

No. 20-1793

IN THE
Supreme Court of the United States

AURA MOODY on behalf of her minor child, JM,

Petitioner,
JULIAN MOODY,

Plaintiff,

v.

NATIONAL FOOTBALL LEAGUE,

Respondent.

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

REPLY BRIEF FOR PETITIONER

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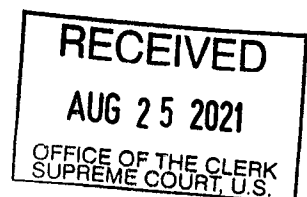


TABLE OF CONTENTS

| | Page |
|--|------|
| TABLE OF AUTHORITIES | ii |
| STATEMENT OF JURISDICTION | 1 |
| STATEMENT OF THE CASE..... | 1 |
| PROCEDURAL BACKGROUND..... | 2 |
| REASONS FOR GRANTING THE PETITION | 3 |
| 1. The Petition Should Be Granted Because Petitioner Is a Party With Standing And The Court Has Jurisdiction | 3 |
| 2. The Complaint Asserts Claims for Julian And Aura For Violation Of Section 504, ADA, XIV Amendment And Other Statutes-Regulations | 5 |
| 3. Petitioner Has Legal Rights And Interests Of Her Own That May Plausibly Be Said To Be Affected By The Lower Courts' Judgments | 7 |
| 4. Petitioner's Constitutional Rights Were Violated By Respondent Under The Due Process And Equal Protection Clauses | 9 |
| 5. Petitioner Has Standing To Reinstate Her Own Plausible Claims For Constitutional Violations | 10 |
| 6. Petitioner Has Representation And Standing To Pursue Claims On Behalf Of Julian And Herself..... | 11 |
| 7. The Judgment On Julian's Case Should Be Vacated And Returned To The Calendar To Proceed On The Merits | 11 |
| 8. Respondent's Allegation That It Inadvertently Failed To Update The Notice Of Appearance Is Not Credible..... | 11 |
| CONCLUSION..... | 12 |

TABLE OF AUTHORITIES

Cases

| | |
|--|---------|
| <i>Anderson News LLC v. am Media Inc.</i> , 680 F.3d 162 (2d Cir. 2012), <i>cert denied</i> , 133 S. Ct. 846 (2013) | 5 |
| <i>Ashcroft v. Iqbal</i> , 556 U.S. 652 (2009) | 5, 7, 8 |
| <i>Cent. States Se. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC</i> , 433 F.3d 181 (2d Cir. 2005) | 7 |
| <i>Cleveland v. Caplaw Enters.</i> , 448 F. 3d 518 (2d Cir. 2006) | 8 |
| <i>Conley v. Gibson</i> , 355 U.S. 41 (1957) | 4, 8 |
| <i>Crispim v. Athanson</i> , 275 F. Supp. 2d 240 (D. Conn. 2003) | 7 |
| <i>Disabled in Action of Metropolitan New York v. Trump Intern. Hotel and Tower</i> , 01 civ. 5518 (MBM), 2003 WL 1751785 (S.D.N.Y. 2003) | 7 |
| <i>Fitzgerald v. Barnstable School Committee</i> , 555 U.S. 246 (2009) | 8 |
| <i>Franklin v. Gwinnett County Public Schools</i> , 503 U.S. 60 (1992) | 4 |
| <i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972) | 9 |
| <i>Hagar v. Reclamation Dist.</i> , 111 U.S. 701 (1884) | 9 |
| <i>Heckman v. Town of Hempstead</i> , 568 Fed. App. 41 (2d Cir. 2014) | 6 |
| <i>Hispanic Soc’y of the N.Y. City Police Dep’t v. N.Y. City Police Dep’t</i> , 806 F.2d 1147 (2d Cir. 1986) | 4 |
| <i>J.S. ex rel. N.S. v. Attica Cent. Sch.</i> , 386 F.3d 107 (2d Cir. 2004) | 8 |

