*” 29 CFR 1630.2-Definitions. On the other hand, pro se litigant must have meaningful brain function, among others, self-advocacy ability (pleading, comprehension and responding abilities) (n73) and executive function (case management ability) (n74). When he has mental disability, he cannot function as his own attorney without accommodation. However, the court system has not kept up with this broadened definition of mental disability and it should, in theory, expect more pro se litigants with mental disabilities. Thus, it is urgent for the Court to take up this general question, what to do with pro se litigant with mental disability when he appears before a court.

In order to assure the First Amendment right of the pro se litigant to petition to the Government, and Fifth Amendment right to due process, the Court must make sure these three:

- (1) The pro se litigant has adequate ability to plead, comprehend, and respond.
- (2) The pro se litigant has adequate ability to do case management.
- (3) The proceeding is never injurious mentally to the pro se litigant.

The autism minority as pro se litigant has impairment to the abilities (1) and (2), and vulnerable to (3). See (AD1)~(AD3) (OC1)~(OC6). The depressed autism minority as pro se litigant does not have either of the abilities (1) or (2), and the proceeding may immediately add further traumatization to already injured emotion and even more disable or damage the abilities (1) and (2). See (DAD1)~ (DAD4) (DOC1)~(DOC6).

In order to handle any of these issues, judges and lawyers must have proper and insightful knowledge and understanding of autism disability and depressed autism disability (OC6) (DOC6), when the autism minority, in particular, the depressed autism minority as pro se litigant appears before any court.

In practice, a court must take these steps when a pro se litigant appears before the court on his own. If he has mental ailment, this is absolute must. Mental ailment means he may have mental disability which may prevent him from functioning adequately as his own attorney. Mental disability means he may not have enough ability to convey his message to the court. Since his self-advocacy ability may be impaired, the judge must takes his personal interests in the pro se litigant needs or judge may be

disregarding him. Again this must never be confused with (AD2) and (DAD2) in case that mental ailment is autism.

A good example of this is in Appendix C, District Judge Brack said "*I had many opportunities to argue about depression.*" Appendix C. However, I did not have ability without interactive discussion or open communication (DAD1). Thus I asked for a hearing (n75). This is his personal failure because not only his lack of background of depressed autism disability but also his confusion of my ability with (DAD2). I have been penalized.

REASON III (1): The depressed autism minority does not have adequate ability to plead, comprehend, and respond promptly.

1. The depressed autism minority has disabled pleading ability.

1.1. The undepressed autism minority has impaired pleading ability.

The pleading ability is a component of self-advocacy ability (n76). Because (AD1) and (AD2), his statements have tendency to be mere factual rather than actionable. His ability to express psychological and emotional condition is limited: (AD1) (AD2). An adequate pleading requires of external attribution to his situation. However, (AD1) makes his ability to express external attribution much weaker than the normal majority or his statement is more neutral. In order to overcome this, he needs some help or prior experiences, but he may not realize his needs in this area.

Additional problem is that he may not be able to convey his situation to his attorney with reasonable accuracy even if he could spend \$1M unless the attorney has background of autism disability. Or his attorney could file a case with misunderstood or misinterpreted facts (n77).

1.2. A depressed individual does not have pleading ability.

The essential element of viable pleading is to do with external attribution to blame others to his situations. To understand this, the external attribution is to do with self-serving bias. However, since a depressed individual is self-focused and does not have self-serving bias, he is not able to find the external attribution (n78). He is not able to express valid external attribution, even if he has it. He is unable to make a viable pleading.

The same is true even if he has an attorney unless the attorney is prepared to interact with the

depressed individual to extract external attribution.

Here is an example. "*I was constantly upset for about one hour..*" (*Depressed*) – NM District Court Document 188 Paragraph 62 – vs "*He made me upset for about one hour.*" (*Undepressed*). See REASON II, section 2

1.3 The depressed autism minority has disabled pleading ability.

This is clear from 1.1 and 1.2. See (DAD1). He only has intellectual ability (DAD2).

Particular problems are (i) regressed skills and ability due to depression – necessary skills and ability for viable pleading are not innate ((AD1): Theory of Mind Deficit) but learned – , (ii) limited reading comprehension ((DOC1)(v) severe visual attention deficit). For (i), an important scientific evidence here is that "*learned skills and ability regress when the autism minority is depressed.*" (n79).

2. I repeated the same failure to plead.

Before I filed with the present case, I filed the case with Office of Civil Right of US Department of Education. Case No: 08-13-3002. I did not understand why my case was dismissed. It was because it had pleading deficiency due to depressed autism disability as above section 1.

In the same token, EEOC dismissed the case against my last employer. Case No: 543-2016-00204. Again, I did not understand why they dismissed the case because I thought I wrote it very well. Yes, factually it is well written: almost 100 pages. But, it lacked external attribution and psychological expression. It is a hostile work environment case against autism disability. The later case was filed with NM District Court. Case No: 1-16-CV-1114-RB-LF. It has been dismissed without prejudice, Appendix N.

All of these dismissals are due to depressed autism disability, not the actual merit of the cases. Since reasonably functional intellectual ability remains (DAD2), I have an appearance of my capability but the fact is that I am/was not adequately capable.

