Supreme Court, U.S.
FILED
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No. 23-1368

In the Supreme Court of the United States

LUIS S. ARANA,

Petitioner,

v.

LUIS TAPIA MALDONADO ET AL.,
RECTOR, UNIVERSITY OF PUERTO RICO-UTUADO,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Puerto Rico

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the present case Petitioner—a tenured professor at the University of Puerto Rico (UPR), teaching at the Utuado campus of UPR ("UPRU")—was charged with sexual harassment of a student by UPRU. At the hearings, Petitioner's counsel was not permitted to cross-examine two witnesses on a subject material to Petitioner's theory of the case.

After the hearings had finished, the rector added a series of facts that were not alleged in the statement of charges, and used them to terminate the Petitioner, not for having committed sexual harassment of the student as alleged, but rather for a charge not contained in the statement of charges.

On the other hand, the Court of Appeals of Puerto Rico has consistently applied the clear and convincing standard of proof to public employees' dismissal cases following the case law developments of the Supreme Court of Puerto Rico. However, it refused to apply that standard of proof in UPRU's case against Petitioner. The questions presented are:

1. In the circumstances described in the first paragraph, was the due process violated?

2. In the circumstances described in the second paragraph, was the notice requirement of due process violated?

3. In the circumstances described in the third paragraph, did the Court of Appeals of Puerto Rico violate the Due Process Clause and/or the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

PARTIES TO THE PROCEEDINGS

Petitioner and Appellant below

- LUIS S. ARANA, who was a tenured professor at the University of Puerto Rico, teaching at that institution for almost fifteen (15) years.

Respondents and Appellees below

- LUIS TAPIA MALDONADO is the rector of the University of Puerto Rico in Utuado
- JORGE HADDOCK ACEVEDO[1] was the president of the University of Puerto Rico at the time of Petitioner's dismissal.
- UNIVERSITY OF PUERTO RICO GOVERNING BOARD

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[1] Acevedo was representing the University of Puerto Rico at the time, but he is no longer the president of the University of Puerto Rico. The president now is Luis A. Ferrao Delgado.

LIST OF PROCEEDINGS

Supreme Court of Puerto Rico

No. AC-2023-0057

Dr. Luis S. Arana Santiago, *Petitioner,* v.
Dr. Luis Tapia Maldonado, Rector of the University of Puerto Rico in Utuado; Dr. Jorge Haddock Acevedo, President of UPR; Governing Board of the UPR, *Respondents.*

Date of Final Order: October 6, 2023

Date of Rehearing Denial: February 2, 2024

Court of Appeals Commonwealth of Puerto Rico

No. KLRA202100375

Dr. Luis S. Arana Santiago, *Appellant(s),* v.
Dr. Luis Tapia Maldonado, Chancellor of the University of Puerto Rico In Utuado; Dr. Jorge Haddock Acevedo, President of UPR; Governing Board of UPR, *Appellees.*

Date of Final Judgment: June 8, 2023

Date of Rehearing Denial: June 22, 2023

Administrative (Agency) Resolution, University of Puerto Rico in Utuado

University of Puerto Rico in Utuado, *Complainant,* v. Dr. Luis S. Arana Santiago, *Respondent.*

Date of Final Resolution: December 20, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Luis S. Arana respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeals of Puerto Rico in which that court affirmed the dismissal of Petitioner as a tenured professor of the University of Puerto Rico by Respondent Luis Tapia Maldonado.

OPINIONS AND ORDERS BELOW

The Appendix to the Petition contains all opinions and orders referenced below.

The June 8, 2023 Judgment of the Court of Appeals of Puerto Rico ("Court of Appeals") appears in Appendix A of the Petition and is published in the internet page of the judiciary of Puerto Rico[1]. App.2a. The December 20, 2019 Administrative Resolution reviewed by the Court of Appeals appears in Appendix B of the Petition and is unpublished. App.37a. The October 6, 2023 denial of writ of appeal by the Supreme Court of Puerto Rico appears in Appendix C of the Petition and is unpublished. App.89a. The June 22, 2023 denial of reconsideration by the Court of Appeals appears in Appendix D of the Petition and is unpublished. App.92a. The November 17, 2023 Puerto Rico Supreme Court's denial of Petitioner's first motion for reconsideration appears

[1] https://dts.poderjudicial.pr/ta/2023/KLRA202100375-08062023.pdf

Note: The URL of all Puerto Rico cases cited is at App.243a-244a.

in Appendix E of the Petition and is unpublished. App.95a. The February 2, 2024 Puerto Rico Supreme Court's denial of Petitioner's second motion for reconsideration appears in Appendix F of the Petition and is unpublished. App.98a.

JURISDICTION

The Judgment of the Court of Appeals was entered on June 8, 2023. App.3a. The Supreme Court of Puerto Rico issued an order denying Petitioner's writ of appeal on October 6, 2023. App.89a; and two timely motions for reconsideration were denied by that court on November 17, 2023, App.95a, and February 2, 2024. App.98a.

On April 15, 2024, Justice Jackson extended the time to file a certiorari petition to July 1, 2024. No. 23A917. This Court has statutory jurisdiction under 28 U.S.C. § 1258.

CONSTITUTIONAL PROVISIONS AND RELEVANT ADMINISTRATIVE POLICIES

A. Constitutional Provisions

U.S. Const. amend. XIV, § 1
Equal Protection Clause and Due Process Clause of the Fourteenth Amendment.

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Official Policies

The following official policies of the University of Puerto Rico are reproduced in the appendix.

Certification No. 40 (2015-2016).

"Procedure for Grades Review of the University of Puerto Rico in Utuado"—(App.192a)

Certification No. 130 (2015-2016)

"Institutional Policy against Sexual Harassment at the University of Puerto Rico"—(App.168a)

Article VIII

"Sexual Harassment and its Modalities" (App.177a)

STATEMENT OF THE CASE

A. Introductory Remarks

As a threshold matter, we point out that being a tenured professor at the University of Puerto Rico ("UPR"), Petitioner has a property interest in continued employment, safeguarded by due process protections. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

This case concerns the dismissal of Petitioner from his tenured position as a professor at the University of Puerto Rico based on allegations of sexual harassment by Petitioner of the student Génesis Vélez Feliciano ("Complaint" or "UPRU's case"), who was enrolled in the Mate 3012 course, section M25 ("Course"), which Petitioner taught at the University of Puerto Rico in Utuado ("UPRU" or "University") during the second semester of the academic year 2017-2018.