| | |
|--|------|
| <i>LeBlanc v. Cleveland</i> , 198 F.3d 353 (2d Cir. 1999) | 8, 9 |
| <i>Linda R.S. v. Richard D.</i> , 410 U.S. 614 (1973) | 10 |
| <i>Nechis v. Oxford Health Plans, Inc.</i> , 421 F.3d 96 (2d Cir. 2005) | 8 |
| <i>Neitzke v. Williams</i> , 109 S. Ct. 1827 (1989) | 4, 8 |
| <i>NML Capital, Ltd. v. Republic of Argentina</i> , 727 F.3d 230 (2d Cir.2013) | 4 |
| <i>Reyes v. Fairfield Properties</i> , 661 F. Supp. 2d 249 (E.D.N.Y. 2009) | 9 |
| <i>Rothstein v. UBS AG</i> , 708 F.2d 82 (2d Cir. 2013) | 3 |
| <i>Simon v. Eastern Kentucky Welfare Rights Organization</i> , 426 U.S. 26 (1976) | 10 |
| <i>Sira v. Morton</i> , 380 F.3d 57 (2d Cir. 2004) | 8 |
| <i>Steel Co. v. Citizens for a better Environment</i> , 523 U.S. 83 (1998) | 9 |
| <i>The Civic Assoc. of the Deaf of New York City, Inc. v. Giuliani</i> , 915 F. Supp. 622 (S.D.N.Y. 1990) | 6 |
| <i>Valley Forge Christian College v. Americans United for Separation of Church and State</i> , 454 U.S. 464 (1982) | 4 |
| <i>Winkelman v. Parma City Sch. Dist.</i> , 500 U.S. 516 (2007) | 7 |

Constitution and Statutes

| | |
|------------------------------|----------|
| U.S. Const. amend. V | 9 |
| U.S. Const. amend. XIV | 8, 9, 11 |

STATEMENT OF JURISDICTION

The Petition for Writ of Certiorari should be granted because this Court has jurisdiction and Petitioner has standing to pursue an appeal based on constitutional rights violations. The facts and evidence firmly establish that Petitioner has standing to raise the Questions Presented for Review. Petitioner is a party of record in the litigation, has identified a legal interest of her own that can plausibly be said to be affected by the lower Courts' judgments.

STATEMENT OF THE CASE

The Petition arises from an appeal by Petitioner. On February 2, 2015, Petitioner brought a lawsuit against Respondent as a result of an arbitrary decision, wherein Julian (**a then 16 year old insulin-dependent diabetic**) was deprived of his right to represent the New York Jets in a National Tournament held in July 2012 in Indianapolis on the basis of his disability, in violation of Section 504 of the Rehabilitation Act, the American with Disabilities Act, the XIV Amendment and other statutes-regulations.

The Original Complaint asserts claims pertaining to both Julian and Aura. **Docket Entry No. 1.** On July 7, 2015, the Original Complaint was amended to substitute Julian as the sole Plaintiff. **Docket Entry No. 12.** Instead of adding Julian's name and other parties, Petitioner's name was illegally removed from the caption of the case although she has her own plausible claims against Respondent, as asserted in "**Paragraph 18**" of the Original Complaint. Petitioner was not served with a Motion to Substitute Parties and/or Transfer of Interest, together with a

notice of hearing, as required by FRCP 25 and Local Rules. On January 6, 2016, Julian reached an agreement with Respondent and settled this case for \$1,000.00 and a ticket to watch a football game, despite irregularities of the mediation. **Docket Entry No. 21.** On August 12, 2016, Counsel for both parties signed and filed a Stipulation, behind Petitioner's back, resulting in the dismissal of the case. **Docket Entry No. 22.** Petitioner opposed to the paltry settlement by addressing letters to the Court, unsuccessfully. **Docket Entries No. 21,23,24.**

Following previous Court proceedings, on February 24, 2020, Petitioner filed a Motion to Vacate the Judgment, Introduce New Evidence and Reopen the Case ("Motion to Vacate the Judgment") with the District Court, which was denied on March 11, 2020. **Docket Entry No. 40.** On May 29, 2020, Petitioner filed a Motion to Amend the Caption of the Case, Add Parties, Supplement the Pleadings, Compel the Disclosure-Production of Documents and Relief from Judgment-Order ("Motion for Leave to Amend") with the Second Circuit, which was denied on October 5, 2020. Panel Rehearing was denied on January 21, 2021. **Docket Entries No. 15,30,38,41,42,46,47,50.** The instant Petition was filed in the Supreme Court on June 18, 2021 to challenge the constitutionality of the procedures used by the lower Courts when rendering their decisions. Respondent's Brief in Opposition was filed on July 23, 2021. A conference is scheduled for September 27, 2021.

PROCEDURAL BACKGROUND

Petitioner assumes this Court's familiarity with the underlying facts, evidence, procedural history and issues on appeal.

