No. 22-1235

ORIGINAL

IN THE
Supreme Court of the United States

BRANDON E. OGBOLU,

Petitioner,

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, LEE C. BOLLINGER, JANE E. BOOTH, PATRICIA S. CATAPANO, ANDREW W. SCHILLING,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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June 20, 2023

QUESTIONS PRESENTED

The questions presented are:

1. Whether lower courts have a constitutional duty to *sua sponte* assess all unlawful conduct and harm to the public interest present in cases brought before them and subsequently raise all viable claims that may have been missed or inadequately pleaded by a party, regardless of whether the party is represented by counsel or proceeding *pro se*.

2. Whether a private settlement harms the public interest when the underlying conduct that led to the contract formation constitutes acts of felonies that harm the public.

3. Whether the Second Circuit and District Court erred in dismissing Petitioner's disability discrimination and emotional distress claims while (1) refusing to define and conceptualize the integral psychological condition and symptoms; (2) disregarding the circumstantial evidence in the record that demonstrates discriminatory intent; and (3) requiring Petitioner to identify similarly situated, non-disabled individuals who received better treatment than he did.

PARTIES TO THE PROCEEDING

Petitioner is Brandon E. Ogbolu, who was Appellant below and Plaintiff in the District Court.

Respondents are The Trustees of Columbia University in the City of New York, Lee C. Bollinger, Jane E. Booth, Patricia S. Catapano, and Andrew W. Schilling, who were Appellees below and Defendants in the District Court.

LIST OF PROCEEDINGS BELOW

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Ogbolu v. The Trustees of Columbia Unive*, No. 22-419 (2d Cir.), summary order filed March 21, 2023; and
- *Ogbolu v. The Trustees of Columbia University in the City of New York et al*, No. 21-cv-01697-JPO-RWL (S.D.N.Y.), opinion and order filed January 31, 2022; order to amend filed April 1, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Brandon E. Ogbolu (*pro se*) respectfully petitions for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's summary order denying Petitioner's appeal (App.1) is captioned as *Ogbolu v. The Trs. of Columbia Univ. In City of New York,* No. 22-419 (2d Cir. Mar. 21, 2023).

The District Court's opinion and order denying Petitioner's motion for a preliminary injunction and granting Respondents' motion to dismiss (App.11) is captioned as *Ogbolu v. The Trs. of Columbia Univ. in City of New York,* 21-CV-1697 (JPO) (S.D.N.Y. Jan. 31, 2022).

The District Court's order to amend (App.33) is captioned as *Doe v. Trs. of Columbia Univ. in N.Y.*, 21-CV-1697 (CM) (S.D.N.Y. Apr. 1, 2021).

JURISDICTION

The Second Circuit issued its decision on March 21, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sections 1 and 2 of Article III of the U.S. Constitution are reproduced at App.47. Relevant federal and state criminal statutes are reproduced at App.48. Relevant consumer protection statutes are

reproduced at App.62. Relevant discrimination statutes are reproduced at App.71.

STATEMENT OF THE CASE

A court acts unconstitutionally when it turns a blind eye to unlawful conduct and harm to the public interest. Because the "judicial Power [...] extend[s] to all Cases, in Law and Equity, arising under [the] Constitution," U.S. Const. art. III, § 2 (App.47), the Second Circuit and District Court rulings fail to reflect the judicial obligation enshrined in the Constitution. Specifically, the Second Circuit and District Court disregarded alleged criminal acts, including at least 13 felonies, that harm the public to uphold a settlement agreement between Petitioner and Respondents. Hence, this Court's intervention is necessary to remind lower courts of their constitutional obligation to assess all unlawful conduct and harm to the public interest in cases brought before them and to subsequently raise all viable claims, regardless of whether the party is represented by counsel or acting *pro se*.

As the Second Circuit and District Court overlooked the alleged criminal conduct serving as the basis for the settlement formation, the courts inevitably stood silent on whether the contract violates public policy. Accordingly, this petition calls for the Court to establish whether Respondents' conduct was, in fact, criminal and, consequently, whether the contract harms the public interest. Both courts nullified the relevancy of Petitioner's allegations of criminal conduct by asserting that Petitioner lacks a private right of action to pursue

criminal charges. However, the underlying criminal conduct is relevant and vital to establishing the nature of the settlement. By refusing to analyze the nature of the conduct and granting Petitioner's motion for a preliminary injunction to enjoin Respondents' unlawful, consumer-oriented loan scheme, the courts have further subjected the public to harm.

Moreover, the Second Circuit and District Court rulings demonstrate the need for guidance when lower courts assess psychological conditions in discrimination and emotional distress claims. The lack of such accountability in judicial proceedings enables lower courts to disregard discrimination and emotional distress claims without ascertaining the mindset of individuals with psychological conditions. No rule requires lower courts to consider such conditions and symptoms, even when they are integral to claims. Remarkably, lower courts are not required to refer to the official names of diagnoses established by the *Diagnostic and Statistical Manual of Mental Disorders 5* (DSM-5-TR). This Court's intervention is necessary to establish guardrails so that courts act uniformly and accountably when assessing psychological conditions in pertinent cases. The Court's intervention is also required to establish whether the Second Circuit and District Court erred in dismissing Petitioner's discrimination and emotional distress claims while disregarding the circumstantial evidence indicating discriminatory intent and requiring Petitioner to identify similarly situated, non-disabled individuals who received better treatment than Petitioner.

A. Factual Background

1. Petitioner falls victim to an unlawful loan scheme orchestrated by Respondents. Brandon E. Ogbolu ("Petitioner"), an individual diagnosed with autism spectrum disorder (Asperger syndrome), graduated from Columbia College at Columbia University in 2012. He alleges to have experienced pervasive disability discrimination while being a victim of an unlawful, consumer-oriented loan scheme orchestrated by Respondents for nearly a decade.

Respondents oversee and promote Columbia's conversion of outstanding tuition debt into private student loans. Namely, the "loan scheme" occurs (i) after educational services are rendered; (ii) when no money exchanges hands between Columbia and the student/alum; and (iii) despite no agreement being reached prior to, or contemporaneous with, the transfer of educational services that such action would take place. These loans are unlawful, as clarified by multiple circuit courts.