Notwithstanding that accusation, there is enough evidence in the record to show that the Complaint was a pretext of UPRU administrators to inflict harm to Petitioner for not having given in to their pressure to illicitly pass the students of said Course. The record shows that Génesis Vélez Feliciano ("Génesis") legitimately failed in the Course, and that she did not complain on her own about sexual harassment by Petitioner. The following quotes were taken from the minutes of the meeting held on May 24, 2018, of Génesis, Vivian Vélez Vera ("Vivian Vélez"), acting Dean of Academic Affairs at the time, and María Rodríguez Sierra, acting Dean of Students at the time:

> At the time that the students unanimously expressed these concerns, we asked Ms. Génesis Vélez Feliciano to speak with both Deans, after the meeting had finished.

App.235a.

> The Student was informed that the Rector would be informed immediately to activate the corresponding protocol. Ms. Génesis Vélez would be visiting the Dean of Academic Affairs to read the minutes and would sign it as the document of origin of her complaint on or before Tuesday, May 29, 2018.

App.235a-236a.

From the preceding quotes it is clear that UPRU administrators invited Génesis to a private meeting and used the minutes of that meeting to start a complaint against Petitioner. Eventually, they used the comments made by Génesis at that meeting to formalize a sexual harassment complaint against Petitioner, albeit the conducts alleged by Génesis were not of a sexual nature as required by the University regulations that Petitioner was accused of having violated.

Professor Jorge Torres Bauzá was one of the witnesses that UPRU brought to testify against Petitioner at the administrative hearings. However, his testimony supports that the Complaint was motivated by the students' failure in the Course. The following quote is taken from the examining officer report:

> It should be noted that in the testimony of Prof. Torres Bauzá he opined that the students' actions were motivated by their desire to have the grade they had in the

> course changed, since at that time all of them were failing in said course.

The record shows that on June 4, 2018, UPRU's administrators offered to the students to change their final grade from F to C, and on June 5, 2018, Vivian Vélez provided Génesis with a Title IX complaint form. Eventually, UPRU's administrators changed the final grade of all the students in the Course from F to C, App.240a-241a, without the participation or knowledge of Petitioner, as required by Certification No. 40 (2014-2015). App.192a, 194a.

The foregoing provides unequivocal proof that the Complaint was a pretext of the administrators to dismiss Petitioner for not acquiescing to their pressure to pass the students of the Course, albeit the students legitimately failed in it.

As we will explain below, UPRU's rector, Luis Tapia Maldonado (Tapia), did not dismiss Petitioner for the charge of sexual harassment contained in the Formulation of Charges, instead he dismissed Petitioner for charges and facts not alleged therein, similar to what happened in *In re Ruffalo*, 390 U.S. 544 (1968).

B. Legal Background

It is well established that the University of Puerto Rico is an arm of the Commonwealth of Puerto Rico. *Dogson v. University of Puerto Rico*, 26 F. Supp. 2d 341, 343 (D.P.R. 1998). This Court has held or otherwise indicated that the protections accorded by the Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to residents of Puerto Rico. *Examining Bd. v. Flores de Otero*, 426 U.S. 572, 600 (1976). Now, since "[a] State acts by its legislative, its executive, or its judicial authorities", *Ex parte Virginia*, 100 U.S.

339, 347 (1879), an act of UPRU or any of its officials is an act of the Commonwealth of Puerto Rico for purpose of the application of the protections of the Constitution of the United States.

1. Quasi-Criminal Proceedings

In *Sprint Comm., Inc. v. Jacobs*, 571 U.S. 69 (2013), this Court listed some factors that would make a state civil enforcement action "akin to a criminal prosecution".

In UPRU's case the record shows that Vivian Vélez and other administrators carried out an informal ex-parte investigation for the purpose of penalizing Petitioner for allegedly having engaged in conduct of sexual harassment; later on, José Heredia Rodríguez (Heredia), UPRU's former interim rector, issued a formal statement of charges against Petitioner, App.161a, and finally UPRU, which is an "arm" of the Commonwealth of Puerto Rico, was a party to the state proceedings. Therefore, the *Sprint*'s factors are satisfied in UPRU's case, henceforth, UPRU proceedings were "akin to a prosecution".

Furthermore, the dismissal of Petitioner by UPRU was a penalty criminal in nature, according to this Court description of this concept in *Hicks v. Feiock*, 485 U.S. 624, 633 (1988) (*Ref. Penfield Co. v. SEC*, 330 U.S. 585, 593 (1947)). *See also United States v. Ward*, 448 U.S. 242, 248-249 (1980).

The characterization of a proceeding and the relief given as civil or criminal in nature, for purposes of determining the proper applicability of federal constitutional protections, raises a question of federal law. *Hicks v. Feiock*, 485 U.S., at 630. In this regard, this

Court has expressed that the notion of punishment cuts across the division between civil and criminal law. *United States v. Halper*, 490 U.S. 435, 447-448 (1989). In *Ruffalo* this Court noted that Lawyer's disbarment is a punishment, and then it characterized lawyer's disbarment proceedings as being quasi-criminal. The foregoing suggests that "the touchstone of quasi-criminality is punishment". *United States v. Private Sanitation Industry Ass'n of Nassau Suffolk, Inc.*, 44 F. 3d 1082 (2nd Cir. 1994) (Heaney, J., dissenting). In such proceedings, the charge must be known before the proceedings commenced. *In re Ruffalo*, 390 U.S., at 551.

C. Factual Background and Administrative Proceedings at UPRU

May 24, 2018 was the last day at UPRU for the students to withdraw from a course, App.42a, proven fact # 11; and by May 23, 2018 the students that attended the Course were failing, App.42a, proven fact # 8. Because of their imminent failure in the Course, on May 24, 2018 the students approached Vivian Vélez asking her to intervene with the situation so they wouldn't fail in the Course.

Accordingly, Vivian Vélez summoned them to a meeting at 3:00pm on that day. App.43a, proven fact #16. Thereafter, she invited Génesis to a private meeting at 3:40pm, and then she had a meeting with Petitioner at 5:20pm[2].

