NO. 22-758

IN THE SUPREME COURT OF THE

UNITED STATES

DR. APARNA VASHISHT-ROTA, an individual,
and AUGUST EDUCATION GROUP LLC

Petitioner,

v.

HOWELL MANAGEMENT SERVICES,

Respondents.

On Petition for Writ of Cert Supplemental

Briefing United States Supreme Court

DR. APARNA VASHISHT-ROTA
PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL AUTHORITY BRIEFING

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

INTRODUCTION

Pursuant to Rule 15 (8), Petitioner, submits a case that came to her attention post briefing. *Cruz. V. Arizona,* 2023 ruling will allow the inmate, John Montenegro Cruz, to press his argument in state court that he is entitled to a **new sentencing hearing** at which jurors would be informed that any life sentence they imposed would not include the possibility of parole.

The Supreme Court noted in that case that "state procedural ruling is adequate is itself a question of federal law" *Beard v. Kindler*, 558 U. S. 53, 60. The present case arises from an interlocutory appeal of two orders, both entered without any evidentiary hearings resulting in denial of due process like *Cruz.*

Petitioner hopes for an actual evidentiary hearing to submit evidence for the two Orders on Appeal.

- Add evidence that the documents were produced redacted as per the Motion to Compel discovery between Hernandez and Rota in the AAA trial;
- Add a declaration from Attorney Heinrichs that both parties have submitted as to sanction presented before Arbitrator Kaplan; the documents were produced to the author, Mr. Michael Hernandez as he wrote both emails;
- Assert that petitioner had the information prior to the litigation.

2. The District Court Violated Ms. Rota's Due Process Rights

"Utah law clearly requires certain minimum steps to accord due process in contempt proceedings." *Salt Lake City v. Dorman-Ligh,* 912 P.2d 452 (Utah App. 1996). "The due process provision of the federal constitution requires that in a prosecution for a contempt not committed in the presence of the court, the person charged be advised of the nature of the action against him [or her], have assistance of counsel, if requested, have the right to confront witnesses, and have the right to offer testimony on his [or her] behalf." *Von Hake*, 759 P.2d at 1170 (cleaned up).

Here, the due process issues concern 1) notice to Ms. Rota, 2) an opportunity to present evidence, and 3) an opportunity to confront witnesses. The district court admittedly never issued an order to show cause, never warned Ms. Rota of the potential consequences of violating the Protective Order, never held an evidentiary hearing, and never provided her an opportunity to present evidence.

2.1 Ms. Rota was not provided notice that the hearing was evidentiary and pursuant to an issued order to show cause

Howell's Show Cause Motion simply requested that the district court issue an order compelling Ms. Rota's attendance to answer whether she should be held in contempt. The district court admitted that no such "actual order to show cause that was ever signed and issued by the Court, which is a smidge unusual." Contempt Order at 5. When the court asked the parties for their understanding of the purpose of the hearing, Ms. Rota's counsel expressly denied that an order to show cause had been entered and that they would be "arguing today is whether or not the Court should be holding someone in contempt." [R. 3873]

Nevertheless, the court squeezed a concession that counsel for Ms. Rota was prepared to argue the motion. [R. 3879-3880] The trial court heard what it wanted to hear and made no effort to ensure that Ms. Rota had proper notice and adequate time to be heard and present evidence—especially in light of the court's apparent inclination to strike her answer and enter judgment against her.

Moreover, the trial court made inaccurate statements in its Contempt Order on the issue of notice:

First, the court stated in the Contempt Order that "Defendants' attorneys informed the Court that it was their understanding that an order to show cause had been issued by the Court ..." Contempt Order at 3. This is contrary to the evidence which showed that counsel for Ms. Rota and the trial court acknowledged that no order to show cause had been entered. [R. 3872, 3874].

Second, the trial court asserted that the hearing was "an

evidentiary hearing" and that Ms. Rota's attorneys "were prepared to address the substantive issues related to the Contempt Motion." Contempt Order at 3. The hearing was not evidentiary. The trial court did not take evidence and never told the parties that evidence was expected or invited. The court never said the word "evidence" or "evidentiary" but simply invited "substantive argument." The hearing was a veritable farmers' market of motions and argument but was not "evidentiary" and no evidence was presented. Ms. Rota's counsel never expressed nor understood that the hearing was an "evidentiary hearing" but expressed only that "we can address the motion" and were "prepared" to "address substantive items" of argument and nothing more.