According to the Second Circuit, the word loan "under the common law" means "(i) a contract, whereby (ii) one party transfers a defined quantity of money, goods, or services, to another, and (iii) the other party agrees to pay for the sum or items transferred at a later date." *In re Renshaw*, 222 F.3d 82, 88 (2d Cir. 2000). "This definition implies that the contract to transfer items in return for payment later must be reached prior to or contemporaneous with the transfer." *Id.* at 88. Specifically, the "transaction will be considered a loan regardless of its form ... Absent such an agreement, failure to pay a bill when due does

not create a loan." *Id. See also In re Grand Union Co.*, 219 F. 353, 356 (2d Cir. 1914); *In re Chambers*, 348 F.3d 650, 657 (7th Cir. 2003). Respondents cannot demonstrate that the loans they offered Petitioner adhere to the above definition.

2. The tuition debt first accrues due to Columbia's negligence. During his 2008-2012 enrollment, Petitioner accrued outstanding tuition debt totaling $80,366.47. This debt accrued because Columbia negligently broke its Billing Policy (App.98) four times, allowing Petitioner to register for classes despite having an outstanding balance far greater than the $1,000 maximum threshold above which class registration is barred.

3. Columbia threatens to send Petitioner's account to a third-party collection agency if he does not agree to the unlawful loan scheme. In May 2011, as Petitioner's tuition debt became excessively large, a Columbia employee within the Student Financial Services Office threatened to send Petitioner's account to a collection agency. As an alternative, this Columbia employee offered Petitioner "a one-time relief program" to borrow "a Columbia University loan to cover the balance." (App.77-78.) Petitioner agreed to the arrangement, believing he had no alternative.

4. The unlawful loan scheme leads to the origination of high-risk loans. Before and following his 2012 graduation, Columbia converted Petitioner's tuition debt of $80,366.47 into one private student loan in 2011 and another in 2014. Both loans originated with a five percent interest rate and a repayment period of five years. Columbia utilized a

third-party loan servicer to service the loans. Since money never exchanged hands between Petitioner and Columbia in converting the tuition debt into loans, it logically follows that Columbia transferred numbers from its tuition ledger (reflecting debts owed) to its loan ledger (reflecting credit extended). Columbia never considered Petitioner's profile as a borrower, including his income, debt, credit history, or employment status. Columbia issued the loans without offering Petitioner valid financing alternatives. In short, as it originated, Columbia's loan scheme was designed to fail.

5. Columbia makes reports to third-party credit bureaus in violation of federal law. Because the two loans were not commensurate with Petitioner's profile as a borrower, Petitioner encountered significant issues repaying them. Between 2012 and 2017, Columbia made 22 adverse reports to third-party credit bureaus for Petitioner's late loan payments. As a result, Petitioner's credit score sank to the 400-500 range for nearly five years. Considering the unlawful nature of the loans, as clarified by multiple circuit courts, Columbia repeatedly violated Section 623(a)(1)(A) of the Fair Credit Reporting Act, which stipulates that "[a] person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate." (App.64.)

6. Petitioner encounters homelessness due to the unlawful loan scheme and informs Columbia administrators, but they do not care. Due to the

untenable nature of the two loans, Petitioner encountered five to seven months of homelessness from late 2014 to mid-2015, where he lived out of his car in California. Further, Petitioner experienced severe emotional and mental distress, including increased anxiety, depression, suicidal ideation, and the continual threat of physical harm due to the lack of safety and protection while homeless. The loan scheme negatively impacted every aspect of Petitioner's life, including his professional and personal relationships. Despite relaying his homelessness to Columbia administrators, including Jessica Marinaccio, Columbia's Dean of Undergraduate Admissions and Financial Aid, Columbia refused to amend Petitioner's loan arrangement.

7. Respondents engage in fraudulent misrepresentation by representing the unlawful loan scheme as lawful. Between 2011 and 2018, Petitioner received eight emails and one telephone call from Columbia employees, including Respondent Patricia S. Catapano, in which they misrepresented the loans underlying the loan scheme as lawful. (App.77.) From Petitioner's Financial Aid Advisor to Columbia's then-Associate General Counsel, all promoted the loans as lawful, even though legal precedent had established otherwise.

8. The unlawful loan scheme is consumer-oriented. Between 2013 and 2017, Petitioner received emails from three Columbia employees, including Columbia's then-Associate Vice President of Student Financial Services, and one telephone call from

Columbia's Vice President of Finance and Controller. (App.77.) These communications confirmed that other students and alumni were also subjected to this consumer-oriented unlawful loan practice.

9. The unlawful loan scheme is deceptive as its goal is to eliminate the ability of victims to discharge tuition debt in bankruptcy. By unlawfully converting the outstanding tuition debt into private student loans, the loans cannot be discharged in bankruptcy as articulated by Section 523(a)(8) of the U.S. Bankruptcy Code. The loan scheme is a crafty method of transforming an otherwise dischargeable debt into a non-dischargeable debt. This deceptive scheme is inapposite to the laws that protect bankruptcy rights for individuals who encounter financial hardship and need a reprieve.

10. Respondents' indifference to Petitioner's declining mental health as they continue to evade accountability. Beginning in 2015 and through 2018, Petitioner escalated his concerns about the loans to senior administrators and Columbia's Board of Trustees. Despite relaying the full facts of his situation, including the circumstances of the loan origination and his subsequent homelessness, the University evaded Petitioner for years.

Columbia and its board knew or should have known that the University's years-long evasion exacerbated Petitioner's mental health. For instance, when neither University administrators nor the board would address his concerns, Petitioner would escalate his concerns to non-Columbia affiliated work and industry colleagues of select board members.

Petitioner had no reason to behave in this reputationally-damaging manner but for his declining mental health, which was made significantly worse by Respondents' continuous evasion.

Through the frequency and nature of Petitioner's correspondences, Columbia and its board knew or should have known that Petitioner suffered from a significant psychological condition, like autism spectrum disorder. Petitioner displayed indicative symptoms like rumination, prolonged focus, a strong sense of justice, depression, and an unusual intensity in his quest to understand questions that would otherwise be too taboo and reputationally damaging to pursue as Petitioner did so persistently.

Respondent Patricia S. Catapano, Columbia's then-Associate General Counsel, specifically evaded Petitioner for nearly one-and-a-half years as she indicated she would meet with Petitioner to clarify his questions, but never did. Her supervisors, Respondent Lee C. Bollinger (Columbia's President) and Respondent Jane E. Booth (Columbia's then-General Counsel and current Chief Legal Officer), were carbon-copied on almost every email for the nearly one-and-a-half years she evaded Petitioner. (App.82.)

