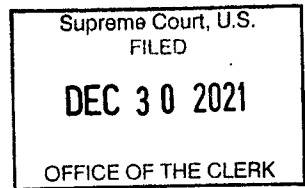


No. **21-6765**

**IN THE
SUPREME COURT OF THE UNITED STATES**



Hitoshi Ombe – PETITIONER

vs.

George Cook, et. al. – RESPONDENTS

**ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals
for the Tenth Circuit**

PETITION FOR A WRIT OF CERTIORARI

**Hitoshi Ombe
Pro Se Petitioner**

**PO Box 3893
Truth or Consequences, NM 87901-7893
Phone: 575-297-0766**

Questions Presented

The main question

“How the Court should respond to pro se litigant with mild mental disability, e.g., highly functional autism disability (i.e., least severe autism spectrum disorder) in order to protect his constitutional liberty and satisfy the due process requirement of the Fifth Amendment ?”

Subsidiary question 1

“Does the proceeding of the case filed by pro se litigant with highly functional autism disability who also has severe mental illness (depression and anxiety) without consideration of his disability needs protect his constitutional liberty and satisfy the due process requirement of the Fifth Amendment ?”

Subsidiary question 2

“When a pro se litigant lost his ability to perform effective and meaningful litigation activities, in particular, effective pleading, due to severe mental illness (depression and anxiety), should the equitable tolling be granted? “

LIST OF PARTIES

(A) These parties are from DNM No: 20-CV-00786, and CA10 No: 20-2166.

REPRESENTED BY:

They have not been summoned yet.

George Cook,	Jessica Martinez,	Jeffrey Anderson,
Victoria Curley,	Lawrence Villanueva,	Dominic Villanueva,
Clines Corners,	Clines Corner Travel Center,	
Clines Corners Operating Company,		Clines Corners Retail Center, LLC,
Clines Corners Property, LLC,		T-Bird, Inc.,
El Mercado Del Sol, Inc.		

(B) These parties are from DNM No: 16-CV-00763, CA10 No: 18-2031, and SCt No. 18-9247.

This petition raises the same question as the question of SCt No. 18-9247 even though the question of SCt No. 18-9247 was not phrased exactly as this petition due to severe mental illness. By Rule 12.4, these are included here. The case SCt No. 18-9247 was timely filed.

(1) REPRESENTED BY JARMIE & ASSOCIATES (Mark D. Jarmie, Mark D. Standridge, Matthew D. Bullock)

State of New Mexico,	NM Department of Public Education,	
NM Division of Vocational Rehabilitation,		
Susana Martinez,	Hanna Skandera,	Ralph Vigil,
Rosa Lima,	Richard Smith,	John Fullinwider
Terri S. Douglass,	Adrian Apodaca,	Susan J. Lopez
Reyes R. Gonzales,	Ava M. Gutierrez,	Lee M. Martinez,
Carol Day,	Gary T. Lucas,	Tanya Shatz,
Martha V. Jaramillo,	Patricia Gulino,	Earnest O. Pacheco,

Note: Gary T. Lucas has not been summoned yet due to NM District Court confusing direction. Severe mental illness made it impossible to perform properly.

Last Known Address on Record

Mark D. Standridge

PO Box 344, Las Cruces NM 88004-0344

(2) REPRESENTED by DOMENICI LAW FIRM, PC (Peter V. Domenici, Jr., Jeanne Cameron Washburn)

Disability Rights New Mexico, Inc.

The Board of Directors of Disability Rights New Mexico, Inc.;

James (Jim) Jackson,

Jason C. Gordon,

Nancy Koenisberg,

Timothy (Tim) Gardner,

Bernadine Chavez

Last Known Address on Record

Peter V. Domenici, Jr.,

320 Gold Avenue, Suite 1000, Albuquerque, NM 87102-3228

LIST OF RELATED CASES

- ◆ *Hitoshi Ombe v. George Cook et. al.*, No: 20-CV-00786, United States District Court for the District of New Mexico, Judgment entered on October 15, 2020.
- ◆ *Hitoshi Ombe v. George Cook et. al.*, No: 20-2166, United States Court of Appeals for the Tenth Circuit, ORDER entered on August 2, 2021 denying the PETITION FOR REHEARING EN BANC; ORDER AND JUDGMENT entered on June 24, 2021
- ◆ *Hitoshi Ombe v. George Cook, et. al.*, No: 16-CV-01114, United States District Court for the District of New Mexico, Judgment entered on November 20, 2017
- ◆ *Hitoshi Ombe v. Susana Martinez, et. al.*, No: 14-CV-00763, United States District Court for the District of New Mexico, Judgment entered on January 25, 2018
- ◆ *Hitoshi Ombe v. Susana Martinez, et. al.*, No: 18-2031, United States Court of Appeals for the Tenth Circuit, ORDER AND JUDGMENT entered on November 08, 2018; ORDER entered on December 10, 2018 denying the PETITION FOR REHEARING EN BANC;
- ◆ *Hitoshi Ombe vs. Susana Martinez, et. al.*, No: 18-9247, Supreme Court of the United States, ORDER DENYING PETITION FOR REHEARING on January 13, 2020; ORDER DENYING PETITION FOR A WRIT OF CERTIORARI (without review) on October 7, 2019.

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to the judgments and orders below.

A. OPINION BELOW

This case is from federal courts.

The opinion that autism spectrum disorder, DSM-5, pages 50-59 together with mental illness (depression and anxiety) is not a disability for the purpose of functioning as a pro se litigant expressed by the proceedings to reach the following.

The "JUDGEMENTS AND ORDERS" of the United States court of appeals appear at Appendix A and Appendix E to the petition and are unpublished. Appendix E is the timely filed case SCt No: 18-9247.

The "FINAL JUDGMENT" and "RULE 58 JUDGMENT" of the United States district court appear at Appendix B and Appendix F to the petition and are unpublished. Appendix F is the case SCt No. 18-9247.

The "ORDERS" of the United States court of appeals appear at Appendix C and Appendix G to the petition and are unpublished. Appendix F is the case SCt No. 18-9247.

B. JURISDICTION

The date on which the the United States Court of Appeal decided my case was June 24, 2021 and a copy of the "ORDER AND JUDGEMENT" appears at Appendix A.

A timely petition for rehearing was denied by the United States Court of Appeals on August 02, 2021 and a copy of the ORDER denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including December 30, 2021 on October 20, 2021 in Application No. 21A88. A copy of the letter of the Clerk of the Court appears at Appendix D.

The jurisdiction of this Court is invoked under 28 USC 1254(1).

The jurisdiction of this Court over the case SCt No. 18-9247 is by Rule 12.4 with the updated and more complete information. This exception is due to severe mental illness caused by everybody involved.

C. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (Appendix H)

STATUTES AND RULES

Fifth Amendment of the Constitution: due process clause

Fourteenth Amendment of the Constitution: due process and equal protection clauses.

ADA Amendments Act of 2008

Americans with Disabilities Act of 1990, as amended

Developmental Disabilities and Bill of Rights Act

Federal Tort Claim Act of 1946, as amended

Judiciary Act of 1798, as amended.

Rehabilitation Act of 1973, as amended.

Federal Rules of Appellate Procedure

Federal Rules of Civil Procedure

34 CFR 361.5(c)(4)

42 CFR 1630.2

OTHER

The Judicial Conference of the United States: Policy 255

Rule Set 16 – Rules of Professional Conduct, New Mexico State Rules

Tort Law (State Law: NM depends upon precedents, not statute)

D. STATEMENT OF THE CASE

The entire fact on which this petition is based lasted from April 10, 2010 to October 04, 2021. I suffered from chronic and never-ending infliction of emotional distress day and night from April 2010 to at least February 2018. It was an institutional and a managerial abuse of power and control committed by the State of New Mexico, in particular, NM Division of Vocational Rehabilitation, Disability Rights New Mexico, Inc., my employer Clines Corners, and the United States District Court for the District of New Mexico ("NM District Court"). The United States Court of Appeals for the Tenth Circuit ("Tenth Circuit") strongly supports abusive practices of NM District Court. I suffered from severe mental illness with depression and anxiety for years. It had a most destructive, damaging and costly negative effect on my mental (cognitive) abilities. In particular, my litigation ability was too severely damaged to be functional. The full recoup of the

damaged mental ability took place on October 04, 2021, even though I still have mild mental disability i.e., highly functional autism disability. The most relevant fact is condensed as follows.

1. NM Division of Vocational Rehabilitation (April 28, 2010 to June 25, 2014) and Disability Rights New Mexico, Inc. (February 08, 2012 to April 14, 2014) (DNM No. 14-CV-00763; CA10 No. 18-2031; SCt No. 18-9247) After the initial determination of my eligibility for their autism disability vocational rehabilitation service, NM Division of Vocational Rehabilitation ("DVR") did absolutely nothing. All they did was bureaucracy or processing. Disability Rights New Mexico, Inc. ("DRNM") abandoned their efforts on my case and did nothing to prevent from DVR reckless bureaucracy. They subjected me to an institutional abuse of power and control by chronic and never-ending infliction of emotional distress. Most essential fact is that they too severely damaged my litigation ability to be functional. They crippled me mentally.

2. My last employer, Clines Corners (April 10, 2010 to October 30, 2016) (DNM No. 16-CV-01114; No. 20-CV-00786; CA10 No. 21-2166) The general manager maintained hostile work environment against my disability. They subjected me to a managerial abuse of power and control by chronic and never-ending infliction of emotional distress. He also harassed me by micromanagement. Most essential fact is that they also severely damaged my litigation ability to be functional. They crippled me mentally.

3. NM District Court (Summer 2014 to February 20, 2018; August 04, 2020 to February 22, 2021) (DNM No. 14-CV-00763; No. 16-CV-01114; No. 20-CV-00786) Not only the defendants too severely damaged my litigation ability long before I filed my first case on August 22, 2014, but also the gang of seven unqualified licensed lawyers including District Judge and Magistrate Judge responded my cases and bulldozed over me completely. The proceeding was a continuous threat and intimidation caused by maintaining an institutional abuse of power and control. It forced me to continue to suffer from chronic and never-ending infliction of emotional distress. They further damaged my litigation ability. They continued to cripple me mentally. They refused to accept that these are mental disability cases by overwriting the determination of the American Psychiatric Association ("APA"). I am a gravely serious victim of these.

The results of the litigation are (1) the case against the DVR and DRNM (DNM No. 14-CV- 00763) is dismissed for failure to state claim caused by the defendants and, later NM District Court without any substantive opportunity to correct pleading deficiency; (2) the case against my employer Clines (DNM No.

