No. 20-7004

IN THE SUPREME COURT OF THE

UNITED STATES

Appeals Court No. 2019-P-1133

CAMILLE T. MATA,
Petitioner,

v.

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION,
Respondent.

On Petition for a Writ of Certiorari to the
Appeals Court of the Commonwealth of Massachusetts

PETITION FOR WRIT OF CERTIORARI

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DATED: December 31, 2020

FEDERAL QUESTIONS PRESENTED FOR REVIEW

1. Can the Massachusetts Appeals Court deny Petitioner judicial review of Respondent state agency's lack of probable cause ("LOPC") disposition on a constitutionally-protected complaint, Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d *et seq*. and the Education Amendments Act of 1972, Title IX 20 U.S.C. A§1681 *et seq*., when the material evidence shows court jurisdiction over state agency dispositions?

2. Can the Massachusetts Supreme Judicial Court ("Mass. SJC") decline to resolve the Appeals Court's departure from procedural due process regulations governing judicial review availability under the Administrative Procedure Act (APA), 5 U.S.C. §§701 *et seq*. and from *stare decisis* in *Christo v. Boyle Insurance Agency, Inc*., 402 Mass. 815 (1988) and *Bennett v. Spear*, 520 U.S. 154 (1997)?

PARTIES INVOLVED

Camille Tuason ("T.") Mata is a Filipina-American (female), who applied to the PhD program at the University of Massachusetts, Department of Landscape Architecture and Regional Planning ("UMASS-LARP"). She is the Petitioner in the case at bar, the Applicant in the Massachusetts Supreme Judicial Court the Appellant-Plaintiff in the Massachusetts Appeals Court, and the Complainant in the Massachusetts Superior Court.

The Massachusetts Commission Against Discrimination ("MCAD") is the state agency responsible for investigating discrimination complaints specifically for low-income and poor individuals residing in Massachusetts. It is the Respondent in the case at bar and in the Massachusetts Supreme Judicial Court, the Defendant-Appellee in the Massachusetts Appeals Court, and the Defendant in the Massachusetts Superior Court.

HISTORY OF LEGAL PROCEEDINGS

Mata v. Massachusetts Commission Against Discrimination, Supreme Judicial Court of the Commonwealth, Docket No. FAR-27548. Judgements entered on July 27, 2020 and on October 2, 2020.

Mata v. Massachusetts Commission Against Discrimination, Massachusetts Appeals Court, Docket No. 2019-P-1133. Judgement entered on May 20, 2020.

Mata v. Massachusetts Commission Against Discrimination, Massachusetts Superior Court, Docket No. 1878cv00079. Judgement entered on January 28, 2019.

Mata v. University of Massachusetts, Department of Landscape Architecture and Regional Planning, Massachusetts Commission Against Discrimination, Docket No. 16SED02522. Investigative Commissioner entered disposition on September 28, 2018.

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INTRODUCTION

This present action asks whether (1) the Massachusetts Appeals Court can deny Petitioner judicial review of Respondent state agency's Lack of Probable Cause ("LOPC") disposition on a constitutionally protected complaint, Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d *et seq.* and the Education Amendments Act of 1972, Title IX 20 U.S.C. A§1681 *et seq.*, when the material evidence shows Superior Court jurisdiction over state agency dispositions; and questions whether (2) the Massachusetts Supreme Judicial Court ("Mass. SJC") can decline to resolve the Appeals Court's departure from procedural due process regulations governing judicial review availability under the Administrative Procedure Act (APA), 5 U.S.C. §§701 *et seq.* and from *stare decisis* in *Christo v. Boyle Insurance Agency, Inc.*, 402 Mass. 815 (1988) and *Bennett v. Spear*, 520 U.S. 154 (1997).

Such departures stem from judicial errors in procedural and statutory interpretations of judicial review, which resulted in an outcome that conflicts with this Court's opinion regarding judicial review availability in *Bennett*, supra and that regarding evidentiary standards for motions to dismiss in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Atlantic Bell Co., v. Twombly*, 550 U.S. 544 (2007). Such conflicts implicate the Massachusetts Appeals Court to be in violation of the equal protection guarantee of the Due Process Clause of the Fifth and Fourteenth Amendment of the U.S. Constitution. When the Mass. SJC denied further appellate review, it failed to fulfill its superintendent duty under Article III Section 2.

OPINIONS BELOW

The Massachusetts Supreme Judicial Court denied further appellate review and reconsideration. The decisions are set forth in App. 006 and 007. The Massachusetts Appeals Court upheld Motion to Dismiss. The Opinion is unpublished and set forth in App. 001-003. The Massachusetts Superior Court of Franklin County granted Motion to

Dismiss and denied Judicial Review. The Opinion is unpublished and set forth in App. 004-005.

JURISDICTION

The Mass. SJC entered a judgement for the Application for Further Review on July 27, 2020 and for the Motion to Reconsider on October 2, 2020. No opinions for the denial of further review or reconsideration were given. This Court's jurisdiction is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. V Amendment, Equal Protection of the Law under the Due Process Clause (1791).

"No person shall be . . . deprived of life, liberty, or property, without due process of law."

