

No. 20-7004

IN THE UNITED STATES SUPREME COURT

MATA, CAMILLE T.,

Petitioner,

v.

MASSACHUSETTS COMMISSION AGAINST
DISCRIMINATION,

Respondent.

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

PETITION FOR REHEARING

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DATE: 4/13/21

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1. PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44, Camille Tuason (“T”) Mata respectfully petitions for rehearing of this Court’s denial of certiorari issued on March 22, 2021. *Mata v. Massachusetts Commission Against Discrimination*, No. 20-7004 (2021). Rehearing is granted when at least one Justice believes that he or she may be have decided in error. Camille T. Mata moves this Court to grant rehearing and consider this case on the merits. Pursuant to Sup. Ct. R. 44.1, this petition is filed within 25 days of the denial of *certiorari* and its grounds are limited to intervening circumstances of a substantial or controlling effect *or* to other substantial grounds not previously presented.

2. REASONS FOR GRANTING REHEARING

The Court missed key facts in the circumstances of the present case that should have been considered in making its decision. These key facts represented errors in the Respondent state agency’s argument, which should have compelled the state courts to dismiss Respondent’s Motion to Dismiss. In every case, there is a Constitutional guarantee of fundamental fairness in the Fifth and Fourteenth Amendments – that of due process and of equal protection. It is the obligation of this Court to stand on the side of due process whenever appropriate. Therefore, it should be unacceptable to this Court that the state courts’ errors would stand on the record, as sustaining such errors puts this Court at risk of replicating the same or similar errors in parallel cases of future litigants. Failure to correct errors in the light of corroborating evidence displayed animus and unfairness to the Petitioner, Camille T. Mata.

Section 35 of the Judiciary Act of 1789 governs the right to court self-representation (“That in all courts of the United States, the parties may plead and manage their own causes personally or by assistance of such

counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein"). Section 35 is further substantiated by 28 U.S.C. §1654, which also grants individuals the right to self-represent. This Court applied both statutes in *Haines v. Kerner*, 404 U.S. 519 (1972). The Code of Conduct for United States Judges, in the presence of 28 U.S.C. §1654 and the Judiciary Act of 1789, Sec. 35, and the Equal Protection Clause of the Fifth Amendment, guarantees fair and equal treatment of pro se litigants. (See Wood, Jefri, "Pro Se Case Management for Nonprisoner Civil Litigation," Federal Judicial Center, 2016, pp. 6-9,¹ citing Judicial Conference of the United States, Code of Conduct for United States Judges, 3(A)(3) (2014)). This cause was distributed for the Conference of March 19, 2021 on March 4, 2021. The denial was issued three days after the Conference date (03/19/2021), indicating that this Court did not give Petitioner's *certiorari* argument its due attention. Petitioner had also submitted corrections to her *certiorari* filing, explaining that the Petition, docketed as No. 20-7004, did not contain the correct supporting appendix, as the material evidence in the docketed appendix was incomplete, and the body of the petition had incorrect pagination. The Clerk of Court addressed the latter concern, but did not docket the full appendix. (See App. H146). The material evidence provided in the appendix is essential to corroborating the claims that Petitioner raised in the *certiorari* petition and integral to (1) contesting Respondent's grounds for filing the Motion to Dismiss, and (2) challenging the reliability of the reasons given by the courts below for granting the Motion. See *Crawford v. Washington*, 541 U.S. 36 (2004), in which this

¹ Among other resources, Jefri Wood also draws from the analysis of Kevin Burke & Steve Leben, "Procedural Fairness: A Key Ingredient in Public Satisfaction," A White Paper of the American Judges Association (Sept. 26, 2007) and Cynthia Gray, "Reaching Out or Overreaching: Judicial Ethics and Self-Represented Litigants," (American Judicature Society 2005) regarding fair treatment of pro se litigants.