20-CV-00786) is dismissed for the expiration of statute of limitation caused by the defendants and NM District Court.

4. Tenth Circuit Court (CA10 No. 18-2031; CA10 No. 20-2166)

Tenth Circuit chose to completely disregard the fact that autism spectrum disorder is a mental disability based on medical determination made by the APA. They maintain able-ism and exclude individuals with mental disabilities. They refuse to understand mild mental disability is indeed significant disability. Tenth Circuit is a Kangaroo Court by excluding the essential point of appeals for consideration. The conclusion stated as ORDERS AND JUDGMENTS, Appendix A and Appendix E are predetermined or expected without any deliberation of essential points of appeals.

E. REASONS FOR GRANTING THE PETITION

There is essentially one reason for granting the petition. Everybody refused to understand that I do have a disability that requires support and disregarded my disability needs for years. This is because I am also highly functional. Everybody completely damaged my litigation ability. The entire process from the beginning of the DVR and DRNM to the end of the NM District Court was completely out of my control. The responsible parties for the cause of my failure to litigate against all the defendants (DVR, DRNM, the employer Clines Corners) are the defendants and NM District Court. I have no fault at all. Tenth Circuit has been evading the disability issues to disguise their failure of proper response to my cases.

One of the conclusions of these is that Tenth Circuit has been denying neurodiversity which is the same kind of issue as sexual diversity. Autism spectrum disorder is to do with atypical development of central nerve system. Or individuals with autism spectrum disorder are neurological minority.

The Congressional finding is that individuals with disabilities are excluded from the main stream of the society. They have been discriminated against disabilities. 42 USC 12101(a). The Congressional purpose of the Americans with Disabilities Act of 1990, as amended ("ADA") is to create all inclusive society with a federal leadership. 42 USC 12101(b). For this purpose, all three branches of the federal government must make consistent and continuous efforts. However, the legal framework is incomplete to do so. I am the victim of this. The only way to resolve the matter is to request the Supreme Court of the United States to intervene in the dispute.

E.1. Rule 14.4, autism and depression

A pro se litigant on the least severe autism spectrum disorder, DSM-5, page 52, without mental illness (depression and anxiety) has these. The ability to present facts accurately without more sophisticated concepts is not an issue. The ability to present the case with brevity or clarity is a major challenge. For a pro se litigant on the least severe autism spectrum disorder with mental illness does not have an adequate ability to satisfy Rule 14.4. In fact, with mental illness, the disability gets more severe. This is the reason why the petition filed as SCt No. 18-9247 failed on the requirement of clarity, Rule 14.4.

Compared with the petition SCt No. 18-9247, this new petition should be much better. This is because I finally recouped from the damages caused by years of abuse of power and control on October 04, 2021. In this sense, among all of the related cases listed, this is the only meaningful opportunity.

If the Court determines that this petition does not fully satisfy the requirements, brevity and clarity, of Rule 14.4, it does require me to work on an additional one or two months, because this is one of my disabilities, 29 CFR 1630.2(j)(4)(iii). The requirement of brevity is always a most serious challenge.

E.2. Significance of the case

a. Acceptance of mild mental disability as significant and real disability This is a question of understanding and acceptance of mild mental disability as real and significant disability. When we say mental disability, we have a broad range of severity of the disability. They can be termed as mild mental disability, moderate mental disability, and profound mental disability. An example of mild mental disability is highly functional autism disability, 29 CFR 1630.2(j)(3)(iii) & (j)(4)(iii) or Level 1 (or least severe) autism spectrum disorder, DSM-5, pages 50-59, especially page 52. Appendix I. In the past, only profound mental disability (i.e., intellectual disability) is considered legally significant, and other two were considered legally insignificant and disregarded. This can be seen from a historical review of disability legislation.

The first disability civil right law is Section 504 of the Rehabilitation Act of 1973 with its original definition of disability. It did not produce sufficient result to help with individuals with disabilities. In particular, the Congress found that individuals with disabilities cannot participate in the main stream of the society, and face various forms of discrimination against disabilities, 42 USC 12101(a)(5). To address this problem, the Congress enacted the Americans with Disabilities Act of 1990. It is meant a comprehensive

but general purpose legislation on disability rights. Meanwhile the Congress also legislated the Developmental Disabilities Assistance and Bill of Rights Act. The latter is focused on developmental disabilities for which more severe autism spectrum disorder is a representative example. 42 USC 15001(a) (3) & (5). It is not meant to be comprehensive as to nature and severity of disabilities.

Since the ADA is meant to be comprehensive, it covers a broad range of nature and severity of disabilities. This means that the ADA covers mild mental disability. However, there are two controversial cases regarding the interpretation of "substantially limited," the key concept of defining disability. They are Sutton vs. United Airlines, inc., 527 U.S. 471 (1999) and Toyota Motor Manufacturing, Kentucky, Inc. vs. Williams, 534 U.S. 184 (2002). By these cases, the Court significantly narrowed the definition of disability against the Congressional intention. Of course, the Court opinion represented by these cases is that mild mental disability is not significant.

To restore the original intention of the ADA, the Congress enacted the ADA Amendments Act of 2008 ("ADAAA") effective on January 01, 2009. Section 2 of the ADAAA. By the ADAAA, mild mental disability has finally been accepted as legally and practically significant disability.

Now I limit myself to highly functional autism disability or Level 1 (least severe) autism spectrum disorder as a representative example of mild mental disability. Since the disability has been accepted as a legally significant disability starting January 01, 2009, more than 10 years past. What changes have happened? The answer is never enough. Some people may argue that the matter is an applicable legal provision. However, it is irrelevant, because the matter is ultimately medical, not legal. Unless you are conscious about this kind of disability, you can easily overlook it completely. You could even inflict me by emotional distress. In the worst case scenario, you could abuse me emotionally. This is an essential reason why I have been pursuing the cases in the courts.

Even though the DVR and DRNM are disability service organizations, they miserably and completely failed to conduct themselves appropriately towards my disability. Given the essential nature of judicial proceeding, NM District Court conducted themselves worse than the DVR and DRNM. This was even after I repeatedly requested a full hearing on the issue to the best of my ability. All of my requests of disability hearing were denied. This was because the gang of seven unqualified lawyers including District

Judge and Magistrate Judge responded to my cases. Even though my cases are disability cases, they have absolutely no interest in disability issues at all. They completed all of my disability cases without ever addressing any of my disability issues at all. Of course, the proceeding became an institutional abuse of power and control. The entire Tenth Circuit refused to review my PETITION FOR REHEARING EN BANC of the both cases No. 18-2031 and No. 20-2166. Appendices C & G. This is because no Circuit Judge has any interest in mild mental disability. The entire Tenth Circuit is totally prejudiced against me simply because they never understand or refuse to understand the seriousness of my autism disability which was much more severe than now because of the serious negative effect of mental illness with depression and anxiety on my cognitive ability. The directly responsible parties of my mental illness are the defendants and all the unqualified lawyers who processed my cases.

Since autism spectrum disorder is a born neurodevelopmental disorder, any individual with the disorder has life-long struggle. Individuals with other kind of mild mental disabilities, 29 CFR 1630.2(j)(3) (iii) can expect similar problems because people cannot see they have legally significant disabilities. People simply exclude them from the system. 42 USC 12101(a)(5).

What NM District Court and Tenth Circuit did is a move that is completely opposite to the ultimate purpose of the Congress to enact the ADA. They imposed me something they could not have handled themselves if they were in my position. This is of course a public scandal.

Raising voice on the issue by an influential person such as the Supreme Court of the United States can expect a significant impact on improving life of the segment of population who suffer from mild mental disability. If not, people with mild mental disabilities remain in the shadow of the society and can never have any chance to be able to fully participate in main stream of the society, fully enjoy their constitutional liberty and fully exercise their rights.

b. Other Circuits

The response to my mental disability by Tenth Circuit is extreme and totally unreasonable. Although I could not find opinions by the other Circuits, I would say that other Circuits, in particular, Ninth Circuit would be much more reasonable based on various media reports. This is because the issue can be resolved by scientific or rational understanding of the meaning of autism disability. Tenth Circuit has been completely refusing to do so.

c. A brand new case

I am certain that the Court made a number of decisions on autism cases. An important question here is: How many of those cases required to go into the details of specific functional limitations due to autism disability?

For example, EEOC vs. Tersadia Hotels dba Comfort Suites, US District Court, SDCA, No: 10-CV-1921(settled) is an autism case under Title I of the ADA. The fact is that a hotel clerk with autism disability requested a state-paid job coach. The employer denied it and fired him. In this case, the fact is straightforward and does not require any specific details of autism disability.

When such details are required, some of the contents of the next **section E.3.** should have been argued already. However, I do not know any cases that should have had such arguments. Argument includes what is the barrier from functional limitation, what is the required accommodation to eliminate or mitigate the barrier for the purpose of the particular situation, and what constitutes legal evidence to prove or disprove the required accommodation is made. To the best of my understanding, this should be the first case to require some details of the disability. I am quite certain that this is a brand new case.

d. The requirement of intervention by the Supreme Court

No matter how many times I requested to have a full hearing on my disability needs to the best of my ability, both NM District Court and Tenth Circuit have been refusing to understand that I do have my disability. Without this step, nothing can be done meaningfully. They do never understand the term "disability." Consequently, the only way to resolve the matter is to request the Supreme Court to intervene the dispute.

E.3. Nature of autism disability or autism spectrum disorder

This requires some explanation in relation to Rule 14.3, the requirement of plain terms. In recent years, we have been hearing autism more then ever before. Then the question is "*What is autism disability all about?*" There is no simple and clear answer to this. It is very complex and nobody knows it for sure, although there are thousands of pages of scientific literature and books. Here I summarize the essential points of the disability based on literatures I studied and my EVALUATION REPORT for autism spectrum disorder and my Neuropsychological Evaluation Report issued by UNM School of Medicine on January 31, 2011 and June 10, 2014 respectively. Some new concepts are required to achieve a good grasp of the nature of autism disability.

It is required that any individual who participates in my cases has sound background of the nature of autism disability with two reasons. The first reason is for any individual. He must be aware that he is taking a significant risk at inflicting me by emotional distress without care of my disability needs. Its negative effect on my mental health and mental ability could be most serious. The second reason is for judicial officials and officers of court. Without sound knowledge and understanding of autism disability, nobody can determine the relevant facts correctly. The factual determination can be completely wrong as happened with my case. DNM No. 14-CV-00763 Document 175 (Motion for summary judgment) & Document 194. The contents of ***"Il Undisputed material fact"*** are irrelevant to anything to do with autism.

