No. 20-7116

IN THE SUPREME COURT OF THE UNITED STATES

ISABEL DEL PINO ALLEN,

Petitioner,

v.

BOARD OF TRUSTEES OF MIAMI DADE COLLEGE

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FLORIDA'S THIRD DISTRICT COURT OF APPEAL

PETITION FOR REHEARING

ISABEL DEL PINO ALLEN
PETITIONER, PRO SE
4371 SW 15 St.
Miami, Fl. 33134
Idelpinoallen@gmail.com
(305) 491-9225

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.1, Petitioner, *pro se*, Isabel del Pino Allen, petitions for rehearing of Florida's Third District Court of Appeal ("3d DCA") unelaborated ***per curiam affirmance*** ("PCA") of the lower court's February 26, 2020 "Order Granting Defendant's [Respondent Miami Dade College's] Motion for Summary Judgment." (see **Exhibit 1**[1])

Petitioner, *pro se*, notes that the fact the *implications* in the lower court's order are extraneous to Petitioner's filings before the lower court, coupled with Respondent's failure to acknowledge Petitioner's certiorari request (which implies Petitioner was less than truthful in her request for certiorari and therefore the request "did not even merit a response") **calls into question Petitioner's credibility and, in essence, denies Petitioner's "right to be heard."** Petitioner submits that the preceding presents "intervening circumstances of substantial or controlling effects [and..] substantial grounds not previously presented." Rule 44.2

Petitioner respectfully proffers that, had this Court deemed Petitioner's posed questions (which pertained to the probable misuse of EEO rules) irrelevant, and

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[1] Although the lower court's Order was included in the February 4, 2021 certiorari request, Petitioner includes it here, as **Exhibit 1**, since Petitioner deconstructs the Order on pages 7-10 of this document in an effort to demonstrate that the claims and insinuations in the Order are extraneous to the facts in Petitioner/Plaintiff's previous filing before the lower court and Petitioner/Appellant's filings before the appellate court. The veracity of these facts is demonstrated in this rehearing petition.

considering the fact EEO concerns (especially those involving allegations of sexual harassment) are ubiquitous and prominent in the current public sphere[2], Petitioner's request for certiorari would have been denied on April 19, 2021.[3]

I) Reasons for the Propriety of Requesting a Rejoinder ("BIO") from Respondent to Address Petitioner's Claims in the Request for Certiorari

When this Court granted *Pro Se* and *In Forma Pauperis* Petitioner Clarence Gideon certiorari, there was no contention regarding the *facts*: Gideon had been charged with a felony under Florida laws, and the trial judge denied Gideon's request for legal counsel since Florida law only permitted appointment of counsel for indigent defendants charged with capital offenses; the Florida Supreme Court affirmed through an unelaborated PCA. (*Gideon v. Wainwright*, 372 U.S. 335 (1963)

But unlike the facts this Court reviewed when it granted Gideon certiorari, in a case which ultimately lead to the resolution of the question of whether the right to legal representation applies to defendants in state court, (*Ibid*) the facts presented in Petitioner's February 4, 2021 certiorari request, discussed for the second time during the May 27, 2021 conference, do not correspond with what the lower court *implied* in its February 26, 2020 summary judgment order, which the 3d DCA "PCAd" without an opinion. Petitioner respectfully proffers that denying certiorari without a

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[2] The term (Öffentlichkeit) is attributed to contemporary German sociologist Jürgen Habermas, who labeled "the public sphere" the non-physical arena where persistent issues of societal concerns are discussed for the purpose of interpretation or change.

[3] Petitioner's perusal of the cases reviewed during conference on April 16, 2021 reveal that, while **this Court spared Petitioner's request for certiorari**, it denied certiorari (not rehearing) to 197 petitioners for writ of certiorari.

rejoinder from Respondent presenting "arguments for denying the petition[4] [..and] address[ing] any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if Certiorari were granted," (*Per* Rule 15) indicates an assumption that Petitioner's claims are not credible.

By ignoring Petitioner's request for certiorari - and waiving its right to respond without explicitly stating that it was waiving its right, (in full compliance with Rule 15(1)) Respondent was tactically suggesting to this Court that Petitioner's request for certiorari was so "off base," it did not merit a response or even an acknowledgment.

