19-8067

No. _____

In the
Supreme Court of the United States

Abdul Mohammed,

Petitioner,

v.

DuPage Legal Assistance Foundation et.al,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The questions presented are:

1) whether a Plaintiff with physical and mental disabilities in an Americans with Disabilities Act action need to reveal all his/her medical and mental health records publicly even after Plaintiff has disclosed all the medical and mental health records to the Defendants confidentially;

2) whether the appointment of a counsel is a reasonable accommodation pursuant to the Rehabilitation of 1973, Section 504, Title II and/or Title III of the Americans with Disabilities Act;

3) whether Court of Appeals should have reversed trial court's dismissal of the instant case because Judge Alonso did not inform the Pro Se Plaintiff "what is required to allege disability discrimination" pursuant to *Tate v. SCR Medical Transp.*, 809 F.3d 343, 345 (7th Cir. 2015).;

4) whether all orders entered by the trial court from October 3, 2018, through to the present date are void *ab initio* due to Judge Alonso's fraud upon the court as described below when he ruled Petitioner's Motion for Preliminary Injunction which the Petitioner neither filed nor he submitted the proposed Motion for Preliminary Injunction to Judge Alonso and for denying the Petitioner's request to file a Motion to disqualify him;

5) whether this court should grant Certiorari because the 7th Circuit and United States District Court for the Central District of California has a conflict on the question of whether the appointment of counsel is a reasonable accommodation pursuant to Americans with Disabilities Act and/or the Rehabilitation Act of 1973, Section 504;

6) whether the appointment of an attorney is a reasonable accommodation pursuant to Title III of the Americans with Disabilities Act for Legal Aid Providers such as the Respondent DuPage Legal Assistance Foundation Inc., Prairie State Legal

Services Inc., Legal Aid Chicago Inc., Equip for Equality Inc,, etc.;

7) whether the abuse inflicted by the Respondents upon the Petitioner as described in the operative complaint, as described in the Petitioner's Response to Respondents' Motion to Dismiss in the trial court, as described in the Petitioner's Appellant Brief and as described in his Reply Brief in the 7th Circuit constitutes a violation of the Americans with Disabilities Act;

8) whether this court should treat this case on par with *Gideon v. Wainwright*, 372 U.S. 335 (1963) because this case deals with almost 50 million people with disabilities in the United States and because this case is of great National Importance.

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PETITION FOR WRIT OF CERTIORARI

This case is an ideal vehicle for resolving two questions of first impression and as well as of national importance—one is whether a Plaintiff with physical and mental disabilities in an Americans with Disabilities Act action need to reveal all his/her medical and mental health records publicly even after Plaintiff has disclosed all the medical and mental health records to the Defendants confidentially, the other is whether the appointment of a counsel is a reasonable accommodation pursuant to the Rehabilitation Act of 1973, Section 504, Title II and/or Title III of the Americans with Disabilities Act. In the instant, the Petitioner filed an Americans with Disabilities Act action against the Respondents who happen to be a Legal Aid Organization and Petitioner's attorneys in his divorce case. The Respondents, in this case, were in possession of the Petitioner's medical and mental health records since October of 2016 and the Respondents were aware of the Petitioner's medical and mental health disabilities as a result of the disclosure of the medical and mental health records made by the Petitioner. The Respondents also filed a Motion to suspend the maintenance to his ex-wife on March 12, 2018, on behalf of the Petitioner in Petitioner's divorce case as a result of the Petitioner becoming disabled and due to his subsequent application for disability benefits filed on January 31, 2018, with the Social Security Administration.

OPINIONS BELOW

The unreported opinion of the Court of Appeals

is reproduced at App. 1–3. The decision of the United States District Court for the Northern District of Illinois, Eastern Division is reproduced at App. 4–9.