2.2 The district court did not provide opportunity to present evidence or to confront witnesses

The court scheduled a two-hour hearing to hear nine extensive motions. Even if the court had informed the parties that the hearing was set for presentation of evidence (which it did not), there was not time. The trial court named the nine motions it expected to be heard. [R. 3881] The court did not give any particular attention to any one motion and told the parties to address them in the order filed. The nine motions were alle either dispositive or highly critical to the case. The Show Cause Motion apparently stood out to the court because it spent the first forty minutes discussing whether it would be argued at all. Yet, the court did not accord this motion any special attention or additional time for argument but took it in order. The defamation took the bulk of the time (over 70 minutes) and, at the end, the court limited to 15 minutes all argument on the Show Cause Motion that the court ultimately used to strike Ms. Rota's Answer and Counterclaim and enter default against her. Even if the court were inclined to take evidence, the court did not allow time for the motion and cut off the limited argument that it

allowed.

"THE COURT: All right. Very good, folks. Let's move on to plaintiff's motion for issuance of an order to show cause in re contempt of protective order. Mr. Shields, go ahead. And again, we're on a real short time frame here." [R. 3931]; "you've got about 30 seconds to a minute if you want to respond" [R. 3937]; "Counsel, I know there's a lot of information that you wish you would have gotten to me that you weren't able to do so today." [R. 3938]).

Finally, the district court did not provide Ms. Rota an opportunity to confront the accusing witnesses: no witnesses were called.

4.1 Striking pleadings and defaulting Ms. Rota was excessive and an abuse of discretion

"The striking of pleadings, entering of default, and rendering of judgment against a disobedient party are the most severe of the potential sanctions that can be imposed ...." Utah Dept. of *Transp. v. Osguthorpe*, 892 P.2d 4, 7 (Utah 1995).

The District Court Applied the Incorrect Legal Standard
The district court held Ms. Rota in "civil contempt" for failure to obey the Protective Order. Contempt Order at 20. However, the court erred when it applied the standard for general violations of discovery orders instead of the standard for civil contempt orders. Moreover, even though the district court labeled the contempt as "civil" and applied a "clear and convincing evidence" standard, it was actually a criminal contempt order and finding that should have applied the "beyond a reasonable doubt" standard. The failure to apply the correct legal standard requires reversal.
Rule 37(b) allows a court to strike pleadings based on discovery violations under subsection (4). The district court, however, expressly found that "Defendants are held in civil contempt, and

that the following appropriate sanctions are imposed..." Contempt Order at 20 (emphasis added). Contempt is governed by different standards than simple discovery sanctions. See, e.g., *Von Hake v. Thomas,* 759 P.2d 1162, 1168 (Utah 1988), superseded on other grounds as stated *in State v. Hurst*, 821 P.2d 467 (Utah Ct.App.1991)). The court in *Dickman Family Props., Inc. v. White*, 2013 UT App 116, ¶ 2, 302 P.3d 833 summarized the contempt standard:

The Contempt Order entered an order of criminal contempt, not civil contempt

The district court's contempt sanctions were criminal in purpose.

The district court found that "Defendants' intentional, willful and persistent disregard of the Court's orders requires a severe sanction." Contempt Order at 18. There was no attempt to initiate the contempt sanctions for a remedial purpose.

Rather, the district court held that the "Court expects parties to comply with its orders," that the parties agreed to be bound the Protective Order, that "Defendants failed to offer any adequate justification or excuse for their misconduct," that "Defendants ignored the Court's warnings and refused to comply with clear and unambiguous Court orders," and that the "appropriateness of a harsh sanction in this case is only further supported by Defendants' unapologetic response and request that they be compensated for having to defend their wrongful behavior." Id. at 18-19.