11. Columbia agrees to wipe away Petitioner's two loans. On March 21, 2019, Respondent Patricia S. Catapano decided to wipe away Petitioner's two loans which had been held in abeyance since January 2018.

12. Columbia attempts to collect loan payments even after agreeing to wipe away Petitioner's two loans. On March 25, 2019, even after agreeing on March 21, 2019 to wipe away Petitioner's two loans,

Columbia attempted to collect a loan payment for $9,280.34. Similarly, on April 10, 2019, Columbia attempted to collect another payment for $9,950.07.

13. Petitioner enters settlement negotiations but encounters seven additional months of stall tactics. In April 2019, Respondent Patricia S. Catapano connected Petitioner with Columbia's outside counsel, Respondent Andrew W. Schilling (formerly of Buckley LLP), to negotiate a settlement. Respondent Andrew W. Schilling dragged out negotiations for nearly seven months despite Petitioner advising him early on that it felt like he was on a never-ending mental health downward spiral. Nevertheless, Respondent Andrew W. Schilling would fail to respond to Petitioner for up to two months. Throughout the ordeal, Petitioner was unrepresented and negotiated without counsel.

14. Petitioner enters into a settlement agreement with Respondents, yet acts of harmful conduct continue. On October 29, 2019, Petitioner entered into a settlement agreement with Respondents where he relinquished his claims related to the loans and disability discrimination. The terms of the agreement stipulated that Petitioner would receive a refund of $35,779.80 for money he paid towards the two loans he asserted were unlawful. Additionally, Petitioner would receive a one-time settlement payment.

Following settlement, Petitioner experienced harmful conduct from Respondents that they knew or should have known would exacerbate Petitioner's psychological condition and disposition. For instance, despite the settlement stipulation that Petitioner would receive the $35,779.80 as a refund, this amount

was still reported as income on his MISC-1099 tax form. This misreporting caused tremendous stress for Petitioner because, even after settlement, it was clear that Petitioner remained subjected to Respondents' near-decade pattern of harmful conduct. Petitioner encountered pronounced anxiety, depression, and suicidal ideation on top of further economic and reputational harm. Petitioner could not focus on his business, which closed in December 2020.

15. Petitioner receives a diagnosis of autism spectrum disorder. In January 2021, Petitioner received a diagnosis of autism spectrum disorder. Before this point, Petitioner was self-diagnosed. Petitioner's diagnosis enabled him to understand aspects of his condition, like his susceptibility to manipulation, that he believed Respondents exploited in arriving at the settlement agreement. Petitioner also came to understand how Respondents' conduct, post-settlement, worsened his condition.

B. Procedural History

1. Petitioner files a lawsuit against Respondents in the District Court. On February 24, 2021, Petitioner filed a lawsuit against Respondents in the District Court. In Petitioner's first complaint, he asserted discrimination claims under the Rehabilitation Act ("Rehab Act"), the Americans with Disabilities Act ("ADA"), and the New York City Human Rights Law ("NYCHRL"). Petitioner also asserted state law claims for breach of contract, intentional and negligent infliction of emotional distress, and deceptive practices violating New York's General Business Law (App.67).

2. The District Court's April 1, 2021 Order to Amend. Responding to Petitioner's first complaint, the District Court (Colleen McMahon) rejected his discrimination claims stating that:

> Plaintiff does not allege that Columbia University, in issuing a particular type of tax form, treated him differently from other individuals without disabilities who received refunds ... If Plaintiff chooses to file an amended complaint, he should plead facts stating a claim under the standards set forth above, including showing that he was treated differently from nondisabled individuals.

(App.42-44.) As identified, the District Court held Petitioner to the similarly situated standard to prove discrimination.

3. Petitioner amends his complaint per the District Court's Order. In response to the District Court's Order to Amend, Petitioner amended his complaint to include the statement that Respondents treated him "differently from and less preferably than similarly situated students and alumni," as called for by Judge McMahon. Petitioner presented 12 criminal claims (App.48) the loan scheme violated and other discrimination and state law claims. Petitioner subsequently amended his complaint twice more. Petitioner's Third Amended Complaint contained 33 federal, state, and local claims.

On September 22, 2021, Petitioner filed a preliminary injunction to enjoin the loan scheme. Petitioner argued Columbia's attempt to collect loan payments after agreeing to wipe away the loans and

Columbia's issuance of an erroneous tax form demonstrated that Petitioner remained subject to the ongoing threat of irreparable harmful conduct regardless of the implied or expressed agreements reached. At no point in the District Court did Respondents attempt to refute Petitioner's allegations that the loan scheme violated criminal statutes. Respondents never demonstrated that the loans were lawful or that the loan practice was not consumer-oriented, ongoing, and materially misleading, as alleged by Petitioner.

4. The District Court's January 31, 2022 Opinion and Order. On January 31, 2022, the District Court (J. Paul Oetken) denied Petitioner's motion for preliminary injunction and granted Respondents' motion to dismiss the complaint for failure to state a claim according to Rule 12(b)(6). The District Court concluded that the settlement agreement was valid and enforceable and that Petitioner lacked standing to pursue criminal charges. The District Court never took a stance on (i) whether the loans were unlawful, as clarified by multiple circuit courts; (ii) whether the loans were issued to the broader Columbia community; (iii) whether the loan scheme was ongoing; or (iv) whether Respondents' conduct was criminal and violated the criminal statutes, all as alleged by Petitioner.

The court also dismissed Petitioner's discrimination and emotional distress claims without defining or conceptualizing the psychological condition and symptoms integral to those claims. Nonetheless, the court ruled that a mislabeled tax

form and "lengthy negotiations" did not constitute severe emotional distress. (App.19.)