JURISDICTION

The Court of Appeals issued its opinion on October 22, 2019. On January 22, 2020, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari up to and including March 20, 2020. *See* No. 19A778. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title II of the Americans with Disabilities Act, 42 U.S. Code § 12131, Title III of the Americans with Disabilities Act, 42 U.S. Code § 12182 and the Rehabilitation Act of 1973, Section 504, 29 U.S.C. § 701 et seq.

STATEMENT OF THE CASE

1. The Respondents were representing the Petitioner in his divorce proceedings from September 2016 through to April 12, 2018. The Petitioner filed the instant action for violation of the ADA in the United States District Court for the Northern District of Illinois, Eastern Division. The District dismissed the instant action on January 31, 2019, and the Court of Appeals for the 7th Circuit denied the appeal on October 22, 2019. 7th Circuit ruled that the Petitioner did not specifically plead what kind of mental disabilities he had publicly in his complaint and hence the District Court's dismissal of the instant action was correct. The Petitioner is bewildered at the 7th Circuit's reasoning that the Petitioner should have publicly disclosed his medical and mental health records and he should have pled in his

complaint what kind of mental disabilities he had despite the confidential disclosure of the entire medical and mental health records to the Respondents. The Respondents were aware of the Petitioner's medical and mental health disabilities as a result of the disclosure of the medical and mental health records made by the Petitioner. The Respondents also filed a Motion to suspend the maintenance to his ex-wife on March 12, 2018, on behalf of the Petitioner in Petitioner's divorce case as a result of the Petitioner becoming disabled and due to his subsequent application for disability benefits filed on January 31, 2018, with the Social Security Administration. The Petitioner's mental health records are protected pursuant to Confidentiality under the Illinois Mental Health and Developmental Disabilities Confidentiality Act (IMHDDCA). The IMHDDCA is highly specific. "Confidential Communication" or "Communication" means any communication made by a recipient or other person to a therapist or to in the presence of other persons during or in connection with providing mental health or developmental disabilities services to a recipient. Communication even includes information that indicates that a person is a recipient. 740 ILCS 110/2. This definition includes the confidentiality and privilege of patient identity information. *People v. Doe,* 211 Ill.App.3d 962, 570 N.E.2d 733 (1st Dist. 1991). The Petitioner asserts pursuant to Subsection (a) (1) of Section 10 of the IMHDDCA (740 ILCS 110/10);

a) That the public disclosure of his Mental Health Records to the Respondents or their attorneys

is not relevant or probative in the instant case, as Subsection (a)(1) of Section 10 of the IMHDDCA (740 ILCS 110/10) says that no record or communication between a therapist and patient is deemed "relevant" except the fact of treatment, the cost of services, and the ultimate diagnosis unless the party seeking disclosure of the communication clearly establishes in the trial court a "compelling need" for production of the documents or Mental Health Records, or if the proceeding is a criminal trial in which insanity is claimed as a defense and;

1) The Petitioner has already informed the Respondents in the instant case about the fact of his treatment within the meaning of Subsection (a)(1) of Section 10 of the IMHDDCA (740 ILCS 110/10);
2) The Petitioner has already informed the Respondents in the instant case that Petitioner's services are covered by Medicaid from the State of Illinois and that covers the fact about his cost of services within the meaning of Subsection (a)(1) of Section 10 of the IMHDDCA (740 ILCS 110/10);
3) The Petitioner has already informed the Respondents in the instant case about the fact of his diagnosis within the meaning of Subsection (a)(1) of Section 10 of the IMHDDCA (740 ILCS 110/10);
4) That the public disclosure of his Mental Health Records to the Respondents or their attorneys are unduly prejudicial and highly inflammatory;

b) That the public disclosure of his Mental Health Records to the Respondents or their attorneys is not more important to the "interests of substantial justice" in the instant case than protection from injury to the therapist-recipient relationship or injury to the recipient (Petitioner);

c) That the Court has not determined that satisfactory evidence which might exist in the instant case, is not demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence as required by and pursuant to Subsection (a)(1) of Section 10 of the IMHDDCA (740 ILCS 110/10) and such evidence of the facts sought to be established in the instant case is the Respondent's possession of medical and mental health records of the Petitioner.