Rule 12(b)(6) of the Federal Rules of Civil Procedure, Appendix K, was used by Defendants, both State of New Mexico and Disability Rights New Mexico as the basis of their motions (n80) to dismiss for failure to state my claims. However, totally irresponsible and unprofessional Defendants disabled my ability to be able to write more meaningful complaints. I have absolutely no reason to accept any decisions

based on that ground. I must be given an opportunity to correct deficiencies. I did not have such opportunity until now, since my depressed autism disability lasted until at least 11/13/18. In Appendix I, Judge Brack also wrote that there is a requirement to give a notice of intent to sue. My depressed autism disability prevented me from thinking such details and Defendants are responsible for depressed autism disability, much more serious than autism disability.

3. NM District Court failed to see potential problems.

In Appendix H, NM District Court denied my request of appointment of attorney because

"In considering Plaintiff's ability to represent himself, the (NM District) Court considers Plaintiff's ability to gather and present crucial facts. ... but he appears to understand the issues in the case and appears to be representing himself in an intelligent and capable manner."

This proves that District Judge Brack did not understand the significance of depressed autism disability. District Judge confused my ability because of (DAD2). Intelligence (DAD2) only is insufficient. If he were knowledgeable with autism disability, Appendix Q, he should have called for a session to discuss if I were indeed capable of (1) ~ (3). His lack of knowledge of autism and law is also reflected in Appendix F because he raised a question "*whether Plaintiff is disabled*" which is closed by 29 CFR 1630.2(j)(3)(iii). This issue is raised in my OPENING BRIEF to appeal but Tenth Circuit refused to understand it correctly. They do not have background either.

In short, this case was handled by Judges and Defense Lawyers who are incompetent because of total lack of knowledge and understanding of autism disability and depressed autism disability from the beginning. This was a major continuous and persistent upset because I was suffering from emotional damages by Defendants already. It put me extraordinary extra burden on me. I could never overcome this or not handled the case properly because of (DAD3). My mind was chaotic, horrible and even crazy or insane. I could never think anything clearly like today. Autism disability includes inability to handle pressure. This is particularly the case for the depressed autism minority (n81).

4. NM District Court response to disabled pleading ability is inadequate.

At one time, I had two cases with NM District Court with the same presiding District Judge Brack. He dismissed the second case (1-16-CV-1114-RB-LF) without prejudice, Appendix N, after he learned Theory of Mind Deficit (AD1) on 03/03/17 (n82). But, he failed to take any action on this case. This case

should have been also dismissed without prejudice after obtaining more information and argument because of the situation presented by reasons below. It may not be normal procedure for him. But, it should have been inevitable situations in order to maintain constitutional principle: First Amendment right to petition to the Government and Fifth Amendment right to due process. The immunity and life time appointment he has are the exact purposes to be able to do this kind of none routine action on his part. Alternately, he should have suspended this case until I get fully recovered from mental illness: depression, instead the proceeding continued further emotional traumatization and destabilization of executive function. This is a consequence of his ignorance of legal autism disability.

For the autism minority, consistency is very important for comfort. This kind of inconsistency generated awfully lots of inner distress, REASON I, section 2, when I had already emotionally damaged.

In short, NM District Court response to disabled pleading ability is inadequate and not fully consistent with constitutional principle or basic fairness.

5. NM District Court also failed to see that the depressed autism minority does not have ability to comprehend a motion and form response assertion promptly.

It takes much longer time for the autism minority to comprehend a motion and form his response assertion, (AD1) (OC1)(v), (OC3), (OC4). This is one reason why an extended time is commonly used to support him. This is particularly serious when a short time deadline is imposed, while a longer time deadline is less an issue. It is impossible for the depressed autism minority to comprehend a motion and form his response assertion in a reasonable amount of time even with an extended time, (DAD1), (DOC1) (v), (DOC3), (DOC4).

If the court tries to impose the time which is too short for him, he would get into trap and be unable to overcome, (AD3): impaired cognitive flexibility. For the depressed autism minority, it is a complete disaster, (DAD3): cognitive inflexibility. NM District Court failed on this. See Appendix G, which was issued without my explicit agreement with Defendants. I simply said it was under negotiation (n83): *“negotiated” vs “pending negotiation.”* This is a good example that autism thought differs from normal thought. See Appendix Q. See REASON III (2) below.

District Courts do never need to wait the Court decisions on these kind of fundamental issues. NM

District Court has lacked its care of constitutional principle and too much focused on processing by disregarding the mission of court: serving justice. For me it is common sense that any court should be much more careful when an individual with mental ailment appears on his own by the definition of mental ailment.

REASON III (2): The depressed autism minority does not have reasonable case management ability.

By nature of issue, it is impossible to provide argument based on general principle. Here I provide what I went through.

First note that I was subjected to continuous and persistent emotional abuse by Defendants for about 2.5 years before I filed my cases, while working with significant underemployment in a hostile work environment simultaneously due to lack of Defendants services (n84).

Six motions to dismiss in response to my complaints was totally unexpected shock. Then NM District Court continued emotional abuse by incompetence – Judges do not know autism disability, much less depressed autism disability.

On 02/17/15, in Appendix F, District Judge Brack wrote the legally closed question as open.

REASON III (1) section 3. Then on the same date, in Appendix H, he wrote

“While the Court declines to address the merits of the claims at this early stage, the Court notes that factual and legal issues in this case are not unusually complex.”