5. Petitioner appeals the District Court's decision. On March 1, 2022, Petitioner appealed the District Court's ruling that granted Respondents' motion to dismiss and denied Petitioner's motion for a preliminary injunction.

a. Petitioner relinquished his contract-based claims and asserted that the settlement agreement is void as it contravenes public policy for consumer protection and the administration of criminal justice. Petitioner argued that private exchange is inadequate to settle acts of felonies that harm the wider public. Petitioner advanced over 15 criminal statutes that the loan scheme violated, of which 13 are felonies. (App.48.)

b. Petitioner argued that Respondents' inability to refute the criminal allegations strongly suggests their inability to do so. Notably, also on appeal, Respondents never denied Petitioner's accusations of criminal conduct and the consumer-oriented nature of the loan scheme.

c. Petitioner argued that a void contract cannot be ratified and that once the contract is found to contravene public policy, his claims precluded by the settlement (like his state and common law fraud claims and civil RICO claim) would proceed on remand.

d. Petitioner argued that a failure to plead cognizable damages with specificity does not bar a court from examining such claims in the future.

e. Petitioner argued that the District Court's failure to define and conceptualize the psychological condition integral to the case deprived Petitioner of all reasonable inferences drawn in his favor.

f. Petitioner argued that the District Court erroneously disregarded the circumstantial evidence that demonstrates discriminatory intent.

g. Petitioner argued that the District Court erroneously held him to the similarly situated standard to prove discrimination.

6. The Second Circuit's Ruling. On March 21, 2023, the Second Circuit affirmed the District Court's decision to uphold the settlement without issuing its analysis of the alleged criminal conduct. The Second Circuit argued that (i) the agreement released Respondents from all allegations regarding the loans; (ii) Petitioner lacks standing to pursue criminal charges; and (iii) Petitioner did not specify "any public interest, which generally favors settlement agreements, harmed by the agreement." (App.7.)

The Second Circuit also argued that Petitioner did not prevail on his discrimination or emotional distress claims. Yet, like the District Court, the court did not define and contextualize the psychological condition and symptoms integral to this case. The court stated, "[w]hile the district court may not have included detailed descriptions of Ogbolu's medical information in its public decision, the record indicates that the district court examined Ogbolu's arguments and claims with his diagnosis in mind." (App.5.) The court was noticeably silent on Petitioner's accusation that the District Court erroneously held him to the

similarly situated standard to demonstrate discrimination but noted that Petitioner did not plead "facts suggesting that Columbia discriminated against him 'on the basis of disability' ... or acted with a 'discriminatory motive[.]'" (citation omitted) (App.8.)

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari To Clarify Whether Lower Courts Have A Constitutional Duty To *Sua Sponte* Assess All Unlawful Conduct And Harm To The Public Interest And Subsequently Raise All Viable Claims That May Have Been Missed Or Inadequately Pleaded By A Party, Regardless Of Whether The Party Is Represented By Counsel Or Proceeding *Pro Se.*

Neither the Second Circuit nor District Court's rulings addressed whether the conduct underlying the settlement was criminal. Section 1 of Article III of the U.S. Constitution vests power in the judicial system to interpret the laws. (App.47.) Since judicial power as vested "extend[s] to all Cases," U.S. Const. art. III, § 2 (App.47), and cascades across all courts, the Framers of the Constitution envisioned courts acting in a fulsome and expansionary manner to assess and interpret the law.

The Constitution does not imply that courts should turn a blind eye to unlawful conduct or harm to the public interest. Nor does the Constitution assert that courts should place the onus solely on litigants to raise claims. Instead, it is the job of the courts to

assess all conduct brought before them and subsequently raise all valid claims available to parties. This is the spirit of Article III of the Constitution.

This Court is similarly of the rationale that lower courts have a "constitutional duty" to "faithfully and independently interpret the law." *VF Jeanswear LP v. Equal Emp't Opportunity Comm'n*, 140 S. Ct. 1202, 1204 (2020). Further that, "[t]urning a blind eye" to the law and constitutional precedents "change[s] the uniform 'law of the land' into a crazy quilt." *Kansas v. Marsh*, 548 U.S. 163, 185 (2006) (citation omitted). *See also Schuette v. Coal. to Defend Affirmative Action*, 572 U.S. 291, 391 (2014) ("We should not turn a blind eye to something we cannot help but see.").

In the instant petition, the Second Circuit and District Court turned a blind eye to Petitioner's allegations of criminal conduct that served as the impetus for settlement formation. While Petitioner highlighted the criminal conduct in the District Court, the District Court did not *sua sponte* advance a public policy argument on Petitioner's behalf.

Petitioner requests this Court to take a definitive stance on whether lower courts have a constitutional duty to *sua sponte* assess all unlawful conduct and harm to the public interest in cases brought before them and raise all valid claims, regardless of all else.

1. Generally, the onus cannot be placed solely on litigants to identify and properly plead claims. Federal Rule of Civil Procedure 8(a) establishes the rules of pleading in district courts. In a complaint, litigants must establish the court's jurisdiction, the

claims, and the relief sought. Rule 8(e) holds that pleadings must be "construed so as to do justice." Moreover, this Court has held that *pro se* complaints must be "construed liberally." *Conard v. Pennsylvania State Police*, No. 091523, at *11 (June 11, 2010). Thus, a *pro se* complaint is held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

Despite the guidance that all complaints are to be "construed so as to do justice" and "liberally construed" in the case of *pro se* plaintiffs, district courts outright reject claims if the plaintiff did not specifically raise them in the complaint, no matter the validity of those claims. For instance, in *Clifford v. Harrison Cnty*, the court ruled that "[s]ince a First Amendment claim was not raised in [the] Complaint, the Court finds that [the claim] is dismissed." 596 F. Supp. 3d 634, 651 (S.D. Miss. 2022). *See also Branch v. Schostak Bros. & Co.*, No. 11-15616, at *10 n.2 (E.D. Mich. May 17, 2013) ("Because this claim was not raised in the complaint, it cannot be raised now."). These strict pleading standards are at the expense of plaintiffs, especially those proceeding *pro se*, because they operationally permit district courts to disregard actionable conduct brought before the court.

Courts have also acted divergently, though following the guidance of this Court, by *sua sponte* raising new claims that a *pro se* litigant did not raise. For instance, "[b]ased on the facts in her complaint and the additional facts in her brief, the Court construes her complaint to include these causes of action." *Wilshire v. L&M Dev. Partners*, 20-CV-7998

(JPO), at *9 (S.D.N.Y. Mar. 22, 2022). Similarly, "although the complaint does not expressly assert a claim related to the denial of OWCP compensation, the Court broadly construes the complaint to assert such a claim given Plaintiff's pro se status." *Hernandez v. U.S. Postal Serv.*, No. 5:19-cv-04002-HLT, at *7 n.7 (D. Kan. May 28, 2020).