d) In *Renzi v. Morrison,* an Appellate Court held that a therapist, who voluntarily disclosed a psychiatric patient's confidential information (communications) while acting as a witness for a patient's spouse in the divorce proceeding, could be held liable for damages. *Renzi v. Morrison,* 249 Ill.App.3d 5 (Ill. 1993). Illinois law stipulates that a witness' testimony when relevant is privileged information at judicial proceedings. (*Libco Corp. v. Adams* (1982), 100 Ill.App.3d 314, 55 Ill. Dec. 805, 426 N.E.2d 1130.) In the instant case except for the fact of Petitioner's treatment, the cost of services and the ultimate diagnosis; everything else is privileged and cannot be publicly disclosed to the Respondents or their attorneys. Further, the IMHDDCA provides strong reasons for maintaining confidentiality in Mental Health

Records. Presumably, the patient/recipient in a psychotherapeutic treatment reveals the most private and secret aspects of his mind and soul. To casually allow public disclosure of such would desecrate any notion of an individual's right to privacy. At the same time, confidentiality is essential to the treatment process itself, which can be truly effective only when there is complete candor and revelation by the patient. Finally, confidentiality provides proper assurances and inducement for persons who need treatment to seek it. Further, the Section 110/10 of The Mental Health Confidentiality Act, 740 ILCS 110/1 et seq., in pertinent part, provides as follows: Except as provided herein, in any [court] or administrative ... proceeding, ... a recipient [of mental health services], and a therapist on behalf and in the interest of a recipient, has the privilege to refuse to disclose and to prevent the disclosure of the recipient's records or communications. Further, the Petitioner and his Therapists have not consented or agreed to the disclosure of the Petitioner's Mental Health Records to anyone other than the Social Security Administration. Further, before a disclosure is made under subsection (a) of Section 10 of the IMHDDCA (740 ILCS 110/10), any party to the proceeding or another interested person may request an In-camera review of the record of communication to be disclosed. The court ... conducting the proceeding may hold an In-camera review on its own motion ... the court ... may prevent disclosure or limit disclosure to the extent that other admissible evidence is sufficient to establish the facts in issue. The court ... may

enter such order as may be necessary to protect the confidentiality, privacy, and safety of the recipient ... Further Subsection (b) of Section 3 of the IMHDDCA (740 ILCS 110/3) says, "A therapist is not required to but may, to the extent he determines it necessary and appropriate, keep personal notes regarding a recipient. Such personal notes are the work product and personal property of the therapist and shall not be subject to discovery in any judicial, administrative and/or legislative proceeding or any proceeding preliminary thereto". In the instant case, the Petitioner's Mental Health Records consists of personal notes from his therapists/doctors and such personal notes are the work product and personal property of the Petitioner's therapists/doctors, which cannot be subject to discovery in any judicial, administrative or legislative proceeding or any proceeding preliminary thereto pursuant to Subsection (b) of Section 3 of the IMHDDCA (740 ILCS 110/3). Further Subsection (c) of Section 5 of the IMHDDCA (740 ILCS 110/5) says, "Only information relevant to the purpose for which disclosure is sought may be disclosed. Blanket consent to the disclosure of unspecified information shall not be valid. Advance consent may be valid only if the nature of the information to be disclosed is specified in detail and the duration of the consent is indicated. Consent may be revoked in writing at any time; any such revocation shall have no effect on disclosures made prior thereto".

2. Further, the 7th Circuit ruled in *Tate v. SCR Medical Transp.*, 809 F.3d 343, 345 (7th Cir. 2015) "The Judge should not only have complied

with the rule; he should have told the plaintiff what is required to allege disability discrimination". In the instant case, Judge Alonso did not inform the Pro Se Plaintiff "what is required to allege disability discrimination".