"he appears to understand the issues in the case and appears to be representing himself in an intelligent and capable manner" (page 2)

This tells that he does not really know autism disability presented as Appendix Q. These had completely shocked and upset me totally unexpectedly. *“Declining to address the merits of the claims”* made me feel totally distressed put me very substantial pressure after I went through prolonged traumatic experiences with Defendants. Understanding of the factual issues require to have knowledge of autism disability, although it may not have been as clear as should have been because of depressed autism disability. Representing myself requires self-advocacy ability and intelligence only is insufficient. At that time, I had no self-advocacy ability, i.e., depressed autism disability: (DOC2), (DOC3), etc. By these NM District

Court directed the court completely wrong direction from the beginning. In other words, NM District Court is incompetent for this case. Too much unexpected development too rapidly. I could never overcome these. This is due to severe executive function deficit (ADA3), in particular, cognitive inflexibility and no novel-problem solving skills.

Not only I was completely shocked and upset but I could not adequately comprehend what to do, in particular, comprehension of motions and rules. This was due to severe visual attention deficit (DOC1)(v). Also I do not have any ability to handle these pressure (n85) either, because my information process is intellectual – slow – (DAD2), but not intuitive – quick – (DAD1).

Then it came the problems of US Magistrate Judge Karen Molzen. As in REASON III (3) section 3.1, she refused everything to discuss my disability needs. Although I understand the issue of long delay due to my depressed autism disability, her refusal added persistent and continuous distress when I was suffering emotional or psychological damage for which Defendants are responsible.

Concurrently, Defense Lawyer Mark Jarmie continued emotional abuse. REASON III (3) section 3.2. Altogether my brain never had even one chance to take absolutely clinically necessary rest at all. My brain worked too hard continuously for years. My brain began to slow down a little starting March 2018. In other words, I had to do with this case with severely depressed autism disability with continued emotional abuse thanks to the facts nobody knows autism disability, much less depressed autism disability.

It was until at least 11/13/18 (n86) to begin to regain the regressed ability and skills (n87). The APPLICATION FOR AN EXTENSION OF TIME is the first document I could prepare meaningfully.

REASON III (3): The process of NM District Court and Defense Lawyers was nothing but further emotional traumatization and destabilization of executive function.

Here I need to bring the scandal committed by NM District Court. I must express my sincere apologize to the Court.

1. Albuquerque Courthouse added undue distress repeatedly.

At the beginning of the case, I visited Albuquerque Courthouse a number of times to ask basic questions such as how to file a document, if a document is always public, etc. My questions involves

seemingly unimportant details (autism trait). But whenever I said "*I have a question*," with depressed autism disability, the woman at the front window replied "*I cannot answer a legal question*." But she did not know if my question was legal. This shut down communication and made me further distressed or anxiety, when I was suffering from emotional damages from Defendants already. This is a personal failure of Clerk Matthew J. Dykman to train and supervise her. Anybody must never treated like this. He must take his personal responsibility, even if he has immunity.

On the other hand, my experience with Las Cruces Courthouse has been good and pleasant.

2. Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is unconstitutional for the autism minority, in particular, the depressed autism minority, as pro se litigant in violation to First Amendment right to petition to the Government.

The rule "*the effective and expeditious administration of the business of the courts*" is a question of the standard of courts operations. Even without specific statement, the standard is developed for the normal majority who has essential functionality of brain to represent himself.

However, when an individual with mental ailment appears before any court on his own, the court must make sure that process meets fundamental principles (a) to ensure his First Amendment right to petition to the Government and Fifth Amendment right to due process (federal courts) or Fourteenth Amendment right to due process and equal protection (state courts) are fully protected, and (b) the mission of any court is to serve justice, not merely process any case. For (a), make sure he is capable of doing all three (1) ~ (3) at page 18.

That he has mental ailment means that his mental function may not be at the normal level of functionality. In case of the autism minority, in particular, the depressed autism minority, it has been legally determined his mental (or brain) function is substantially impaired relative to the majority of the population.

In the actual courtroom setting, the autism minority, in particular, the depressed autism minority has three areas which essentially prevent him from participating in proceeding fairly and equitably without accommodation. They are auditory attention, verbal fluency, central coherency. See (OC1)(a), (OC2), (OC3), (DOC1)(a), (DOC2), (DOC3). The court cannot wait until he pleads his needs. This is particularly the case for the depressed autism minority because he lacks such ability completely. The judge must show

his willingness to take some time to discuss about it. Because of the complexity of the autism disability, the judge must never expect it done quickly even if he has significantly insightful knowledge and understanding of the autism disability already. Do never overestimate your background of autism disability. Keep in mind that constitutional principle is materially over-weigh the routines. Also note that autism trait is essentially in conflict with the principle of efficiency (n88). So the Court must find a good balance.

In the instant case, Judges or Defense Lawyers without any understanding of the seriousness of autism disability, in particular, depressed autism disability pushed through the process. The end result has been such that nothing was done meaningfully and I had to suffer from emotional damages, anxiety and persistent or continuous depression, when I had been suffering from the emotional damages attributed to Defendants already. As a matter of fact, NM District Court disregarded my request of such discussion (n89) on 03/03/17 without comment. This is clear disregard of my First Amendment right to petition to the Government. See also REASON IV below.

Since they were so much focused on procedural standard, they disregarded the more important (a) & (b) in the above. They lacked prudence completely: judges and lawyers are expected of very high standard of prudence but Judges and Defense Lawyers did not have prudence at all. They are over confident with their competency on the something they do not know well. Even if I tried to bring their attention with my damaged emotion and psyche, they refused it. They totally lack modesty or humbleness and are extremely arrogant and conceit, and totally unjust because they are Lawyers and Authority. My academic achievement, PhD in theoretical mathematics earned overcoming poverty and undiagnosed autism disability without much support and help with thousand extra hours of efforts, has been trashed by these totally ignorant people. An important purpose of this PETITION is to make them understand such actions and attitude can never acceptable. Instead, they must understand and accept the reality that autism disability, in particular, depressed autism disability is indeed serious mental disability and they do not know it.