At the meeting with Petitioner Vivian Vélez made all kinds of suggestions to Petitioner so that the

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2 The acting Dean of Students was also in those meeting too, but her role in the Complaint was incidental.

students wouldn't fail the Course, none of which assessed the students' knowledge of the topics in the Course. At that meeting it became clear that all Vivian Vélez wanted was for Petitioner to pass the students regardless of whether they have learned the topics of the Course, which is a conduct that is contrary to the University of Puerto Rico academic standards.

Immediately after the students had officially failed the Course, Heredia did not allow Petitioner to teach two courses in the summer of 2018 that had been assigned to Petitioner by the Chairman of the Natural Sciences Department earlier in the semester. This adds more proof that the Complaint was an act of retaliation by UPRU's administrators.

Thereafter, Petitioner took a leave of absence outside of Puerto Rico in the fall semester of 2018, and when he returned for the spring semester he learned that he had been accused of sexual harassment by Heredia, and that Tapia had become the acting rector of UPRU.

On January 15, 2019, Tapia suspended with pay Petitioner for security reasons, he said.

Sometime later Petitioner needed to enter the premises but was stopped by the University guards, who informed him that Tapia had restricted his entrance to campus. That happened without notice and a hearing as required by due process. Moreover, Tapia denied Petitioner a copy of that order, in spite of the fact that Petitioner formally asked Tapia for it, thereby acting in violation of pertinent University regulations.

Later, Tapia didn't allow Petitioner to teach summer school in 2019, as Heredia did in the summer of 2018. The formal hearings about the Complaint were

held on October 30 and 31 of 2019, and November 1, 2019.

Something unexpected happened. The first student that testified against Petitioner, David Ureña Negrón —a student who had attended the Course—testified that the final grade of the students in the Course was changed from F to C by Vivian Vélez and other functionaries, including the Student Attorney, Marisol Díaz Ocasio. App.240a-241a.The other students that testified against Petitioner at the hearings, namely Esteban Tellado Zequeira and Jann Romero Santiago, confirmed that their grades had been changed from F to C by Vivian Vélez and others. The students declared with ease about the change of grades because the administrators misrepresented to them that the *General Regulations of the University of Puerto Rico* permitted them to do so[3]. As we mentioned before, student's grade revision at UPRU is regulated by Certification No. 40, and requires in first instance the participation of the professor that taught the course in question, but in that action Petitioner did not participate at all.

The administrative hearings ended and the examining officer recommended Tapia dismiss the charges against Petitioner, for according to him UPRU couldn't prove that Petitioner had violated the Institutional Policy Regarding Sexual Harassment. App.10a. Tapia did not accept the examining officer's recommendation; instead, he dismissed Petitioner on December 20, 2019, App.85a-86a, for a charge not included in the Formulation of Charges. Petitioner appealed that deci-

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[3] This matter is in the transcript of the hearing of October 30, 2019.

sion first to the President of the University of Puerto Rico, and then to the Governing Board of the University of Puerto Rico, knowing beforehand that these efforts would only serve as a procedural requirement to later go to the State's courts for revision.

On July 14, 2021, Petitioner filed a writ of judicial review in the Court of Appeals, asking for the equitable relief of reinstatement and back pay. On their part, Respondents filed their brief in opposition on April 18, 2022, more than eight months after the deadline they had to file it had passed. Petitioner asked the Court of Appeals to strike it, but to no avail.

In June 8, 2023, almost two years after the Petitioner had filed his writ of judicial review, the Court of Appeals confirmed Tapia's decision, not on the grounds that the charge of sexual harassment had been proven in the administrative proceedings, instead, because Tapia's decision was reasonable, they said, and was "grounded on UPR's duty to maintain an educational environment free of any violent conduct toward its students". App.33a-34a. Petitioner asked the Court of Appeals to correct that error, clarifying that UPRU's case was about a charge of sexual harassment of Génesis, not for the commission of violent conducts. App.134a, *Motion for Reconsideration, Tenth Issue.* Notwithstanding Petitioner's request for the correction of that error, it persisted in the Judgment, for his *Motion for Reconsideration* was denied. App.93a.

D. Argument Pertinent to the First Question: Whether the Curtailment of Cross-Examination Constituted a Violation of Due Process of Law in This Case

Cross-examination is guaranteed by Section 3.13(b) of L.P.A.U.[4], by State's due process, App.21a-22a, 101a, and by Article XIII-B of Certification 130. App.186a. In the "Formulation of Charges", Heredia specifically said:

> You have the right to appear at said hearing represented by an attorney, to cross-examine adverse witnesses, [. . .] .

App.165a.

However, at the hearings Petitioner's counsel was not permitted to cross-examine Vivian Vélez and Marisol Díaz regarding their participation in the illicit change of grades of the students, even though this issue was elicited in the direct examination and despite the fact that it was relevant to our theory of the case. App.105a-106a. In other words, our side of the story was not allowed to be considered in UPRU's proceedings despite of the fact that it was "of obvious value in searching an accurate decision". *Cleveland Board of Ed. v. Loudermill*, 470 U.S. 532, 543 (1985).

Petitioner's counsel at the hearing made an extensive offer of proof in that regard, but his proposal was rejected. The Court of Appeals did not pass on the issue of limited cross-examination even though it was part of the third point of error in our writ of judicial review under the subtitle *Cross-Examine Two Impor-*

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[4] L.P.A.U. is the acronym to *Puerto Rico Administrative Procedure Act*, 3 LPRA § 2101 et seq.

tant Witnesses Was Curtailed, App.105a, and despite the fact that a copy of the full transcripts of the hearings was provided to that court for verification.

Nor did the Court of Appeals passed on the issue of the illicit change of grades of the students in the Course, which was the tenth point of error in our writ of judicial review before that court. App.15a. The illicit change of grades to the students and the curtailment of cross-examination were material issues to the controversy favorable to Petitioner.

At the federal level, this Court has said that the rights of confrontation and cross-examination are essential when a person may lose his job in society. *Wolff v. McDonell*, 418 U.S., at 567.