3. For centuries, impartiality has been a defining feature of the Anglo-American Judge's role in the administration of justice. The reason is clear: in a constitutional order grounded in the rule of law, it is imperative that Judges make decisions according to law, unclouded by personal bias or conflicts of interest. Accordingly, upon ascending the bench, every federal judge takes an oath to "faithfully and impartially discharge and perform all the duties" of judicial office; 28 U.S.C. § 453. and the Due Process Clause of the Fourteenth Amendment to the United States Constitution has been construed to guarantee litigants the right to a "neutral and detached," or impartial, udge. *Ward v. Village of Monroeville*, 409 U.S. 57 (1972). Moreover, in a democratic republic in which the legitimacy of government depends on the consent and approval of the governed, public confidence in the administration of justice is indispensable. It is not enough that judges *be* impartial; the public must *perceive* them to be so. The Code of Conduct for United States Judges, therefore, admonishes and directs Judges to "act at all times in a manner that promotes public confidence and faith in the integrity and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety in all activities." As per Code of Conduct for United States Judges, Canon 2A, when the impartiality of a Judge is in doubt, the appropriate remedy is to disqualify that Judge from hearing further proceedings in the matter.

In *Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009). In the aftermath of *Caperton*, the United States House Judiciary Committee held a hearing on the state of judicial disqualification in the federal system. *Hearing on Examining the State of Judicial Recusals after Caperton v. A.T. Massey: Hearing before the Subcommittee on Courts and Competition Policy of the House Committee on the Judiciary*, 111th United States Congress. (2009), a case dealing & concerning disqualification of a state supreme court justice, the United States Supreme Court reaffirmed that litigants have a due process right to an impartial Judge and that under circumstances in which judicial bias was probable, due process required disqualification. The United States Supreme Court noted, however, that disqualification rules may be and often are more rigorous than the Due Process Clause requires. So it is with disqualification requirements for federal Judges, which require disqualification when a judge's impartiality "might reasonably be questioned." 28 U.S.C. § 455(a). In the instant case on October 3, 2018, Judge Alonso denied Petitioner's Motion to file Motion for Preliminary Injunction and Exhibits under Seal pursuant to the FRCP 26(c) and entered an Order that the Petitioner shall not file further motions until this court rules on the motion to dismiss and Judge Alonso also referred to the Motion for Preliminary Injunction as frivolous, which the Petitioner neither filed nor he presented the proposed Motion for Preliminary Injunction to Judge Alonso and Judge Alonso does not know how the Petitioner's Motion for Preliminary Injunction looks like. Further, the Petitioner did not want Judge Alonso to hear this case anymore

and he sent an email to Nicole Fratto, Courtroom Deputy of Judge Alonso, on January 23, 2019, at 3:31 PM in which he said, "I would like to inform the Judge that I don't want my case to be heard by him anymore. I cannot file any Motions until the Judge rules on Defendant's Motion to Dismiss as per the Court Order entered on October 3, 2018. Please let me know ASAP". The Petitioner received an email from Nicole Fratto on January 24, 2019, at 9:40 AM in which she said, "Thanks for your message. I am unable to offer you legal advice, you can contact the Hibbler Memorial Pro Se Assistance Program at 312-435-5691". The Petitioner called Judge Alonso's Chamber to know how he can file a Motion to be in front of the Judge because Judge Alonso entered Order that he shall not file further motions until this court rules on the motion to dismiss. The Petitioner wanted to file a Motion to have his case heard by another Judge as Judge Alonso had denied him the opportunity to introduce documentary evidence of the violation of Title III of the Americans with Disabilities Act by the Defendants. Petitioner called Judge Alonso's Chamber and he was informed to talk to Nicole Fratto and Petitioner called Judge Alonso's Chambers few times to talk to Nicole Fratto and he left several voice messages for Nicole Fratto on 23rd and 24th January 2019 but the Petitioner was not able to talk to Nicole Fratto and she also did not return his calls. On January 24, 2019, Petitioner received a call from United States Marshall Service that Judge Alonso's Chambers has filed a complaint against him that the Petitioner is calling the chambers repeatedly. The Petitioner called Nicole Fratto only on the direction of the