The trouble is that these issues should have been settled in NM District Court long long ago. NM District Court refused my repeated requests of a full hearing of this. The last refusal took place on October 15, 2020. DNM No. 20-CV-00786, Document 13. Tenth Circuit refused to have an oral argument twice. Tenth Circuit has been evading their responsibilities and the issue completely to make me look bad. Consequently, nothing is settled on these fundamentals of the cases. Thus, I have no choice but to present the essence of these here. This is an unwarranted extra burden on me.

a. Diagnosis criteria of autism spectrum disorder Autism spectrum disorder DSM-5 pages 50-59 is to do with abnormal behavioral patterns caused by atypical development of central nerve system. For the purpose of diagnosis, the abnormal behavioral patterns can be summarized as (A) persistent deficits in social communication and social interaction across multiple contexts ("social communication disorder") and (B) restricted, repetitive patters of behavior, interests, or activities ("restricted repetitive behavior"). The APA is the authority of this. DSM-5, page 50.

Since the severity of these autism symptoms has a wide range, the APA specifies three levels of required support. DSM-5, page 52. Level 1 requires support. Level 2 requires substantial support. Level 3 requires very substantial support. Appendix I.

b. Nature of autism disability While the diagnostic criteria (A) and (B) provide a general understanding of the nature of autism disability, it is insufficient to fully understand the factual issues of this petition. Here, I present the hard core of the disability of this petition.

Autism disability can be understood as the issues of the fundamental cognitive functions consisting

of (1) intelligence (intellectual intelligence and emotional intelligence), (2) attention (visual attention and auditory attention), and (3) the fluidity of subconscious (i.e., the ability to automatically bring up the information stored in subconscious and verbalize it.) When at least of one of these is substantially limited, then you have disability. Highly functional autism disability or the least severe (or Level 1) autism spectrum disorder means that all of these except intellectual intelligence are substantially limited: 42 USC 12102; 29 CFR 1630.2. The disability of (3) is the rigidity of subconscious. Since intellectual intelligence is intact, the disability is highly functional and an example of 29 CFR 1630.2(j)(4)(iii). It is also the essential reason that many people do not understand that he has mental disability. For the purpose of this petition, emotional intelligence is the central issue but not the entirety.

(a) Intellectual intelligence is the classical intelligence and generates intellectual ability. It is the ability to use knowledge (academics), quantitative reasoning (numbers), logical reasoning, raw fact (e.g., John said ABC without understanding the John intended meaning.) or rote memory, etc.).

(b) Emotional intelligence is a new concept popularized by the New York Times best seller *"Emotional Intelligence – Why it can matter more than IQ"* by Daniel Goleman published in 1995 and generates abilities to perform a broad range of major life activities. 42 USC 12102. The essential importance among them is the *higher-order thinking ability*. The function of this ability includes, among others, concept formation (from the facts), concept connection (facts and causes), idea generation, problem solving, and so forth based on facts. More practically, it is the essential ability to plead, negotiate, make decisions, form opinions and intention, use qualitative reasoning, to interpret and relate others, to effectively communicate, and much much more. Emotional intelligence is more important than intellectual intelligence as long as you do not have intellectual disability.

c. Autism disability accommodation Autism disability accommodation (or support) consists of (1) maintaining open communication, (2) maintaining genuineness, and (3) providing extended time to complete some essential tasks as appropriate. By nature of the disability, accommodation should be made all the time as appropriate irrespective of any legal provision. These are medical or clinical requirements. *Your attitude is important.*

Authority for (1) is EEOC vs. Tersadia Hotels dba Comfort Suite. This is an autism case under the

Title I of the ADA. Its Press Release includes,

'Maria Stern, local director of the EEOC's San Diego Local Office, added "A reasonable accommodation is often minimal in cost and merely involves open communication between the employer and employee to make it work. The results can make all the difference for people with disabilities, allowing them to succeed in the workplace.' (underline added)

This principle applies for a broad range of circumstances including the court: it must maintain effective and complete communication all the time anyway. See also the quotation from the AFFIDAVIT at the end of this **subsection c** as a concrete and practical example to show how to interact with individuals with autism disability.

Authority for (2) is the original research paper by Hans Asperger published in 1944. It includes a report on this with school setting.

"I have already mentioned that behind the cool and objective interaction with Fritz and all similar children there needs to be genuine care and kindness if one wants to achieve anything at all. These children often shows a surprising sensitivity to the personality of the teacher. However difficult they are even under optimal conditions, they can be guided and taught, but only by those who give them true understanding and genuine affection, people who show kindness towards them and, yes, humour. The teacher's underlying emotional attitude influences, involuntarily and unconsciously, the mood and behaviour of the child. Of course, the management and guidance of such children essentially requires a proper knowledge of their peculiarity as well as genuine pedagogic talent and experience. Mere teaching efficiency is not enough."(underline added)[DNM No: 14-CV-00763, Doc. 117]

The unlined parts implies that judges and lawyers must have a proper knowledge of autism disability in order to handle both of my cases, in particular, cases in the district court, where the judges more directly interacted with me. NM District Court has known this since March 03, 2017 but been totally refusing to understand its importance.

Authority for (3) is 29CFR1630.2(j)(4)(iii):

"In determining whether an individual has a disability the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve". (underline added)

An example of this is: for the case DNM No: 14-CV-00763, at its conference held on July 27, 2017, the court granted one week extension to complete my contention (Document 140) without my asking. The deadline was 21 days. However, I could not think anything about contention for one week under threat and intimidation together with extreme pressure and severe anxiety and depression. I did not understand the meaning of contention at all. Nevertheless I wrote whatever came to my mind in the next 14 days and

submitted an incomplete document. However note that the contents have lots of factual details (due to intact intellectual intelligence) with little actual contention (due to too severely limited emotional intelligence) as I now understand, but not at that time. The ability of higher-order thinking is essential to produce effective contention but I did not have it at that time.

Finally, I quote from the AFFIDAVIT of my supporter. We have known each other for years.

13. *My experience with Autism which includes a nephew and niece as lead me to understand some of issues these individuals encounter throughout their lives. Issues like communication and social interaction skills that are out of the norm in our society. Simple social skills like relating to people and others understanding their emotions are ongoing challenges. What works best in my experience is providing them with an environment where they can explain how they interpret the subject matter. This is achieved through active listening and being very detailed in the way I explain my thoughts or opinions without assuming they understand as others may in the same social situation.*

14. *I have known Hitoshi for over 10 years. We initially met when he was a job seeker and came into our employment office. Hitoshi is a mild-mannered individual who at time lacked self-confidence. Our office services provided him with interviewing skills and employment placement. I continued to stay in touch with him to assist him with ongoing counseling as a job coach and employment mentor. A few characteristics that Hitoshi displayed and that I noticed was an underdeveloped social skill and an out of cultural norms communication difficulty. For example, Hitoshi had a very literal use of language and struggled to distinguish humorous statements, sarcastic remarks, or similar nuances of speech and tone. That said, verbal communication methods such as asking open ended questions where he could explain his understanding of the subject matter and active listening were the best methods of communication. (underline added)*

AFFIDAVIT filed on November 4, 2021 with the case Hitoshi Ombe vs. Sierra Collision & Towing Services, LLC et. al., Case No. D-721-CV-2018-00151 (NMCourts.gov)

d. Instability of the severity of autism disability The Court can understand that autism disability accommodation does not require any major resources. It only requires your desire and attitude, in particular, open-mindedness. On the other hand, it is easy to disregard his disability need without noticing it. And when his disability needs are not met, you are taking risk at hurting him by infliction of emotional distress. The authority for this is that DSM-5 at page 50 lists "*extreme distress at small change*" as an example of the diagnosis criterion (B) repetitive restrict behavior.

When autism disability accommodation is not met sporadically, it is not much an issue. However, when it happens systematically for a prolonged period of time like my cases, it can become an institutional or authoritative abuse of power and control. This is the main fact of both of my cases. My first case SCT No. 18-9247 (CA10 No. 18-2031; DNM No. 14-CV-0763) is such that the defendants never fully understood

what I said and I never fully understood what they said. My second case DNM No. 20-CV-00786 is such that the defendant general manager was never interested in full communication at the level exercised by any other reasonable manager in a similar position. He was always most significantly under-communication. This generated infliction of emotional distress and hostile work environment.

When institutional or authoritative abuse of power and control lasts for an extended period of time, he suffers from mental illness with depression and anxiety. In my case, the abuse lasted for total at least 8 years: April 2010 to at least February 2018 by people whose responsibilities include helping me, supervising me, or directing proper and quality judicial activities. By proper and quality judicial activities, I mean that any activity never hurt any participant of the proceeding and at the same time maintaining effective and complete communication with all the parties. NM District Court completely failed on this.

Most serious consequence of these abusive practices is that they severely damaged my cognitive ability as a serious negative effect of mental illness on it. My Level 1 disability progressed to Level 2 or even Level 3 disability. This is an essential difference from many disabilities, which are stable once the condition is settled. The intelligence becomes:

(a1) Intellectual intelligence is intact. Intellectual ability is intact.

(b1) Emotional intelligence is too severely limited to be functional. In particular, higher-order thinking ability is too severely limited to be functional. He is mentally crippled. Some people are ready to take advantage of his disability.

An additional serious disability as the effect of mental illness is:

(c1) Tasks which can be accomplished with extra time and efforts with quality outcome can become too burdensome and additional infliction of emotional distress. At the same time, supposedly completed task has a poor quality or unsatisfactory or never completed.

e. Litigation ability Litigation ability as a pro se litigant is defined as the ability to effectively and meaningfully perform litigation activities without support or accommodation like what most people can perform. When he has litigation ability, he has an opportunity to prevail his case. When he does not have litigation ability, his opportunity to prevail his case diminishes to up to and including no opportunity at all regardless of the merit of the case. Here "effectively and meaningfully" are essential. Then the

question is what kind of more specific abilities are required to have one's litigation ability. For this question, the Court does not have a meaningful answer. The past approach to this kind of question taken by the Court is ad hoc, eg, mental capacity. It lacks systematic understanding of the matter. This is because there was not much information on how brain works in the past. Today, there is substantial scientific evidence to answer to the question systematically without demanding legal argument. 29 CFR 1630.2(j)(1)(i)

Ultimately, the question is to define litigation ability. The Court past definition is focused on intellectual intelligence and wholly inadequate. Not only it does not reflect modern scientific knowledge but also it is inconsistent with the Congressional purpose of the ADA. There should be an old case on this issue. But I could not find one so far. I do not know how I could research more at this moment.