E. Argument Pertinent to the Second Question: Whether the Notice Requirement of Due Process Was Violated

1. UPRU Dismissed the Plaintiff Over a Charge That Was Not Included in the Formulation of Charges

Sexual harassment at the University of Puerto Rico is regulated by Certification 130 (2015-2016), known as *Institutional Policy against Sexual Harassment at the University of Puerto Rico* ("Certification 130"), App.168a, and requires, in particular, that the alleged conduct be of a sexual nature and unwelcome. App.173a, *Article IV-E of Certification 130.* Petitioner was charged for having violated Articles VIII-A(1), A(2), A(3), B(1) and B(2) of said certification ("Formulation of Charges"), for allegedly having incurred in sexual harassment of Génesis. App.161a.

As we mentioned before, the examining officer recommended Tapia dismiss the charges against Petitioner, for UPRU could not prove that Petitioner had violated any of the Articles of Certification 130 mentioned before. In particular, the examining officer concluded that the conducts Petitioner had allegedly incurred were not of a sexual nature as required by Certification 130. Confronted with that situation, Tapia decided to dismiss Petitioner—not for the charge of sexual harassment of Génesis—, but for supposedly having created an "*intimidating, hostile and offensive environment in the study environment of the University*". We quote Tapia on this:

> Having evaluated the totality of the particular circumstances of this case . . . we conclude that the defendant Dr. Luis S. Arana Santiago incurred in violations of Article VIII(A)(3) and (B)(2) of the Institutional Policy Against Sexual Harassment at the University of Puerto Rico, Certification No. 130 (2014-2015) of the Governing Board, [. . .] by creating an intimidating, hostile and offensive environment in the study environment of the University.

App.84a.

Now, that determination of Tapia is clearly erroneous. First, a reading of Articles VIII(A)(3) and VIII(B)(2) of Certification 130 reveals that those Articles could only be violated if a charge of sexual harassment is proven, not if a general conduct that could arguably create an "*intimidating, hostile and offensive environment in the study environment of the University*" has occurred, as Tapia concluded. App.177a, Article VIII, Certification 130.

Definitely, Tapia misconstrued the meaning and application of Articles VIII(A)(3) and VIII(B)(2) of Certification 130. Second, having created an "*intimidating, hostile and offensive environment in the study environment of the University*" was not a charge contained in the Formulation of Charges. App.161a. To be sure, the Complaint was about an accusation of sexual harassment of Génesis by Petitioner, not for having created an "*intimidating, hostile and offensive environment in the study environment of the University*".

It follows that the dismissal of Petitioner for a charge not contained in the Formulation of Charges, which is not regulated by the Articles of Certification 130 Petitioner was accused of having infringed, that was only informed to Petitioner after the hearings had finished and the examining officer had submitted his report, constituted a flagrant and gross violation of due process of Petitioner by Tapia. In this regard, this Court has stated that:

> Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity".

In re Gault, 387 U.S. 1, 33 (1967) (*citation to internal quote omitted*).

And In *Ruffalo*—a lawyer's disbarment case—, this Court expressed:

> This absence of fair notice as to the reach of the grievance procedure and the precise

> nature of the charges deprived petitioner of procedural due process.

In re Ruffalo, 390 U.S, at 552.

In the specific case of a public employee, this Court has noted that "[t]he tenure public employee is entitled to oral or written notice of the charges against him [. . .] and an opportunity to present his side of the story". *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S., at 546. The purpose of notice is to give the accused the opportunity to prepare a defense. *Wolff v. McDonell*, 418 U.S. 539, 562 (1974) (Marshall, J., concurring in part and dissenting in part).

Consequently, Tapia's actions conflict with federal law. In general, this Court has noted that the fundamental requisite of due process of law is the opportunity to be heard at a meaningful time and in a meaningful manner. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citations omitted). These rights are important in cases where the proposed agency actions are challenged as resting on incorrect factual premises or misapplication of rules or policies to the facts of particular cases, as it happens in the case at bar. *Goldberg v. Kelly*, 397 U.S., at 268.

Now, Tapia's actions were worse than those that happened in *Ruffalo*. In *Ruffalo* a charge was added during the hearings by oral motion, and there was a continuation; but in UPRU's case, the decision to dismiss Petitioner was based on a charge that Petitioner only knew about after the hearings were over, when Tapia informed him about his dismissal.

Related to this, in *Ruffalo* this Court added: "'[S]uch procedural violation would never pass muster in any normal or civil litigation.'" *In re Ruffalo*, 390 U.S, at 551

(quoting *In the Matter of John Ruffalo, Jr*, 370 F.2d 447 (6th Cir. 1996), Edwards, J., dissenting, at 462).

2. Tapia Added Facts That Were Not Part of the Formulation of Charges or Part of the Record

At the outset we inform the Court that Tapia was not present at the hearings. Consequently, he was not able to observe the students' demeanor while testifying, which is an important aspect to take into consideration when assessing witnesses' credibility. *Mattox v. United States*, 156 U.S. 237, 242-243 (1985); *California v. Green*, 399 U.S. 149, 192 (1970). To try to justify that Petitioner had created an "*intimidating, hostile and offensive environment in the study environment of the University*", Tapia included in his Resolution a section entitled "*Additional Determinations of Proven Facts, According to the Evidence that Arises from the Administrative Record and that Presented and Admitted During the Administrative Hearings*" ("additional facts"), App.47a, in which he added facts that emerged from the students' testimony in the administrative hearings that does not appear as proven facts in the examining officer's report nor were they part of the allegations in the Formulation of Charges; thus violating again the due process right of Petitioner. In this regard this Court has noted that "[b]efore its property can be taken under edict of an administrative officer the appellant is entitled to a fair hearing upon the fundamental facts". *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring, quoting *Southern R. Co. v. Virginia*, 290 U.S. 190, 199 (1933)). It also has noted that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights". *Id.*, at 170.

It is important to mention that the "additional facts" that UPRU was trying to bring into the case through the testimony of its witnesses were consistently objected to by Petitioner's counsel in the administrative hearings. For the most part, his objections were sustained by the examining officer, who in turn did not include any of the "additional facts" in his report to Tapia, as the very characterization of "additional facts" by Tapia suggests.