REASONS FOR GRANTING THE PETITION

The appeal is not frivolous or malicious. Aura and Julian have viable causes of action that should have been legally submitted to a jury for adjudication on the merits. Accordingly, their rights and interests are affected by the lower Courts' Orders. They failed to follow procedural mandate requirements, overlooked controlling principles of law, misapprehended the facts, ignored the evidence, disregarded the Power of Attorney bestowed upon Petitioner by Julian, denied oral argument-panel rehearing and failed to demand Respondent's compliance with FRCP, FRAP and Local Rules. This Court should vacate the lower Courts' judgements, in the interest of justice.

1. The Petition Should Be Granted Because Petitioner Is a Party With Standing And The Court Has Jurisdiction

Petitioner is a party who has identified a legal interest of her own (different from Julian's) and is bound by the lower Courts' judgments. There are two Plaintiffs of record in this action. Although Julian is the primary victim, Aura is a direct victim who has been damaged as a result of Respondent's actions and is entitled to relief. **As parent-guardian, Petitioner was not given notice of Respondent's adverse action against Julian. Petitioner has been anguished-emotionally distressed and invested time and money.**

A prerequisite to asserting a claim in any action is that a party must have standing. *Rothstein v. UBS AG*, 708 F.2d 82, 90 (2d Cir. 2013). To do so, plaintiff must demonstrate that: 1) she has personally suffered some actual or threatened injury as a result of putatively illegal conduct of defendant; 2) the injury can be

fairly traced to the challenged action; and 3) the injury is likely to be redressed by a favorable decision. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). The Court will “accept the truth of the well-pleaded factual allegations in the Complaint.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Neitzke v. Williams*, 109 S. Ct. 1827, 1832 (1989); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992). Only a party of “record in a lawsuit has standing to appeal from a judgment of the district court.” *Hispanic Soc’y of N.Y.C. Police Dep’t*, 806 F.2d 1147, 1152 (2d Cir. 1986). “Parties of record include the original parties and those who have become parties by intervention, substitution, or third-party practice.” Exception to this rule may allow non-parties to have standing “where the non-party is bound by the judgment and where the non-party has an interest plausibly affected by the judgment.” *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 239 (2d Cir. 2013).

When Petitioner retained Counsel and commenced this action, it was clearly established that Julian and his entire family have suffered. In addition to representing and pursuing claims on Julian’s behalf, Petitioner was to be included as a party of interest with her own claims against Respondent, as asserted in “**Paragraph 18**” of the Original Complaint and “**Paragraph 22**” of the Amended Complaint. **Docket Entries No. 1, 12.** Although the District Court ordered the amendment of the Original Complaint, **there is no documentation in the record proving that Petitioner consented to the removal of her name and/or rescinded her rights as a Plaintiff and that Julian consented and/or agreed**

to such removal. They did not sign a Stipulation of Dismissal, were not notified that Petitioner had ceased to be a party to the suit and were not served with the Amended Complaint. Procedurally, they have a right to notice and approval of the actions taken. **In the absence of the above mentioned documents, it was wrong for the Court to amend the Complaint.** When Petitioner learned about the removal and, prior to the Court issuing the final judgment, she attempted to have her name restored but was ignored. **Pt.App.12-31.** Subsequent appeals were denied by the Circuit Court. As prayed in her Motions, Petitioner should be allowed to amend the caption of the case to assume her rightful place as a Plaintiff, supplement the pleadings, add other parties, compel the disclosure-production of documents and introduce new evidence. Insomuch, Julian's case should be reopened for a fair and impartial trial before an unprejudiced jury.

2. The Complaint Asserts Claims for Julian And Aura For Violation Of Section 504, ADA, XIV Amendment And Other Statutes-Regulations

The Complaint states a plausible cause of action for constitutional violations. Julian and Aura were discriminated against by Respondent. Their claims are worthy. **FRCP 8** requires that a complaint include facts giving rise to a plausible entitlement to relief. According to *Ashcroft v. Iqbal*, 556 U.S. 652, 678 (2009), a claim has facial 'plausibility' when the plaintiff pleads 'factual contents that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Anderson News LLC v. am Media Inc.*, 680 F3d. 162, 185 (2d Cir. 2012), *cert denied* 133 S. Ct. 846 (2013).