If Federal Rule of Civil Procedure 8(e) holds that all complaints should be "construed so as to do justice," and if guidance from this Court holds that *pro se* complaints should be held to less stringent standards, it is rather confusing why courts would reject *any* valid claim on the basis that the litigant did not raise, or properly raise, such claim.

Moreover, in liberally construing *pro se* complaints, it is unclear whether this Court suggests that district courts should always raise viable claims that a *pro se* plaintiff did not assert or adequately do so. Part of this confusion comes from prior rulings from this Court that held that "[d]istrict judges have no obligation to act as counsel or paralegal to *pro se* litigants." *Pliler v. Ford*, 542 U.S. 225, 231 (2004). *See also McKaskle v. Wiggins*, 465 U.S. 168, 184 (1984) ("[T]he Constitution [does not] require judges to take over chores for a *pro se* [litigant] that would normally be attended to by trained counsel as a matter of course."). So, does a court's *sua sponte* raising of claims in *pro se* cases, under the mandate to liberally construe *pro se* complaints, fall within or out of the scope of a judge's role as asserted by this Court? Only this Court has the authority to answer and resolve this question.

In other instances, district courts *sua sponte* raised claims even when counsel represented the plaintiff. "The amended complaint does not expressly assert a hostile work environment claim, but the Court has assumed for purposes of this motion that such a claim was adequately pleaded." *Dasrath v. Stony Brook Univ. Med. Ctr.*, 965 F. Supp. 2d 261, 268 n.5 (E.D.N.Y. 2013). *See also Picciano v. McLoughlin*, 723 F. Supp. 2d 491, 494 n.2 (N.D.N.Y. 2010) ("Even though Plaintiff's Complaint does not expressly assert a claim of false arrest, the Court liberally construes it as asserting such a claim. *See* Fed.R.Civ.P. 8(e) (providing that all complaints 'must be construed so as to do justice')").

If a court identifies claims not alleged by a party who is represented by counsel, does the court have an obligation to raise those claims in every case? Or can the court willfully turn a blind eye to the identifiable claims solely because the plaintiff is represented by counsel? Clarification from this Court is necessary.

2. Shifting to appellate courts, Federal Rule of Appellate Procedure 28(a) establishes the rules of pleadings on appeal. Like pleadings within district courts, the appellant is responsible for raising issues for review. This Court has held that "[i]n exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States v. Atkinson*, 297 U.S. 157, 160 (1936). Yet, appellate

courts frequently disregard arguments not raised in the district court without offering their perspective on the validity of those arguments. This is especially observed in *United States v. John*: "The failure to raise the issue below forecloses review." 508 F.2d 1134, 1140 (8th Cir. 1975). The mere barrier to consideration has been shut off when the appellant fails to raise the issue in the district court.

Likewise, appellate courts have considered claims not raised or properly done so by the appellant. *See, e.g., Reid v. McDonnell Douglas Corporation*, 443 F.2d 408, 409 n.3 (10th Cir. 1971) ("This claim is not explicitly made in the complaint, but for purposes of this appeal we will treat it as properly raised."). *See also Dean Witter Reynolds, Inc., v. Fernandez*, 741 F.2d 355, 361 (11th Cir. 1984) ("[W]e shall address appellant's claim even though he failed to raise it below.").

In the interest of justice, do appellate courts have a duty to *sua sponte* raise valid claims not raised by an appellant in the district court or on appeal? What if the appellant was proceeding *pro se*? Are appellate courts obligated to liberally construe *pro se* pleadings, in the same way as district courts, considering this Court's recognition in *Conard* of the inadequacies of *pro se* litigants? The discrepancies between circuit courts are evident, and this Court's intervention is necessary.

3. Regarding the pleadings in this Court, Supreme Court Rule 14 establishes the content of a petition for a writ of certiorari. *See* Supreme Court Rule 14.1(a) ("Only the questions set out in the

petition, or fairly included therein, will be considered by the Court."). Thus, the Court will not address issues that a petitioner did not raise in the petition. This Court also follows suit with appellate courts in patently rejecting issues not raised or properly done so. *See, e.g.*, *Nestle U.S. v. Doe*, 141 S. Ct. 1931, 1951 (2021) ("[T]his issue was not raised by petitioners' counsel, and I would not reach it here."). Similarly, "[w]e do not reach this issue because it was not raised or briefed below." *TRW Inc. v. Andrews*, 534 U.S. 19, 34 (2001). These rulings suggest that the Court wholly prohibits considering issues not initially alleged.

Yet, there are cases where this Court addressed issues that were not raised at the onset. "Although the District Court did not address this argument, the argument raises a question sufficiently legal in nature that we choose to address it even in the absence of lower court analysis." *United States v. Locke*, 471 U.S. 84, 93 (1985). *Compare, Carlson, v. Green*, 446 U.S. 14, 17 n.2 (1980) ("Though we do not normally decide issues not presented below, we are not precluded from doing so.").

4. As demonstrated, the divergences in how courts handle pleading standards are a legitimate barrier to courts assessing the law through conduct presented in cases brought before them across the judicial hierarchy. To this effect, the onus lies on litigants to identify issues, including unlawful conduct and harm to the public interest, in a manner that satisfies pleading standards. But as identified, strict adherence to pleading standards may take precedence over a court's constitutional duty to

interpret the law. If courts have a constitutional duty to faithfully and independently interpret the law, why do they conditionally and selectively do so? Why is the onus placed on litigants to identify and properly plead unlawful conduct and harm to the public interest when courts are the most qualified entity to do so?

5. Continuing, significant conflict exists across circuits regarding whether courts should *sua sponte* assess the public policy ramifications of each contract brought before a court. As an initial matter, this Court has made clear that settlements are in the public interest. *See Delta Air Lines, Inc. v. August*, 450 U.S. 346, 363 (1981) (noting that "parties to litigation ... have an interest ... in settlement rather than exhaustion of protracted court proceedings"). This Court similarly held that contracts that are "injurious to the interests of the public, or [contravene] some established interest of society" are against public policy. *Hartford Ins. Co. v. Chicago c. Railway*, 175 U.S. 91, 106 (1899). *See also* Restatement (Second) of Contracts § 178 (1981).