We want to call to this Court's attention that Tapia's addition of new charges and new facts is a violation of State's due process[5]. Quote:

> [T]he employee has the right to know the clear picture of his particular situation before making a decision regarding the legal strategy to follow. . . . [I]t constitutes a clear macula on this due process of law that the citizen be induced by the State to the possibility of something different from what it finally turns out to be. Therefore, once the employee accepts the conditions of what will constitute the process against him, the State cannot vary such conditions [. . .]. It is not about what the State has the right to do, but about what the State announced to the employee that it would do".

Ex Agente José L. Torres v. Policía de P.R., 2016 TSPR 224, p. 28. (*Emphasis in the original.*)

The incompliance with due process based on the issue of "additional facts" was brought before the

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[5] https://faolex.fao.org/docs/pdf/pue126720E.pdf [P.R. Const. Article II, Section 7]

Court of Appeals as part of the third point of error titled "Dr. Luis Tapia Maldonado erred by having indicated that the due process of law had been complied with", under the subtitle *The Rector's decision was not based on the Record.* App.110a. The Court of Appeals mentioned this issue in its Judgment, App.32a, but it only concluded that "[t]he institution is the one who must finally adjudicate the dispute according to the administrative record". However, that was not the issue Petitioner brought to the Court of Appeals' attention in regard to the "additional facts". To be sure, the issue Petitioner brought before the Court of Appeals related to the administrative record was that the "additional facts" were not part of the Formulation of Charges or part of the record, for it was the examining officer, not Tapia, the one in charge to make determination of fact, assessment of witnesses' credibility, and the formation of the record in UPRU's proceedings. App.110a-115a. This follows from the Supreme Court of Puerto Rico's case-law. We quote:

> The examining officer is in charge of the crucial task of adjudicating the facts in controversy during the course of the evidentiary hearing. His position requires him to comprehensively compile the evidence presented in the proceedings, that is, he is responsible for the formation of the administrative record.

Comisionado de Seguros de Puerto Rico v. Real Legacy Ass. Co., 179 D.P.R. 602 (2010), 2010 TSPR 142[6], at p.18.

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[6] This case was brought to the Court of Appeals' attention to show that the examining officer was the one in charge of forming the administrative record upon which Tapia had to adjudicate the case. App.111a.

> For these purposes, he is empowered to order the discovery of evidence, preside over the conference in advance of the hearing, determine the evidence that will form part of the record and issue to the adjudicator a recommendation on the decision that should be made based on his determinations of facts and the applicable law.

Id., at p.19.

> Keep in mind that the examining officer is the one who has delimited the issues that are in controversy; he has had all the evidence before him; he has awarded credibility; in short, he is the one who has formed the record on which the adjudicator will base to make the final decision.

Id., at p. 20.

From the preceding quotes, it follows that Tapia's actions were arbitrary and capricious when he added the "additional facts", for he was not in charge to assess witnesses' credibility or make determination of fact in UPRU's proceedings. The next quote reveals that Tapia used the "additional facts" to support the charge of "*intimidating, hostile and offensive environment in the study environment of the University*". Quote:

> As emerged from the testimonies, this conduct was perceived by the students as uncomfortable and hostile and the students filed complaints about it with the university authorities. (It arises from the Additional Proven Facts number 40 to 49 and the stipulated fact

> number 6 of the Report of the Examining Officer.)

App.79a-80a.

Now, since stipulated fact number 6 only mentions that the students complained to the administrators about Petitioner, App.40a, it follows that Tapia used the "additional facts" exclusively to support the charge of "*intimidating, hostile and offensive environment in the study environment of the University*". That certainly was a violation of due process of Petitioner of first order, for this Court has noted that 'the essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it"'. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S., at 171-172 (Frankfurter, J. concurring)).

Based on due process principles the Puerto Rico's Administrative Procedure Act.[7], requires that in formal adversary proceedings before administrative agencies, the decision has to be based on the record, which in the present case was the one formed by the examining officer. The Supreme Court of Puerto Rico has established that such a violation would be sufficient grounds for automatic reversal. Quote:

> We have already resolved that any administrative determination that has been made without regard to the minimum guidelines established in section 3.1 of the L.P.A.U. – among which is the right to have the decision based on the record– cannot prevail.

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[7] Previously identified as L.P.A.U.

Ofic. del Comisionado de Seguros v. Asociación de Empleados del E.L.A., 2007 TSPR 112, p. 16.

The foregoing shows that if the Court of Appeals had applied the legal principles contained in *Comisionado de Seguros de Puerto Rico v. Real Legacy Ass. Co., supra*, and *Ofic. del Comisionado de Seguros v. Asociación de Empleados del E.L.A, supra*, UPRU's case should have been ruled in Petitioner's favor.

The issues of "additional facts" and charges were brought before the Supreme Court of Puerto Rico as part of our second point of error, under the subtitle "*Dr. Tapia Distorted the Administrative Complaint*", App.144a, to show that the administrative resolution was not based on the record, and therefore constituted a violation of due process and a violation of Section 3.1 of L.P.A.U., which in turn is sufficient grounds for reversal of Tapia's Resolution as a matter of state law as stated above. *See* previous quote.

F. Argument Pertinent to the First Part of the Third Question: Whether the Court of Appeals Violated Due Process as a Matter of Federal Law When It Did Not Apply the Clear and Convincing Standard of Proof in UPRU's Case

The function of the standard of proof is to minimize the risk of erroneous decisions, and is part of the due process. *Addington v. Texas*, 441 U.S. 418 (1979).

This Court has mandated a clear and convincing standard of proof when the individual interests at stake in a state proceeding are both "particularly important" and "more substantial than mere loss of money". *Santosky v. Kramer*, 455 U.S. 745, 756 (1982) (quoting *Addington v. Texas, supra*, 441 U. S, at 424)). And it has deemed this level of certainty is necessary

to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual with "a significant deprivation of liberty" or "stigma". *Id.*, at 756 (quoting *Addington v. Texas*, 441 U. S at 425, 426)).

Now, what was at stake for Petitioner at UPRU's proceedings was more significant than a mere loss of money. At UPRU's proceedings Petitioner's tenure as a professor at the University of Puerto Rico was at stake over an accusation of sexual harassment, albeit unfair and unfounded, which in turn imposes a stigma on Petitioner that affects his good name, reputation, honor and integrity that significantly reduces, if not precludes, his freedom to take advantage of other employment opportunities. Accordingly, we submit to the Court that the clear and convincing standard of proof should be the appropriate criterion in this case as a matter of federal law. The following quote provide extra support for this conclusion:

> The individual should not be asked to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state.