Court, relying on the original meaning of “confronting,” affirmed the need to establish “‘adequate ‘indicia of reliability,’ ‘a test met when the evidence either falls within a ‘firmly rooted hearsay exception’ or bears ‘particularized guarantees of trustworthiness’ ” at 66. The insufficiency of the docketed appendix precludes this Court from verifying all the issues Petitioner raised in her claim, which could affect whether or not she is granted rehearing. If rehearing is not granted, Petitioner is deprived of “an adequate access to justice.” (Wood, Jefri, 2016, p. 25). On March 24, 2021, Petitioner again made a second attempt to correct the docketed appendix via a letter communication to the U.S. Supreme Court Deputy Clerk, Mr. Jordan Bicknell. (App. H147-H148). On March 31, 2021, the court clerk, Lisa Nesbitt, returned the appendix and instructed Petitioner to submit the petition for rehearing. (App. H149).

2.1. The lower courts’ decision to grant Respondent’s Motion to Dismiss was an error in Judgement of the due process requirement inherent in the Judicial Review process.

At the core of this dispute is the Petitioner’s right to challenge the standards of review employed by Respondent state agency when it determined Lack of Probable Cause (“LOPC”) on her Title VI>Title IX collateral claim against the University of Massachusetts Department of Landscape Architecture and Regional Planning (“UMASS-LARP”). The judicial review is the only mechanism by which a state agency’s disposition may be scrutinized for constitutional compliance. It falls under the jurisdiction of the courts, not the state agency, and balances the power between state and citizens, and between different government branches: “The function of judicial review is to improve decision-making by facilitating . . . the struggle for power among the branches of government.”(See Eylon, Yuval and Alon Harel, “The Right to Judicial Review,” *Essay*, *Virginia Law Review* Vol. 92:991, p. 995, citing Henry

J. Abraham, *The Judicial Process* 371 (7th ed. 1998)). The courts have a responsibility to “reconsider any infringement in light of the particular claims and circumstances of the victims of the infringement.” *Morrissey v. Brewer*, 408 U.S. 471 (1972), in which this Court rejected “arbitrary actions” in regards to parolees and determined that inmates are entitled to a due process notice and hearing.

Given the distinct purpose of judicial review, and the “private interest violated (sic) by the government action,” in granting Respondent state agency’s Motion to Dismiss and subsequently dissolving Petitioner’s Complaint for Judicial Review, the state courts erroneously deprived Petitioner of her right to a hearing and her right to voice her grievance against the arbitrary and capricious manner in which Respondent state agency disposed of her Title VI>Title IX collateral claim against UMASS-LARP, the collateral defendant. *Matthews v. Eldridge*, 424 U.S. 319 (1976), “where the claimant’s interest in having a particular issue promptly resolved is so great that deference to the Secretary’s judgment is inappropriate,” *Id.* at 330-332. In granting Respondent’s Motion, the state courts simultaneously failed to curb the “unwarranted infringement” of state power (Eylon and Harel, p. 996), which results from court mismanagement of a democratic function. Equally, the state courts failed to afford Petitioner the “procedural protections as the particular situation demands,” *Morrissey*, *supra*, guaranteed under the Fifth Amendment. (See also *Matthews*, *supra*, in which this Court determined that “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment;” and that “the interest of an individual in continued receipt of these benefits is a statutorily created ‘property’ interest protected by the Fifth Amendment.” *Id.* at 332). Unless corrected in the present case, this

Court risks depriving future litigants of the same procedural protections. *Matthews*, *supra*, at 335. (“At some point, the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just may be outweighed by the cost.” *Id.* at 348).

This cause should have been granted *certiorari* in light of the errors in judicial procedure and in interpretations of statutes committed by the state courts. The U.S. Supreme Court should not ignore such errors; errors are sufficient reason to remand a case for redeliberation. In *Rosales-Mireles v. United States*, 850 F. 3d 246. Reversed and remanded (2018), this Court established three conditions by which “‘the court of appeals should exercise its discretion to correct the forfeited error if the error’ ‘seriously affects the fairness, integrity or public reputation of judicial proceedings.’” *Id.*, at ___. (1) “‘error is plain,’” (2) “‘error not intentionally relinquished or abandoned,’” *United States v. Olano*, 507 U. S. 725, and (3) affected substantial rights,” *Molina-Martinez v. United States*, 578 U. S. ___, ___.