No remediatory element was offered, the sanctions were not provided as an attempt to compensate Howell for injuries resulting from the alleged failure to comply with the order, and there was no way for Ms. Rota to

avoid the contempt sanction of striking her pleadings and having judgment entered against her. Hence, the sanction was criminal in purpose and not civil. The trial court's recitation of "civil contempt" and Rule 37(b) do not change the analysis because the trial court's stated "purpose" consistent with criminal sanctions is dispositive. See *Dickman Family Props., Inc.*, 2013 UT App at ¶ 3.

Furthermore, "[f]or the court to hold one in contempt of an order, that order must be ... sufficiently specific and definite as to leave no reasonable basis for doubt regarding its meaning." *State v. L.A.*, 2010 UT App 356, ¶ 13, 245 P.3d 213 (internal quotation marks omitted); see also id. at ¶ 13 (citing *Foreman v. Foreman,* 111 Utah 72, 176 P.2d 144, 156 (1946) (*Wolfe, J.,* concurring) ("[A] court order[,] to be the basis of a finding of guilty of contempt for disobedience thereof[,] must be clear and unambiguous.")). "Contextually restricted": The district court appeared to recognize the inherent ambiguity in the Protective Order by its statement that the certain terms of the Protective Order were "clearly and contextually restricted to this litigation..." Contempt Order at 12. If the terms were so "clear" and "unambiguous," there would be no need to rely on context.

Here, "context" is a shorthand term to mean the express terms are missing or vague and the court expected Ms. Rota to fill in the meaning by reference to surrounding terms. Relying on "context" cannot be "sufficiently specific and definite as to leave no reasonable basis for doubt regarding its meaning" in order to support criminal or civil sanctions. See *State v. L.A., supra.* There must be proof that a contemnor clearly knew what was expected. "Context" does not meet that burden. See id.

Disclosure to authors: The "contextually restricted" comment was related to ¶ 8 "or any other provision" of the Protective Order. Paragraph 8 permits disclosure to non-party "authors or

drafters" of documents produced in the action. The court interpreted the Protective Order to be "contextually restricted" to "this litigation" and any disclosure could only be for purposes related to "this litigation." Contempt Order at 12. The court criticized Ms. Rota because the three documents were "disclosed in connection with an unrelated lawsuit, to unrelated individuals, and for unrelated purposes." Id. The Protective Order, and in particular, ¶ 8, does not support the district court's interpretation limiting any use to "this litigation":

8. Counsel for the inspecting Party may provide copies of documents designated as "CONFIDENTIAL" only to the following: (a) the categories of individuals listed above in paragraph 7(a)-(e) and subject to all conditions thereof; (b) Parties (including the officers, directors, employees, agents and representatives of a party that is a business entity) to whom it is necessary that the material be disclosed for purposes of this litigation; and (c) Authors or drafters of the documents or information. The term "this litigation" is limited to ¶ 8(b). Paragraph 8(c) is the paragraph that permitted Ms. Rota to provide copies to "Authors or drafters of the documents or information" and the limitation of "this litigation" did not, by the express terms of ¶ 8, apply. Moreover, although there are other references in the Protective Order to "this litigation," none of those references provide the "context" that could reasonably be interpreted to mean that the documents produced that are subject to the Protective Order would be strictly limited to "this litigation," the parties to this lawsuit, and the purposes of this lawsuit. Id. Indeed, the Protective Order allows recipients of confidential documents to retain copies of the documents in "automatic backup and archiving processes," a purpose unrelated to "this litigation." Protective Order at ¶ 16. Finally, Howell has been aware since the Protective Order was negotiated that the related litigation with Hernandez was imminent. If Howell were concerned that documents produced here might be used there, it

failed to note such a concern or expressly address it.

By the terms of the Protective Order, the only expressed concern was for protection from "public disclosure" and not disclosure or use in other contexts or lawsuits. Protective Order at 2. In particular, the Protective Order is silent as to whether documents can be used in any other litigation or for any other purpose other than "this litigation." The order simply requires protection of confidential information. Hence, even considering the "context," the Protective Order does not support the district court's restriction that documents could not be used in confidential arbitration.