U.S. Const. XIV Amendment, Sec. 1. (1868)

"All persons born or naturalized in the United States . . . are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. Legal Background

When the Massachusetts Superior and Appeals courts granted Respondent state agency's Motion to Dismiss the Petitioner's Complaint for Judicial Review on her race-gender discrimination collateral claim against the University of Massachusetts Department of Landscape Architecture and Regional Planning, and when the Mass. SJC denied

further review of the lower courts' opinions to defy precedent in *Christo v. Boyle Insurance Agency, Inc.*, 402 Mass. 815 (1988) and a federal precedent, *Bennett v. Spear*, 520 U.S. 154 (1997), the courts stripped Petitioner of her fundamental, statutory right of judicial review, 5 U.S.C. §701, *et seq.*[1], a statute that empowers citizens/ individuals to challenge the legality (*i.e.* in accordance with the law) of decisions, decision-making, and administrative procedures of state agencies. In denying thereof, the Massachusetts courts in fact declared that they have no authority to review the decision of a state agency despite the existence of a statute in the Constitution allowing for judicial review. This ruling directly contradicts the Fourteenth Amendment and the Fifth Amendment of the U.S. Constitution.[2]

Due process of law under U.S. Const. Amendment V and XIV safeguards all persons/citizens against violations of their fundamental rights. Both laws require that government must follow fair procedures before depriving any individual of life, liberty, and property. Any action denying the process due would be unconstitutional and offends the rule of law. *Fuentes v. Shevin*, 407 U.S. 67 (1972), in which this Court ruled that a pre-judgement replevin provision allowing the government to seize an individual's property without prior notice or hearing in Florida and Pennsylvania state law to be a violation of the due process of law.

Judicial review of administrative procedures is introduced within the scope of due process where constitutional rights are concerned. This Court applied such an interpretation in *Goldberg v. Kelly*, 397 U.S. 254 (1997), a landmark federal case, in which litigant Goldberg questioned the authority of the state agency to deprive him of welfare benefits

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[1] Mass. G. L. c.30A §14 is the Massachusetts equivalent of the federal law.

[2] The Massachusetts Declaration of Human Rights, Article 10 (Due Process) provides equivalent assurances, that "Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws." Massachusetts Constitution, Retrieved from https://malegislature.gov/Laws/Constitution on August 12, 2020.

without an administrative hearing. This Court ruled that such a hearing was required and denial of such is an infringement of his due rights. The Massachusetts Appeals Court's denial of judicial review to Petitioner, a process due her when she chose to challenge the standard of review employed by the Investigator and Investigating Commissioner of Respondent state agency that resulted in the LOPC disposition. When the courts below dismissed Petitioner's judicial review complaint, [they] demonstrated blatant disregard of Petitioner's fundamental due process rights and chose an action subversive to the Constitution.

Equal protection was incorporated as a component of due process to ensure that all persons/citizens receive the ordinary procedures of the law. *Stare decisis* has provided the basis for enforcing equal protection of the law into the Fifth Amendment's due process protections[3] and this Court has never shied away from denouncing discrimination as being violative of the Constitution. Several landmark cases have proven this Court's regard of prejudice. In *Hirabayashi v. United States,*[4] the U.S. Supreme Court incorporated equal protection as an "additive of due process" when "an American citizen of Japanese parentage"[5] was arrested for violating the curfew law during World War II. The U.S. Supreme Court upheld national security, the overriding national interest. At the same time, in a dissenting opinion, the Court recognized that such a law posed a threat to the personal liberties of a racial group of citizens, remarking that "discrimination based on ancestry" was "odious to a government based upon the principles of equality and fairness."[6] In a similar opinion, *Korematsu v. United States,*[7] a case that upheld the exclusion of Americans of Japanese descent from the West Coast, the dissenting opinion noted that the "exclusion order was a

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[3] Karst, Kenneth L., "The Fifth Amendment's Guarantee of Equal Protection," 55 N.C.L. Rev. 541 (1977).

[4] 320 U.S. 81 (1943), cited in Karst, 544.

[5] Karst, 544.

[6] Karst, 545, quoting *Hirabayashi,* supra.

[7] 323 U.S. 214 (1944), cited in Karst, 545.

deprivation of the equal protection of laws as guaranteed by the Fifth Amendment."[8]

While *Hirayabashi* and *Korematsu* merely directed attention to the potential erosion of equal protection when governments defer to national security interests, in *Bolling v. Sharpe*,[9] a case that recognized the deprivation of black children's liberty due to school segregation, this Court asserted that "discrimination may be so unjustifiable as to be violative of due process."[10] These cases demonstrate that the U.S. Supreme Court has long avowed discrimination's constitutional status and has strenuously declared intolerance towards disparate application of due process rights by federal and state governments. Judicial opinion in the foregoing precedents also signifies that the U.S. Supreme Court has long regarded equal protection to be inseparable from due process and, further, has intertwined these principles with the assumption of "life, liberty or property" granted to all persons of the United States. The opinions in the foregoing precedents signify that this Court has long considered disparate treatment to be violative of and offensive to the Constitution, and has consistently appealed to precedent as the basis for guiding and legitimizing court decisions against prejudicial treatment.[11]

The facts surrounding the Motion to Dismiss in the case at bar also bring into question the reach of due process in terms of (1) the sufficiency of material evidence in relation to Respondent state agency's filed Motion, *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), *Atlantic Bell Co., v. Twombly*, 550 U.S. 544 (2007); (2) *stare decisis* in guiding decisions for cases at bar as a means of correcting errors (See Coney-Barrett, Amy,

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[8] Karst, 545, quoting *Korematsu*.

[9] 347 U.S. 497 (1954), cited in Karst, 545.