2.2. This court missed key facts that should have been considered in making its decision.

This Court missed important facts that showed the errors committed by the lower courts and should have compelled this Court to grant *certiorari*. Respondent state agency failed to show *lack of* subject matter jurisdiction, one of its grounds for filing the Motion to Dismiss. Showing subject matter jurisdiction is a requirement for judicial review under 28 U.S.C. §1331. Petitioner’s appended documents included the showing of her Title VI>Title IX cause against the UMASS-LARP (App. E049-053).

Secondly, Respondent failed to show *inadequacy* of pleading. Fed. R. Civ. P. 8(a) requires that pleading include grounds and remedy.

Petitioner had stated her grievance over the reasons underlying Respondent state agency's LOPC disposition and had stated the grounds for the grievance (App. E011-014). Petitioner had also requested that the LOPC judgement be reversed. From this evidence, the Superior Court nevertheless granted Respondent's Motion, in conflict with this Court's precedent, *Bennett, et al. v. Spear*, 520 U.S. 154 (1997). Remanded and remanded (1997). Thus, an error in due process.

Thirdly, the grounds on which Respondent filed its Motion to Dismiss was not substantiated by the reasons. Respondent argued that "final agency action" had not been met because the LOPC disposition was decided by the Investigative Commissioner, not the Full Commission. Respondent further argued that the investigation of Petitioner's collateral claim was not an adjudicatory proceeding. Petitioner countered by pointing to the UMASS-LARP response to her Title VI>Title IX claim and the rebuttal issued by both parties, all steps in the "adjudication" of a dispute, pursuant to 5 U.S.C. §§551. Petitioner then appealed the Investigator's LOPC disposition at Respondent state agency. When the Investigative Commissioner issued the second LOPC disposition, she was informed that it was the final agency action. (App. E017).

Fourthly, the Massachusetts Appeals Court gave as a reason for granting dismissal Mass. General Laws c.151C §9, a state law allowing for the litigant to transfer active complaints from the state agency to the courts. "We determined that similarly situated plaintiffs have an alternate remedy available under G. L. c. 151B §9, and as a matter of law cannot prove they 'suffered a substantial injury or injustice from the commission's decision not to institute formal proceedings.' Grandoit, *supra* at 608. MCAD is not required to prosecute "each one of the many complaints that it receives." *Id.* We reach the same result here." (App. A003). However, Petitioner's claim had been exhausted at Respondent

state agency, which precluded her from relitigating her Title VI>Title IX claim in the courts due to the *res judicata* doctrine (App. A016), which negates the G. L. c. 151B §9 reason. Moreover, Respondent state agency's dispositions on the Title VI>Title IX claim, a Constitutional protection, is sufficient reason to proceed to judicial review, provided that the litigant "established that the injury complained of falls within the zone of interest sought to be protected by statutory provision whose violation forms the legal basis for complaint. . .", pursuant to APA 5 U.S.C. §704. *Bennett, et al.*, supra at [13].

A fifth error is that given by the Massachusetts Appeals Court for granting Respondent's Motion to Dismiss that "the Superior Court lacks jurisdiction under the Administrative Procedure Act, see G. L. c. 30A, and the certiorari statute, see G. L. c. 249 §4, to review MCAD's determination of no probable cause." (App. A003). The circumstances of Petitioner's cause clearly show subject matter jurisdiction. The Superior Court reviews all discrimination claims from state agency dispositions and is the first court in which civil actions against state agencies commence. American Procedure Act, 5 U.S.C. §§701 *et seq.* Therefore, the Superior court has jurisdiction over judicial review complaints. On the other hand, *certiorari* petitions in the State of Massachusetts are filed with the Mass. Supreme Judicial Court, rather than commences at the Superior Court. As such, G. L. c. 249 §4 is irrelevant as a reason for granting Respondent state agency's Motion in the present cause.

The U.S. Supreme Court has always assumed a "basic presumption of judicial review" under the Administrative Procedure Act. *Abbott Labs. v. Gardner*, 387 U.S. 136, 152-53 (1967), cited in Congressional Research Service, "An Introduction to Judicial Review of Federal Action," December 7, 2016. The lower courts action of granting dismissal of Petitioner's judicial review complaint in the present case has not complied with this basic presumption.