staff in Judge Alonso's Chambers. Judge Alonso has not provided any explanation, why did he file a complaint against the Petitioner with United States Marshall Service. Then on 31st January 2019, Judge Alonso dismissed the instant case without allowing the Petitioner to file a Motion to disqualify him. In the instant case, Judge Alonso has violated numerous canons of the Code of Judicial Conduct and as result of his violations of canons of the Code of Judicial Conduct, Judge Alonso was automatically disqualified when he referred Petitioner's Motion for Preliminary Injunction as frivolous, which the Petitioner neither filed nor he presented the proposed Motion for Preliminary Injunction to the Judge. Then Judge Alonso was again automatically disqualified when Judge Alonso did not grant permission to the Petitioner, to file a Motion to Disqualify the Judge (Judge Alonso) on 24th January 2019. Then Judge Alonso was again automatically disqualified when he filed a complaint against the Petitioner with United States Marshall Service. The two principal statutes governing judicial disqualification are 28 U.S.C. § 455, "Disqualification of justice, judge or magistrate judge", and 28 U.S.C. § 144, "Bias or prejudice of judge". While the two sections provide overlapping remedies for bias, there are some important differences. First, 28 U.S.C § 144 aims exclusively at *actual* bias or prejudice, whereas 28 U.S.C § 455 deals not only with actual bias and other forms of partiality but also with the *appearance* of partiality. Second, 28 U.S.C § 144 is triggered by a party's affidavit, whereas 28 U.S.C § 455 may be invoked in motion by a party or *sua sponte* by the judge. Third, 28 U.S.C § 144 applies only to district

judges, while 28 U.S.C § 455 covers "any justice, judge, or magistrate of the United States." Judge Alonso with his conduct as described above which includes but not limited to violations of laws, rules, and procedures; and prejudice against the Petitioner; has violated the following canons of the code of judicial conduct:

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary: An independent and honorable judiciary is indispensable to justice in our society. A Judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities:

(A) *Respect for Law.* A Judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) *Outside Influence.* A Judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.

Canon 2A: An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a Judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other

inappropriate workplace behavior. A Judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A Judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently: The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

(A) *Adjudicative Responsibilities.*

(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the

judge's control, including lawyers to the extent consistent with their role in the adversary process.

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.

(B) *Administrative Responsibilities.*

(4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A Judge should not retaliate against those who report misconduct. A Judge should hold court personnel under the Judge's direction to similar standards.

(C) *Disqualification.*

(1) A Judge shall disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) The judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

Canon 3A (3): The duty to hear all proceedings

fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate. The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the Judge's activities, including the discharge of the Judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comments or behavior that could reasonably be interpreted as harassment, prejudice or bias.

Further Judge Alonso's conduct when he did not allow the Petitioner to file a Motion to disqualify him and then dismissed the case is a fraud upon the court. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court". In *Bulloch v. the United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the Judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted." "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that

are presented for adjudication." *Kenner v. C.I.R.*, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated, "a decision produced by fraud upon the court is not, in essence, a decision at all, and never becomes final". "Fraud upon the court" makes void the orders and judgments of that court. It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The *People of the State of Illinois v. Fred E. Sterling,* 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); *Allen F. Moore v. Stanley F. Sievers*, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re *Village of Willowbrook*, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); *Dunham v. Dunham*, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); *Skelly Oil Co. v. Universal Oil Products Co.,* 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); *Thomas Stasel v. The American Home Security Corporation,* 362 Ill. 350; 199 N.E. 798 (1935). Under Illinois and Federal law, when any officer of the court has committed "fraud upon the court", the orders and judgment of that court are void, of no legal force or effect.