Ultimately, the Court must have at least an opportunity to fully discuss the mental disability issues when an individual with mental ailment appears on his own. In some autism cases, it might be appropriate to assign a legal advisor, not an appointment of attorney. As a general fact, it is not as easy as you say to

find someone who can assist pro se litigant with autism disability. In the State of New Mexico, the only such resource is the defendant Disability Right New Mexico, Inc.

Finally, I must add this. Disregarding my disability needs is self-conflict or self-contradiction. As a plaintiff, I am protected by the Americans with Disabilities Act. But the same person as his own attorney has to function as normal, no disability. It is impossible to understand why Judges and Lawyers do not understand this obvious self-conflict or self-contradiction. This is my high school math skills. Why do they not understand? Obviously they have been refusing it whatever reason is.

3. Normal behaviors and actions by Judges and Defense Lawyers were injurious.

All of the following are psychological and emotional abuse by instrumental aggression. This is unique to the autism minority, in particular, the depressed autism minority. Familiarity with Appendix Q is essential here. See also page 8.

3.1. Magistrate Judge disregarded my First Amendment right to petition to the Government and committed systematic emotional abuse without due process right in violation of Fifth Amendment

On 03/03/17 (n90), Magistrate Judge Molzen disregarded my request of discussing my disability needs submitted on 03/01/17 (n91). This was totally unexpected. Clearly, her disregard of this is clearly her disregard of my First Amendment right to petition to the Government and Fifth Amendment right to due process. Since she mentioned her background of autism, this is her deception or fraud. On 07/27/17 (n92), I convinced myself that she does not have any measurable background of autism at all.

She lacked prudence and lack of professionalism. From depressed autism eye, her performance was sloppy. Autism minority can see lots of small details. Depressed autism minority has even more on this. I was suffering from depressive realism hypothesis (n93). Since the autism minority can better function in more structured environment, her style definitely generated additional undue distress. She had been talking as if I had not had any disability at all. I could not understand most of the time, probably 80-90% or more of the time. (DOC1)(a).

She had focused on processing or bureaucracy instead of serving justice: the case had delayed for a long time because of depressed autism disability. REASON III (2). She did not bother to assure my First Amendment right to petition to the Government, even I tried to plead her on both days. Since I had serious

mental illness, I needed her attention. When I finally pleaded I had depression for a long delay (n94), she quickly asked "Are you well enough?" I unconsciously said "Yes." It was under silent pressure and try to accommodate her. But, that was her disregard of my needs of depressed autism disability. Because of (ADA1), (DOC5), I did not have ability to answer this kind of questions promptly (n95). This is another example of people's confusion on my ability because of (ADA3), (AD3) and the major autism disability issue. And I still do not have good ability to answer questions on my thought and feeling promptly, (AD1) (OC5) unless I have an opportunity to prepare for it in my mind. It can never be spontaneous. On 03/03/17, I was barely there with depressed autism disability: severe anxiety and depression. I was quite weak. I did not have much energy, a common symptom of depression. If she were prudent and knowledgeable enough of autism disability, she must have taken more time. But, she refused it. This was the turning point that the case began to disregard completely of equitable and fair participation of mine.

Here are examples of her failures. On 03/03/17, she responded to my statement "*Motion to dismiss in response to my Complaint is an attack on my disability*" (n96) by saying it's the way. Rule 12(b) (6) of the Federal Rules of Civil Procedure. This is an insult, belittling and depressing. I am certain that I posed a legitimate question as I do believe that I was the first person with depressed autism disability, who appeared before her court. Whenever one faces with the autism minority, one must not say this kind of things. An attitude like this is often not proper in order to interact with the autism minority, in particular, the depressed autism minority. It often has an emotional tone of lacking genuineness (OC6) (DOC6). Do intelligently, not just an order.

On 07/27/17, I raised a question if a settlement attempt were fair. I also mentioned about an e-mail about job opening (n97). On both occasions, I lost my words completely to complete my say. (DOC2). These were instance of disability issue, not merely not enough time was given as Chief of Tenth Circuit stated in Appendix O. It was because extreme anxiety and needed intervention, just waiting for several seconds is not enough (n98). But she quickly moved to Defendants (Mark Jarmie) who reported he answered to me all of my requests. But it was not quite true. See the next section. This kind of emotion must not be left in the autism minority. This is one way to get emotional abuse.

Other example of her disregard of my depressed autism disability is this. On 07/27/17, she said

that changes of these deadlines are subject to court approval with good cause. I can understand good cause abstractly instantly, but I did not understand what constitutes good cause. This is due to (OC4) & (DOC4), (n99). Both days, I was subjected to continuous emotional abuse in this way. I could not ask her because I was too weak mentally (DOC2). Other examples are "INITIAL SCHEDULING ORDER" (n100) and "Joint Status Report and Provisional Discovery Plan". Here I did not understand the meaning INITIAL and PROVISIONAL (DOC4). For the latter I prepared for the MEET & CONFER meeting using Southern New York example I found on the internet. But, no help at all because Defense Lawyer Mark Jarmie moved too fast and I was too weak to control the meeting, and added much much more anxiety. Or additional emotional abuse. After Defense Lawyer Mark Jarmie further damaged me, (next section), I was simply too weak to keep up the process adequately. I am certain if Judge Molzen must had been much much more careful or prudent, she should have issued a protective order to Defendants. She failed on these because she does not have necessary background of (depressed) autism disability. She most seriously or outrageously underestimated the seriousness of the disability. I am the victim.