2.3. This Court must resolve the inconsistency arising from its determination in court precedents and the present cause.

This Court has already determined the administrative conditions that make judicial review available. *Bennett, et al. v. Spear*, 520 U.S. 154 (1997), in which this court ruled that for judicial review to be available, the litigant must meet the prudential considerations “within the zone of interests protected by the law invoked”² (as elucidated in cert. pet., pp. 14-15); must meet administrative exhaustion, represented by the “‘consummation’ of the agency’s decision-making” *Bennett, et al.*, supra at 178, “from which legal consequences will flow.” *Id.* In the interest of fairness and justice, this Court should eliminate the inconsistency arising from its determination in court precedents, affirm rehearing in the present cause, and remand it to the Mass. Appeals Court. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), in which this Court affirmed the equal application of Constitutional law. (“The guarantees of protection contained in the Fourteenth Amendment to the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality,” at Syllabus). There should not have to be a Filipina-American associate justice on the U.S. Supreme Court in order for Petitioner’s circumstances to be treated with the same careful consideration and respect as the petitioner(s) in *Bennett, et al.*, supra.

² Does Petitioner’s collateral claim fall “within the zone of interests protected by the law invoked”? *Allen v. Wright*, 468 U.S. 737, 751 (1984), cited in Young, Ernest A., “Prudential Standing after Lexmark International, Inc. v. Static Control Components, Inc., 10 *Duke Journal of Constitutional Law & Public Policy* 149-163 (2014), pp. 151-152.

2.4. Important questions left without conclusive determination is an injustice to Petitioner, Camille T. Mata.

This action turned on the Motion to Dismiss filed by Respondent state agency and upheld by the lower courts. This Court has a judicial obligation to correct the errors of the state courts. *United States v. Young*, 470 U.S. 1, 15 (1985), in which this Court ruled that the appellate court discretion to waive a correction of error should not be exercised if the error “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)), cited in *United States v. Olano and Gray*, 507 U.S. 725 (1993); and that forfeited errors are not recognized by this Court because appellate courts have no authority to waive the obligation to correct the error if it is “plain” (i.e. ‘clear;’ ‘obvious’) and “affects substantial rights.” *Olano and Gray*, *supra*.

This Court has equal obligation to determine subject matter jurisdiction even if the parties fail to file an objection (*Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (“Moreover, courts, including this Court, have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party.”); and has always adhered to the principle that a federal court exercises its authority to “hear and decide” cases that fall within its jurisdiction (cited in *Young*, *supra*, in which this Court asserted that “a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging” at 62)).

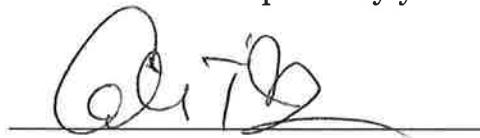
In ruling on the “motion to dismiss for lack of subject matter jurisdiction,” this Court affirmed its obligation to review decisions of state courts in matters involving the U.S. Constitution and federal law. *Cohens v. Virginia*, 19 U.S. 264 (1821) (‘that [w]e have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the

constitution,” cited in Young, Ernest A. p. 161). And yet, this Court has remained silent on the “plain” errors in the decisions of the courts below regarding judicial procedure in the present cause. Without correcting such errors, this Court (1) privileges the civil rights of the state agency, an institution, over the civil rights of the petitioner, which is an exercise of jurisdiction that does not fall within this Court’s powers, and simultaneously, (2) deprives Petitioner’s substantial right to a court review of Respondent state agency’s LOPC disposition. 5 U.S.C 706(2)(a); *General Electric Co., v. Joiner*, 522 U.S. 136 (1997).

CONCLUSION

For the reasons above, Petitioner, Camille T. Mata, respectfully requests that this Court vacate its denial of certiorari in the above-cited cause, grant certiorari, grant rehearing, and remand the cause to the Massachusetts Appeals Court with the stated corrections on the procedural standards of judicial review. Otherwise, this Court opens the door to the same allowance of judicial errors for future litigants. (Michael J. Gerhardt, “The Role of Precedent in Constitutional Decisionmaking and Theory,” 60 George Wash. L. Rev. 68, 76 (1991)).

Respectfully yours,



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