[10] Karst, 545, quoting Justice Warren in *Bolling*.

[11] Coney-Barrett, Amy published a study that showed the consistent use of and reliance on opinions in legal precedents to guide rulings in cases at bar. In *Stare Decisis and Due Process*, 74 U. Colo. L. Rev. 1011 (2003). Also, read her comments on the equivalency of stare decisis with issue preclusion to underscore the significance *of stare decisis* on guiding decisions, p. 1012.

p.1013); and (3) the judiciary's obligation to upholding the integrity of constitutional law by enforcing fair treatment in the interest of justice.

B. Factual Background

Sometime in January 2016, Petitioner applied for admission to the PhD in Regional Planning at the University of Massachusetts, Department of Landscape Architecture and Planning ("UMASS-LARP"). On April 13, 2016, the University of Massachusetts responded with a letter denying her admission. Petitioner, subsequently, filed a complaint against UMASS-LARP on September 9, 2016, alleging that she was denied admission to the PhD program because of her race and gender in violation of the Civil Rights Act of 1964, Title VI 42 U.S.C. 2000d *et seq*. and the Education Amendment Act of 1972, Title IX, 20 U.S.C. A§1681 *et seq*.

Petitioner, a Filipina-American female, is an academic over-achiever. She has earned a Master of Urban and Regional Planning from the University of Hawaii, a Master of Social Change and Development from the University of Wollongong in New South Wales, Australia, and a Master of Liberal Arts from Goddard College. She is also an accomplished scholar. She has published extensively on urban planning issues in academic journals and magazines, such as Urban Agriculture magazine, GeoJournal, and the Journal of Regional Studies. Her second masterate thesis was published as a book by the University Press of America and the two case studies featured in her first masterate thesis were each published in the student planning journals of the University of Texas School of Architecture (UTSOA) and the Massachusetts Institute of Technology Department of Urban Studies and Planning (MITDUSP). Her second masterate thesis was given a special recognition in the form of an honorarium by the University of Minnesota under the auspices of the Graduate Mellon Fellowship. Since 2016, she has published two academic pre-prints, one of which was about her analysis of the planning situation in Zambia, developed whilst volunteering as a Town Planning Advisor at the Chipata Municipal

Council. In 2018, she volunteered as an academic peer reviewer for the special issue, "Food Deserts/Food Security," of the Journal of Public Affairs, published by Wiley-Blackwell Publishers. Already, Petitioner has been performing some of the tasks expected of university professors.

The Filipina-American demographic is under-represented at the UMASS-LARP program. Between 2012 and 2016, only two Asians applied to LARP and neither were accepted. (See Nadeau, Attachment 1, "Five-year history of applicants and selected candidates," in App. E054-063). In 2016, one of these applicants was the Petitioner. She was denied admission despite showing academic attributes of 9 academic publications, 3 master's degrees, 2 research awards and 3.6 years of experience in the urban planning profession, inclusive of the MURP practicum. Hence, on September 9, 2016, she filed a Title VI/Title IX complaint at the Massachusetts Commission Against Discrimination ("MCAD") alleging that UMASS-LARP's reason for denying her admission to its Regional Planning PhD program was because she is Filipina-American and a woman – thus, a woman of color.

On December 6, 2017, Mr. Matt Marrotta, Investigator for Respondent state agency, issued a LOPC disposition, ruling that "there is insufficient evidence that her application's rejection in fall 2016 was due to either her color or race." In support of this opinion, he noted that UMASS-LARP "rejected both male and female candidates as well as applicants of diverse races/colors." While this may be true, it is more appropriate to compare acceptances, rather than rejections, across demographics. Between 2012 and 2016, UMASS-LARP accepted 9 Whites (82%), 1 Black (0.9%), 1 Hispanic (0.9%), and *0 Asians (0.0%)* to the PhD program. Presumably, those accepted are all Americans.[12] UMASS-LARP maintains a separate category for international applicants. Of those accepted between 2012 and 2016 (21 individuals in total), 24% were international, a higher percentage accepted than Asian-

[12] Considering the long history of discrimination against non-white Americans in the United States, it is appropriate to assume that the Title VI/Title IX laws were written to protect non-white Americans from discrimination.

American applicants. Furthermore, between this 5-year period, 11 women had been accepted to the PhD program compared to 10 men. *Not one of these women was Asian-American.* Without collating all demographic data, it is not clear from the gender demographic, alone, how many of the women accepted were Americans and how many were international. In 2016, the pattern of acceptance by demographics was like that of 2012. Of all those accepted into the PhD program, only 1 was Hispanic (25%), while 3 were Whites (75%). Only 1 (25%) was a woman, while 3 (75%) were men. *None of those accepted in 2016 was Asian-American.*

Investigator Marrotta did not compare the academic attributes of the individuals accepted in fall 2016 to those of Petitioner. The standard of comparison established by the U.S. Supreme Court in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) is the academic record. *Bakke,* supra at 62-64. The U.S. Supreme Court compared Bakke's academic record across all variables in the application against the average scores of those who had applied to the UC Davis medical school in the same year.