"Permission": The trial court held that Ms. Rota violated ¶ 10 of the Protective Order because "Defendants never informed [Howell]" before producing the three documents in Arbitration. Contempt Order at 14. The referenced portion of ¶ 10, however, applies to "public information": "If such public information is designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, the receiving Party must inform the producing Party of the pertinent circumstances before the restrictions of this Order will be inapplicable." (the trial court's cited portion in italics). Because the three documents are not "public information" and not publicly produced, this provision does not apply and could not form the basis of a violation of the Protective Order. It is erroneous to impose on Ms. Rota the burden to misinterpret the Protective Order in the manner the district court has held. The district court's interpretation is not consistent with the plain terms of the Protective Order and is not "sufficiently specific and definite as to leave no reasonable basis for doubt regarding its meaning." *State v. L.A., supra.*

Hence, the Protective Order lacks both "contextual" clarity and actual clarity and could not impart to Ms. Rota knowledge of what was required of her—especially not to the level of "beyond areasonable doubt" or even a level of "clear and convincing." The district court also pointed to the removal of the bates numbers and "confidential" stamps from the three documents as further proof of willfulness and intentional conduct.

The Protective Order, however, does not restrict the removal of either. Protective Order, passim; see *State v. L.A.*, 2010 UT App at ¶ 13 (""order must be ... sufficiently specific and definite as to leave no reasonable basis for doubt regarding its meaning..."). The district court cited paragraph 11 as its source as the "clear and unambiguous" term that told the parties how to petition for "removal" of a "CONFIDENTIAL" stamp:

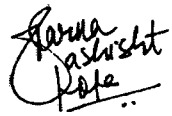
Ms. Rota has never asserted that the three documents are not "confidential" or that she "believed the documents did not warrant the "confidential" designation. Hence, the last sentence of ¶ 11 is inapplicable. The Protective Order did not preclude her from removing the bates number and stamp and producing them in confidential Arbitration to an "author and drafter" of the documents, Hernandez. Protective Order at ¶ 8.

The three documents, even without a "confidential" stamp, retained their confidential bearing and designation because they were produced in an entirely confidential setting: Arbitration. Moreover, the three documents were produced to a person who authored the documents and already had copies of his own without any "confidential" stamp or bates number.

CONCLUSION

Ms. Rota hopes for evidentiary hearings for both the September 2, 2020 Orders on Appeal. The appeals court ruled on issues not on appeal which is the 'gag order' and 'default order'.

Respectfully submitted,



/s/ Aparna Vashisht-Rota Pro

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

March 13, 2023

NO-22-758

IN THE SUPREME COURT OF THE

UNITED STATES

DR. APARNA VASHISHT-ROTA, an individual, and AUGUST EDUCATION GROUP LLC
Petitioner,

v.

HOWELL MANAGEMENT SERVICES,

Respondents.

On Petition for Writ of Cert United

States Supreme Court

DR. APARNA VASHISHT-ROTA SUPPLEMENTAL AUTHORITY APPENDIX TWO

Pro Se Petitioner
12396 Dormouse Road,
San Diego, California 92129
(858) 348-7068

TABLE OF CONTENTS

Solomon Ward
Attorneys at Law

Solomon
Ward
Seidenwurm &
Smith LLP

Wells Fargo Plaza
401 B Street, Suite 1200
San Diego, California 92101
(t) 619.231.0303
(f) 619.231.4755
www.swsslaw.com

Lawrence J. Kaplan, Inc.
Partner
lkaplan@swsslaw.com
(t) 619.238.4801
(f) 619.615.7901

Sandra Marshall
SandraMarshall@adr.org
Re: Aparna Vashisht Rota v. Michael Hernandez;

AAA Case No.01-18-0000-5144

Dear Ms. Marshall:

Counsel and I had a telephonic conference on March4,2019. Please note the following:

1. I understand that Counsel has scheduled the depositions of Ms. Rota and Mr. Hernandez for April 23 and 24.Unless additional viable theories emanate from such depositions, it appears that Claimants: (1) are entitled to be compensated by Respondent, subject to all defenses, if any, based upon a rate of $75 per student for every session/semester a student is enrolled in the specific program, commencing for enrollment in the second semester, and (2) discovery on a series of yet-to-be defined theories should be denied. Therefore, Claimants' Motion to Compel discovery is denied; however, if other viable theories arise as a result of the depositions, this ruling does not preclude Claimant from again seeking additional discovery which is relevant to the newly discovered theories, if any. Until then, Respondent's Motion to Compel Discovery is denied.

