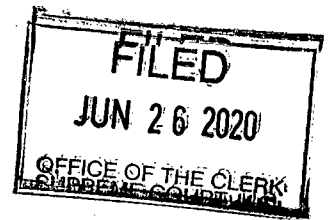


ORIGINAL



No. 19-8174

IN THE SUPREME COURT OF THE UNITED STATES

CAMILLE T. MATA,
Petitioner

v.

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
MASSACHUSETTS APPEALS COURT

PETITION FOR REHEARING

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DATE: June 26, 2020

CIVIL CASE

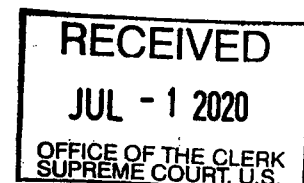


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1. PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Camille Tuason (“T.”) Mata respectfully petitions for rehearing of this Court’s decision to deny *certiorari* issued on June 8, 2020. Mata v. Massachusetts Commission Against Discrimination, No. 19-8174 (2020). Camille T. Mata moves this Court to grant this petition for rehearing and consider this case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court’s decision in this case.

2. REASONS FOR GRANTING REHEARING

In the original *certiorari* petition, Camille T. Mata (“Petitioner”) did not include the federal questions pertinent to the conflicts in the Massachusetts courts’ decisions and the due process standards of laws governing judicial review availability and the granting of motion. The courts’ decisions resulted in Petitioner’s judicial review complaint being dismissed on baseless grounds. Due process standards undergird court proceedings and other statutory obligations. U.S. Const. 5th Amendment, applied in *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).¹ The

¹ In which this Court affirmed the fundamental principle of due process, which is that an individual has the right to be heard before the state can deprive that individual of a private interest. *Id.* at 23.

facts of the case laid out in Petitioner's original petition provided factual evidence showing that the Massachusetts courts departed from the due process standards governing judicial review availability and motions to dismiss. Camille T. Mata was denied her statutory right to judicial review, which sustained Defendant state agency's Lack of Probable Cause (LOPC) disposition in her race-gender discrimination complaint against MIT-DUSP. 5 U.S.C. §702. The Massachusetts courts' binding decisions are final, 28 U.S.C §1291, and unless corrected may be applied to future, parallel cases for persuasive value to influence litigation outcomes. *Ashcroft v. Iqbal*, 556 U.S. ____ (2009).² The Massachusetts courts' errors are so substantial and egregious, and the consequences of failing to correct them imminent, that rehearing is merited. Otherwise, this Court risks losing the public's trust in its commitment to correcting conflicts in constitutional law when the circumstances of a case will it to and, heretofore, fails to remove the Motion to Dismiss precluding Camille T. Mata from obtaining judicial review in the Massachusetts Superior Court. Therefore, Petitioner seeks clarity on the federal questions below.

² citing *Behrens v. Pelletier*, 516 U.S. 299, 305 (1996) on p. 8 of *Ashcroft v. Iqbal*, supra. in which this Court determined that rights "asserted in the action" are "collateral" to rights claimed and are "too important to be denied review." *Behrens*, supra.

2.1. If the reasoning Defendant state agency gave in a Motion to Dismiss Petitioner's Complaint for Judicial Review does not substantiate the grounds, does the Superior Court's granting of Motion conflict with due process standards governing said motion standards under Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6)?

Defendant state agency gave two grounds for Motion to Dismiss. The first was "lack of subject matter jurisdiction." Fed. R. Civ. P. 12(b)(1). The Petitioner need only show that the court has authority over the dispute, that there is a concrete and particular injury committed within the jurisdiction of the courts, that there was a causal connection between the injury and the conduct, and that a favorable decision would redress the injury. *Lujan v. Defenders of Wildlife* 504 U.S. 555 (1992). Petitioner had provided evidentiary material, which explained the nature of her complaint, showed that she had been denied admission to the MIT-DUSP PhD program, showed her academic and scholarly achievements between 2004 and 2013 to contest the weight of credit Defendant state agency gave to MIT-DUSP's reason of relatively low GRE test scores, and thus partially demonstrated how Defendant state agency did not apply the standards of review for determining higher education discrimination well-established in landmark cases decided by

this Court.³ Add. C93-105. This material was sufficient to docket the judicial review complaint⁴ at the Superior Court. Furthermore, this same judicial review complaint showed that she had requested the reversal of Defendant state agency's LOPC final disposition as a remedy. The Massachusetts courts have general jurisdiction to review and remedy criminal and civil constitutional disputes and has the authority to remedy conflicts in interpretation of constitutional law. U.S. Const. Art. III §§1,2. Defendant state agency's reasons for Motion to Dismiss pertained to administrative exhaustion and to primary jurisdiction,

³ Petitioner appended copies of her three graduate testamurs and the curriculum vita, chronicling her verifiable publications, the Investigator's LOPC disposition, Petitioner's appeal of Investigator's disposition, and the Investigative Commissioner's upholding of the LOPC disposition sufficiently enabled the Massachusetts courts to reasonably infer that Petitioner's plead is true. *Ashcroft v. Iqbal*, supra.