Another reason given by UMASS-LARP for denying Petitioner admission to the PhD program is because those accepted had skills that directly corresponded with a grant. In the pre-conference hearing held at Respondent state agency sometime in March 2017, the pertinent skills required, as explained by Professor Henri Renski, were quantitative analytical reasoning and ArcGIS mapping skills. However, Petitioner had completed the advanced statistics course and the advanced planning models course (ArcGIS) as part of her elective and mandatory courses in order to complete the coursework unit requirements for the Master of Urban and Regional Planning ("MURP") at the University of Hawaii, facts that should have red-flagged this reason as pretextual. These courses are listed in her graduate transcript as PLAN 601 and PLAN 655. She had completed other quantitative analysis courses also while completing the MURP degree (e.g. PLAN 603, "Urban Economic Analysis Planning and Policy") and while

completing her graduate coursework for the Master of Social Change and Development program (e.g. CAPS 933, "Social Science Research Methods") at the University of Wollongong in New South Wales, Australia. Clearly, UMASS LARP had not credited Petitioner for these prior graduate trainings when it explained that one of the reasons Petitioner was not admitted to the PhD program and attached to a research scholarship is because the individual for the research assistantship had to possess quantitative and mapping skills.

An important point regarding financial aid, not acknowledged by Investigator Marrotta, is that other types of aid besides research grants are allocated specifically for doctorate students, namely the Resident Directorship ("R.D.") and Teaching Assistantship ("T.A."). Generally, scholarships are allocated according to both merit and need. Petitioner exhibits both attributes; she is low-income (need) with a strong academic record (merit), indications that she would likely be given financial aid. As far as her candidacy for a R.D. financial aid, her experience as a Resident Assistant ("R.A.") at Gorman Hall whilst an undergraduate student at UMASS-Amherst (1988-1992) and one of her specializations in her urban planning program having been community planning and social policy, indicate that she possesses the knowledge and professional experience that would be effective for the role of R.D.

Petitioner was informed of her right of appeal on the record (See "Dismissal and Notification of Rights," App. E030). On December 14, 2017, she appealed at Respondent state agency. On September 28, 2018, the Investigating Commissioner for Respondent state agency, Ms. Monserrate Quiñones, issued a disposition that upheld the Investigator's LOPC decision. In this same letter, Petitioner was informed that this disposition "represents a final action by the Commission and no further action regarding this complaint will be considered at the Commission Against Discrimination. This final action of the Commission is not subject to judicial review M.G.L. c.30A," (See App. E017). The statement regarding the final action being 'not subject to judicial review' is an exercise of power "in excess of statutory

jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. §706 (2)(C).

On October 21, 2018, Petitioner filed a Complaint for Judicial Review against Respondent state agency at the Superior Court of Franklin County for failing to subject the material evidence in her Title VI/Title IX collateral claim to the standards of review conventional of measuring discrimination. She referred to academic indicators as the standard comparator, as established in *Bakke*, supra, and had repeatedly discussed her academic record in detail in her collateral complaint initiated at Respondent state agency and in her appeal of the Investigator's disposition. It can be determined from the absence of academic reasons in the Investigator's disposition that he did not incorporate this factor in his review of the material evidence submitted by both parties and, therefore, he could not reasonably discern disparate treatment. See e.g. *McConnell Douglas Corp. v. Green*, 411 U.S. 792 (1972). Petitioner also highlighted the Investigator's failure to draw reasonable inferences from the corpus of pertinent, material evidence, which resulted in the Investigator's failure to discern pretext for discrimination, e.g. *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989), and preponderance of evidence, e.g. *McConnell Douglas Corp.*, supra. Therefore, Petitioner argued that the LOPC disposition was based on arbitrariness and capriciousness, pursuant to 5 U.S.C. §706(2)(A), rather than on an objective, methodical review of the factual evidence measured against the prevailing, guiding opinions in similar, *stare decisis*, higher education discrimination cases.[13] The LOPC disposition exhibited partiality towards UMASS-LARP also because the disposition was unsupported by substantial evidence, pursuant to 5. U.S.C. 706(2)(A)(C). The disposition was, therefore, prejudicial and unfair to Petitioner. Moreover, Respondent state agency over-reached its authority and jurisdiction when the Investigating Commissioner

[13] Specifically, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003), and Fisher v. University of Texas, 579 U.S. ___ (2016).

informed Petitioner that Respondent state agency's disposition was not subject to judicial review, a disposition that conflicts with *Bennett*, supra, the Administrative Procedure Act (APA), 80 State. 392, as amended, 5 U.S.C. §§701 *et seq*., and *Christo*, supra, the Mass. SJC precedent. 5 U.S.C. §706(2)(C). (Complaint for Judicial Review, App. E09-015).

On October 24, 2018, Respondent state agency answered Petitioner's Complaint with a Motion to Dismiss for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), and failure to state a claim on which remedy can be made, pursuant to Fed. R. Civ. P12(b)(6). As reasons for the grounds, Respondent state agency argued that "an investigative disposition is not a final agency decision under G.L. c.30A,"[14] and because "[a] preliminary hearing . . . is not subject to G.L. c.30A . . . and no statutory right of appeal for judicial review applies to such a determination," quoting *Christo v. Boyle Insurance Agency, Inc.*, 402 Mass. App. Ct. 815 (1988). (App. G127-142). Here, Respondent state agency interpreted this quote to mean that judicial review is a discretion over which Respondent state agency has authority, when in fact the Mass. SJC draws a distinction between the discretion of Respondent state agency over preliminary hearing and the statutory right of a litigant to a judicial review of a state agency's final decision.