This Court has held that courts must weigh the public policy and illegality concerns of settlements irrespective of anything else. *See, e.g., Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 84 (1982) ("a court must reach the merits of an illegality defense in order to determine whether the contract clause at issue has any legal effect in the first place"). The Tenth Circuit, likewise, held that a court "[m]ust satisfy itself that" settlement agreements are "fair, adequate, and reasonable" and "not illegal, a product of collusion, or against the public interest." *United States v.*

Colorado, 937 F.2d 505, 509 (10th Cir. 1991). *See also Sheffield Commercial Corp. v. Clemente*, 792 F.2d 282, 286 (2d Cir. 1986) ("Although [an] argument ... was not presented to the district court, we will consider it because of the strong public interest ...").

In contrast, the Fifth Circuit held that "[c]ontracts are presumptively legal, so the party challenging the contract carries the burden of proving illegality." *Crosby v. Orthalliance New Image*, 552 F.3d 413, 422 (5th Cir. 2008). In line with this view, the Second Circuit noted Petitioner's public policy argument but asserted that Petitioner did not specify the public interest harmed by the settlement. Thus, the Second Circuit placed the onus on *Petitioner* to prove that the settlement was against public policy while keeping quiet on whether the settlement harmed the public interest.

Further, some circuits patently reject public policy arguments if the issue was not raised in the district court. The Eleventh Circuit, for instance, held that "[w]e need not address Paylor's public-policy argument because she did not raise the issue before the District Court." *Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125 (11th Cir. 2014). The Eight Circuit confirms a split within the circuit, holding that "[a]ppellants have waived [the public policy] argument, as they raised it for the first time in their brief to [the] court." *Medicine Shoppe Int. v. Turner Inves*, 614 F.3d 485, 489 (8th Cir. 2010).

In the instant case, the Second Circuit and District Court failed to assess the nature of the conduct upon which the settlement was created,

thereby failing to measure the settlement's public policy implications. Hence, this case presents an opportunity for this Court to clarify the lower courts' divergent ruling on whether lower courts should assess the public policy implications of contracts brought before them.

8. Finally, since criminal claims cannot stand in a civil case due to a court's lack of jurisdiction over such claims, Petitioner relinquished his 15 criminal claims on appeal. However, Petitioner's allegations of criminal conduct were still relevant and necessary for the Second Circuit and District Court to consider as the alleged criminal conduct served as the basis for the settlement formation. To be exact, the alleged criminal conduct is *inseparable* from the settlement formation itself.

Of course, courts can assess the nature of the conduct that underlies contracts that come before them. This is how courts ascertain whether contracts are illegal or invalid. This Court's precedents include analyzing the nature of the conduct that gave rise to settlements to determine whether the settlement should be enforceable. *Oscanyan v. Arms Co.* demonstrates how this Court assesses the viability of contracts. "We are brought, then, to the consideration of the contract upon which the action is founded." 103 U.S. 261, 269 (1880). The Court offered a detailed analysis of the underlying conduct that led to the settlement, after which it concluded:

> The question then arises, Is this contract one which the court will enforce? We have no hesitation in answering it in the negative. The

> contract was a corrupt one, — corrupt in its origin and corrupting in its tendencies. The services stipulated and rendered were prohibited by considerations of morality and policy which should prevail at all times and in all countries, and without which fidelity to public trusts would be a matter of bargain and sale, and not of duty.

Id. at 271-272. The Second Circuit and District Court elaborated on the contract's text (App.3-4 and App.13, respectively) without assessing the underlying conduct (the alleged criminal acts) before ruling that the contract was valid and enforceable. This was inadequate for establishing the basis of an action.

The allegations of criminal conduct are significant in this case, regardless of Petitioner's inability to pursue criminal claims. Yet, the Second Circuit and District Court outright rejected the significance of the criminal conduct because Petitioner lacked a private right of action to pursue criminal claims. This Court's intervention is necessary to determine whether courts have a constitutional obligation to preserve public interest by assessing all unlawful conduct, including criminal conduct, in cases brought before them.

II. The Court Should Grant Certiorari To Make Clear Whether A Private Settlement Harms The Public Interest When The Underlying Conduct Consists Of Acts Of Felonies That Harm The Wider Public.

Because the Second Circuit and District Court overlooked the underlying criminal acts that gave rise to the settlement, it is impossible to establish the

Second Circuit and District Court's rationale regarding the implications of the settlement. Notwithstanding Petitioner's inability to pursue criminal charges, unanswered questions are plenty. Most urgently, would the settlement harm the public interest if it *was* found to settle acts of felonies that harm the wider public?

1. The following facts are established: Loans issued through Respondents' loan scheme do not meet the legal definition of a loan as clarified by multiple circuit courts. The loan scheme is consumer-oriented, as several Columbia administrators confirmed that other students and alumni were subjected to the same practice. Because Respondents, for nearly a decade, willfully misrepresented the loans as lawful when they were not (and in a collusive, multi-departmental manner), their conduct becomes criminal in nature. At no point in the District Court or on appeal did Respondents refute Petitioner's allegations of criminal conduct or the consumer-oriented and ongoing nature of the loan scheme.

2. According to this Court's ruling, "society has an urgent interest in protecting the public from criminal acts..." *Ashe v. Swenson*, 397 U.S. 436, 466 n.4 (1970). Namely, "[i]n the context of felonies or crimes involving a threat to public safety, it is in the public interest that the crime be solved and the suspect detained as promptly as possible." *United States v. Hensley*, 469 U.S. 221, 229 (1985). Further, "[t]he courts have an obligation, once a violation ... has been established, to protect the public from a continuation of the harmful and unlawful activities."

United States v. Parke, Davis Co., 362 U.S. 29, 48 (1960). This Court's rulings demonstrate that protecting the public from criminal acts takes precedence. Accordingly, the Second Circuit and District Court's failure to assess the public policy implications of the settlement and grant Petitioner's motion for a preliminary injunction to enjoin the loan scheme further subjects the public to harm.