Ultimately, the depressed autism minority does not have essential ability and skills to function as his own ability (n101). Bringing many unfamiliar things like many deadlines all at once (n102) was most seriously harmful, never positive. Ignorant judges and lawyers may insist on these because of the laws or rules. However, prohibiting injurious acts and procedure clearly overrules them.

3.2. Defense Lawyer Mark Jarmie abused me emotionally by instrumental aggression.

I had personal interaction with him from 03/17/17 to 09/12/17. All he contributed was nothing but persistent emotional abuse by instrumental aggression (n103). His is a perfect example that a lawyer's normal behavior can be harmful or injurious to mental health of the autism minority, in particular, the depressed autism minority. Here are examples.

On 03/17/17, he disregarded what I submitted to him (n104) to start to discuss a possible settlement without any comment but reported to the court as answered. He willfully committed deception or fraud on his background of autism – he has no measurable background of autism at all. Then he committed harassment by habitually and unconsciously saying that he did not want to litigate much longer referring to a long delay due to my mental illness and depressed autism disability. I managed to stop him.

I was incapable of bringing that the case was due to his side of injurious and insulting acts. See REASON II. Note that the depressed autism minority does not have self-advocacy ability, Appendix Q.

His handling of the case is completely characterized as token services. All of the meetings with him can be characterized by total lack of genuineness and openness (DOC6). He never had any intention to have genuine meeting toward a meaningful resolution of the case at all. He put a wall so that I could not talk into anything meaningfully and fully. This put me totally undue distress and further damaging my emotion which had been already suffering from the damages due to Defendants' behavior and actions.

Although it is true that he allocated extra time for me but he did not know how to use the extra time meaningfully to resolve the case meaningfully.

On 09/12/17, he first immediately denied my attempt to try to explain him about visual attention deficit (OC1)(v). Then when I asked to suspend the case, he immediately denied it saying that the court had not issued a stay without any opportunity to discuss it at all. The meeting of 09/12/17 ended by his saying "*We would do fairly and you would lose everything.*" All of these examples were serious emotional abuse. By this time, my emotion was already suffering from additional damages sustained by him and Magistrate Judge Molzen regardless their intention or not. These were absolutely too much. (DOC6).

He did not intended to do any genuine discovery at all. He did not have any intention to ask me anything such as deposition. By Document Production 3, I demanded to produce very specific e-mails, e.g., e-mail of 09/26/12 from me to Lee Martinez, together more general demand. But he responded to say that everything is too general. Another example is that the record says I needed multi-intensive services (n105). By Document Production 2, I demanded what was done with respect to multi-intensive services, e.g., list of services provided, duration of each service provided, etc. He disregarded this completely. In this way, he continued to abuse emotionally.

When I showed the e-mail on job opening (n106), he refused to discuss it fully, only token. (DOC6).

Mark Jarmie made it impossible to do meaningful discovery (n107). His desire to do discovery was only token, not legitimate at all. I suffered from increasing more serious persistent anxiety and depression. Keep in mind the autism minority is prone to anxiety and depression (n108). I could not consistently sit at my desk to work on this case. I drove out almost everyday to relieve from extreme distress and anxiety.

With respect to this, District Judge Brack said I did not do diligent efforts. Appendix L. It is totally false. He did not know what to do with this case. I am the victim.

Absolutely nothing was done meaningfully. I was crazy. I was crying in my mind from extreme state of mind: extreme helplessness, extreme hopelessness, extreme pressure, extreme misery, total powerless, extreme overwhelm, just name it (n109). It was too painful to do anything meaningfully. I suffered from unconscious suicide thought (n110). Of course, this had been very inhumane treatment I received from the Defense Lawyers in violation to my human or basic right. Absolutely nobody can requires of me to do anything under such mental and emotional state. This is clear abridgment of my First Amendment right to petition the Government. See (1) ~ (3) at page 19. He had also violated my due process right of Fourteenth Amendment.

Regarding to the fairness in the above, he does not know what to do about it. Fairness is a complex process. He does not have such skills. This also hurt my emotion. (DOC6).

As the head of the legal team of three lawyers for the State Defendants, he has completely wrong understanding of meaning of "*effective communication with respect to autism disability*" but took most horrible attitude to act as if they were expert of autism disability and depressed autism disability. It resulted in the fact that I did not get a copy of their MOTION FOR SUMMARY JUDGMENT until after the case is over because of evidently some mail trouble. This is totally wrong and violation of fundamental rule of court proceeding.

All of the above are total insult and belittling to anybody. I respectfully request the Court its serious consideration of these kind of behavior by lawyers towards vulnerable population like myself. Yes, the autism minority is vulnerable even if he may have appearance of normal competency. See Appendix Q. Lawyers are supposed to be leaders of the society to promote and protect human, basic, civil, and constitutional rights. But Defense Lawyer Mark Jarmie most miserably failed on his fundamental duties and responsibilities. He has absolute duty not to injure to anybody. For that purpose, he must have solid background of autism disability, not mere terminology. He is a violator of basic right of the autism minority.

What Defense Lawyer Mark Jarmie did is more than enough to invalidate the entire process.

Regardless how anybody views the above behavior of Magistrate Judge and Defense Lawyers, it is simply

inhumane. My mental health was seriously damaged by these ignorant people (n111) in addition to the emotional damages sustained by Defendants.