⁴ Petitioner provided sufficient material to docket the judicial review complaint. However, she could not complete the judicial review complaint proceedings at the Superior Court because Defendant state agency issued its Motion to Dismiss within thirty days of docketing Petitioner's judicial review complaint. See, App. D11-D15, E16-E23, F24, G25-G30, H31-H42 in Pet. for Cert. 19-8174. This Motion precluded her from sending all of the documents supporting her allegations and cut short the proceedings of the Superior Court. Thus, the submitted material evidence satisfied only the docketing requirements of the Superior Court, but the documents selected by Petitioner showed consistency with the pleading standard. The detriment to Petitioner of curtailing the submission phase is significant because she was not able to include all of the supportive, material evidence in Defendant state agency's possession. According to procedural standards governing the submission of materials and responses following the docketing of a complaint for judicial review, plaintiffs are given ninety days to request and submit all relevant documents. Add. D106. Thus, the supportive material evidence submitted with the judicial review complaint was sufficient only to satisfy the pleading standard for docketing the judicial review complaint, which is that "the allegations contained therein should be taken as true without regard to the pleader's ability to prove the same." *Provence v. Palm Beach Taverns*, 676 So. 2d. 1022 (1996).

neither of which substantiated the ground of “lack of subject matter jurisdiction.” App. E16-E23 in Pet. for Cert. 19-8174.

The second ground was Petitioner’s “failure to state a claim upon which remedy can be made.” Fed. R. Civ. P. 12(b)(6). Defendant state agency did not provide a reason to support this ground. However, Petitioner disputed its legitimacy by showing where in the judicial review complaint the remedy desired and the reasons for requesting the remedy were written. (See, “Count I: Judicial Review,” App. D11-D15 in Pet. for Cert. 19-8174). On both grounds, Petitioner had met the evidentiary standard for over-ruling Motion. *Aschroft v. Iqbal*, supra, in which this Court affirmed that Petitioner must amplify a claim by referencing its factual context. *Id.*, p. 22.

2.2. Is there a heightened standard to the administrative exhaustion requirement that makes judicial review available under 5 U.S.C. 702: “Right of Review”?

Petitioner sought judicial review from the Superior Court because Defendant state agency’s disposition was arbitrary and capricious, not based on the standards of review well-established in *stare decisis* guiding higher education discrimination decisions.⁵ One’s right to

⁵ *Bakke v. Regents of University of California*, 438 U.S. 265 (1978), in which this Court ruled that academic record be given priority; *Grutter v. Bollinger*, 539 U.S. 306 (2003), in which this Court ruled that other factors be taken into account and applicants be

judicial review is governed by 5 U.S.C. §702, which states that “A person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to a judicial review thereof.” 5 U.S.C. §704 then goes on to state “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.”⁶ Because courts have equitable jurisdiction over discrimination disputes, Defendant state agency cannot claim to have primary jurisdiction over the verdict on Petitioner’s race-gender discrimination complaint against MIT-DUSP. Civil Rights Act of 1964, Title VI, 2000d et seq. and the Education Amendments Act of 1972, Title IX, 20 U.S.C. A§1681 et seq. The judicial review law serves a special purpose; it is intended to review state agency decisions suspected of legal standards violations, including standards of review applied to discrimination complaints. *Pan Am. Petroleum Corp. v. Superior Court*

evaluated on an individual basis; *McConnell Douglas Corp. v. Green*, 411 U.S. (1973) to measure disparate treatment and to identify pretext; *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036 (2016) for the use of supportive data.

⁶ Massachusetts law, Mass. G. L. c.151B §9, allows a complainant to transfer a case from a state agency to the courts. See Add. A003, par. 2, Pet. for Cert. 19-8174. However, this applies only to active cases, not cases that have been exhausted at the state agency. See, *Green v. Wyman-Gordon Co.*, 422 Mass. 551 (1996), Note 8. (Add. C93-105). Petitioner had no more appeals beyond the first within Defendant state agency.

of Del., 366 U.S. 656 (1961) in which this Court ruled the courts did not have jurisdiction over the dispute because it involved a contract and not a federal question.

In the original petition, Camille T. Mata had raised the three prongs enabling judicial review: (1) existence of a dispute, U.S. Const. Art. III §2; (2) within the courts' authority, 28 U.S.C. §1331; administrative exhaustion. 5 U.S.C. §704. To explain administrative exhaustion, this Court ruled in the landmark case, *Bennett v. Spear*, 520 U.S. 154 (1997) that final action represents “ ‘the consummation’ of the agency’s decision-making process,” *Id.*, at 78,⁷ “from which ‘legal consequences will flow.’ ”⁸ Defendant state agency, to the contrary, argued that administrative exhaustion is reached only when the Full Commission renders its “final order.” (See, Add. F24, Pet. for Cert. 19-8174). There is no such language under statute 5 U.S.C. §704 or any reference in *Bennett v. Spear*, *supra* that in order for an action to be final, commission bodies or boards of directories must render the decision, and there is no precedent that affirms such a determination.