Thus, the Court should abrogate the past practice and start anew.

Among various abilities, intellectual ability and higher-order thinking ability are most essential components of litigation ability. *When the level of intellectual ability is not at least at the level of most people (this is the classical reason for the issue) or the level of higher-order thinking ability is not at least at the level of most people, then the individual does not have his full litigation ability.* He cannot expect that he has an opportunity to prevail his case regardless of the merit of the case.

f. Litigation ability of individuals with autism disability When applying the definition of litigation ability to an individual with autism disability (note: we are talking about least severe autism disability with no mental illness), it is immediately clear that he as a pro se litigant does not have his full litigation ability. It is substantially limited compared to most people. The most serious disability is that his higher-order thinking ability is substantially limited and requires support. This is because his ability to form concepts from the facts, to generate ideas, and connect it to what he wants to plead and argue is substantially limited.

Commonly his disability accommodation means an extended time to complete tasks and more complete communication. As an example, saying that an extension of these deadlines is for good cause is often very incomplete. See DNM No. 14-CV-00763, Documents 138 & 193. You must give more concrete meaning of good cause as it is too abstract. He can immediately understand the abstract meaning and significance of good cause but he does not understand what kind of cause is acceptable for this purpose.

This causes infliction of emotional distress.

Now, when the same individual has also mental illness, especially, depression, he does not have his litigation ability at all. Most serious disability that makes his litigation ability completely disabled is that he does not have higher-order thinking ability. No matter how many pages of documents he produces, none of them are useful for the purpose of pursuing meaningful litigation. He can produce documents because his intellectual intelligence is intact. But, he is incapable of appealing or pleading or arguing anything meaningful to trigger serious debate.

This is the cause that there are too many documents are on file. See DNM No. 14-CV-00763, Documents 191 & 198, and No. 20-CV-00786, Documents 41 & 47. The NM District Court ordered me to show cause. But, I did not have my ability to defend myself. And at the same time, District Judge refused to understand the concrete meaning of autism disability like what I have explained in this **section E.3**. Instead, he forced me to suffer from chronic and never-ending infliction of emotional distress.

This is because, for example, my concept formation ability and concept connection ability were completely disabled. As an example, what NM District Court did for the case DNM No. 14-CV-00763 is summarized as "The gang of seven unqualified lawyers completely bulldozed over me." Until October 04, 2021, I did not have any ability to think like this because I could not form concept from the fact what they did and connect it to what I wanted to say. This is sufficient to say that he does not have his litigation ability.

E.4. Negligence of federal judiciary

The most serious complaint against NM District Court and Tenth Circuit is that they have been most grossly underestimate the seriousness of autism spectrum disorder. They have literally overwritten the determination of the APA that it is a life long disorder and requires support, and said that it is not a mental disorder. The legal basis of their acts is that the ADA does not directly cover the federal judiciary. And what they did is a proof of the limitation of pure legalism. At the same time, it proves the negligence of the federal judiciary. Further more, overwriting the APA determination is an illegal act without medical license.

In view of the fact that individuals with disabilities cannot participate in the main stream of the society because of pervasive discrimination against disabilities, the Congress enacted the original Americans with Disabilities Act in 1990 in order to comprehensively eliminate discrimination with a federal leadership. To

effectively achieve the purpose or goal of the current and amended ADA, all three branches of the federal government must make necessary efforts. The current status of this efforts is as follows.

- ◆ Legislative Branch of the Federal Government is covered by the ADA;
- ◆ Executive Branch of the Federal Government is not covered by the ADA, but by sections of Title V, eg., Section 501, Section 508, of the Rehabilitation Act;
- ◆ Judiciary Branch of the Federal Government does not have anything significant to help the issue. The only thing they have is Policy 255. It is outdated and wholly inadequate.
- ◆ EEOC enforces the ADA but does not have anything to protect the right of individuals with certain mental disability, who may not have effective pleading ability as complainants.
- ◆ Office of Civil Right of the Department of Education (“OCR”) enforces the ADA and Section 504 of the Rehabilitation Act but does have the same problem as EEOC.
- ◆ State and local governments are covered by the ADA and Section 504 of the Rehabilitation Act.

Probably because of the constitutional requirement of separation of power, the Congress could not cover the federal judiciary with the ADA or Title V of the Rehabilitation Act. If this is indeed the case, they have to establish disability policy consistent with the purpose of the ADA. However, such policy does not exist other than an outdated and wholly inadequate Policy 255. This is because whoever is responsible for the matter has been negligent for years. This also means that the consciousness level of the importance of the disability issues among judiciary people like judges are none at all. This is the root cause of this appeal.

These situations create an inconsistency. The federal judges enforce the ADA and Section 504 by their personal enforcement actions, yet they can disregard disability needs to face individuals with disabilities. This is meaningless and totally incomprehensible. It does not help achieving the ultimate Congressional purpose of the ADA. It is clear that the Judiciary Branch must urgently develop disability policy consistent with the purpose of the ADA. However, this does not mean that the federal government must take full responsibility for the entirety of the issue. Instead, the federal judiciary should take more pro-active role or interest for ensuring that individuals with disabilities, especially, mental disability are well taken care of. This is because of the diversity of the nature and severity of disabilities, it is impossible to do

with one simple rule.

This petition is a proof that I am a victim of the wholly inadequate federal judiciary system to accept cases filed by pro se litigants with mild mental disabilities. Note that individuals with profound mental disabilities are most unlikely to appear before any court as pro se litigants. They are simply too severely disabled to expect to do so. Individuals with moderate mental disability would not be very likely try to do the same but requires careful understanding of the matter. Individuals with mild mental disabilities require the most serious debate on this issue. This is because they are capable enough to do so but still require some accommodation. See for example 29 CFR 1630.2(j)(4)(iii).

E.5. The defendants DVR and DRNM maintained an institutional abuse of power and control. They severely damaged my litigation ability. DNM No. 14-CV-00763, CA10 No. 18-2031, SCt No. 18-9247.

a. The DVR and DRNM illegally discriminated against my disability in violation of the Title II of the ADA and of Section 504 of the Rehabilitation Act. The DRNM is a state actor. They were totally negligent to accommodate my communication disability like what is quoted at the bottom of page 12. Everything they did was infliction of emotional distress. This resulted in an institutional abuse of power and control. The major damage for the purpose of this PETITION is the severely damaged litigation ability, in particular, lost higher-order thinking ability. Since it is an essential component of litigation ability, I was totally incapable of effectively and meaningfully pursuing any case before any court or authority. In other words, I should not have had any expectation to prevail my cases as I understand now. But, I was most desperately trying to do something with my cases without understanding anything meaningful at all. The defendants must take responsibilities for this.

First remember that these continuous events took place concurrently with the events that took place in the hostile work environment at Clines Corners. In other words, I suffered from chronic and never-ending infliction of emotional distress days and nights. It was indeed an institutional abuse of power and control. I had no control over what they did because my disability was too severe to fully bring up the matter. This is a common example how an individual with autism disability has been excluded from the system.

After the initial determination of my eligibility for autism disability vocational rehabilitation service, Case Note: 04/25/2011, based on my autism with no intervention until age 59, the DVR did absolutely

nothing. Since they refused to have an informal conversation on my disability needs at workplace setting per 29 CFR 1630.2(o)(3), they never started my rehabilitation process. All they did was to process the case or bureaucracy and nothing to do with the purpose, despite of a large amount of record.

The first examples of their bureaucracy is Case Note: 11/04/2011 by the first counselor. It is titled as "Comprehensive Assessment." It is a copy of textbook. Even though it has a detailed information, it totally lacks the reason for and purpose of my request of their services. Its EMPLOYMENT GOAL "cashier" is never my informed choice and illegal in violation to the Rehabilitation Act. 29 USC 722(b)(3)(B)

I had this in my subconscious. But it was impossible to bring this up because my subconscious was too rigid to be functional and their attitude was too bureaucratic or discriminatory effect of communication barrier, 42 USC 12101(a)(5). They always failed to have effective, meaningful and comfortable communication with me given that an essential component of my disability is communication disability.

After two counselors failed to do anything meaningful, the major event Supervisory Review Meeting of the case took place on September 12, 2012. The reviewer disregarded what I submitted him before the meeting. This was his refusal of communication and of understanding the problems I faced with two counselors. Then he began to ask a series of totally unexpected questions. My response was continuous agitation, a sign of severe anxiety. Case Note: 09/21/2012. This lasted about one hour until he gave up the meeting. I did not understand the significance or purpose of those questions. He issued his Supervisory Review Report dated September 27, 2012. The report implied that those questions were for the purpose of determining transferable skills. He attempted this as if the recorded assessment by the first counselor were legitimate. The report required me to have good communication ability (*"There needs to be good communication and ... "* Report page 3), when they are required to accommodate my communication disability. This is direct illegal violation of Title II of the ADA and Section 504 of the Rehabilitation Act. Overall contents of the Report is characterized as bureaucracy with misunderstanding of important points. Although it includes a lot of information, nothing is stated to make the case move forward. It is a repetition of what a user manual says. It is totally absent from addressing the cause that my case failed to progress toward my vocational rehabilitation.

At the meeting held on September 12, 2012, the advocate from the Client Assistance Program of

DRNM abandoned her responsibility to intervene the situation of my continuous agitation to make the situations under control. She did nothing. Then, on October 10, 2012, she abandoned my case completely by refusing to respond to my request to attend the meeting made by the e-mail on October 10, 2012 at 5:22 PM with Field Director (TD) on October 24, 2012. She left me alone without any help or support at all.

I hardly understood what the Field Director was talking at the meeting held on October 24, 2012, because I had severely limited listening comprehension ability due to severe mental illness. It did not produce any progress toward vocational rehabilitation contrary to the record. From the tone of voice, it was apparent that she (TD) did not fully engage herself with the matter because she was busy. In other words, she lacked genuineness. She continued to inflict me by emotional distress. Case Note: 10/24/2012.

As of this date, I was already suffering from severe mental illness with depression and anxiety because of total lack of communication. Here an essential point is that communication is not merely exchange information. Effective communication includes emotional aspect and my autism uniquely requires it. Severity of my disability progressed to at least Level 2 or more likely Level 3. And I was left alone without any help or support. I did not have any self-confidence at all.