The State of New Mexico brought totally useless lawyers Mark Jarmie, Mark Standridge, and Matthew Bullock who have absolutely no interest in legal autism disability. This is Governor Susana Martinez personal determination that autism disability is not a serious disability because of (AD2) and (DAD2). The DVR operations reflect this. Selecting Ernesto Pacheco as fair hearing office is also reflection of this.

REASON IV: I never had any occasion to discuss my disability needs for 8.5 years: 04/28/10 ~ 11/13/18. This alone was continuous and persistent distress and psychological abuse by instrumental aggression

For Defendants, the very first protocol of any disability vocational rehabilitation is an assessment which includes an informal process to determine functional limitations. 29 CFR 1630.2(o)(3). However, this process did never take place including Fair Hearing process, while I was ready for it all the time (n112). Thus, this had established diminished earning potentials and psychological damages without due process in violation to Fourteenth Amendment. This had also established court case as in REASON II: section 2. For NM District Court, this was to disregard First Amendment right to petition to the Government and Fifth Amendment right without due process. See REASON III (3).

I asked for a hearing by my response (n113). I asked for an oral argument to Tenth Circuit. An important reason for them was about my disability needs. They rejected my requests because of their total ignorance of autism disability and depressed autism disability. Insulting and belittling.

REASON V: Tenth Circuit refused to understand the case correctly and made arbitrary decision.

The ultimate problem is that none of the 20+ Circuit Judges including Chief Circuit Judge know Americans with Disabilities Act. They may be able to recite articles of this law but without any understanding at all. They do not know what they have been doing. They are just processing. They do not

know the meaning of someone's having these legal mental disabilities. In particular, they do not know legal autism disability and legal depressed autism disability at all.

The attitude of Tenth Circuit demonstrated by JUDGMENT AND ORDER (Appendix A) is insulting and belittling. It is typical towards the autism minority. It is to do with naiveness of the autism minority. It is the most common way to punish the autism minority by authoritative individual, such as manager supervising him, because of ignorance of the autism minority, in particular, executive function deficit (AD3) (DAD3).

In this case, Chief Timothy Tymkovich of Tenth Circuit committed corruption. I wrote to Tenth Circuit Executive my complaint against Magistrate Judge Karen Molzen (n114). He was well aware of the matter. In that situation, he must have recused himself from the case. But, instead he took over the case. His behavior is to cover up his failure as the chief. He felt his self-esteem had been threatened. He is insecure. I have strong reservation as to his qualification for the position. Just good at law is most insufficient. His own self-esteem is more important than serving justice. This is his personal marginalization of the autism minority instead of accepting the real truth that he does not know legal autism disability. This is his abuse of his power and authority. If I were him, I would definitely recuse myself as only three are required to have an appellate panel. Per Curiam does not convince me anything. I am smart enough to reject such most dubious attitude by Tenth Circuit. In fact, it is an abridgment of my First Amendment right to petition to the Government. My PETITION FOR REHEARING includes some new information as I began to regain regressed skills and ability since 11/13/18. An opportunity to consider new information was cut in advance because of his corruption.

As it should be clear from the exposition of autism disability, Appendix Q, depression of the autism minority is clearly interrelated with the disability in question. Both autism and depression are independently legal disability. 29 CFR 1630.2(j)(3)(iii), 34 CFR 361.18(c)(2)(ii)(A). This is adequately presented in my OPENING BRIEF at pages 17-19. However, at page 3, Tenth Circuit added one sentence "*He also reports that he suffers from severe depression because of difficulties he has experienced as a result of his autism disorder.*" This means that Tenth Circuit does not have reasonable understanding of the case. Most surprisingly, nobody has ever had any desire to understand the seriousness of autism disability, in

particular, depressed autism disability. Without adequate understanding of the main facts, nobody can argue anything meaningfully. They added this because they had to but no understanding of the relevancy to the case at all.

As a matter of digression, I can point out another example of no understanding by NM District Court is: in Appendix J, *“Defendant Gary Lucas, for being “dishonest” or “misleading” because he recorded Plaintiff’s employment goal as “cashier.”* I found what he recorded this on 11/04/11 as his Case Notes on 03/15/13. When combined with Complaint-Affidavit Part 3, this clearly shows something is seriously wrong. The fact that Judge Brack could not take this as a trigger of dispute is due to his lack of knowledge of autism disability. The language of the autism minority is very literal (n115). This is one area to have miscommunication. The autism minority has limited vocabulary to express emotion, state of mind, and behavior (psychology) and I have spent numerous extra hours to do this petition which is hopefully much better than before (n116). There were absolutely no way I could have done better because depressed of autism disability. Depression is the responsibility of Defendants.

Going back to JUDEMENT AND ORDER (Appendix A), at page 6, it says *“Even so we have some difficulty discerning the issues Mr. Ombe is attempting to raise on appeal.”* This is because Tenth Circuit refused to understand my case. Since the thought system of the autism minority differs from one of the normal majority, Appendix M, it is an absolute must that readers must pay special attention to it. Or it is most misunderstood as a matter of the most common problem of the autism minority. Although OPENING BRIEF is not as well organized as this PETITION, it did raise a question of First Amendment right. But Tenth Circuit disregarded it completely and unjustly. However, this unclarity of the issues raised was expected by any knowledgeable individual of autism. This is precisely (depressed) autism disability.

Alternately, this is because of language barrier directly related to autism disability. The language development of the autism minority differs from the normal majority. Or Tenth Circuit is prejudice because of my complaint against Magistrate Judge Molzen. Who knows?