⁷ Quoted in Cole, Jared P., “An Introduction to Judicial Review of Federal Agency Action,” *Congressional Research Services*, Dec. 7, 2016, p. 11.

⁸ *Ibid.*, quoting *Port of Bos. Marine Terminal Assn. v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970).

2.3. Is U.S. Const. Art. III §§ 1, 2 constitutive of a fair proceeding obligation mandating the SJC to correct errors of the Appeals Court before it disposes of her judicial review complaint?

US Const. Art. III §§1, 2 gives the Mass. SJC the power to adjudicate disputes arising under the State Constitution and the authority to review and remedy conflicts in interpretation of statutes and related procedures thereof. The Superior Court and, subsequently, Appeals Court granted Defendant state agency's Motion to Dismiss, but the basis for doing so conflicted with the due process standards governing judicial review availability and motion to dismiss discussed herein (2.1. and 2.2.). See, Add. E16-E23, Pet. For Cert. 19-8174. Petitioner's judicial review complaint also met the pleading standard under Fed. R. Civ. P. 8(a), See Add. D11-D15, Pet. for Cert. 19-8174), which "governs the pleading standard 'in all civil actions and proceedings in the U.S. district courts,' " pursuant to Fed. R. Civ. P. 1.⁹ The appended material showing entitlement to relief met the plausibility standard applied by this Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and the amplified-to-make-a-reasonable-inference standard in *Ashcroft v. Iqbal*, *supra*. On January 3, 2020, the Mass. SJC denied Petitioner further appellate review, which gave

⁹ Citing *Ashcroft v. Iqbal*, *supra*, p. 21.

preclusive effect to her judicial review complaint. See, Add. C007-C008, Pet. for Cert. 19-8174. Its decision departed from its own *stare decisis*, *Christo v. Boyle Insurance Agency, Inc.*, 402 Mass. 815 (1988), also indicating a departure from 28 U.S.C. 455. See, Add. I43-I45, Pet. for Cert. 19-8174.

2.4. This Court should not decide on the procedural due process requirements in this case without full briefing and argument.

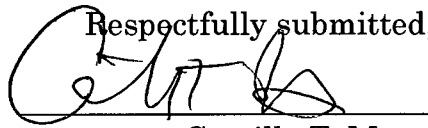
The U.S. Bill of Rights grants any person the right to put a check on the powers of authorities and hold such authorities accountable to the law. It also imposes limitations on government in judicial proceedings. *Marbury v. Madison*, 5 U.S. 137 (1803). Due process is among these rights. Procedural due process mandates that government follow fair procedures before depriving an individual/citizen of his/her statutory rights.¹⁰ When it seeks to do so, the government must grant such person an opportunity to be heard by an impartial adjudicator. To wit, persons are assured of the right to a decision based solely on the testimony and evidence given. *Marchant v. Pennsylvania, R.R.* 153 U.S. 380, 386 (1894). In *Matthews v. Eldridge*, 424 U.S. 319 (1976), this Court

¹⁰ Glicksman, Robert L.; Levy, Richard E. (2010). *Administrative Law: Agency Action in Legal Context*. 9781599416106: Foundation Press, (cited in Wikipedia, 20 May 2019, at 18:56 (UTC)).

decided what three factors must be balanced in order to determine what process is due, Add. 32-33, Pet. for Cert. 19-8174, but it has yet to apply this case “to another, often ignored facet of due process—the requirement for impartial adjudicators,” quoting Bartnett, Kent H. (2019).¹¹

CONCLUSION

For the foregoing reasons and because the risks of not remedying the constitutional conflicts are so substantial to Petitioner’s right to judicial review and to the public’s trust in the judiciary, Camille T. Mata respectfully requests this Court to grant the petition for rehearing and order full hearing and briefing on the arguments of this case in order to remove Defendant state agency’s Motion to Dismiss and move forward with judicial review. If these conflicts are not addressed by this Court, Petitioner will never be able to obtain judicial review of the standards of review applied to the facts of her race-gender discrimination complaint against MIT-DUSP.

Respectfully submitted,

Camille T. Mata,
Pro Se

¹¹ Bartnett, Kent H. “Some Kind of Hearing Officer,” 94 Wash. L. Rev. 515 (2019).

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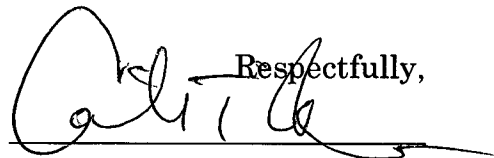
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RULE 44 CERTIFICATE

As required by Supreme Court Rule 44.2, I certify that the Petition for Rehearing is limited to "intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented," and that the Petition is presented in good faith and not for delay.

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

Executed on June 26, 2020.

 Respectfully,

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