On November 24, 2018, Petitioner filed an Opposition to Motion, in which she clarified the general circumstances that make judicial review available from a state agency disposition, pursuant to Administrative Procedure Act, 80 State. 392, as amended, 5 U.S.C. §§701 *et seq*.. A Motion Hearing was held at the Superior Court on January 17, 2019. Then, on January 29, 2019, the Superior Court granted Respondent state agency's Motion to Dismiss, thereby dismissing Petitioner's Title VI/Title IX collateral claim. The Appeals Court upheld on May 20, 2020. As reasons, the Appeals Court argued that the Superior Court lacks

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[14] M.G.L. c. 30A is the Massachusetts Administrative Procedure Act. (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30A).

jurisdiction over Petitioner's Title VI/Title IX collateral claim under M.G. L. c.30A and M.G.L. c.249 §4 ("action in the nature of certiorari; limitation; joinder of party defendant; injunction; judgement"),[15] and because she had an alternative option for relief from the LOPC disposition under M.G.L. c. 151B §9 (a statute allowing active, civil cases to be transferred from the state agency to the appropriate state district court).[16] The Appeals Court gave no reason pertaining to Fed. R. Civ. P. 12(b)(6), failure to make a claim, with respect to Petitioner's judicial review complaint.

On June 9, 2020, Petitioner's Application for Further Appellate Review was docketed by the Mass. SJC. On July 27, 2020, it declined to address the conflict of the Appeals Court's decision with its precedent in *Christo v. Boyle Insurance Agency, Inc.*, 402 Mass. 815 (1988). The circumstances of Christo paralleled those of Petitioner's in that Christo likewise could not obtain a review from the Full Commission of Respondent state agency, had exhausted her appeals therein, pursuant to 5 U.S.C. §704[17], and because the Investigating Commissioner does

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[15] "A civil action in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal, may be brought in the supreme judicial or superior court. . ." (https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIV/Chapter249/Section4).

[16] Under M.G.L. c.151B §9, it is written: "Any person claiming to be aggrieved by a practice made unlawful under this chapter or under chapter one hundred and fifty-one C, or by any other unlawful practice within the jurisdiction of the commission, may, at the expiration of ninety days after the filing of a complaint with the commission, or sooner if a commissioner assents in writing, but not later than three years after the alleged unlawful practice occurred, bring a civil action for damages or injunctive relief or both in the superior or probate court for the county in which the alleged unlawful practice occurred or in the housing court within whose district the alleged unlawful practice occurred if the unlawful practice involves residential housing."

[17] 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. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless

not have primary jurisdiction over Christo's collateral claim, which was tolling. For Petitioner, it was Title VI/Title IX. In denying Petitioner further review, while having granted it to Christo, the Mass. SJC acted prejudicially.

On August 10, 2020, Petitioner filed a Motion for Reconsideration to the Mass. SJC on the grounds of errors as described in the foregoing paragraphs. On October 2, 2020, the Mass. SJC entered its decision, denying Petitioner reconsideration, on the docket.

C. Reasons for Granting the Petition

1. The Massachusetts courts have jurisdiction to review the decision of the Massachusetts Commission Against Discrimination, the Respondent state agency under the Administrative Procedure Act, 80 Stat. 392, as amended, 5 U.S.C. §701 *et seq.*, the Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d-2, and the Education Amendment Act of 1972, Title IX §1683?

The Massachusetts Appeals Court dismissed Petitioner's judicial review complaint, which in effect upheld the Massachusetts Superior Court of Franklin County ruling that the court does not have jurisdiction to review Respondent state agency's LOPC disposition under either M.G.L. c.30A or M.G.L. c.249 §4, and because Petitioner had an alternative to litigate the same claim under M.G.L. c.151B §9. With this decision, the Appeals Court simultaneously dismissed her Title VI/Title IX collateral claim. The Appeals Court's dismissal of Petitioner's collateral claim conflicts with the U.S. Supreme Court's decision in *Bennett v. Spear*, 520 U.S. 154 (1997), in which the petitioners were granted *certiorari*. The Mass. SJC's denial of further review likewise conflicts with *Bennett*, supra and its own precedent, *Christo*, supra.

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the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority. (Quoted from Cornell University, Legal Information Institute, 5 U.S. Code § 704 - Actions reviewable | U.S. Code | US Law | LII / Legal Information Institute).

The Appeals Court's interpretation of the procedural requirements and statutes that make judicial review available in the case at bar is inconsistent with this Court's in *Bennett*, supra, in which this Court established the three prongs for determining judicial review availability. To have standing, the plaintiff must establish the existence of a controversy between the parties, as required by Article III. In the prudential consideration of standing, the plaintiff must meet the zone-of-interest test in which "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question," p. 8, citing *Association of Data Processing Service Organizations, Inc.* v. *Camp,* 397 U. S. 150 (1970) at 153; *Barlow* v. *Collins,* 397 U. S. 159 (1970). 'Standing' under the APA requires that the collateral claim (the injury), the legal basis for the complaint, fall under a constitutionally protected statute. *Bennett*, supra, citing 5 U.S.C. §704. Also, 28 U.S.C. §1331 applies here, as it is the statutory enforcement of subject matter jurisdiction: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, and treaties of the United States."[18] Petitioner's injury in the case at bar falls under Title VI and Title IX. (App. E051-053.)

The evidence must further show that the plaintiff is a party in the suit, "has suffered an injury in fact," that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision," *Bennett*, supra, p. 7, citing *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560–561 (1992); *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.,* 454 U. S. 464, 471–472 (1982). This Court ruled in favor of the Petitioners in *Bennett*, supra, affirming that the biological opinion of the Fish and Wildlife was reviewable under the Endangered Species

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[18] Cornell University Legal Information Institute, https://www.law.cornell.edu/uscode/text/28/1331.