Petitioner also proffers that Respondent "banked on" the distinct probability that - in the absence of a written opinion from an appellate court or a rejoinder from Respondent - this Court would contrast the facts alleged in Petitioner's request for certiorari to those *implied* in lower court's Order, and deduce that Plaintiff's claims were untruthful and/or irrelevant to the questions posed in the Petition: whether an employer may use EEO rules for specious purposes and whether the U.S. Equal Employment Opportunity Commission may turn a blind eye to this type of misuse.

The U.S. Court of Appeal, Fourth District, presents a succinct explication of the judicious rationale for an appellate court's issuance of an unpublished disposition: *"The panel may decide the case by unpublished opinion pursuant to Local Rule 36(b). Unpublished opinions give counsel, the parties, and the lower court a statement of the*

[4] Petitioner's thorough perusal of this Court's response to other petitions for writ of certiorari, led Petitioner to infer that the next step - after Petitioner submitted payment for the docketing fee, in compliance with the April 19, 2021 order denying her motion to proceed *in forma pauperis* - would be for a request from this Court for a Brief in Opposition ("BIO") during the May 27, 2021 conference.

reasons for the decision. They may not recite all of the facts or background of the case and may simply adopt the reasoning of the lower court."

Petitioner submits that Florida's 3d DCA did **not** "adopt the reasoning of the lower court" when it issued an unelaborated PCA and denied a written opinion (which Petitioner requested not only for her benefit, but also for that of the "bench and bar," (See **Exhibit 2, pg 1**)) since the lower court's Order offers no "reasoning." Instead, the lower court's Order makes *unspecific statements* (e.g. what Petitioner claimed was a protected disclosure, was not; Petitioner was fired for "misconduct") or *insinuations* not based on facts (e.g. *"Petitioner is unable to established that she was disabled*[5] *or that the [Respondent, Miami Dade College] terminated her in May 2015 because of request (sic) to use a wheelchair couple (sic) days in 2013"*[6], or that Petitioner's claim of religious discrimination, per the Florida Civil Rights Act, was not valid[7]), none of which relate to the questions posed in Petitioner's certiorari request.

Petitioner proffers that the probable reliance on "the (non-stated) reasoning of

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[5] Petitioner has **never** claimed to be disabled. **Exhibit 4 ¶¶ 62-64** details Respondent's violation of EEO rules as well as Florida's Civil Rights Act when it allowed an EEO retaliation charge against Petitioner for having requested that she be accommodated after having had surgery the previous week and being temporarily in a wheelchair.

[6] **Exhibit 2** Petitioner's "Motion for Issuance of a Written Opinion, Rehearing, and Re-Hearing en Banc's" footnote 4, page 6 states: *"The only point of contention regarding factual issues, is Appellee's undocumented statement - which the lower tribunal judge referenced in her order- that Appellant claimed she was fired because she requested the use of a wheelchair two years earlier. The unproven statement is categorically false, as Appellant noted in her Brief. Appellant has always claimed (and proved) she was fired immediately after making a protected disclosure."*

[7] Plaintiff addresses the discrepancies between her claim of discrimination (per the Florida Civil Rights Act) and what is alluded in the lower court's order on pgs 10 -11.

the lower court," without first requesting and perusing a rejoinder from Respondent addressing what Petitioner noted in her certiorari request, is tantamount to denying Petitioner "the right to be heard."[8] (ABA's Canon 2, Rule 2.6(A).

II) The effect of dismissing a *pro se* litigant's claims, is tantamount to denying a *pro se* litigant's "the right to be heard."

This Court noted the importance of considering facts exposed by *pro se* litigants when it stated in *Haines v. Kerner*, 404 U.S. 519 (1972):

> The only issue now before us is petitioner's contention that the District Court erred in dismissing his pro se complaint without allowing him to present evidence of his claims.... Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the **opportunity to offer supporting evidence.** We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which entitle him relief." *Haines v. Kerner*, 404 U.S. 519 (1972) (Emphasis added)

Petitioner does not request permission to submit further supporting evidence, (the attached exhibits substantiate Petitioner's claims in her certiorari request), Petitioner respectfully pleads that this Court assess the facts in Petitioner's certiorari request (which directly relates to the questions posed in said request) *vis-à-vis* the evidence and/or arguments to be presented by Respondent in a BIO.