2. A proposed Declaration of Howell Management Services("HMS") was provided to me, based upon prior telephonic

hearings with Counsel. Instead of providing specific input on the Declaration, I suggest the following: (a) The Payment Ledgers for Ottawa University and Lindenwood University be updated to include the Spring 2019 semester, and (b)HMS explicitly confirm(i)inparagraph9 of its Declaration that Respondent is not paid for the first semester that each student attends (see paragraphs 3 and 13 of Respondent's Declaration), and (ii)that Respondent was paid during the operative period of time for X re-enrollments at Ottawa University and Y re-enrollments at Lindenwood University (in each case, omitting the actual amount which was paid by HMS to Respondent).

Sandra Marshall
March 24, 2019 Page2

3. Please make arrangements for a follow p telephonic conference sometime during the week or April 29 or May 6 which is convenient to Counsel.

Sincerely,

Lawrence J. Kaplan
Partner
Solomon Ward Seidenwurm & Smith, LLP
LJK:DHM
cc:

Ward Heinrichs
(swheinrichs@gmail.com)[Via e-mail]
Robert Williams
(rew@rewiliamslaw.com)[Via e-mail]
P:01272887:14480.128

The parties agreed to redacted documents production as noted below. The AAA trial was confidential. Hernandez was the drafter of the agreement and the addendum. Mr. Hernandez wrote the email "Aparna".

Lines 1-21 of Respondent Hernandez' opposition to Claimant's Motion to Compel.

Respondent's contracts with HMS relating to Ottawa and Lindenwood. Set Three, No. 5 seeks documents relating to the negotiation of these contracts.

Respondent contends that such agreements are not relevant because Claimants' compensation under the agreement at issue, if any, is fixed at $75 per student semester and can be calculated based on the HMS Reports. (See Section I, supra.) Further the agreements include proprietary and irrelevant evidence concerning the amounts paid to Respondent by HMS.

Document Requests, Set Two, No. 3 requests contracts, agreements, etc., between Respondent and schools that have HMS CPT programs. Claimants contend these contracts are relevant to "the payment terms of Claimant's case." This is not the case. Claimants' entitlement to payment, if any, is based on HMS's payments to Respondent. Respondent's contracts with schools, if any, have no bearing on this.

Document Requests, Set Two, No's. 15 and 16 request all contracts, agreements, etc., between HMS and Lindenwood and Ottawa, respectively, concerning HMS CPT programs. Claimant again contends these are relevant to "the payment terms of Claimant's case." Again, this is not the case. Claimants' entitlement to payment, if any, is based on HMS's payments to Respondent. HMS's contracts with Ottawa and Lindenwood have no bearing on this.

Respondent respectfully submits that if any of the documents at

issue in this section are required to be produced, the information concerning the rates and amount of payments to and from HMS should be redacted and a protective order should be entered. Claimants' moving papers recognize that limited redactions and a protective order would be appropriate with respect to each of the requests discussed in this section.

Kenneth L. Reich (8578)
Reich Law Group
262 North University
Avenue Farmington, UT
84025 Telephone: (801)
923-8885
ken@reichlawgroup.com
Attorneys for Defendants

IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH

HOWELL MANAGEMENT SERVICES, LLC, a Utah limited liability company, Plaintiff, vs. AUGUST EDUCATION GROUP, LLC, a California limited liability company; and AP ARNA V ASHISHT ROTA, an individual Defendants.	DECLARATION OF S. WARD HEINRICHS, ESQ. Civil No. 170100325 Judge: Angela Fonnesbeck

I, S. Ward Heinrichs, Esq. declare as follows:

1. I am an attorney at law, licensed to practice in the State of California, Bar #157774.

2. I represented Dr. Aparna Vashisht-Rota in an American Arbitration Association arbitration, Case No.: 01-18-0000-5144 (Aparna Vashisht-Rota v. Michael Hernandez). She claimed breach of contract, breach of implied contract, promissory

estoppel, and other related causes of action.