Act §1540(g)(1) and the APA 5 U.S.C. §§701 *et seq*. Petitioner submitted evidence showing that she, the litigant in the collateral claim, *Mata v. University of Massachusetts* (Docket No. 16SED02522), suffered the injury of higher education discrimination in question, which is traceable to the admissions decision on her PhD in Regional Planning application, and that proceeding with judicial review of Respondent state agency's decision would likely redress the injury. Moreover, federal laws under the Civil Rights Act of 1964, Title VI, 2000d-2, the Education Amendment Act of 1972, Title IX §1683, and the APA 5 U.S.C. §§701 *et seq*. indicate that judicial review is protected as a statutory right.

Final agency action, under 5 U.S.C. §704, is also addressed by this Court in *Franklin v. Massachusetts et al.*, 505 U.S. 788 (1992), in which it clarified that "An agency action is "final" when an agency completes its decision-making process and the result of that process is one that will directly affect the parties," at 1(a). On the other hand, in *Chowdhury v. Reading Hospital & Medical Center*, 677 F.2d 317 (3d Cir. 1982),[19] the United States Court of Appeals for the Third Circuit affirmed that the courts have not always enforced the final agency action requirement. (See Warter, Carolyn J., 1983, "that a plaintiff need not exhaust administrative remedies prior to seeking judicial relief in a private action under Title VI of the Civil Rights Act of 1964 in *Chowdhury v. Reading Hospital & Medical Center,* 677 F.2d 317 (3d Cir. 1982), cited in *petition for cert. filed,* 51 U.S.L.W. 3120 (U.S. Aug. 5, 1982) (No. 82-201)). Either way, in the case at bar, Petitioner, Camille T. Mata, had met this threshold; she had furnished to the courts below the facts on record showing that Respondent state agency had confirmed final agency action following the disposition of the Investigating Commissioner. (See, again, App. E017). This evidence clearly informed

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[19] Cited in Warter, Carolyn J., "Civil Rights - Title VI - The Exhaustion of Administrative Remedies Is Not a Prerequisite to a Private Right of Action under Title VI," 28 Vill. L. Review, 693 (1983), available at https://digitalcommons.law.villanova.edu/vlr/vol28/iss3/10.

Petitioner that she had exhausted her administrative appeals made available at Respondent state agency.

Another reason the Massachusetts Appeals Court gave for dismissing Petitioner's judicial review complaint - because Petitioner had an alternative option for relief under M.G.L. c. 151B §9 - has no basis in law. The Massachusetts statute, M.G.L. c. 151B §9, which allows a plaintiff to transfer a discrimination complaint initiated at the Respondent state agency to the courts, applies only to active – not exhausted – cases. As such, it is distinct from Judicial Review, which was established for the sole purpose of court review of administrative action and therefore may not be used for other purposes, pursuant to 5 U.S.C. §551 (cited in *Bennett*, supra). Therefore, the Appeals Court's argument that Petitioner had an alternative remedy available to her via M.G.L. c.151B §9 conflicts with the *Res Judicate* doctrine, specifically *collateral estoppel* (issue preclusion). *U.S. v. Mendoza*, 464 U.S. 154 (1984), in which this Court ruled that because the litigating party in the instant case was different from those in a previous, albeit similar naturalization case, the Government could be sued for breach of equal protection under due process of law, at 158-164. In *Lucky Brand Dungarees v. Marcel Fashions Group, Inc.*, 590 U.S. ___ (2020), this Court asserted that claim preclusion applies when there is a "common nucleus of operative fact[s]," (quoting Restatement (Second) of Judgments §24, Comment *b*, p. 199 (1982) (Restatement (Second) in *Lucky Brand*, supra), at IIA. Because Lucky Brand's two previous suits did not "share the same claim to relief . . . Lucky Brand was not barred from raising its defense in the later action," at 1.[20]

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[20] See also *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980); see *Parklane Hosiery, Inc. v. Shore*, 439 U. S., at 326, n. 5, cited in *Lucky Brand*, supra, *United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 316 (2011) (quoting *Kremer* v. *Chemical Constr. Corp.*, 456 U.S. 461, 482, n. 22 (1982)), regarding "Suits involving [sic] the same claim (or "cause of action") when they " 'aris[e] from the same transaction.' "

Hence, if Petitioner attempted to seek remedy of her collateral claim against UMASS-LARP in the courts through re-litigation, beginning with the Superior Court, such an attempt would not be tolerated because the instant case involves this common nucleus of operative facts and parties. *Remedy through re-litigation would not be tolerated by the courts*. As such, Petitioner's only remedy for her collateral claim was the judicial review ("The APA authorizes review only when 'there is no other adequate remedy in a court,' 5 U.S.C. §704." *Bennett*, supra at 95-813-OPINION, p. 7).

The Mass. Appeals Court's decision to dismiss Petitioner's judicial review complaint does not reflect consideration of the submitted evidence in support of Petitioner's judicial review complaint or an effort to be guided by precedent, resulting in a decision that conflicts with this Court's ruling in *Bennett*, supra.

2. The reasons Respondent state agency gave in a Motion to Dismiss the Petitioner's Complaint for Judicial Review did not substantiate the grounds under Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). Regardless, the Motion was granted, violating U.S. Cons. Amendment V and XIV.