The absence of rejoinder renders Petitioner's claims irrelevant, implies a

[8] Petitioner perfunctorily reviewed the docketed related-documents of approximately 75% of the cases discussed during conferences on April 16, April 23, April 30, May 13, May 20 and May 27, 2021, and found only thirteen (13) petitions for certiorari (other than that of Petitioner's) where an acknowledgment from Respondent was not included among the docketed documents. This Court requested a BIO from Respondents in the 22 petitions for certiorari where a written opinion from appellate courts was not on file as well as a waiver from Respondent declining to respond.

speculative belief that *Pro Se* Petitioner's claims must be fallacious and extraneous to anything that would merit this Honorable Court's perusal, and that an employer's misuse EEO rules is either improbable or permissible.

Petitioner posits that Respondent's uncharacteristic[9] non-response (which, Petitioner acknowledges, complies with Rule 15(1)) was based on the deliberate stratagem to have this Court assess Petitioner's certiorari request *vis-à-vis* that which was insinuated in the lower court's Order. Therefore, in accordance with Rule 16(1) and "[a]fter considering the documents distributed under Rule 15, the Court [entered a summary disposition on the merits]" on June 1, 2021 and based its May 27, 2021 decision on the incongruence of the facts presented in Petitioner's certiorari request *vis-à-vis* those insinuated in the lower court's Order, PCAd by Florida's 3d DCA without a written opinion, which implies that the lower court's claims were so evident, that they did not warrant a written opinion.

Acknowledging that the hard-to-believe claims in Petitioner's certiorari request validates the probable incredulity on the part of this Court, Petitioner counteracts the possible perception that *Pro Se* Petitioner's claims are false, exaggerated, or irrelevant to anything that has national significance and thus would be of interest to this Court, by demonstrating that her assertions are factual and were previously noted in judicial pleadings with the lower court as well as with the appellate court.

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[9]Respondent has previously repeatedly filed objections. Despite its purposeful absence of involvement related to the petition for certiorari, Respondent has been vigilant about its development. On June 2, 2021, the *day after* certiorari was denied, Respondent filed a motion with the lower court (**Exhibit 3**) to have the case re-opened and Petitioner be fined financial penalties for "conjecturing." (See **Exhibit 2, pgs. 9,10**)

Petitioner asserts that a perusal of the exhibits/appendices in this Petition for Rehearing - which includes: Petitioner's "Third Amended Complaint and Demand for Jury Trial"[10] (**Exhibit 4**); Respondent's "Defendant's Motion for Summary Judgment and Memorandum of Law" (**Exhibit 5**); Petitioner's "Plaintiff's Memorandum in Opposition to Defendant's October 9, 2019 Motion for Summary Judgment" (**Exhibit 6**); Petitioner's "Motion for Issuance of a Written Opinion, Re-hearing, and Re-hearing En Banc" (**Exhibit 2**), and Petitioner's November 12, 2014 email to Respondent's EEO officer (**Exhibit 7**) - would confirm that Petitioner is not a charlatan or that her certiorari request is irrelevant.

Petitioner does *not* ask that her claims be accepted by this Honorable Court at "face value," only that Respondent be asked to refute Petitioner's claims to allow this Honorable Court to fairly assess whether certiorari is merited and subsequently give an opinion concerning the legality of an employers' violation of its EEO-related rules.

III) Unspecific Claims and Insinuations in the Lower Court's Order v. Petitioner's Assertions in the Request for Certiorari

- The February 26, 2020 Order's unspecific[11] claims that "[Petitioner] did not engage in any protected expression as required under the [Florida Whistle-

[10] The case, initially filed in November, 2015 through counsel (Petitioner proceeded *in forma pauperis*, in August, 2016 after having exhausted all her savings) went through three revisions (amendments), five (5) judges, and three (3) attempts at summary judgment from Respondent.

[11] The Order does not state what protected expression Petitioner/Plaintiff engaged in, or what the two "whistle-blowing" letters allege.

blower's Act[12]] and that "the two letters [of February 9, and April 8, 2015] do not contain information protected by section 112.3187(5), Florida Statutes."

Petitioner refuted the claim (previously made by Respondent in its "Defendant's Motion for Summary Judgment and Memorandum of Law in Support," **(Exhibit 5, pg.14)** in "Plaintiff's [Petitioner's] Memorandum in Opposition to Defendant's October 9, 2019 Motion for Summary Judgment," **(Exhibit 5, pg. 2)** where Petitioner referenced her "Third Amended Complaint and Demand for Jury Trial," **(Exhibit 4)** where Petitioner specified why her whistle-blower allegation complies with the Florida's Whistle-blower's Act's requisites: § 112.317(2)(5)(b) & (6) and which includes a copy of the February 9, and April 8, 2015 letters.