At pages 6-8, Tenth Circuit argued about procedural standard. What has troubled me for some years is that these Judges and Defense Lawyers do not know what they are arguing. Argument is actually fruitless. This is because they do not know autism disability and depressed autism disability. And autism

disability is never under my personal control. It is a born disability. Depressed autism disability is Defendants' responsibility. REASON II. These procedural rules are subject to constitutional limitations: First Amendment right to petition. Fifth Amendment right to due process. REASON III. This is not a question if the court is liberal or conservative. I have never seen any argument that when applied these procedural standards, in particular, the number of days between the steps, uniformly without any exceptions meets the constitutional mandates. However, these Judges are saying the rules are absolute truth like God rule. It is far from the truth.

"Mr. Ombe colors his complaints with disrespectful language directed at the district court and magistrate judges and other participants in the proceedings below, thus repeating a pattern that is pervasive in the district court record." JUDGMENT AND ORDER, page 7, Appendix A.

This is another example of ignorance of Judges and Defense Lawyers of autism disability. First, understanding and accommodating disability needs are respect towards disabled people. Disregarding disability is gravely serious disrespect. NM District Court disregarded my repeated pleas "***AUTISM SPECTRUM DISORDERS ARE LIFE THREATENING CONDITIONS. THE DISORDER MAKES THE AFFECTED INDIVIDUAL AS DEVELOPMENTALLY DISABLED.***" (n117). Judges and lawyers are equal to disabled people. But, Judges and Defense Lawyers most miserably failed on this.

It was my responses or reactions to those people because I needed their attention. I did not have necessary self-advocacy ability at all (depressed autism disability). I was crazy. I was suffering from extreme state of mind. I was suffering from depressive reality hypothesis (n118). Why do I have to be penalized for the consequence of the total ignorance of these people? I must ask the Court to give most serious consideration to this.

In the same token, too many filings were also consequences of the fact that everybody disregarded my disability needs. My mind was so chaotic and awful under extreme pressure for a long time that there was absolutely no room to do anything meaningfully including studying rules. I was simply trying to save my case. I did have absolutely no idea as to appealability of the case at all.

At page 7, "*The applicability of rules of law is not to be switched on and off according to individual hardship.*" This clearly tells that Tenth Circuit does not know what is talking about. The term "hardship" does not represent the reality accurately. I am talking about (a) the limitation to function as my own

attorney from born disability which is not under my personal control, and (b) the severely damaged functionality. Defendants are responsible for the damages I sustained. The damages regressed my learned skills and ability, which are essential to function as my own attorney (n119).

Ultimate problem is ignorance of Judges and Defense Lawyers. These people processed this case without necessary knowledge and understanding of autism disability, in particular, depressed autism disability. For these people, it is very easy to say these are rules, which are developed for the normal majority unconsciously. What Chief Tykovich said is that I must function normally with my born disability and the necessary ability removed or damaged by Defendants. I must say to Chief Tymkovich: if he had a major accident without his fault, were hospitalized for a long time without any help, and missed the deadlines, do never complain of his loss and take it. To say this is most proper. This is a question of fundamental right everybody has. I am equal to him to maintain my fundamental right. Equality is the foundation of our country.

Again, Tenth Circuit enforces the Americans with Disabilities Act, while it disregards the same principle for pro se litigant. Clear self-conflict or self-contradiction. These people do not know what they have been doing at all.

The problem is that these courts have been making decisions without adequate understanding of autism related facts. In Thompson R2-J School District vs. Luke P. et. al. 540 F.3d 1143(2008), Judge Gorsuch ruled against autistic school children by blindly following precedent. It was further denied by the Court. Luke P. et. al. vs. Thompson R2-J School District, 129 S.Ct. 1356 (2009). The essentially the same case was reversed by Endrew F. et. al. vs. Douglas County School District RE-1, 137 S.Ct. 988 (2017). One of the reasons why autism cases may not be handled well by the courts is because autism disability is complex and still evolving. But, the courts have not understood the facts well. In the instant case at bar, Defense Lawyers and Judges have completely wrong understanding of the core fact. Nobody knows the scientific evidence of impaired communication ability presented as Appendix Q. Yet, they have acted as if they were expert. This has been nightmare. I must ask the Court to stop such practices. Lawyers and judges behave like they are above anybody else. I am also the victim of the system because I suffered from depressed autism disability.

Ultimately, at the district court level, judges and lawyers must be prepared for facing all kind of people including mentally disabled. For this reason, in this case, they need to have measurable background of autism disability. On the other hand, the Court is different because Justices are not expected to face mentally disabled individuals directly, but Clerk must have some: case analysts may need some but not as much as district courts. However, Justices need to understand facts correctly so that correct law and argument are applied. And I am most sure they are ready in this regard.

REASON VI: The whole issue is a question of basic right of the neuro-atypical minority.

When we talk about disability, what do we think of? Despite the fact that the definitions of disability as 29 CFR 1630.2 have been significantly broadened, many people still think of more tangible and obvious disabilities such as wheelchair, blind, deaf etc. The cause of disability needing wheelchair is, for example, one lost his legs. However, the cause of autism disability is essentially different from those of many obvious disabilities. The autism disability is to do with atypical development of central nerve system. This makes the mental function of the autism minority different from one of the normal majority. In particular, the autism thought system is different from the normal thought system, Appendix M.