Hence in the instant case, all orders entered by Judge Alonso from 3rd October 2018 to 31st January 2019, are void *ab initio* due to Judge Alonso's misconduct and fraud upon the court as described above which rendered him automatically disqualified on 3rd .October 2018 and on 24th January 2019. The Petitioner is requesting that orders from 3rd October 2018 to

31st January 2019 in the Case # 18-cv-2503 be vacated as void *ab initio* due to misconduct and fraud upon the court of Judge Alonso and his automatic disqualification as described above.

REASONS FOR GRANTING CERTIORARI

First, the Trial Court's and Court of Appeals' ruling that the Petitioner needs to publicly disclose his Mental Health Records even though the Petitioner had disclosed his Mental Health Records confidentially to the Respondents is totally erroneous because the Petitioner's Mental Health Records are protected by IMHDDCA and the Petitioner's Medical Records are protected by HIPAA. Hence this Court needs to grant the Certiorari for the first reason.

Second, Judge Alonso did not inform the Pro Se Petitioner "what is required to allege disability discrimination" pursuant to *Tate v. SCR Medical Transp.*, 809 F.3d 343, 345 (7th Cir. 2015). Hence this Court needs to grant the Certiorari for the second reason also.

Third, the Certiorari should be granted because Judge Alonso referred to the Petitioner's Motion for Preliminary Injunction as frivolous, which the Petitioner neither filed nor he presented the proposed Motion for Preliminary Injunction to Judge Alonso and Judge Alonso does not know how the Petitioner's Motion for Preliminary Injunction looks like and after that, he did not disqualify himself from this case and for fraud upon the court committed by Judge Alonso when he did not allow the Petitioner to file a Motion to disqualify him from this case and hence all orders entered by the trial court from October 3, 2018, to the present date are void *ab initio*.

Fourth, there is a conflict of opinion between 7th

Circuit and United States District Court for the Central District of California on the question of whether the appointment of counsel is a reasonable accommodation pursuant to Americans with Disabilities Act and/or the Rehabilitation Act of 1973, Section 504. In *Franco-Gonzalez v. Holder*, Case No. CV-10-02211 DMG (DTBx) (C.D. Cal. Oct. 29, 2014), United States District Court for the Central District of California ruled that appointment of counsel is a reasonable accommodation pursuant to the Rehabilitation Act of 1973, Section 504 whereas the 7th Circuit has ruled in *Linda Reed v, the State of Illinois,* No. 19-1164 (7th Cir. 2020) that the court did not deny access to the court to Linda Reed when the court denied Linda Reed's request for appointment of counsel as a reasonable accommodation pursuant to the Title II of the Americans with Disabilities Act and/or Rehabilitation Act of 1973, Section 504. In the instant case, neither the District Court nor the 7th addressed the issue of appointment of counsel as a reasonable accommodation pursuant to the Americans with Disabilities Act and/or the Rehabilitation Act of 1973, Section 504 despite the Petitioner's raising of that issue in both the District Court and the 7th Circuit. Case Law for Counsel as a reasonable accommodation in civil cases pursuant to the Rehabilitation Act of 1973, Section 504 is *Franco-Gonzalez v. Holder*; which is the Settled Case Law from United States District Court, Central District of California. In *Franco-Gonzalez* the court held that the United States Department of Homeland Security violated the Rehabilitation Act of 1973, Section 504; when the United States Department of Homeland Security failed to provide reasonable accommodation. i.e., a Qualified Representative in all aspects of the immigration proceedings; to people with disabilities as defined by the Rehabilitation Act of 1973, Section