- The Order references Petitioner's charge against Respondent for religion and disability discrimination charges, per Florida's Civil Rights Act, and states: "There is absolutely no evidence to support Plaintiff's claim of religious discrimination, the basis of the claim being that [Defendant/Respondent] discriminated against her by refusing to investigate her complaint of discrimination made after she had been notified of the College's intent to terminate her employment."

Petitioner specified her religion discrimination charges in her opposition to summary judgment where Petitioner wrote (See **Exhibit 6, pg. 10**):

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[12] Petitioner, cognizant of the U.S. Supreme Court's mission, notes the certiorari request is NOT **to have this Honorable Court evaluate a possible "errors" on the part of Florida courts,** but to attempt to establish her credibility *vis-à-vis* the misstatement in the lower court's order, affirmed by the appellate court with its unelaborated PCA.

> With respect to [Petitioner's] charge for [Respondent's] violation of Florida Civil Rights Act, [Respondent's] EEO Coordinator and Reverend Joy Ruff accepted a charge of harassment based on religion against [Petitioner] because the charging party, a Jewish woman, stated that [Petitioner] - on an unspecified date and place - had told her that [Petitioner] would not want her own daughter to marry a "Presbyterian, a Jew, a Muslim or a Bahai," instead of a Catholic. (Refer to ¶ 69 of Allen's [Petitioner's] Third Amended Complaint).
>
> Shocked by the acceptance of the misplaced charge, when Allen attempted to file a similar "harassment against religion" charge against another *Freedom to Communicate* co-author, also Jewish, who told [Petitioner] (who identifies herself as Catholic) that she (the Jewish woman) would not tolerate her son marrying a Catholic... Ruff refused to accept [Petitioner's] charges (Refer to ¶¶ 70-71 of Allen's [Petitioner's] Third Amended Complaint. ct..."
>
> EEO Coordinator Ruff's (*sic*) clearly implied that, with regards to her vigilance of EEO-related regulations at [Respondent] MDC, "what's good for the goose is *NOT* good for the gander." (See **Exhibit 6, pgs 10- 11**)

- The Order states that: "Defendant's decision to terminate [Petitioner's] employment [was] for misconduct stemming from an internal investigation that commenced in September 2014," and that "[Petitioner] has failed to show that the [Defendant's/Respondent's] non-discriminatory and legitimate business reasons for termination were pretextual."

Petitioner refuted the Order's claim (also, claimed earlier in Respondent's motion for summary judgment (**Exhibit 5, pg. 23**) in her motion in opposition thereof (**Exhibit 6, pg. 2**) where Petitioner noted:

> The attached performance evaluations (See Exhibit A) for 2013 and 2014 - the last, for which [Petitioner] was awarded maximum points, was signed off by [Respondent] North Campus President Malou Harrison on December 15, 2014, the same person who wrote in her April 23, 2015 "Intent to Terminate Letter" to [Petitioner] stating that starting in January, 2014 [Petitioner] had engaged in a harassing campaign against

her peers - refute [Respondent's] Counsel Luke Savage's verifiably false assertion that "The College Had Legitimate and Non-Retaliatory Business Reasons for Terminating [Petitioner[13]]" Allen stating that starting in January, 2014 [Petitioner].3187, F.S.

- The Order's false implication in the deceptive statement that: "[Petitioner] is unable to establish that she was disabled or that the [Respondent] terminated her in May 2015 because of request (*sic*) to use a wheelchair for a couple days in 2013", is also reproduced from "Defendant's Motion for Summary Judgment and Memorandum of Law in Support," (See **Exhibit 5, pg 22, last ¶**) and repeated in Respondent's Answer Brief before the 3d DCA (not included among the appendices) is NOT based on ANYTHING alleged by Petitioner. This is noted in Petitioner's DCA-filed "Motion for Issuance of a Written Opinion, Rehearing, and Re-Hearing en banc." **(Exhibit 2, footnote 4, pg. of 6)**

- **Petitioner's Assertions in her February 4, 2021 Certiorari Request, that Respondent Miami Dade College speciously abused EEO rules to castigate Petitioner for having gone to the media and voiced her objection to the acquiescence to plagiarism, were stated in duly-filed pleadings:**

  During her deposition, Ruff admitted conferring with [Respondent's Associate Provost Bettie] Thompson, [who asked the accusers to charge Petitioner with EEO-related violations] on August 29, 2014 six (6) days *before* Cannon's charges, 12 days *before* Vellone's) and 15 days after *The Miami Herald* ran an article quoting [Petitioner] Allen... **(Exhibit 4, ¶ 17)**

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[13] The verbiage in Respondent's summary judgment motion **(Exhibit 5, pg 23)** is identical to that in the lower court's Order. A perusal of the lower court's order and Respondent's summary judgment will confirm that the lower court's order did not consider Petitioner's claim, and instead duplicates everything stated by Respondent.