3. Above all, private settlements cannot vindicate harm imposed on the public by felonious conduct. In criminal matters, civil compromise is barred when the conduct consists of acts of felonies that harm the wider public. Criminal Procedure only "allows for civil compromise in crimes less than a felony where the general public will suffer no damage." *People v. Borregine*, 52 Misc. 2d 996 (N.Y. City Ct. 1967). The principles of civil compromise established by Criminal Procedure provide a guidepost for civil cases. If a contract was created to settle acts of felonies that harm the wider public, then such a contract is in discord with public policy. "[P]rivate individuals should not be allowed to thwart the penal goals of the criminal justice system by entering into releases or settlements with wrongdoers." *United States v. Bearden*, 274 F.3d 1031, 1041 (6th Cir. 2001). Needless to say, "[i]t would be improper to permit private parties to release criminal wrong-doers from punishment." *Id.* Finally, "to permit criminal wrongdoers to seek settlements with their victims would unfairly advantage wrongdoers with means over their less affluent counterparts." *Id.* The Ninth Circuit similarly held that "the power imbalance between [a criminal wrongdoer and their victim] may

permit the defendant to coerce the victim to accept a nominal settlement." *United States v. Anne Marie Hankins, Inc.*, 858 F.3d 1273, 1278 (9th Cir. 2017).

These rulings establish that the criminal justice system does not take a backseat to private settlements. In different terms, the Second Circuit's rationale that the public interest "generally favors settlement agreements" (App.7) is futile without considering the criminal justice system. Ultimately, settlements between criminal wrongdoers and their victims, like the one between Petitioner and Respondents, pose tremendous threats to victims and criminal justice.

This Court's guidance is needed to establish whether Respondents' conduct is criminal and whether the settlement between Petitioner and Respondents thus harms the public interest.

III. The Court Should Grant Certiorari To Decide Whether The Second Circuit And District Court Erred In Dismissing Petitioner's Disability Discrimination And Emotional Distress Claims While (1) Refusing To Define And Conceptualize The Integral Psychological Condition And Symptoms; (2) Disregarding The Circumstantial Evidence In The Record That Demonstrates Discriminatory Intent; And (3) Requiring Petitioner To Identify Similarly Situated, Non-Disabled Individuals Who Received Better Treatment Than Petitioner.

A. Granting this petition will address whether lower courts err when they do not define and conceptualize psychological conditions and symptoms integral to discrimination and emotional distress claims.

1. This petition draws from administrative proceedings for disability benefits because they provide a parallel framework for comparing judicial proceedings. For instance, when individuals wish to appeal decisions regarding social security benefits claims, their case is presented before an administrative law judge (ALJ). ALJs are held to stringent standards for assessing and documenting such cases. It is commonplace for administrative courts to zero in on psychological conditions that serve as the basis for disability benefits. Beyond the relevant psychological difficulties, the disorder must likewise be defined and conceptualized. "The Court considers each of the psychological disorders in turn." *Dvorak v. U.S.*, Civ. No. 01-1415 (RHK/AJB), at *1 (D. Minn. Dec. 30, 2002).

Synonymously, the court must familiarize itself with the disorder vital to a claim. Courts "must not merely speculate regarding psychological harm." *U.S. v. Neadle*, 72 F.3d 1104, 1112 (3d Cir. 1995). As psychological conditions are difficult to assess, courts must incorporate "...[c]linical and laboratory data [that] consist of the diagnoses and observations of professionals trained in the field of psychopathology." *Lebus v. Harris*, 526 F. Supp. 56, 60 (N.D. Cal. 1981). Because ultimately, claimants cannot, for legal purposes, be separated from their disability.

The Social Security Act defines "disability" as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment ..." 42 U.S.C. § 423(d)(1)(A). This is likewise the standard in judicial proceedings. *See, e.g.*, 42 U.S.C. § 12102(1)(A). Relatively, "[t]he ALJ is required to consider all of the claimant's symptoms, including pain, in light of objective medical evidence." *Binion v. Shalala*, 13 F.3d 243, 247 (7th Cir. 1994). Further, ALJs may not "cherry pick" evidence from the record to support decisions. *Denton v. Astrue*, 596 F.3d 419, 425 (7th Cir. 2010). By the same token, "[a]n ALJ's erroneous refusal to consider evidence 'ordinarily requires remand to the ALJ for consideration of the improperly excluded evidence, at least where the unconsidered evidence is significantly more favorable to the claimant than the evidence considered.'" *Degraff v. Comm'r of Soc. Sec.*, 20-2945-cv, at *2-3 (2d Cir. June 21, 2021) (citation omitted).

The following cases provide rich examples where ALJs failed to address and contextualize medical conditions and symptoms. *See, e.g.*, *Bradley A. v. Commissioner of Social Security*, No. 20-CV-352-LJV, at *3 (W.D.N.Y. July 16, 2021) ("Because the ALJ did not describe or discuss any medical evidence regarding [the] seizure disorder ..., ... he did not address the 'symptoms, signs, and laboratory findings' of [the] seizure disorder...") (citation omitted); *see also True v. Colvin*, No. C15-3089, at *18 (N.D. Iowa Nov. 5, 2015) ("The ALJ failed to properly consider, and in most cases even address, [the claimant's] diagnosis of Asperger's disorder ..."); *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) ("[T]he ALJ also failed to

consider her subjective symptoms in making the severity determination.").

2. Although the Social Secretary Administration ("SSA") governs how ALJs evaluate disability cases, this Court should see similar inadequate patterns in the way the Second Circuit and District Court assessed Petitioner's discrimination and emotional distress claims when compared to ALJs whose rulings were reversed and remanded based on improper evidence considerations. Neither the Second Circuit nor District Court objectively defined Asperger syndrome and its symptoms. To be precise, the term Asperger syndrome was retired in 2013 as an official diagnosis and now falls under the diagnosis of autism spectrum disorder in the *Diagnostic and Statistical Manual of Mental Disorders 5* (DSM-5-TR). This deviation in terms is not accessible in the courts' opinions. Although neither court demonstrated familiarity with Petitioner's medical condition and symptoms in their public decisions, they nonetheless speculated that "lengthy negotiations" and a mislabeled tax form did not constitute severe emotional distress. (App.8 and App.19, respectively.) Without contextualization, how did either court arrive at this conclusion?

If the standard for "disability" is the same across administrative and judicial proceedings, why are there no rules that govern how judicial courts assess disabilities that serve as the basis for discrimination and emotional distress claims? Should lower courts at least use contemporary names for medical conditions?