A prima facie claim for a violation of **Section 504** requires a plaintiff to demonstrate that plaintiff: (1) has a covered disability; (2) was “otherwise qualified” for the benefit that has been denied; (3) has been denied benefits “solely by reason” of plaintiff’s disability, in other words, with a discriminatory motive; and (4) that the benefit is part of a program or activity receiving financial assistance. *The Civic Assoc. of the Deaf of New York City, Inc. v. Giuliani*, 915 F. Supp. 622, 638 (S.D.N.Y., 1990). Establishing discriminatory motive requires that facts be alleged to support an inference that the individual(s) making the alleged discriminatory decision knew or believed that the plaintiff was disabled. *Heckman v. Town of Hempstead*, 568 Fed. App. 41, 44-45 (2d Cir. 2014). Respondent knew about Julian’s disability, as verified by documents maintained-located in its file. **Appellant Appendix,130-133**. The Complaint alleges facts satisfying all 4 prongs of this test. Julian has a recognized disability known by Respondent. He was entitled to the benefit based on his team’s winning record. Respondent harbored discriminatory intent by replacing him for a less qualified player. The stadium in which the Tournament was played and Program are places of public accommodation.

The **ADA** prohibits private entities owning, leasing, leasing to, or operating public accommodations from discriminating against disabled persons by denying them “full and equal enjoyment of [their] goods, services, facilities, privileges, advantages, or accommodations.” **42U.S.C.§12182** prohibits discrimination by public accommodations on the basis of disability. Title III requires private entities that own or operate public accommodations to make reasonable modifications to

their policies, practices, and procedures when modifications are necessary to allow disabled persons to fully and equally enjoy offered services, advantages and privileges. *Disabled in Action of Metropolitan New York v. Trump Intern. Hotel and Tower*, 01 civ. 5518 (MBM), 2003 WL 1751785 at, *6 (S.D.N.Y. 2003). The Complaint also alleges that Respondent is responsible for the HSPD Coaches' actions. A claim satisfies the plausibility test where plaintiff pleads factual content that permits the court to draw the reasonable inference that defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Petitioner has met this standard. Respondent is a recipient of federal assistance as defined by **Section 504** and other statutes-regulations. **Extended Use of Building Contract between the NFL and DOE** is attached to the Amended Complaint as Exhibit "A". This unrefuted evidence raises issues of material facts and discredits Respondent's position in this matter.

3. Petitioner Has Legal Rights And Interests Of Her Own That May Plausibly Be Said To Be Affected By The Lower Courts' Judgments

The District Court issued a judgment that disposes of claims with respect to Julian via settlement but failed to address the claims of Aura. Subsequent Motions by Petitioner were erroneously denied, requiring vacatur by this Court.

Under **IDEA**, a parent may assert claims on her own behalf in federal court, based upon both procedural violations of the Act and the substantive denial of a "free appropriate public education" to their children. *Cent. States Se. Areas Health & Welfare Fund v. Merck-Medco Managed Care, LLC*, 433 F.3d 181 (2d Cir. 2005); *Citing Winkelman v. Parma City Sch. Dist.*, 500 U.S. 516 (2007).

Section 1983 also provides remedy for Constitutional violations. *Crispim v. Athanson*, 275 F. Supp. 2d 240, 244 (D. Conn. 2003). The Supreme Court ruled that the victim, in addition to seeking money damages from the school and school officials based on their violation of Title IX, may also seek money damages for violations on their rights under the Equal Protection Clause of the XIV Amendment. *Fitzgerald v. Barnstable School Committee*, 555 U.S. 246 (2009).

When denying a motion pursuant to **FRCP 60**, courts must accept as true all well-pleaded facts in the complaint, and view the allegations in the light more favorable to the plaintiff. *Cleveland v. Caplaw Enters.*, 448 F. 3d 518, 521 (2d Cir. 2006); *Nechis v. Oxford Health Plans, Inc.*, 421 F.3d 96, 100 (2d Cir. 2005). Petitioner has alleged a plausible set of facts sufficient to state a claim and is entitled to relief. The Court will “accept the truth of the well-pleaded factual allegations in the Complaint.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Neitzke v. Williams*, 109 S. Ct. 1827, 1832 (1989); *Ashcroft v. Iqbal*, 556, U.S. 662, 678 (2009).

In deciding a motion, Courts are required to resolve questions regarding jurisdictional facts in dispute. *J.S. ex rel. N.S. v. Attica Cent. Sch.*, 386 F.3d 107, 110 (2d Cir. 2004); *LeBlanc v. Cleveland*, 198 F.3d 353, 356 (2d Cir. 1999). To do so, courts may properly consider documents that are relied upon in the Complaint, other evidence outside of the pleadings, such as affidavits, and matters of public record for which the court may take judicial notice, judicial admissions contained in legal pleadings filed by a party. *Sira v. Morton*, 380 F.3d 57, 67 (2d Cir. 2004);

LeBlanc v. Cleveland, 198 F.3d 353, 356 (2d Cir. 1999); *Reyes v. Fairfield Properties*, 661 F. Supp. 2d 249, 255 n. 1 (E.D.N.Y. 2009). Before deciding a case on the merits, a court is required to resolve the factual disputes and establish that it has federal constitutional jurisdiction, including a determination that plaintiff has Article III standing. *Steel Co. v. Citizens for a better Environment*, 523 U.S. 83, 101 (1998).