Respondent state agency gave two grounds for Motion to Dismiss. The first, lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), is governed by 28 USC §1331 and refers to the constitutional question over which the courts have authority to adjudicate. Petitioner had explicitly stated in her Complaint for Judicial Review that she was seeking review of Respondent state agency's decision on her Title VI/Title IX collateral claim, in which she accused the collateral claim defendant, UMASS-LARP, of denying her admission to its PhD in Regional Planning program, not because she was the weaker applicant, but because of her race and gender. (See Petitioner's allegation and reasons for this civil action in Section B, "Factual Background" in this Petition).

Furthermore, Petitioner outlined her claims for judicial review in the Complaint, alleging that Respondent state agency's disposition was arbitrary and capricious, not based on a methodical review of the material evidence, and failed to invoke the legal precedents that have established the conventions of measuring discrimination in higher education admissions, namely, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Fisher v. University of Texas*, 579 U.S. ___ (2016). In *Bakke*, supra the U.S. Supreme Court compared Bakke's academic portfolio against the average performance of other applicants to the UC Davis medical school and ruled that, while upholding affirmative action, the medical school unlawfully admitted minority applicants whose academic performances fell below the average scores of those applicants admitted to the medical school, including Bakke, and consequently violated equal protection guarantees. In *Grutter*, supra, this Court ruled that race may be considered in admissions decisions as a plus factor, albeit should not be primary to academic considerations. In *Fisher*, supra, this Court ruled that the use of race, narrowly tailored, in admissions decisions is not a violation of equal protection.

In the case at bar, the Investigator for Respondent state agency used a nonconventional method for deciphering discrimination. For example, the Investigator considered the racial and gender demographics of applicants *rejected* rather than those *accepted* to the PhD in Regional Planning and failed to subject the reasons given by UMASS-LARP to tests of pretext, preponderance of evidence, and reasonable inference, the strict scrutiny appropriate for determining discrimination as established in the employment discrimination case law precedents *McDonnell Douglas Corp. v. Green*, 411 U.S. 804 (1973),[21] and *Texas*

[21] ". . . respondent must be afforded a fair opportunity of proving that petitioner's stated reason was just a pretext for a racially discriminatory decision, such as by showing that whites engaging in similar activity were retained or hired by petitioner," (quoting *McDonnell Douglas*, supra at 793.

Dept. of Cmty Affairs v. Burdine, 450 U.S. (1981),[22] *Patterson v. McLean Credit Union*, 491 U.S. 164, 187 (1989),[23] and *Smith v. Lockheed-Martin Corporation*, No. 09-15428 (11th Cir. 2011),[24] and the higher education discrimination precedents of *Bakke*, supra, *Grutter*, supra, and *Fisher*, supra. Another example is when the Investigator did not compare Petitioner's skills and knowledge in relation to the research grants available to PhD applicants (see par. 4, p. 8 and par. 1, p. 9 in this *cert. pet.*), which conflicts also with the standard of measurements invoked by the foregoing legal precedents.

3. Petitioner's material facts on record met the reasonable inference standard for judicial review availability under APA, 5 U.S.C. §702 and the evidentiary standard for surviving Respondent state agency's Motion to Dismiss.

This Court, in *O'Keeffe v. Smith, Hinchman, and Gryllis Associates, Inc.*, 380 U.S. 359 (1965), asserted that the reasonable inferences drawn from the facts of a case suffice for judicial review: "The rule of judicial review has therefore emerged that the inferences drawn . . . are to be

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[22] ". . . the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination," *Texas Dept. of Cmty Affairs*, supra at 252-256.

[23] "3(b) The establishment of a *prima facie* case creates an inference of discrimination which the employer may rebut by articulating a legitimate, nondiscriminatory reason for its action . . . Thereafter, however, petitioner should have had the opportunity to demonstrate that respondent's proffered reasons for its decision were not its true reasons. There are a variety of types of evidence that an employee can introduce to show that an employer's stated reasons are pretextual, and the plaintiff may not be limited to presenting evidence of a certain type," *Patterson*, supra at 186-188.

[24] "Based on the totality of the circumstances, the court held that the record contained sufficient circumstantial evidence from which a jury could infer that the employer displayed a racially discriminatory animus toward plaintiff when it fired him in May 2005. Consequently, plaintiff presented a case sufficient to withstand the employer's motion for summary judgment," quoting Justicia Opinion Summary for *Smith*, supra, obtained from https://law.justia.com/cases/federal/appellate-courts/ca11/09-15428/200915428-2011-06-30.html.

accepted unless they are irrational or 'unsupported by substantial evidence on the record . . . as a whole," quoting *O'Leary v. Brown-Pacific Maxon, Inc.*, 340 U.S. 504 (1951) at 508.

In *Bell Atlantic Co. v. Twombley*, 550 U.S. 544 (2007), this Court determined that factual matter, accepted to be true, must provide for reasonable inference to be made from the facts on record to survive dismissal. Elaborating, it wrote, in a pleading of "failure to state a claim," Fed. R. Civ. P. 8(a)(2), " '[D]etailed factual allegations' are not required," *Id.* at 555; "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Id.*, at 556, although "There must be sufficient facts in a complaint to state a claim to relief that is plausible on its face for it to avoid dismissal. . ."[25] This Court concurred in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), albeit adds that a claim must be amplified with factual matter that corroborate the claim. Petitioner in the case at bar furnished the factual matter and pleading required to meet the evidentiary standards established in the foregoing precedents, but the Massachusetts Appeals Court ruled that she had not. Its interpretation of sufficient factual matter from which reasonable inferences may be drawn conflicts with the foregoing precedents.