3. Even as ALJs are held to standards established by the SSA, this Court has issued rulings on some similarities between ALJs and Article III judges. In *Butz v. Economou*, this Court held that the role of an ALJ and that of an Article III judge is "functionally comparable" as both "may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions." 438 U.S. 478, 513 (1978). Because of such similarities, the Court held that ALJs are entitled to absolute immunity from suit for damages. If safeguards, as established, within the judicial process can apply to the administrative law process, then both systems must converge when assessing psychological conditions in relevant cases. If the standards for an ALJ to assess and contextualize psychological conditions are substantially high, then the standard for trial and appellate judges when assessing claims based on psychological conditions must likewise mirror that of the ALJs, at least in terms of defining conditions and symptoms, discussing litigants' subjective symptoms, and accountably assessing relevant claims.

The Second Circuit and District Court acted without obligation to demonstrate familiarity with the psychological condition that served as the basis for Petitioner's discrimination and emotional distress claims. This Court's intervention is necessary to clarify what their obligations are.

B. Granting this petition will establish whether the Second Circuit and District Court erred in disregarding the

circumstantial evidence that supports an inference of discriminatory treatment.

In *Rogers v. Missouri Pacific R. Co.*, this Court held that "[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence." 352 U.S. 500, 508, n. 17 (1957). The Second Circuit and District Court acted contrary to this ruling by disregarding the circumstantial evidence presented in the record.

Petitioner asserted seven disability claims under Section 504 of the Rehab Act, Title III of the ADA, Section 296(4) of the New York State Human Rights Law ("NYSHRL"), Section 296(6) of NYSHRL, Section 40-C of the New York Civil Rights Law ("NYCRL"), Section 8-107(4) of the NYCHRL, and Section 8-107(6) of the NYCHRL. To establish a *prima facie* case under these statutes, a "[p]laintiff must establish that the defendant had a discriminatory intent or motive." *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2513 (2015). A plaintiff must "allege facts that support a plausible claim that they were 'a member of a protected class,' suffered relevant 'adverse' treatment, and 'can sustain a minimal burden of showing facts suggesting an inference of discriminatory motivation.'" *Thompson v. CRF-Cluster Model Program, LLC*, 19 Civ. 1360 (KPF), at *24 (S.D.N.Y. Aug. 14, 2020) (citation omitted). Petitioner, in both courts, exceeded this standard.

Petitioner argued that (i) Respondents likely knew he had autism spectrum disorder based on his

display of indicative symptoms (such as rumination, deep focus, a strong sense of justice, and depression); (ii) Respondents exploited his unawareness of the full implications of his condition (like susceptibility to manipulation) by engaging in years-long stall tactics to evade accountability for their unlawful loan scheme; (iii) Respondents exacerbated and exploited his weakened mental health prior to and during negotiations; and (iv) Respondents subjected him to further discrimination post-settlement by engaging in harmful behavior that they knew or should have known would impose significant distress based on his prior reactions to the same behavior.

Ultimately, Respondents' awareness of Petitioner's psychological condition—considering their continued subjection of Petitioner to harmful practices that both exploited and exacerbated the symptoms of Petitioner's condition—is sufficient to infer discriminatory intent. The facts of this case demonstrate discriminatory intent. But as the Ninth Circuit held, "[b]y requiring the Plaintiffs to prove more, the district court failed to draw all reasonable inferences in their favor ..." *Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1148 (9th Cir. 2013). This Court's intervention is necessary to establish whether the Second Circuit and District Court erred in disregarding the circumstantial evidence demonstrating discriminatory intent.

C. Granting this petition will establish whether the Second Circuit and District Court erred in requiring Petitioner to identify similarly situated, non-disabled

individuals who received better treatment than Petitioner.

In this case, the Second Circuit and District Court held Petitioner to the similarly situated standard to prove discrimination. In *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, this Court held that "[d]isparate treatment constitutes discrimination only if the objects of the disparate treatment are, for the relevant purposes, similarly situated." 520 U.S. 564, 601 (1997). Since Petitioner's claims arose out of a private settlement, it was nearly impossible for Petitioner to identify other individuals who also received refunds from Columbia University (as these are private transactions) and whether they also had autism spectrum disorder.

Various courts have acknowledged the issues that arise when litigants are held to the similarly situated standard. In *Abdu-Brisson v. Delta Air Lines, Inc.*, the Second Circuit acknowledged that there are occasional cases "... where a plaintiff cannot show disparate treatment only because there are no [individuals] similarly situated to the plaintiff." 239 F.3d 456, 467 (2d Cir. 2001). In *Meiri v. Deacon*, the court found that "[f]rom a practical perspective, requiring a plaintiff to demonstrate that her job was filled by a 'person outside the protected class' could create enormous difficulties involving the identification of the protected class." 759 F.2d 989, 996 (2d Cir. 1985) (citation omitted). More so, there are many "circumstances that would help to support an inference of discrimination." *Chambers v. TRM Copy Centers Corp.*, 43 F.3d 29, 38 (2d Cir. 1994).

The 'Similarly Situated' test propounded is difficult to establish and, above all, does not mean disparate treatment is negated if not established. This petition represents an opportunity for this Court to take a stance on whether the Second Circuit and District Court erred in holding Petitioner to the similarly situated standard to prove discrimination.

IV. The Questions Presented Raise New Issues Of Law For This Court To Decide.

The dangers of a judicial system that selectively addresses unlawful conduct and harm to the public interest are severe. Under this paradigm, litigants cannot be certain that courts will protect their legal interests, and the public cannot be certain that courts will always act on egregiously harmful conduct present in cases brought before them. Criminal wrongdoers will be incentivized to contract with their victims to conceal and protect their criminal acts. These are chilling precedents that inevitably call for a world of lawlessness. With the powers vested in it, this Court should remind lower courts of their constitutional duty to assess and act on all unlawful conduct and harm to the public interest in cases brought before them. Considering the sheer scope of harm imposed on the public through Respondents' loan scheme, this Court's attention is sought.

This case is also of First Impression for the Court to establish necessary guardrails for cases involving psychological conditions that serve as a basis for discrimination and emotional distress claims. Because such conditions are hard to grasp, courts should, above all, familiarize themselves with these

conditions. Particularly, defining the condition and symptoms, assessing litigants' subjective symptoms, and discerning discrimination and emotional distress claims given such analyses. Guardrails should further stipulate that courts err when they disregard circumstantial evidence in the record and that identifying similarly situated individuals outside of the protected class who received better treatment cannot be the only standard for disparate treatment.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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