504. In *Franco-Gonzalez* the court entered an Order that the United States Department of Homeland Security must provide the "Qualified Individuals" with a "Qualified Representative" within 60 days from the date of the Order which was entered on April 23, 2013. In *Franco-Gonzalez* even though 3 out of 21 class members were being represented by counsel, the court still ruled that not only the class members who currently do not have a counsel but also the class members who have counsel are entitled to an attorney at the public expense as a reasonable accommodation for qualified individuals with disabilities and the court entered an Order to appoint counsel for the class members at the public expense and the court also entered an Order to reimburse the counsels of the 3 class members who were retained before the Order was entered to provide counsel at public expense on April 23, 2013. *Franco-Gonzalez,* was purely a civil court proceeding and only approximately 3 class members were in custody and rest of the class members were not in custody or were never taken into custody and 4 days after filing of the case in *Franco-Gonzalez,* the class members who were in custody were released on March 31, 2010. Further after filing of the *Franco-Gonzalez* one class member was granted relief and seven class members have had their removal proceedings terminated but the court still entered Order that counsel be appointed to all 21 class members as a reasonable accommodation pursuant to the Rehabilitation Act of 1973, Section 504. Financial Application for reasonable accommodation for qualified individuals is not a requirement under the Americans with Disabilities Act and charging for reasonable accommodation is specifically prohibited under the Americans with Disabilities Act and/or Rehabilitation Act of 1973, Section 504. The

provisions and protections of the Rehabilitation Act of 1973, Section 504 and the Americans with Disabilities Act are the same. In *Franco-Gonzalez* the court ruled, "Plaintiffs first assert that the Rehabilitation Act requires legal representation as a reasonable accommodation for individuals who are not competent to represent themselves by virtue of their mental disabilities. For the reasons discussed below, the court finds that Section 504 of the Rehabilitation Act does require the appointment of a Qualified Representative as a reasonable accommodation, and accordingly grants Plaintiffs' motion as to Count Four". In *Franco-Gonzalez,* the court ruled, "Appointment of a Qualified Representative is a reasonable accommodation and does not constitute a "Fundamental Alteration" of the Immigration Court System". The requested accommodation does not impose an undue financial burden". Defendants also reiterate their position that Plaintiffs' requested relief would place Sub-Class One members in a significantly better position than nondisabled, detained aliens because providing legal representation "would do much more than remove a barrier to access; it would expand the scope of benefits provided to aliens in immigration court." This is not the first time Defendants have raised this argument. *See Franco-Gonzalez, et al. v. Holder,* 767 F. Supp. 2d 1034, 1056 (C.D. Cal. 2010). In a new twist to the argument, however, Defendants now assert that, because Plaintiffs are not requesting an exception to existing rules, but instead attempting to create an entirely new system of benefits in immigration court, the decisions on which the Court previously relied are not applicable to the present case, citing *US Airways, Inc. v. Barnett,* 535 U.S. 391, 122 S. Ct. 1516, 152 L. Ed. 2d 589 (2002) and *Giebeler v. M B Associates,* 343

F.3d 1143 (9th Cir. 2003). Defendants urge the Court to rely instead on a 2nd Circuit decision, *Rodriguez v. City of New York,* 197 F.3d 611 (2d Cir. 1999). In *Rodriguez,* the Second Circuit addressed whether the district court erred when it found that New York's failure to include safety monitoring as an independent task among personal-care services violated, *inter alia,* Section 504 of the Rehabilitation Act. *Id.* at 614. The plaintiffs in that case argued that safety monitoring was "comparable" to the personal-care services already provided by New York. *Id.* Finding that safety monitoring was not "comparable" to personal-care services, the Second Circuit determined that "New York cannot have unlawfully discriminated against appellees by denying a benefit that it provides to no one." Defendants mischaracterize the nature of the benefit the Plaintiffs seek. In *Rodriguez,* the plaintiffs sought a unique, independent benefit that was not available to any other individuals under the State program. *Rodriguez,* 197 F.3d at 618. In contrast, the Plaintiffs here seek only to meaningfully participate in their removal proceedings. The opportunity to "examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government" is available to all individuals in immigration proceedings, but is beyond Plaintiffs' reach as a result of their mental incompetency.Thus, the provision of a Qualified Representative is merely the *means* by which Plaintiffs may exercise the same benefits as other non-disabled individuals, and not the benefit itself. In this sense, and contrary to Defendants' assertions, this case is more similar to *American Council for Blind v. Paulson,* 525 F.3d 1256. In *Paulson,* the D.C. Circuit explained, "[w]here the plaintiffs identify an obstacle that