As of October 2012, the defendants (DVR, DRNM, my employer) damaged my litigation ability completely. As I understand now, but not at that time, there was no expectation that I could prevail any cases filed with any authority. Since October 2012, I was most desperately and hopelessly trying to reach somebody to get needed help. This includes filing cases with the OCR.

Third counselor did not do any better. She arranged an autism therapist without any explanation of reason and purpose. But, an actual therapy did not start because the therapist canceled her first appointment. Case Note: 08/30/2013. There was still no conversation on the first step of vocational rehabilitation service. She eventually left the agency without completing my case or arrangement of successor counselor.

On November 23, 2013, I had a mediation for the case filed with the OCR. Case No. 08-13-3002. I had to do over the phone with severe anxiety and depression because of weather. I had very little mental energy. When I was trying to explain the case, the defendant (internal staff lawyer) continuously trampled on me by interrupting every sentence. She was not qualified for interacting with individual on autism

spectrum disorder. Then the defendant (Deputy Director) suddenly forced to end my presentation by saying he would prepare something. The individual from General Service Administration asked "How about money?" It was a totally unexpected question. But I had no response because my subconscious was too rigid to be functional due to severe depression. All of these were also infliction of emotional distress. His proposed settlement of December 12, 2013 was another bureaucracy. Its contents are empty. It does not address my concern unique to my case. Very superficial. Infliction of emotional distress continued.

These empty processes continued. The DVR eventually closed my case on March 27, 2014. The letter of closing from Director is a full of examples to prove that they totally lacked effective, meaningful and comfortable communication by disregarding my communication disability. Anything negative in it was my psychological and emotional response to their total lack of communication in order to protect myself. But they used those against me. They never made any efforts to communicate with me. They inhibited me to comfortably speak. They always forced me to communicate in their bureaucratic language. They always overlooked on me instead that I was an equal partner of the vocational rehabilitation proceeding. They never started actual vocational rehabilitation process. I did not have any conversation on what specific services are required for my case either direct discussion or activity which clearly implied them, although my ability to understand implied meaning was severely limited.

The DRNM closed my case on April 14, 2014. The contents of the closing letter by the advocate are not only incoherent but also includes false statements to shift the blame of the failure to me. An example of this is *"I asked you if you knew of a specific person who could provide and facilitate that type of communication and you stated that you did not."* This is a complete fabrication. Then the letter continues *"From your records at DVR, they have attempted to try many options including a person from the Japanese Cultural Center of your choosing."* First of all, there does not exist an organization called the Japanese Cultural Center. This is a fabrication based on Case Note: 08/22/2012 of the second counselor *"From the training classes ... I found a group called the New Mexico Asian Family Center that may be of assistance in working with Hitoshi. ..."* I am not interested in involving with Japanese people. In short, she intentionally or knowingly shifted the blame of and responsibility for failure of my case in order to evade legal liability to support the DVR. She maintained her false self-esteem. All she had to do was to sit down and talk openly

and candidly about the matter. She refused to do so. She is totally irresponsible and illegally unaccountable. 29 USC 732(c). The assignment of her to my case by the DRNM is illegal because she is unqualified.

In summary, what the DVR and DRNM left to me was severe mental illness with depression and anxiety. They did absolutely nothing positive for me. As a major consequence, they damaged my litigation ability completely. The full recoup of the damaged ability took place on October 04, 2021.

E.6. The defendants DVR and DRNM deprived of constitutional liberty without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment.

a. The DVR and DRNM deprived of constitutional liberty guaranteed by the Fourteenth Amendment as a consequence of their continuous and persistent illegal discrimination against my disability in violation to the Title II of the ADA and the Section 504 of the Rehabilitation Act.

The deprived liberty includes the rights which are essential to orderly pursuit of happiness by free men. They are (1) the privilege to be free happy man (They made me most miserable with severe mental illness. E.g., they deprived my sleep for years.), (2) the right to acquire useful knowledge (My ability of processing visual information, in particular, reading comprehension was too severely limited to acquire required knowledge to pursue a case in any court), and (3) the right to pursue my case with free will (It was impossible to say that I had my ability to pursue my cases with free will with the damaged litigation ability.) (4) the right to be fair proceeding up to including a fair trial with substantively equal participation. This includes a fair hearing. (No fair proceeding or equal participation was possible with the damaged litigation ability). Meyer v. Nebraska, 262 U.S. 390 (1923), Bolling v. Sharpe, 347 U.S. 497 (1954), Ingraham v. Writ, 430 U.S. 651 (1971).

b. The DVR and DRNM violated procedural due process of the Fourteenth Amendment.

The first DVR violation of procedural due process is that their proposed settlement of the case No. 08-13-3002 does not solve the problem at all because they were not interested in understanding of the case fully. My filing the case with the OCR did not produce any opportunity to remedy the situation.

The second DVR violation of procedural due process is that they assigned an unqualified individual (defendant) as a fair hearing officer because he does not have any background of autism or interest in

anything to do with mild mental disability. Thus, it was certain that he failed to make me an equal participant of the proceeding. In fact, he insisted on having a pre-hearing conference over the phone by completely refusing to consider my request of disability accommodation. E-mail of June 01, 2014 2:04PM. This is because he does not know the importance of the Title II of the ADA and Section 504 of the Rehabilitation Act. Without disability accommodation, the fair hearing is totally meaningless to resolve any of the problems the DVR generated. Instead, his insistence further deprived of constitutional liberty. Besides more, a fair hearing does not adequately remedy the deprived constitutional liberty. It has a severe limitation as to kind of the problems and issues that can be resolved. Note that he is a state actor, because as a contractor of the State of New Mexico, his duties and responsibilities as a fair hearing officer are bound by the state and federal regulations. He is an administrative judge. His status as a state contractor is immaterial to perform his duties and responsibilities.

The DRNM violation of procedural due process is that they barred to file a grievance based on disability. There is no procedure to remedy any of the damages sustained by their omission and failure.

c. The DVR and DRNM violated substantive due process of the Fourteenth Amendment.

Both the DVR and DRNM follow too literally the prescribed routine and are incapable of achieving the ultimate purposes of respective activities. For example, 34 CFR 361.5(c)(4) is "appropriate mode of communication." It is the same as the DVR Manual of Operations 1.4.3. It does not include anything to do with communication disability due to autism. However, they must accommodate my communication disability consistent with the Title II of the ADA and Section 504 of the Rehabilitation Act in order to protect constitutional liberty as well as achieving the purpose of vocational rehabilitation. Their unwillingness to go beyond 34 CFR 361.5(c)(4) is a violation of substantive due process. Likewise, the fair hearing officer insistence of telephonic pre-hearing conference is due to alleged and unknown federal regulation. Again to protect constitutional liberty of fair proceeding, in particular, equal participation right, he must have done something about it. But, he refused it. This is a violation of substantive due process.

d. The DVR and DRNM denied equal protection of the Rehabilitation Act and ADA in violation of the Fourteenth Amendment.

The question here is if the DVR and DRNM applied the Rehabilitation Act and ADA equally. There are two distinct issues.

First issue is an equal application of the Rehabilitation Act for the purpose of vocational rehabilitation. The meaning of equal application is that the proceeding within the DVR and DRNM must be such that I could have an opportunity to be a successful participant of their program. However, what they did implies that I did not have any opportunity to be a successful participant at all. They never started an actual vocational rehabilitation process. This is not an equal application of the Rehabilitation Act for the purpose of disability vocational rehabilitation at all. The cause is because my disability is autism.

The second issue is an equal application of the Section 504 of the Rehabilitation Act and the Title II of the ADA to protect disability civil right. The meaning of equal application of these statutes is that they must accommodate my communication disability. The fact that I have a disability means that I am not equal to most people. The purpose of disability accommodation is to make me more equal to most people. Since the DVR and DRNM refused to accommodate my communication disability, they forced me to remain unequal. They did not apply these statutes at all. Their practices exclude individuals with communication disability such as autism disability whose communication accommodation is not explicitly stated in 34 CFR 361.5(c)(4) from participation in their vocational rehabilitation program, even if the individuals are otherwise eligible for it with good potential.

Ultimately, the way the agency DVR together with the DRNM runs literally excludes autism cases. Autism cases do not have any chance to succeed in vocational rehabilitation. This is not an equal application of the Rehabilitation Act and ADA at all.

E.7. NMD No. 20-CV-00786, CA10 No. 20-2166. My employer Clines Corners (April 10, 2010 - October 30, 2016) The general manager never communicated me anything at the level exercised by any other manager similarly situated. He always significantly under-communicated. A good example of this is: he scheduled 40 hours a week and ordered that no overtime was allowed. The store was operating 24/7 with three 8 hour shifts a day. Without clearly defined shift change procedure, this was impossible. The manager was never interested in the matter and the scheduled reliever of my shifts never arrived in time for smooth shift change. I took his order literally because of my autism. Because of his attitude, I could never bring the issue to him. My subconscious was too rigid to overcome his attitudinal barrier. The assistant manager refused to communicate with me and forced me to suffer from inner conflict

with the unresolved overtime issue. All of these forced me to suffer from chronic and never-ending infliction of emotional distress. He created a hostile work environment against my disability. He committed managerial abuse of power and control. After I filed the dismissed charge with EEOC, Charge No. 543-2016-00204, the manager began to harass me by micromanagement. He repeatedly ordered me to do trivial tasks when I was doing more important task for customers. Near the end of my employment, from August 30, 2016 to September 21, 2016, the young co-worker repeatedly harassed me. Since I happened to find an escape nest (the apartment), I managed to escape from horribly hostile environment on November 03, 2016. If I were not lucky enough to find the apartment, I would have continued to suffer from further continued and never-ending managerial abuse of power and control. Of course, the defendants of the case caused severe mental illness with depression and anxiety. **Most seriously, they damaged my litigation ability in the same manner as what the DVR and DRNM did.**

E.8. NM District Court took over the institutional abuse of power control initiated by the defendants. First, I would like to request the Court to scold at the judges of NM District Court (and Tenth Circuit.) Knowing my cases are mental disability cases and I do have mental disability, they always refused to understand the essential importance of the disability issues, even though I repeatedly requested a full hearing on my disability. They completed all of my cases without any opportunity to fully discuss anything about my disability at all. Ultimately, they said that I would not have mental disability contrary to the determination of the APA. This is most absurd and a scandal. This is also the judges' violation to their oath of office to serve equally to the rich and the poor. My poverty is directly related to my disability. 28 USC 453.

They completely denied me as a person and my rights. What they did is no different from their saying that I am stupid, worthless, and totally irresponsible without anything positive, when the truth is that my apparent failure of effective and meaningful litigation activities was the result of their total failure or refusal to understand the essential importance of the disability issues together with the fact that the defendants completely damaged my litigation ability.