The material facts comprising the evidence in the case at bar show genuine issues of material facts, pursuant to Fed. R. Civ. P. 56, which should have precluded summary judgement. However, the Massachusetts Appeals Court ignored the conflicting issues from among the material facts and granted Respondent state agency's Motion to Dismiss, a decision that ultimately stripped Petitioner of her statutory right to judicial review of the LOPC disposition issued by Investigator and Investigating Commissioner of Respondent state agency.

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[25] https://supreme.justicia.com/cases/federal/us/550/544/

4. U.S. Const. Art. III §1 and §2 bind Justices/Judges to the due process obligation of correcting procedural and statutory interpretive errors when appropriate.

Judicial power is vested in the U.S. Supreme Court and state courts to resolve controversies arising under the U.S. constitution. U.S. Const. art III §§1 and 2. Yet, the Massachusetts Appeals Court granted Respondent state agency's Motion to Dismiss Petitioner's Judicial Review Complaint and the Mass. Supreme Judicial Court denied Petitioner further review of her appeal of the lower courts' granting of dismissal motion in spite of the presence of facts on record showing subject matter jurisdiction, pursuant to U.S. Const. art. 28 §1331: (1) the presence of a dispute regarding the standards of review employed by Investigator and Investigating Commissioner of Respondent state agency in relation to Petitioner's Title VI/Title IX collateral claim, pursuant to U.S. Const. art. III §2; (2) the presence of a claim and relief requested in Petitioner's Complaint for Judicial Review under Fed. R. Civ. P. 8(a); (3) evidence showing Petitioner was a party to the dispute regarding Respondent state agency's disposition on Petitioner's collateral claim and that she was injured as a result of UMASS-LARP's decision to not admit her to the PhD program in Regional Planning. As a result of such oversights of facts on record, Petitioner was denied judicial review of the controversy on her Title VI/Title IX collateral claim.

The weight of precedent suggests that the supervisory power of supreme courts over inferior courts regarding the constitutionality of legal interpretations and actions has been well-entrenched in appellate courts since *McNabb v. United States*, 318 U.S. 332, 340 (1943),[26] where this Court, calling on its "implied duty of establishing and maintaining civilized standards of procedure and evidence," at 340, concurred with the district court by determining that confessions obtained from inmates

[26] Cited in Coney Barrett, Amy, "The Supervisory Powers of the Supreme Court," 106 Colum L. Rev. 324 (2006).

"in prolonged detention," at 341-342, could not be included in evidence. In another case, *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946),[27] this Court, using its supervisory authority over federal district court, confirmed that excluding daily wage workers from jury duty is unconstitutional in the federal court. In *Castro v. United States*, 540 U.S. 375 (2003),[28] this Court ruled that the District Court is required to fulfill its due process duty of notifying Castro, a pro se litigant, of the recharacterization of his Motion "as one for habeas relief" and the consequences of doing so before "recasting a prisoner's motion as such (sic),"[29] at 382-383.

Stare decisis, therefore, has the purpose of guiding lower courts on how to address controversies in parallel cases. This Court confirmed in *Payne v. Tennessee*, 501 U.S. 808 (1991)[30] that "[T]his Court has never departed from precedent absent 'special justification,' " relying on *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). Among such 'special justification' is "a showing that a particular precedent has become a "detriment to coherence and consistency in the law," quoting *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 172 (1989) at 173.

With respect to the circumstances of the present case allowing for judicial review, supreme courts have already decided on the factors that constitute judicial review availability in *Bennett*, supra and in *Christo*, supra. Rather than ruling consistently with both precedents, the Massachusetts lower courts departed from the principles in each case and dismissed Petitioner's judicial review complaint, which resulted in disposing of her collateral claim before the Superior Court could review the LOPC disposition for arbitrariness and capriciousness, unsupported by substantial evidence, and in excess of statutory right.

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[27] Cited in Coney Barrett (2006).
[28] Cited in Coney Barrett (2006), pp. 330-331.
[29] Quoted in Coney Barrett (2006), pp. 331-332.
[30] Cited in Coney Barrett, Amy, Stare Decisis and Due process, 74 U. Colo. L. Rev. 1011 (2003).

CONCLUSION

The Bill of Rights protects Petitioner, Camille T. Mata, from being deprived of a constitutionally-protected right, the judicial review under APA 5 U.S.C. §§701 *et seq.*, before her Title VI/Title IX collateral claim can be disposed of by this Court and the courts below. The Fifth and Fourteenth amendments of the U.S. Constitution ensure that Petitioner's allegation of impartiality, restraint of power, and unsubstantial evidence influencing the LOPC Disposition issued by Investigator and Investigating Commissioner of Respondent state agency be subject to judicial review. The equal protection clause under both amendments further ensure that the circumstances for judicial review availability be applied equally with *Bennett*, supra and *Christo*, supra in the interest of fairness and justice. The material evidence on record in the case at bar has shown that judicial review was available to Petitioner and makes the case for disposing of this action consistently with *Bennett*, supra and *Christo*, supra in order that this Court comply with the equal protection clause. Otherwise, this Court risks looking farcical and puts future, similarly-situated litigants in danger of being denied the right of judicial review when the circumstances allow it.

Respectfully yours,

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