impedes their access to a government program or benefit, they likely have established that they lack meaningful access to the program or benefit." *Id.* At 1267. In that case, by failing to provide a means by which the visually impaired could easily utilize United States currency, the Government effectively deprived Plaintiffs of "meaningful access" to a benefit available to the general public, namely, the ability to engage in economic activity. *Id.* at 1269. In this case, those who are in full possession of their faculties already have the ability to participate in immigration proceedings or, at least, have the wherewithal to obtain access. Aspiring to a system that allows the mentally incompetent to similarly participate in the removal proceedings against them is not tantamount to "creating an entirely new system of benefits in immigration." Defendants can hardly argue that it is audacious to require a Qualified Representative for mentally incompetent individuals in immigration proceedings when the INA itself has pronounced that some form of procedural safeguards are required for those who are mentally incompetent. *See* 8 U.S.C. § 1229a(b)(3) ("If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien."). By the same token, the appointment of a Qualified Representative for Sub-Class One members serves only to level the playing field by allowing them to meaningfully access the hearing process. Indeed, the accommodation is just as reasonable as and no more burdensome than EOIR's requirement that interpreters be provided to those who cannot understand English. *See El Rescate Legal Services Inc. v. Executive Office for Immigration Review*, 959 F.2d 742, 752 (9th Cir. 1991) (upholding BIA's policy, articulated in *Matter of Exilus*, 18 I&N

Dec. 276 (BIA 1982), of requiring interpretation of statements made and questions asked of the alien and the alien's responses, and giving Immigration Judges discretion to require more interpretation where "essential to his ability to assist in the presentation of his case").For the reasons discussed herein and in the Court's previous orders, in this case, the Court finds that providing Sub-Class One members with a Qualified Representative is a reasonable accommodation. Defendants have failed to raise any triable issue of fact in support of their contention that the accommodation poses a fundamental alteration of the immigration court system. *See Paulson*, 525 F.3d at 1267". Hence this Court needs to grant the Certiorari for this reason also.

Fifth, this Court should also decide on the question of whether the appointment of an attorney is a reasonable accommodation pursuant to Title III of the ADA for Legal Aid Providers such as DuPage Legal Assistance Foundation, Prairie State Legal Services, Legal Aid Chicago, Equip for Equality, etc. Hence this Court needs to grant the Certiorari for the fifth reason also.

Sixth, this court should also decide whether the abuse inflicted by the Respondents upon the Petitioner as described in the operative complaint, as described in the Petitioner's Response to Respondent' Motion to Dismiss in the trial court, as described in the Petitioner's Appellant Brief and as described in his Reply Brief in the 7th Circuit constitutes a violation of the Title III of the Americans with Disabilities Act.

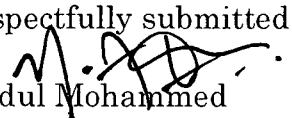
Seventh, this court should treat this case on par with *Gideon v. Wainwright*, 372 U.S. 335 (1963) because this case deals with almost 50 million people with disabilities in the United States and this case is

of great National Importance. Hence this Court needs to grant the Certiorari for the seventh reason also. On June 4, 1962, this court accepted the letter written with a pencil on a piece of paper by Clarence Gideon from prison as a valid Petition and his Writ for Certiorari was granted and the rest is history. Pursuant to *Gideon v Wainwright,* in face of the Petitioner's Pro Se status, his numerous disabilities, the public importance of this case and because this court's mission is search for truth, affording the right to Petition the government, affording due process and equal protection guarantees of the Constitution of the United States, the Petitioner is requesting that this court waive any shortcomings the Petitioner might have in conforming to the Supreme Court Rules and/or pleading deficiencies and shove justice down the throats of the Respondents and their attorneys the hard way. This court's decision, in this case, is going to affect almost 50 million people with disabilities in the United States.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,



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