3. I have personal knowledge of the facts set forth below, and could testify to those facts if necessary.

4. Michael Hernandez was represented by Robert Williams, Esq., California State Bar #255179.

5. During the arbitration hearing, Dr. Vashisht-Rota produced some documents to which Robert Williams, Esq. objected. He claimed they were confidential documents subject to a protective order by this Utah Court. Apparently, Dr. Vashisht-Rota was a litigant in a case against Howell Management Services in Utah.

6. Arbitrator Lawrence J. Kaplan, Bar # 66377, works for the distinguished firm of Solomon Ward in San Diego California. He is a renowned attorney and an experienced arbitrator.

7. Robert William, Esq. asked Mr. Kaplan to issue sanctions against Dr. Vashisht-Rota for violating a Utah protective order. Mr. Kaplan denied Mr. Williams request for sanctions.

8. During his denial of Mr. Williams' motion for sanctions, Mr. Kaplan said that the AAA arbitration hearing was confidential itself and he was bound by that confidentiality.

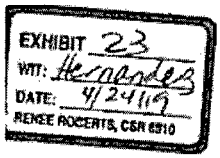
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: March 2, 2021

Employment Law Office of Ward Heinrichs

S. Ward Heinrichs, Esq.

Attorney for Dr. Aparna Vashisht-Rota



From:
Subject: Re: The delay
Date: Feb 11, 2017 at 4:40:51 AM
To: Michael Hernandez mivhernandez@yahoo.com

Hi there:

Here is the updated contract with the signed one for your reference. I have made it more generic as HMS might move into non-CPT recruitment as well. For example, Ottawa, I am adding UG agents for them and will do the same for your INTO schools too.

The rest of it is the same per signed agreement.

Best,

Aparna

On Mon, Jan 30, 2017 at 3 06 PM, Michael Hernandez <mivhernandez@yahoo.com> wrote:
Aparna,

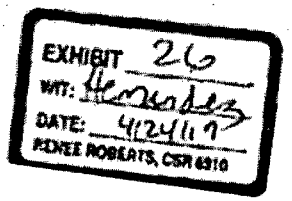
Good to hear from you and sorry for my absence from the conversation. Regarding the contract, as I was looking at it, I realized that you originated the contract. So, if you will edit the number to $100, sign it and send it to me, I will sign it.

The billable number of students for January 2017 at Ottawa University is 26 students of Cohort 1 in their 2nd semester, so 26 x $100 =$2,600. Once I have received confirmation from Chris as to HMS having received the Ottawa payment, then I will bill HMS and I will get you paid. We also enrolled 23 students in

Cohort 2 for January 2017. The next payment period at Ottawa will begin May 2017, with the estimated numbers being 26 + 23 = 49 x $100 = $4,900.est:

Regarding Lindenwood University, we enrolled 12 students in Cohort 1, beginning January 2017 - the first payout period will be May 2017, with an estimated number of 12 x $100 = $1,200.

AEG001112



From: Michael Hernandez
To: Chris Howell chris.howell@howellmgmt.com
Cc:
Sent: 3/28/2017 11:14:32 A.M.
Subject: Aparna

Chris:

Per our last conversation, my agreement with Aparna is $100 per student for both GRAD CPT and undergraduate full-time enrollments, based on my contract for payouts, which begins the 2nd term semester of each enrolled cohort, and subject to HMS receiving payments from the schools. This payment is for every returning student at every school for every enrolled semester that I brin to HMS, which only includes Ottawa and Lindenwood at the moment.

To cover Aparna from my future revenue without dipping into my $6,000 per month advance commission until I no longer need it, the payments due Aparna would look like this:

March 2017
Ottawa 26 students x $100 = $2,600 to Aparna
Lindenwood: 0 students

May 2017
Ottawa 49 students (est) x $100 = $4,900 to Aparna
Lindenwood 11 students (est) x $100 = $1,100 to Aparna

These amounts would be added to my total debt, paid from my future commission revenue.

Let me know what you think and we can have another phone call to discuss further.

AEG001122