As the major consequence, they subjected me to continue to suffer from chronic and never-ending infliction of emotional distress. They committed an institutional abuse of power and control. Of course,

absolutely nothing was done meaningfully. Both courts are totally prejudiced Kangaroo Courts. Nothing more and nothing less.

a. The Court is requested the following general understanding of the recoup of the damaged litigation ability.

The full recoup of the damaged and lost litigation ability as the most serious negative effect of mental illness, especially, depression on my cognitive ability took place on October 04, 2021. Yes, it was very recent. Yes, it was a long process. Also note that the full recoup of the damaged and lost litigation ability does not mean that I do not have any disability any more. It simply means my disability is less severe. For example, if you order me to do something with very short deadline without fully detailed information on something new to me, I would not be able to do it in time. It would be too much pressure and counter productive. This is because it takes significantly longer time to do the required task compared to most people. There is no simple rule to understand this. The main thing of this example is that my learning curve is much longer than most people's. If you do not accommodate, it could lead to another disaster. I could never catch up the lost initial step if it were the first step of a long process. This is an example of repetitive restricted behavior.

b. The gang of seven unqualified lawyers including District Judge and Magistrate Judge responded to my cases DNM No. 14-CV-00763, No. 16-CV-01114, and No. 20-CV-00786. They recklessly broke the fundamental rule that court is a safe haven for the vulnerable. They must be prosecuted for imposing cruelty on me by unwarranted infliction of emotional distress for years.

First I have no hesitation to say that these seven lawyers are a gang. They do not know anything meaningful about autism, the main subject matter of all of my cases. They have no interest in it either. By doing so, they overwrote the determination of the APA that individuals on autism spectrum disorder require support. DSM-5, page 52. Appendix I. Without medical license or full hearing on autism, it is an illegal act.

Generally speaking, an individual on autism spectrum disorder is considered as being vulnerable. This is because he has substantially limited emotional intelligence and the rigidity of subconscious. By these, his ability of effective communication in a broad range of circumstance is substantially limited. His ability to promptly and appropriately respond to a particular situation is substantially limited. His ability of processing auditory information, in particular, listening comprehension and retention is substantially limited.

His ability of processing visual information, in particular, reading comprehension and retention is substantially limited. With these, he is readily ignored by the system. These abilities of individuals with autism disability and mental illness, especially depression are most severely limited to be functional. They are the most vulnerable. It has been said that 50% of adult autism have depression. Thus, when you are facing an adult with autism disability, the probability that you are facing with the most vulnerable is very high and you must be utmost careful. If not, you may be inflicting him with emotional distress without your knowledge or intention.

For the vulnerable, a court should be safe haven like refugee camp and protect them. However, what the NM District Court did was dangerous and hell. The seven judges and lawyers trampled on me from the beginning because they chose to disregard my rights and well-being or constitutional liberty. They treated me less than their own pets. They abused their privileged status (*"Licensed attorneys are privileged public citizens with special responsibilities for quality justice"* NM Rule Set 16) against my disadvantaged status.

They punished me for no good reason or cause. Instead of protecting me, they continued to institutionally abuse their power and control in the same manner as what the defendants did. They did make me even more vulnerable. It took me a long time to recoup from the damages, in particular, the lost higher-order thinking ability. All of these are due to the fact that processing the case according to the Federal Rules of Civil Procedure is the only guiding principle by disregarding the **first principle of disability** (i.e., taking care of any disability issue must be the first priority.) This is an example of severe limitation of pure legalism. However, they should have known the Federal Tort Claim Act (the judges) and Tort Law and other substantive law (defendant lawyers as state actors) can become relevant against themselves. Since substantive law precedes over procedural law, they were indeed totally negligent or reckless. I am the victim of these outrageous and scandalous activities committed by the gang. They must be prosecuted that they imposed on me something cruel for years.

c. The case against the DVR and DRNM (DNM No. 14-CV-00763) started with threat and intimidation. I could never overcome them. They immediately took over an institutional abuse of power and control started by the defendants DVR and DRNM. Without any break, I continued to

suffer from chronic and never-ending infliction of emotional distress until the end of the case on February 20, 2018. I had absolutely no chance to prevail my cases.

The Court is reminded that these accounts in the NM District Court is a court version of Hans Asperger's finding that "Mere teaching efficiency is not enough." (section E.3.c) Both judges and defense lawyers knew this since March 03, 2017 because it is a court record (Document 117).

The Clerk of the NM District Court repeatedly refused to communicate with me during the summer of 2014 upon inquiry and request of information about the court. They eventually gave me a copy of "GUIDE FOR PRO SE LITIGANTS." However, I could not read or comprehend it because of severely limited ability to process visual information due to the negative effect of mental illness, especially depression caused by the defendants. This is because the judges neglected to supervise the Clerk. This forced me to suffer from even more infliction of emotional distress, emotional distraught and anxiety even before filing any case.

Upon starting the case, the seven -- judges (2) and defense lawyers (5) -- began to trample on me, in particular, emotionally and psychologically. This lasted until the end of the case on February 20, 2018. They were totally indifferent to my disability needs knowing the case is about autism disability. They totally lacked moral imperative and were most reckless about the **first principle of disability**. Since all of them have law licenses issued by the State of New Mexico, the required general standard of their conduct is bound by "They are privileged public citizens with special responsibilities for the quality justice." NM Rule Set 16. Of course, what the gang did is against this required standard of their conduct. They abused their privileged status against the vulnerability paid by public fund. It was indeed a scandal.

Upon commencement of the proceeding, the first response was six motions to dismiss. Since I was extremely hungry for positive stimulus toward autism disability vocational rehabilitation, this was a total surprise. This was immediately after the defendants committed institutional abuse of power and control for four years. They totally lacked positive stimulus toward the goal. The defendants did not do even the first step of the proceeding: determination of barrier from functional limitation with workplace setting and of the required service. What they did is the same as a medical doctor is trying to treat his patient without diagnosis.

Since my subconscious was too rigid and my repetitive and restricted behavior was extremely severe, I could not meaningfully respond to them at all. However, one of the things I managed to do was to ask to hold. The defendant (JCW) said she would hold if I were to respond to them. This was an attack on my disability even though she may not have known it. But, the court did not respond and eventually denied it. This was a major mishandling on the part of the court because the judge does not know autism.

Generally speaking, one of the most important responses to autism disability is that you must immediately comply with the request of hold. If not, you are psychologically and emotionally pushing him into the corner or completely stymied and his situation will only get much much worse, never get better. It also put him under greatest distress or infliction of emotional distress. Remember an individual with autism disability has substantially limited ability to handle any kind of pressure, one of the manifestation of substantially limited emotional intelligence or repetitive restricted behavior. Since I also had serious mental illness, especially, depression, my ability to respond to the kind of pressure was too severely limited to be functional.

Since I did not have higher-order thinking ability and had severely limited reading comprehension and retention ability, there was no way to understand the motions to be able to respond them.

The defendants insisted on 45 day response deadline. It gave me only 6.4 days or less than a week per motion. It was absolutely too short of time for my ability anyway. While I was trying to negotiating with the defendants, I reported the situation to the court. The court immediately responded by the ORDER (Document 53). It includes misinterpretation of what I said, a very common problem for an individual with autism disability. This seemingly harmless and routine order was indeed most harmful. It completely psychologically and emotionally cornered me into the deepest point of the corner. All of these, in particular, the ORDER, were most serious threat and intimidation without any meaningful opportunity for my vocational rehabilitation since April 28, 2010 at all.

The ORDER essentially killed my opportunity to litigate in addition to the fact that the defendants already damaged my ability to do effective and meaningful litigation activities. It was like:

"A driver was driving at the speed limit. A small child suddenly jumped into the street. The driver hit the child. The child was injured most seriously and lost some important ability. It took years for the child to recover from the injury and rehabilitate his lost ability."

Additionally, all of these were greatest distress. I lost about 40 lb from January 25, 2015 to September 01, 2015. Right before that there was an increase of my weight that should have been medically significant due to depression from the defendants institutional abuse of power and control. (Document 117). This implies that the court continued to institutionally abuse their power and control.

When NM District Court dismissed most of the case on August 19, 2015 (Document 91), it broke my spirit completely. My mental energy was completely depleted by working in hostile environment to do anything with the case. Under these situations, absolutely nobody could have done anything meaningful. Yet, the Tenth Circuit has been penalizing me, although I did not have enough ability to fully present these.

d. Magistrate Judge totally and recklessly disregarded my request of moving slowly in response to her inquiry. The entire process continued to be completely out of my control. It continued to be an institutional abuse of power and control.

This was shortly after I managed to escape from hostile work environment of about six years because of the total lack of service by the DVR and DRNM. I arrived at the status conference on March 03, 2017 as ordered. I was mentally crippled. My mental energy was depleted. I had severe anxiety because I did not know what a status conference was and because I miserably failed to manage the case at the beginning stage. My ability of processing auditory information, in particular, listening comprehension was severely limited to be functional. My higher-order thinking ability was severely damaged. My subconscious was too rigid to respond to whatever I was required to do it. All of these were to do with the negative effect of mental illness caused by the defendants and later also by NM District Court.

First the Magistrate Judge started the conference by saying that she had background of autism, although her conduct proved that she does not have it at all. Her tone of voice proved that she was not fully engaged to her activity (lack of genuineness). She continued to inflict me by emotional distress.

The minutes (Documents 117 & 138) of the conferences may not be accurate because they are interpretation by the court reporter. An interpretation of what an individual with autism disability said may include misinterpretations. This is a common problem.

The record (Document 117: 1:37PM) shows that I asked to move slowly, although I did not comprehend what the court said at 1:36PM due to severely limited listening comprehension ability. In

reality I did not have my ability to continue the case or the ability to fully discuss the matter. But she recklessly proceeded with full strength and speed because she does not know something like at the end of page 12. This made the proceeding completely out of my control. I did not understand anything fully, although the court was assuming too much as if I understood everything fully. I was never an equal participant of the proceeding: only vaguely and generally but missing important points because severely limited ability to process auditory information. Too rigid subconscious made it impossible to bring up my situation. This is an example how the system excludes individual with autism disability, in particular, one with mental illness.