The development of the autism thought system is the result to compensate deficiencies like Theory of Mind Deficit (AD1), Auditory Attention Deficit (OC1)(a) and more to do with atypical neurological development. On the other hand, (AD2) and (DAD2) give an idea that I am fully capable or mentally competent to many people even judges and lawyers who are supposed to be much much more prudent. In reality, both Defendants and courts have become too bureaucratic and hurting the autism minority, in particular, the depressed autism minority by instrument aggression.

The autism minority is living in the world of the normal majority like the homosexuals living in normal sexuality without being normal or heterosexual.

In other words, the autism minority is like the sexual minority. The homosexuality is to do with genetic and one must accept his sexual orientation. In the same token, autism disability is to do with neurological development, and one must accept his born neurological ability. Certain aspects of deficiencies can be improved by training but the functionality can never been comparable to the majority.

Also improvement or learned skills may be regressed by depression. The autism minority with more successful life has been simply coping with one way or other. Or he is fortunate to be in more supportive environment. One must never assume anything by appearance.

On the other hand, various systems such as court system are developed for the neurological majority in mind whether intentional or not. In this sense, the Court needs to do some accommodation, or at least to have an opportunity to discuss the disability issues, when the autism minority appears before any court. And judges must have insightful knowledge and understanding of autism disability more than just casual understanding of autism disability = social disability. This opportunity of discussing the disability issues cannot be quick or rapid questions because the autism minority does not have ability to respond quickly or rapidly meaningfully. This is absolutely much more important for the depressed autism minority.

Having such an opportunity, which is a little extra step, can make the court system much more efficient. In the instant case, the case could have been resolved satisfactory without appeals. When taking into account that my First Amendment right to petition to the Government and Fifth Amendment right to due process must be fully protected, the extra step makes process indeed more efficient. There is no rule or law that prohibits the extra step. The judges and lawyers have failed to see this kind of soft side of the system.

In short, the whole situation of my case is a clear reflection of the court neglect ion of First Amendment right of pro se litigant with mental disabilities like autism disability to petition to the Government. The petitioner could have done this case much more meaningfully if NM District Court had more meaningful understanding of the disability needs. NM District Court was too rigid and the result generated persistent anxiety and depression whose effects on my cognitive ability lasted until at least 11/13/18. Nobody can do anything that is injurious to anybody. And the autism minority, in particular, the depressed autism minority is vulnerable to seemingly harmless acts or process. Judges and lawyers often say that I must know all the laws. However, in this case, they must accept that injustice has been committed for lack of understanding autism disability, in particular, depressed autism disability, which is also a law. I have been processed but not served. **I am the victim of the ignorance of Judges and Lawyers.**

REASON VII: Closing Argument and Answers to the QUESTIONS PRESENTED

Petitioner is the autism minority (and with autism disability.) His self-advocacy ability is impaired. He does not have innate ability and skills essential to function as his own attorney. The case has been processed by unprofessional, irresponsible people without any interest of legal autism disability at all. Defendants first injured Petitioner and made him depressed. Petitioner suffered from much more serious depressed autism disability. In particular, his learned ability and skills, that makes him function as his own attorney with accommodation, regressed. NM District Court, Defense Lawyers, Tenth Circuit neglected his serious mental disability, depressed autism disability, which caused life-threatening anxiety and depression. They deeply harmed Petitioner's emotion and drove Petitioner extreme state of mind by stressing his brain and having a sense of heightened tension and uneven mental and emotional state for years. Petitioner had no self-advocacy ability. Petitioner has suffered the consequences of Defendants lack of professionalism and negligence as well as irresponsibility. Judges and Lawyers lacked accountability for their unfamiliarity of the autism minority and victimized further vulnerable people, the autism minority, in particular, the depressed autism minority. Regaining regressed ability and skills began on 11/13/18. PETITION FOR REHEARING has some improvement in this regard. This PETITION and APPLICATION FOR AN EXTENSION OF TIME are the only documents Petitioner could prepare meaningfully.

My truly horrible experience with NM Division of Vocational Rehabilitation must never be repeated.

My truly horrible experience with Disability Rights New Mexico, Inc. must never be repeated.

My truly horrible experience with NM District Court must never be repeated.

All of the problems I encountered could have been avoided by a simple act: stop and discuss what needs to be done in order to make process meaningful instead of just processing.

(1) What should have been done with this case?

- a. There should have been a session to discuss my disability needs. This should have been at the beginning of the case and no later than 03/03/17.
- b. As of 03/03/17 with proper justification, the case should have been dismissed WITHOUT PREJUDICE, (this is the same standard as Rule 14.5 of the Court) or

b'. The case should have been suspended on 03/03/17 until I could recover fully from my mental illness, which is the responsibility of Defendants and regressed my essential skills and ability.

(2) Answers to the QUESTIONS PRESENTED.

Answer to Question 1.

The depressed autism minority does not have adequate competency to litigate on his own (pro se) without any help or support. In particular, his pleading ability, more generally self-advocacy ability is disabled. He does not have good case management ability: severe executive function deficit.

Answer to Question 2.

A presiding judge and defense lawyer must have proper knowledge and understanding of autism disability, in particular, depressed autism disability.

Answer to Subsidiary Question to Question 2.

At the absolute minimum, the judge must have a session to discuss disability issues of the autism minority, in particular, the depressed autism minority. Never overestimate your background of autism without first discussing with the affected individual before you. Never confuse intellectual ability as necessary ability to function as his own attorney. It is insufficient.

Answer to Question 3.

The answer is YES. The defendants are liable for the damages.

F. CONCLUSION

The petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,



Hitoshi Ombe, Petitioner Pro Se

05/07/19

Date