Addington v. Texas, 441 U. S., at 427.

G. Argument Pertinent to the Second Part of the Third Question: Whether the Refusal of the Court of Appeals of Puerto Rico to Apply the Clear and Convincing Standard of Proof, as a Matter of State Law, Constituted a Violation of the Equal Protection Clause

1. The Clear and Convincing Standard in Puerto Rico

The Supreme Court of Puerto Rico has guided itself by the federal jurisprudence regarding the characterization of clear and convincing evidence. In the case *In re Rebecca Rodríguez Mercado*, 2005 TSPR 144, p.11, the Supreme Court of Puerto Rico stated:

> We can conclude that clear, robust, and convincing evidence is much stronger than a preponderance of the evidence. It has been described as that evidence that produces in a trier of fact an enduring conviction that factual contentions are highly probable. *Colorado v. New Mexico*, 467 U.S. 310, 316 (1983); *Buildex, Inc. v. Kason Indus., Inc.*, 849 F.2d 1461, 1463 (Fed. Cir. 1988); *Price v. Symseck*, 988 F.2d 1187, 1191 (Fed. Cir. 1993). *See also:* MCCORMICK ON EVIDENCE, 5th ed., Vol. 2, § 340 p. 425 (1999).

On the other hand, in Puerto Rico it is well established that the clear and convincing standard of proof is the criterion to be applied in cases of public employees' dismissal. Quote:

> [W]e have reiterated on multiple occasions that the intermediate standard of <u>clear, robust and convincing</u> evidence is that required by

> our disciplinary ethical system to impose sanctions under this body of regulations. The above was established under the assumption that the fundamental right to earn a living is at stake.

OEG v. Manuel B. Martínez Giraud, 2022 TSPR 93, p.18. (*Emphasis in the original.*)

> [N]o less could be demanded, especially when the nature of the procedure is adversarial, in which the public employee who is accused of violating an ethical norm could be punished with a substantial fine or dismissal.

Id., ps.18-19. (Emphasis in the original.)

On its part, the Court of Appeals has routinely applied the clear and convincing standard of proof in cases of public employees' dismissal. Quote:

> This panel has been consistent in its determinations in promulgating that the *quantum* of evidence in cases of dismissal of a public employee is that of clear, robust and convincing evidence.

Ex PM Ángel Vázquez Pagán v. Mun. De Carolina, KLRA201501253. App.228a.

> It is firmly established in our jurisprudence that for the denial of a fundamental right, due process of law requires that the value and sufficiency of the evidence be measured with the criterion of clear, robust and convincing evidence. We have no doubt that the right to work or to partially or permanently maintain the main source of livelihood is located in that category.

Ex. Agente Joel Algea Resto v. Policía de P.R., KLRA-201401312, p. 16.

From the last quote above it follows that State's due process requires that the clear and convincing standard of proof be applied in public employees' dismissal cases. However, the Court of Appeals did not apply that criterion in UPRU's case, despite the fact that this was the eleventh point of error in our writ of judicial review in that court, App.115a, and despite the fact that it was brought back before that court as the 'Sixth Issue' in our *Motion for Reconsideration*, App.122a, for that motion was denied. The lack of clear and convincing evidence by UPRU was brought before the Supreme Court of Puerto Rico as our sixth point of error in our writ of appeal. App.158a (In the Appendix we omitted the discussion of the sixth point of error since we only want to show this Court that that error was properly presented before the Supreme Court of Puerto Rico but rejected).

The fact that the Court of Appeal did not apply the clear and convincing standard of proof could be corroborated by reading its Judgment. App.2a-34a.

Consequently, by deliberately not having applied the clear and convincing standard of proof in UPRU's case the Court of Appeals not only denied the due process right to Petitioner, but also treated him differently than other public employees similarly situated, thus acting in violation of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, and the equal protection of the law guaranteed by Article II, Section 7, of the Constitution

of the Commonwealth of Puerto Rico[8]. This Court has noted that:

> Requiring the application of law, rather than a decisionmaker's caprice, does more than simply provide citizens notice of what actions may subject them to punishment; it also helps to assure the uniform general treatment of similarly situated persons that is the essence of law itself.

BMW of North America, Inc. v. Gore, 517 U.S. 559, 587 (1996) (Bryer, J., concurring, ref. omitted)).

We want to add that the Supreme Court of Puerto Rico has determined that third-party accounts would never amount to have "clear and convincing" evidence. Quote:

> Therefore, it is forced to conclude that when the ethical behavior of a public official is questioned, even if it is the simple appearance of impartiality or dishonesty, the charge must be established by clear, robust and convincing evidence that, in turn, overcomes and discards all considerations based on conjectures and third-party accounts.

OEG v. Manuel B. Martínez Giraud, supra, page 19. (Emphasis in the original)[9].

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8 https://faolex.fao.org/docs/pdf/pue126720E.pdf [P.R. Const. Article II, Section 7]

9 This quote was brought to the Court of Appeals' attention to show that UPRU did not have clear and convincing evidence. App.123a-124a.

It follows that if the Court of Appeals had applied the clear and convincing standard of proof in UPRU's case as was required by state law, along with the jurisprudence cited in the previous quote, UPRU's case should have been decided in Petitioner's favor since UPRU's evidence consisted precisely of third-party accounts as Génesis did not come to the hearings to testify.

H. The Court of Appeals' Judgment Does Not Rest in Valid State Grounds

The Court of Appeals' Judgment was a *pro forma* affirmation of Tapia's decision, which in turn rested in violations of State's due process of law, violations of L.P.A.U., and violations of State's case-law as we explained before. Together, the curtailment of cross-examination and the fact that Tapia's Resolution was not based on the record of the case provides enough state's grounds for Tapia's Resolution reversal since these are violations of Section 13(b) and Section 3.1 of the L.P.A.U., respectively, which also are violations of State's due process.