One important point I missed but recorded (Document 117: 2:59PM) is that she said I should have been prosecuted referring to the long delay. But, she did not. I am most certain that this was her major mishandling committed by the court. If I were questioned by the authority, it should have opened a door to fully discuss my disability. There is no way for the authority to disregard my autism. It should have been almost certain that the authority called a specialist of autism, who should have recommended that I needed to take rest or to suspend the case. This is an example to say that judge must have good background of autism. Remember autism involves medical matter in addition to usual sense of disability.

At the same time, I expected to fully discuss my disability and situations that caused a long delay. But, Magistrate Judge refused to do so other than in a superficial and meaningless touch to the matter. Overall atmosphere was hostile. Because of the essential importance to take care of disability issues (**the first principle of disability**), I brought some material to the conference. Although it is posted as (Document 117), it did not trigger a debate at all. Nobody was interested it. I did not have enough ability and strength together with too rigid subconscious to pursue the issue further.

I left the courthouse with complete despondency. Absolutely nothing happened to encourage me. Obviously, NM District Court imposed me something nobody could have done anything. The judge imposed me something she could not handle herself. Institutional abuse of power and control continued. The process so far is the same as saying that I must be an automatic loser because of my disability.

After four more months of abusive power and control by the defendant lawyer (MJ), I attended the scheduling conference on July 27, 2017. I thought to talk about the restlessness experienced. But,

Magistrate Judge was totally indifferent to something like this matter. Nobody could do anything meaningful with restlessness, but I was forced to try it. Because of too rigid subconscious and severe repetitive restrict behavior, I lost the chance completely. When I brought up about the e-mail of the job opening (see next **subsection e**), Magistrate Judge asked if I showed it to the lawyer (MJ), I could not respond to it because of the same cause. In short, my disability was too severe to continue the case. But nobody understood or I did not have any ability to bring the issue up.

The above and next are excellent examples to say that, generally speaking, judges and lawyers have been grossly underestimating the seriousness of autism disability because lack of the background. It in turn is the same as disregarding the law ADA as well as the APA determination. Here the issue is not at the level of arguing an applicability of the ADA because it is also medical.

e. The defense lawyer (MJ) refused to understand that I am also an equal participant of the proceeding and took control of the entirety. He continued to abuse his power and control and forced me to continue to suffer from infliction of emotional distress.

Starting March 17, 2017, I began to deal with the defense lawyer (MJ). I requested an older individual because he should be better equipped with interacting the vulnerable. However, I was completely wrong. He continued to be abusive power and control emotionally and psychologically speaking.

He started the process by disregarding what I submitted to him to start to discuss the root cause of the problem. Then he said, "*He knows autism. He read all of my pleadings.*" However, it turned out that these were no different from lip services and totally meaningless. This was indeed a very bad start. He totally lacked genuineness. He offered \$5,000 plus the use of DVR service as a settlement. However, I could not speak anything because my subconscious was too rigid to respond it, although I had something important to say about it. At the same time, I was evidently required to take rest after years of institutional or managerial abuse of power and control, although nobody knew it and I did not have ability to fully communicate this. He did not care anything other than superficial technique (lack of genuineness).

Although he scheduled for two hours for each meeting, he did not know how to use those extra hours to resolve the case. His attitude always lacked genuineness. He did never allow anything to discuss fully. When I presented an e-mail of April 25, 2012 7:30PM from me and April 26, 2012 8:07AM from the

defendant (RG) about a job opening of my like, which defendants neglected, he refused to fully go over it because it went against him. Meanwhile, I could not speak to anything fully because of the too rigid subconscious

In this way, he continued to abuse his control and power over me. Without fully discussing anything, it was a superficial and meaningless activities. My autism demands to be more thorough: if not, it forces to inflict me with emotional distress.

From the beginning to work with him starting March 17, 2017, I suffered from restlessness, a sign of severe anxiety. The working relationship with him was persistent abuse: he always dominated emotionally and psychologically contrary to the appearance. There was no communication at all beyond the meaningless surface. Clearly, he belittled me because I was mentally crippled. On about September 12, 2017, he said that he did not like consent decree. This implies that he is not interested in fact and law. He is interest in money. How a case should be resolved is not personal preference of judge or lawyer. It depends on each case. This kind of behavior immediately inflicted me by emotional distress.

On the same day, he said *"We would do everything fairy and you lose everything."* This was like he threw me into the deep ocean. As of this time, there was no conversation about autism. At the same time, this also forced me to be further confused, when I was already confused for all of these years. Of course, it was his lie. It shows only superficial reasonableness or correctness. At the deep end, it is a sharp contradiction because fairness is an essentially different concept from legality. It often contradict to legality. Fairness is much broader than legality.

His discovery activities were superficial formality. Even he had a wrong or incorrect understanding of the main fact, he maintained as if he had a good and correct understanding of it. His **"II Undisputed material fact"** of the motion for summary judgment (Document 175) filed by his subordinate (MB) is irrelevant to autism disability. I did not get a copy of the motion in time. When I saw it in late February 2018, it immediately resolved my puzzle. I perceived that he does not know autism for a long time. I did not understand why he maintained his correctness. This motion is a proof of it.

By fall 2017, I was suffering from most severe emotional and psychological pain. It was murderous and hellish pain. It was too painful to go to my PO Box to pick up court documents. When I saw a media

report on the police brutality against Mr. George Floyd on May 25, 2020, it instantly flashed in my mind that my experience of this part of the proceeding was no different from his but lasted much much longer.

At the scheduling conference on July 27, 2017, he said that he responded to me everything when I was having deep trouble with responding to the judge question if I showed the e-mail to him. However, according to my standard of definition of respond, there was no response by him. Everything he did was superficial formality and refusal of communication. It is gravely serious abuse of legal know-how. It is a form of deception. This is how I was forced to be confused even more. Note that my language is very literal. See the bottom of page 12, paragraph 14. Of course, all of these inflicted me by emotional distress when I was suffering from years of institutional abuse of power and control by his client.

All of these are manifestations that he has been belittling me in his deep mind, while he superficially conducted himself as if he were honest good person. This was a form of deception for individuals with autism disability. He totally lacked genuineness

During the last phone conversation, he began to lecture on the trivial topic of client loyalty. It was an immediate and deep insult. I unconsciously hung up the phone. I tried to make him a defendant.

f. District Judge lacked consistency for the identical issue. He continued to inflict me with emotional distress (NMD No: 16-CV-0114; No: 14-CV-00763).

The court ordered me to amend the complaint of the case No: 16-CV-01114. I failed to satisfy the requirement. Specifically, it said that my complaints are conclusive allegation. I did not understand. Of course, it put me extraordinary emotional distress. The court eventually dismissed it without prejudice. Document 34. I now understand, I hope, that the reason I could make only conclusive allegation was because of the most serious negative effect of depression on my higher-order thinking ability. It is the essential ability to effectively plead. But, I did not have this essential ability. This was fall 2017.

At the same time, I tried to amend the complaints of the ongoing case No: 14-CV-00763. I failed in the same manner. The court seriously mishandled the issue. The District Judge saw there is a clear pattern of failure to amend complaints with the identical issue: conclusive allegation. Since the court must take the same action for the identical issue, he should have *sua ponte* stopped the case and called for a conference or hearing. This inconsistency was also infliction of emotional distress or strengthening

institutional abuse of power and control. Because of repetitive and restricted behavior, I am particularly sensitive to this kind of inconsistency. The mental illness, in particular, depression made me it extremely sensitive with no ability to overlook it. I never understood this kind of meaningless activities

E.8. NM District Court further deprived of constitutional liberty without due process of law in violation to the Fifth Amendment.

a. NM District Court further deprived of constitutional liberty guaranteed by the Fifth Amendment.

The root cause of the further deprivation of constitutional liberty by NM District Court is the same as the cause by the DVR and DRNM. It was because they insisted on an incorrect precedent Garrett vs. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10-th Cir. 2005). This is an incorrect precedent because the decision was made pre-ADAAA or before autism becomes an ADA protected disability (actually, this is not an essential requirement because autism is a medical matter without it) and *the issue of autism is entirely absent from this case*. The deprived constitutional liberty is (1), (2), (3), and (4) stated in **section E.6. c.**

b. NM District Court violated procedural due process of law of the Fifth Amendment.

I repeatedly requested a full hearing on my disability needs. All of them were denied. This closed the door on an opportunity to remedy the deprived constitutional liberty. I did not understand why they kept denying my request of a hearing until the end of case when the court brought the case Garrett vs. Selby Connor Maddux & Janer. DNM NO. 14-CV-00763, Document 193. This must be brought at the beginning of the case by the first principle of disability. All of these are violation of procedural due process.

For the case DNM No. 14-CV-00763, NM District Court *sua ponte* issued my appeal right. Document 198. But, this was never enough to remedy the deprived constitutional liberty because of the two reasons. (a) My litigation ability was damaged and thus no meaningful appeal brief could be prepared. In fact, during the preparation of the Opening Brief, I continued to suffer from continued infliction of emotional distress. There were too many detailed unanswered questions in my mind. The only way to say that the appeal right should have provided a sufficient opportunity to remedy the deprived constitutional liberty is when the court suspended the case until my litigation ability is fully recouped (which took place on October 04, 2021) (b) The Tenth Circuit is closed the door by being completely prejudiced.

For the case DNM No. 20-CV-00786, there was not enough procedural opportunity to remedy the deprived constitutional liberty in the same manner as the case DNM No. 14-CV-00763, although I had my appeal right due to the issue by the Rules of Federal Appellate Procedure.

c. NM District Court violated substantive due process of law of the Fifth Amendment

It is essential that the court assures that my equal participating right and constitutional liberty are fully protected. By insisting in an incorrect precedent Garrett vs. Selby Connor Maddux & Janer, NM District Court disregarded these fundamental rights. This is clearly a violation of substantive due process.

d. NM District Court denied equal protection component of due process clause of the Fifth Amendment

By insisting on an incorrect precedent, Garrett vs. Selby Connor Maddux & Jane, NM District Court denied the protection afforded by the Federal Tort Claim Act because of autism. As a consequence, the court continued to deprive constitutional liberty.

E.9. Tenth Circuit deprived of constitutional liberty without due process of law in violation of the Fifth Amendment.

a. Tenth Circuit deprived of constitutional liberty guaranteed by the Fifth Amendment

Tenth Circuit insists on an incorrect precedent Garrett vs. Selby Connor Maddux & Janer, their decisions by the ORDERS AND JUDGEMENTS, Appendix A and Appendix E, are affirmation of the deprivation of constitutional liberty by the DVR, DRNM, and NM District Court is proper. Also they affirm that the damage of litigation ability caused by the employer is not good cause of requesting to understand an extraordinary circumstances beyond my control without my fault at all.