During her deposition, held on April 22, 2016, Ruff acknowledged that she had accepted the charges for sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-related retaliation against [Petitioner] Allen *because* "[t]here was an issue with plagiarism with one of the colleagues, that [Allen] had an issue with plagiarism." **(Exhibit 4 ¶ 21)**

Ruff also said she did not abide by MDC's Procedure 1665 in notifying [Petitioner] Allen of the charges against her within 10 days after the EEO-related charges were filed, and that she waited two months because "there were other demands in [her] office. **(Exhibit 6, ¶ 22)** Ruff refused to say what these demands were. **(Exhibit 6, ¶ 23)** Ruff said her investigation was finished in late April 2015, "[months] beyond the sixty days" [specified in Procedure 1554 (*sic*) because [Ruff] "needed to consult with [MDC's] legal officers and administrative officers. **(Exhibit 6, ¶ 24)**

- Respondent **"white-washed" its misuse of its EEO-related rules** when it wrote:

"In September, 2014, citing [Petitioner's] behavior before, during and after the College's investigation concerning the academic integrity of *The Freedom to Communicate,* two of [Petitioner's] co-authors filed Charges of Discrimination/Harassment with the College's [EEO Coordinator]" **(Exhibit 5, ¶ 13)**

The above-referenced judicial pleadings - whose copies are included in this petition for rehearing as exhibits/appendices - firmly demonstrate that absolutely NOTHING stated in Petitioner's certiorari request is mendacious or exaggerated.

IV) Relevance of Petitioner's posed questions to the current "Öffentlichkeit," or public sphere

It is undeniable that EEO-related matters are ubiquitous in the public sphere; this Court has recently issued a multitude of opinions interpreting or re-interpreting EEO-related issues. Among these are: *Bostock v. Clayton County,* 590 U.S. (2020) 140 S. Ct. 1731; 207 L. Ed. 2d 218; 2020 WL 3146686; 2020 U.S. LEXIS 3252, and *University of Tex. Southwestern Medical Center* v. *Nassar,* 570 U. S. 338, (2013)

While it would seem improbable that an employer (in this case a Florida public college) would denigrate sacrosanct EEO rules, (intended to shield members of protected groups against discrimination and harassment) and misuse and bastardize them - by prompting, and then accepting charges of sexual harassment, harassment based on religion, harassment based on sexual orientation and EEO-related retaliation - to castigate a professor for defying the College *vis-à-vis* what constitutes plagiarism, Petitioner asks this Court to consider that it might have happened, **peruse the facts presented by Petitioner and Respondent** and subsequently issue an opinion pertaining the permissible use of EEO-related rules by employers.

CONCLUSION

For the above-cited reasons, Petitioner, Isabel del Pino Allen, respectfully asks that this Court grant this motion for rehearing, assess the veracity of Petitioner's claims *vis-à-vis* the claims and arguments presented by Respondent and grant certiorari to ultimately submit an opinion as to whether EEO-related rules must be strictly observed by employers or if EEO rules may be invoked to terminate an employee for stated-reasons unrelated to any EEO-related violation.

Respectfully submitted,

Isabel del Pino Allen
Petitioner, *pro se*
4371 SW 15 St.,
Miami, Fl. 33134
Idelpinoallen@gmail.com
305 491-9225

CERTIFICATE OF REMITTANCE PETITION IN GOOD FAITH

I, Isabel del Pino Allen, *pro se,* certify that this Petition for Rehearing is presented in good faith and not for delay.

Isabel del Pino Allen
Petitioner, *pro se*

CERTIFICATE OF SERVICE TO COUNSEL

I, Isabel del Pino Allen, *pro se,* certify that on June 21, 2021, I served a copy of this Petition, via U.S. Postal Service to:

Luke Savage
Counsel to Miami Dade Collge
Allen Norton and Blue
121 Majorca Ave. #300
Coral Gables, Fl. 33134

Isabel del Pino Allen
Petitioner, *pro se*

Additional material from this filing is available in the Clerk's Office.