A reading of the Court of Appeals' Judgment reveals that that forum devoted its time to give full credibility to UPRU's witnesses—which is a practice that is not favored in general for courts of appeals to engage in—, in order to support Tapia's decision. However, it only concludes that Tapia's decision was reasonable since it was "grounded on UPR's duty to maintain an educational environment free of any violent conduct toward its students". App.33a-34a. To be sure, the intent of the reviewing process in that court was to determine whether Articles VIII(A)(3) and VIII (B)(2) of Certification 130 were violated by Petitioner or, more specifically, whether sexual harassment of

Génesis by Petitioner had occurred according to the evidence in the record and the applicable law; a conclusion that the Court of Appeals does not reach in its Judgment.

As the foregoing shows, in its quest for defending Tapia's actions, the Court of Appeals totally disregarded the applicable law and the rights that assisted Petitioner both in UPRU's proceedings and in the reviewing process before that court, including his right that UPRU's case be reviewed under the criterion of clear and convincing evidence. It also shows that Tapia's determination to dismiss Petitioner could not be rightfully supported in state law grounds. Consequently, the Court of Appeals' Judgment was in error.

It is worth mentioning that regarding a "hostile environment" sexual harassment complaint, the Supreme Court of Puerto Rico has established that it must be analyzed subjectively and objectively, as a general rule. *Universidad de Puerto Rico en Aguadilla v. José Lorenzo Hernández*, 2012 TSPR 57, p. 28. *See* App.70a. Specifically, it has stated that:

> However, what constitutes sexual conduct under this modality cannot be evaluated exclusively based on the perception of one of the parties involved.

Id., p. 27. App.71a.

Consequently, what is stated in the previous quote should have been enough to warrant Tapia's Resolution reversal by the Court of Appeals had the charge of sexual harassment been properly considered by that court since Génesis did not appear to testify at the hearings and for that reason the documents containing

expressions made by her were deemed hearsay by the examining officer.

The subjective part of the analysis in a "hostile environment" sexual harassment accusation is so fundamental that this Court has expressed, in the context of Title VII, that "[t]he gravamen of any sexual harassment claim is that the alleged sexual advances are 'unwelcome'". *Meritor Bank v. Vinson*, 477 U.S. 57, 68 (1986) (citing 29 CFR § 1604.11(a) (1985)). *See also Harris v. Forklift System, Inc.*, 510 U.S. 17 (1993). It further has noted that the question whether a particular conduct is unwelcome presents difficult problems of proof, and turns largely on credibility determinations committed to the trier of facts, *Meritor Bank v. Vinson*, 477 U.S., at 68, who in UPRU's case was not Tapia.

I. Proceedings at the Supreme Court of Puerto Rico

The Supreme Court of Puerto Rico favored UPRU *sub silentio*. In order to do so, the Supreme Court of Puerto Rico arbitrarily and capriciously changed Petitioner's appeal to a writ of certiorari and then denied review.

Section 3.002(c) of the "Judiciary Act of the Commonwealth of Puerto Rico of 2003", Law 201-2003, 4 L.P.R.A. § 24s, as amended "(Judiciary Act")[10], states that the Supreme Court of Puerto Rico shall hear through a remedy of **appeal**; when the existence of a conflict between the judgments of the Court of Appeals is stated in cases appealed before said Court. (*Emphasis added.*)

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10 https://presupuesto.pr.gov/Budget_2012_2013/Aprobado2013Ingles/suppdocs/baselegal_ingles/010/010b.pdf

It follows that a writ of appeal taken to the Supreme Court of Puerto Rico is a matter of right insofar as the requisite described in Section 3.002(c) of the Judiciary Act is satisfied, as it was in UPRU's case. We now elaborate.

In his writ of appeal to the Supreme Court of Puerto Rico Petitioner brought to its attention the case *Ex Sgto. Ángel D. Hernández v. Pol. de P.R.*, KLRA201601162, to show that the Court of Appeals had applied the clear and convincing standard of proof in that particular case—as it was supposed to because that's the applicable standard of proof in public employees' dismissal cases in Puerto Rico—, and called to its attention that the Court of Appeals did not apply that standard of proof in UPRU's case, despite the fact that UPRU's case concerns the dismissal of a public employee as that cited case did. *See* App.138a, under the subtitle "*Conflicts of Previous Decisions of the Court of Appeals*". The case *Ex Pm Ángel Vázquez Pagán v. Mun. de Carolina*, KLRA201501253, App.205a-232a, is another example where the Court of Appeals had applied the clear and convincing standard of proof to public employees' dismissal cases. App.228a, third paragraph. That case was brought to the attention of the Supreme Court of Puerto Rico in our first motion for reconsideration before that court to show that the Court of Appeals consistently had applied the clear and convincing standard of proof to public employees' dismissals cases.

Therefore, the Supreme Court of Puerto Rico should have taken UPRU's case as an appeal, for the requisites established in Section 3.002(c) of the "Judiciary Act" are complied with in this case. But it didn't, in spite of the fact that it was required by law, or stated

differently, despite the fact that it was a legal right of Petitioner. Nor did it take it as a certiorari, even though the Court of Appeals did not apply the appropriate standard of proof to UPRU's case, and despite the fact that the Supreme Court of Puerto Rico has expressed that:

> The courts have the duty to check whether the correct standard of proof was applied and, if it was not applied, they must reevaluate the case.

In re: Rebeca Rodz. Mercado, 2005 TSPR 144; *P.P.D. v. Admor. Gen. de Elecciones*, 111 D.P.R. 199 (1981).

It is to be noticed that the Supreme Court of Puerto Rico has expressed that the denial of a writ of certiorari is an error in itself when the reviewed court had committed an error. Quote:

> Likewise, the Court of Appeals erred in denying the issuance of the writ of certiorari, since in this way it validated the erroneous action of the trial court.

El Pueblo de P.R. v. David Méndez Rivera, 2013 TSPR 26 (Kolthoff, J., concurring), p. 19.

Despite having made such expressions, and the fact that the Court of Appeals clearly erred regarding the standard of proof to be applied in UPRU's case, the Supreme Court of Puerto Rico denied review in UPRU's case three (3) times, which seems to us to be a paradoxical behavior of the Supreme Court of Puerto Rico when compared to its own jurisprudence.

By arbitrarily denying review, the Supreme Court of Puerto Rico, not only allowed a judgment in which the wrong standard of proof had been applied to stand,

but also denied review in a case that complies with the requirement set out in Section 3.002(c) of the "Judiciary Act".