The trouble of the ORDERS AND JUDGMENTS is that they completely evaded the issue of disability despite of the fact that I repeatedly wrote the importance of it to the best of my ability. In particular, Footnote (4) of Appendix A is a more direct evidence of this. It denies the Congressional mandate of 42 USC 12101(b)(3). Additionally, the total refusal of reviewing PETITIONS FOR REHEARING EN BAC, Appendix C and Appendix G is a firm proof of their affirmation that deprivation of constitutional liberty is proper. It is also an affirmation that autism is not a significant disability.

By the nature of autism disability, it is impossible for any court to make a proper decision by evading the issue completely. The DISCUSSIONS of ORDERS AND JUDGMENTS are not based on coherent

understanding of the matter based on the entirety of what I presented even if my presentations were not as clear as should have been due to the damaged litigation ability. Both of their decisions are sham and bogus. Their true reason for denials are never stated directly. This is discrimination against my disability.

b. Tenth Circuit violated procedural due process of law in violation to the Fifth Amendment.

First, I present about an opportunity of the cases CA10 No. 18-2031 and No. 20-2166. It is totally meaningless to appeal to the Tenth Circuit. It does not provide any possibility to remedy the deprived constitutional liberty at all. They are completely prejudiced because they insist on overwriting the determination of the APA by insisting on a incorrect precedent Garrett vs. Selby Connor Maddux & Janer. They also trampled on the Congressional purpose of the ADA in violation of the constitutional principle of separation of power. Ultimately, they have never studied the definition of disability, 42 USC 12102, 29 CFR 1630.2. Thus they do not know the boundary of determining legally significant disability. The definition of disability and the Findings and Purposes, 42 USC 12101 are backbone of the ADA. Since they have never studied these backbone thoroughly, it is accurate that they do not know the ADA. This is the reason that no Circuit Judge from the Tenth Circuit has ever raised an issue of my disability, the main factual issue of all of my cases. This is most absurd.

By refusing to review the PETITIONS FOR REHEARIN EN BANC, what the Tenth Circuit said is that *"I did not make enough efforts by total refusal understanding of the cause."* When an individual on autism spectrum disorder apparently fails to perform the given task, this is a very common problem when he faces an authoritative individual without any background of autism. Such authoritative individual has a strong tendency to insisting on able-ism and disregard the disability issue completely unless disability is obvious such as wheelchair or white stick. Their inability or unwillingness to put the truth, the ultimate reason for the denials, is also complete refusal of communication with me as I have substantially limited ability to understand this kind of implied meaning. This is a discrimination against my disability.

Under these circumstances, there was one possibility to remedy the deprived constitutional liberty. It was to have a full hearing on the matter of the disability or an oral argument. Since they refused to have an oral argument twice, they shut down the door completely without any meaningful opportunity at all.

Consequently, I conclude that they have been completely prejudiced and in violation of procedural

due process of the Fifth Amendment. One hearing should have opened the door.

Second, I present about yet filed case. The case is against the federal judiciary about my long term emotional suffering and their consequences during the proceeding of mainly the case DNM No. 14-CV-00763. It is most feasible that I could establish a prima facie case under the Federal Tort Claim Act. It is a limited waiver of federal sovereign immunity. Since the statute of limitation is governed by 28 USC 2401, it is unclear if my situation allows me to proceed. The responsible parties for this are District and Magistrate Judges. Barring the proceeding is clearly a violation of procedural due process of the Fifth Amendment.

c. Tenth Circuit violated substantive due process of law in violation to the Fifth Amendment.

By insisting on an incorrect precedent Garrett vs. Selby Connor Maddux & Janer., the Tenth Circuit affirms the violation of substantive due process of the Fifth Amendment by NM District Court. So Tenth Circuit also violated substantive due process of law.

d. Tenth Circuit denied equal protection (of the laws) component of the due process clause of the Fifth Amendment by insisting on an incorrect precedent Garrett vs. Selby Connor Maddux & Janer.

Here the laws in question are the Federal Rules of Civil Procedure (procedural law) and Federal Tort Claim Act (substantive law). Since they exclusively focused on the procedural law and completely neglected the substantive law, the federal judiciary did not provide me any protection afforded by the Federal Tort Claim Act at all because of autism. This resulted in a complete disaster of the proceedings.

The correct approach is that whenever the situation requires or warrants, the substantive law supersedes the procedural law. This includes the possibility of suspending the case until the situation improves. Maintaining the constitutional liberty of the right to a fair proceeding is the first priority. Ultimately, the Tenth Circuit is in complete denial of the equal protection component of due process clause of the Fifth Amendment because of autism.

To prevent this problem from happening, the Court must maintain effective and complete communication as the much of the issue of all of my cases is about communication. Do never depend upon half-understanding of anything, in particular, to do with mild mental disability such as highly functional autism disability or Level 1 (or least severe) autism spectrum disorder.

E.10. Equitable tolling (DNM No. 20-CV-00863; CA10 No. 20-2166)

In order to pursue a case in any court as a pro se litigant, he must be able to perform litigation activities effectively and meaningfully. The fact is that an individual with autism disability does not have the required ability. A pro se litigant with highly functional autism disability without mental illness can function with minimal support. The question of how to provide such a support is a separate issue.

The first step of litigation is to prepare an effective pleading or complaint. To do so, the ability of concept formation from facts, of concept connection to the facts (causes and effects), and of idea generation are some of the most essential abilities to prepare such a pleading.

A pro se litigant with highly functional autism disability without mental illness does not have unconditional ability to do so compared to most people in the general population. This is because his abilities are substantially limited. Even when he can achieve to prepare an effective pleading, it takes much longer time and efforts for him. Without precaution or experience, his pleading would become a mere statement of facts without legally significant information. Then the case is dismissed for failure to state claim or mere conclusive allegation even though it is a good case. Without a further opportunity to correct pleading deficiency, it is a serious penalty for the cause of the failure due to born disability. It is a deprivation of constitutional liberty to freely pursue his case because of his disability.

A pro se litigant with highly functional autism disability with mental illness (depression and anxiety) does not have his effective pleading ability because he does not have his abilities of concept formation, concept connection or idea generation which are too severely limited. There are only two ways to overcome the situation. This is not for any attorney. A qualified attorney to handle the situation must have very substantial background of autism. So far, I have not met any qualified attorneys or judges. Alternately, the Court must simply wait until the litigant heals from mental illness and recoup the damaged ability. DO NEVER REQUIRE TO DO ANYTHING during the recoup. More imposes something, more delays the recoup. His brain simply requires to take rest. Thus, a meticulously planned hearing is required.

When I filed the case NMD No. 20-00786 on August 04, 2020, my recoup of the damaged ability was sufficient to understand the case is about hostile work environment. But, it was not sufficient to deal with subsequent proceeding. I filed the case on August 04, 2020 out of pressure from the horrible experience with the case DNM No. 14-CV-00763. The full recoup took place on October 04, 2021. Thus, this PETITION

is the only substantive opportunity for me to present my cases listed in all the related cases.

At the same time, District Judge did not have his background to understand the cases correctly. His understanding is based on mental capacity which is used to determine if one has capacity to make legally binding decisions. This approach does not fit into the autism cases. Or it is most insufficient to fully understand the facts related to autism disability.

An individual with highly functional autism disability like myself (without mental illness) has sufficient mental capacity. However, he requires to have much more complete information and understanding of the matter and to take much longer time to make such a decision compared to most people in the general population. This is particularly the case when the matter is entirely new to him.

An individual with highly functional autism disability with mental illness may not have sufficient mental capacity to proceed in any court. This requires to have a full hearing. No decision can be made on his ability without a full hearing possibly including an expert witness.

The issue has considerable overlap with more direct disability understanding of the matter. The approach here so far is much more simpler and useful to do it.

Since District Judge and Magistrate Judge do not have background of autism, they forced me to suffer from an institutional abuse of power and control and further damaged my ability. They are also responsible for generating the question of equitable tolling. I can never be responsible for the problem caused by the defendants and NM District Court. Tenth Circuit is in support of abusive practice also because they do not have background of autism. Equitable tolling must be granted. It has never been my personal fault at all.

E.11. Closing argument – the ultimate problem Despite the fact that autism spectrum disorder is a serious neurological (or mental) disorder determined by the authority of the APA, none of the defendants, lawyers, and judges has accepted it. In particular, the individual with autism spectrum disorder is susceptible to infliction of emotional distress and prone to anxiety and depression. DSM-5, page 55. This is the case even when the individual does not seem to have disability at first glance or impression.

For the purpose of successful litigation, the first step is effective pleading as presented in the above. However, pro se litigant with highly functional autism disability has substantially limited effective

pleading ability compared to most people in the general population. The same individual who also has depression does not have effective pleading ability at all. Thus, the Court must be very careful to maintain or protect his constitutional liberty of the right to be fair proceeding. But, nobody has desire to understand it. Thus, nothing has been done meaningfully. This is a typical problem individuals on autism spectrum disorder face regularly one way or the other. The Court must understand this and respond appropriately. Make sure his constitutional liberty of the right to fair proceeding is fully protected. Both NM District Court and Tenth Circuit have never understood the seriousness of this issue. I am the victim of this total nonsense. They broke the fundamental rule: do never touch with what you do not know.

If NM District Court and Tenth Circuit were correct, then autism were not a disability contrary to 29 CFR 1630.2(j)(3)(iii) and autism spectrum disorder were not a disorder contrary to DSM-5, pages 50-59. And the fact is that they failed to observe the essential importance of what my supporter says at page 12 of this petition and created hostility toward my disability for years. This must be stopped.

The ultimate problem is that the judges have consistently applied particular legal provisions without making sure the applicability to particular facts or situations because they lacked the background of autism. DNM No. 20-CV-00863, Document 32 page 2 is a good example. They have been making decisions without fully understanding the facts. This can never work. One hearing should have prevented from all of these meaningless process. But, they refused to understand it. They have been emasculating the ADA.

E.12. Pro Se Status My pro se status is strictly involuntary. Lawyers have surprisingly poor knowledge that legal resource to low income people are extremely limited compared to actual demand based on my direct experience. The Court is requested to think about this instead of criticizing as I know it.

F. Conclusion This petition for writ of certiorari should be granted. (1) The entire proceeding of the case DNM No. 16-CV-00763 should be quashed. (2) The equitable tolling for the case DNM No. 20-CV-00863 should be granted.

RESPECTFULLY SUBMITTED,


Hitoshi Ombe, Petitioner Pro Se

December 30, 2021
Date