4. Petitioner's Constitutional Rights Were Violated By Respondent Under The Due Process And Equal Protection Clauses

Julian was a minor when the incident occurred. Aura is a Black Hispanic woman. Respondent failed to provide Petitioner with notice and a rational basis for the action taken against Julian. Petitioner would have been treated different if non-minority.

Under the Fifth and Fourteenth Amendments, neither the federal nor state governments may deprive any person “of life, liberty, or property without due process of law. The **Due Process Clause** stands for the proposition that “one who has been denied process due to one has been constitutionally deprived of their due process.” The **Equal Protection Clause** requires that “similarly situated people be treated in the same manner.” To set forth a claim pursuant to **Section 1983**, plaintiff must plead that the defendants violated statutory or constitutional rights. The Due Process Clause is meant to ensure that the procedures by which laws are applied are evenhanded to prevent arbitrary exercise of power. *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884). The Due Process and Equal Protection Clauses are also meant to minimize substantially unfair or mistaken deprivation of one's protected interests. *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

5. Petitioner Has Standing To Reinstate Her Own Plausible Claims For Constitutional Violations

Petitioner has not ceased to be a party with standing. She never rescinded her rights as a Plaintiff nor sought voluntary dismissal. Respondent acknowledged that Petitioner is a party to this suit. **Appellee Brief, 13-14 under Docket No. 16-4315.**

The issue of standing presupposes that a person has an actual stake in the outcome of the case. For a person to show that they have standing, they must show that the following 3 components can be met; (a) injury; (b) causation; and (c) redressability. *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 39-44 (1976); *Linda R.S. v. Richard D.*, 410 U.S. 614, 616-18 (1973). (a) The injury element can be met if the individual can show that has been or will be directly and personally injured by the action taken. The injury was Julian's unjustified exclusion from the Tournament without parental notification. (b) The causation element can be met if a connection can be shown between the alleged injury and the wrongful action. Respondent's action against Julian also resulted in the violation of Petitioner's due process and equal protection rights, creating a direct causal connection, which is traceable. (c) The redressability component can be met if one can show that a favorable decision by the Court on behalf of the person bringing the suit would redress or relieve the injury. Petitioner made efforts to redress the situation amicably by reaching out to agencies and individuals, including the DOJ, OCR, NFL and Attorney General. Petitioner was forced to sue to redress the wrongdoing that caused them to be aggrieved.

Petitioner has met all of the elements of standing as outlined here, and due to the fact that she is in the zone of interests protected by the XIV Amendment and other statutes-regulations, she has the proper standing to reinstate and file her individual Complaint and has expressed the type of injury the Court can remedy.

6. Petitioner Has Representation And Standing To Pursue Claims On Behalf Of Julian And Herself

Petitioner has representative capacity to pursue claims on Julian's behalf and herself. Julian provided Petitioner with a durable Power of Attorney and has not revoked it. The District Court erred by disregarding the Power of Attorney and allowing Petitioner's exclusion during the mediation-settlement.

7. The Judgment On Julian's Case Should Be Vacated And Returned To The Calendar To Proceed On The Merits

The District Court departed from the essential requirements of the law when Julian's case was settled. Petitioner believes Julian was duped into signing an unfair settlement, warranting a declaration of mistrial. Judge Block failed to afford Julian time to reconsider the settlement.

8. Respondent's Allegation That It Inadvertently Failed To Update The Notice Of Appearance Is Not Credible

Respondent alleges failure to update the Notice of Appearance because the case was disposed and Counsel changed personnel. **BIO.9.** It is inconceivable that a prestigious law firm unintentionally failed to update the Notice of Appearance. Assuming that it was updated with the Court, Petitioner has not been served.

There has been a consistent pattern of arrogance, non-compliance and disregard of legal protocols by Respondent. For instance, Supreme Court Rules

require that all documents to be filed in this Court be served on opposing parties or their Counsel. Acknowledgment and Notice of Appearance have not been served. Respondent did not file and serve a Notice of Appearance and Brief under Docket No. 18-393.

CONCLUSION

For the forgoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: August 23, 2021
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