In other words, the Supreme Court of Puerto Rico denied Petitioner the equal protection of the law. This Court has noted that:

> Although the Federal Constitution guarantees no right to appellate review, once a State afford that right, . . . the State may not "bolt the door to equal justice".

M.L.B. v. S.L.J., 519 U.S. 102, 110 (1999) (citations omitted).

We want to call to this Court's attention that the Supreme Court of Puerto Rico routinely takes as an appeal those cases in which the Court of Appeals issues inconsistent judgments. The following quotes are taken from the Supreme Court of Puerto Rico's Jurisprudence:

> In response to inconsistent opinions of the Court of Appeals inconsistent with the judgment under review, on May 25, 2018, this Court accepted the appeal presented.

William Pérez Vargas v. Office Depot/Office Max. Inc., 2019 TSPR 227, p.8.

> By virtue of the conflict between the judgments of the forum a *quo*, we accept the writs as appeals and with the benefit of the appearance of all the parties, we resolve.

Víctor Roldán Torres v. M. Cuebas, Inc., et al., 2018 TSPR 18, ps. 12-13.

> On December 16, 2016, we accepted the appeal since, in effect, the Court of Appeals ruling in this case is inconsistent with several previous rulings of that forum.

Méndez Jiménez, et al. v. Carso Construction of Puerto Rico, LLC, et al., 2019 TSPR 99, p. 5.

However, despite the inconsistency of the Court of Appeals' ruling in UPRU's case with respect to the cases we mentioned before, the Supreme Court of Puerto Rico denied review in UPRU's case, thus acting in a discriminatory manner against Petitioner.

The foregoing shows that state law and the jurisprudence of the Supreme Court of Puerto Rico that applies to UPRU's case favors Petitioner vastly, but the courts of Puerto Rico managed a different outcome through violations of Petitioner's rights, constitutional and otherwise, including rights acquired by the Supreme Court of Puerto Rico's jurisprudence. In the specific case of the Supreme Court of Puerto Rico, it could fairly be said that that court arbitrarily denied Petitioner access to justice, a right which is being recognized by international standards "as both a basic human right and a means to protect other universally recognized human rights"[11]. This right "is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights". *Wolff v. McDonell*, 418 U.S., at 579.

In sum, the actions of the courts of Puerto Rico to favor the UPRU are clear and evident; they were

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11 https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/

tasked with guarding the process against partial adjudicators; however, they comported as partial adjudicators themselves.

REASONS FOR GRANTING THE PETITION

This case furnishes a clear example of the misuse of power by the government; a conduct that the Constitution is there to protect against. The Fourteenth Amendment to the Constitution guarantees that no state shall deprive any person of property "without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws". Our due process and equal protection rights were properly asserted in the courts of the Commonwealth of Puerto Rico but were rejected in this case.

Tapia's Resolution, apart from having been issued without the guarantees of due process of law, is in conflict, in particular, with this Court's precedents in *In re Ruffalo, supra,* and *Cleveland Board of Education v. Loudermill, supra.*

There is no question that both Tapia's Resolution and the Court of Appeals' Judgment are wrong as a matter of state law, and it appears to be so as a matter of federal law. It is for this reason that we have come to this Court to vindicate our federal rights, for this Court has asserted that the adequacy of the state law ground to support a judgment precluding litigation of the federal claim is itself a federal question that it will review *de novo. Howlett v. Rose,* 496 U.S. 356, 366 (1990) (*citations omitted*).

Accordingly, it has made manifest its "independent obligation to ascertain whether a judgment defeating the enforcement of federal rights rests upon a valid nonfederal ground and whether that ground find 'fair or substantial support' in state law'", *Howlett v. Rose*, 496 U.S., n.14 (citations omitted). It has further expressed that "[t]he reasons for that rule rests on nothing less than this Court authority to review state-courts decisions in which 'any title, right, privilege, or immunity is specially setup or claimed under the Constitution'". *Howlett v. Rose*, 496 U.S., n. 14 (quoting 28 U.S.C. § 1257(a)).

We have presented this Court enough evidence to support the conclusion that UPRU administrators, through abuse of power, illegal conducts, and misrepresentations, induced the students of the Course to help them to articulate a sexual harassment complaint against Petitioner in retaliation for him not having acquiesced to their pressure to pass the students of the Course, albeit the students legally failed in it.

By altering the grades of the students illicitly, UPRU's administrators not only participated in conducts in conflict with the equitable doctrine of "clean hands", but also have participated in conducts that have been strenuously criticized by the judiciary in other jurisdictions within the United States[12].

There is no doubt that the constitutional violations in the present case by Tapia, the Court of Appeals, and the Supreme Court of Puerto Rico have been substantial and manifest.

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12 https://www.latimes.com/socal/daily-pilot/news/tn-dpt-me-0805-lai-20150804-story.html

So far Petitioner hasn't had an opportunity for an impartial review of his ill-motivated dismissal by UPRU that besides causing him the loss of his job at the University of Puerto Rico, has severely harmed his liberty interest in his good name and reputation, and has imposed upon him an undue stigma that would severely limit his freedom to take advantage of other employment opportunities, specifically professorship opportunities, which is Petitioner's chosen career.

As we have shown before, Petitioner's dismissal was not done according to the charges or facts contained in the Formulation of Charges, similar to what happened in *Ruffalo*.

It is worth mentioning that this case also encompasses the non-compliance with the Constitution of the United States not only by UPRU, but by the judiciary of the Commonwealth of Puerto Rico, for them violated Petitioner's due process and equal protection rights, which is a matter related to the Supremacy Clause of the Constitution of the United States (U.S Const. art. VI, Clause 2), that charges state courts with a coordinate responsibility to enforce the federal law according to their regular mode of procedure. *Howlett v. Rose*, 496 U.S., at 367.

This Court has recognized, and Petitioner knows firsthand, that "[t]o be deprived not only of present government employment but for future opportunity for it certainly is no small injury". *Board of Regents of State Colleges v. Roth*, 408 U.S., at 574 (quoting *Joint Anti-Fascist Refugee Com. v. McGrath*, 341 U.S., at 185 (Jackson, J., concurring)). It has further expressed that the "the right to work for a living in the common occupations of the community is of the essence of that personal freedom and opportunity which it was the

purpose of the Fourteenth Amendment to secure". *Truax v. Raich*, 239 U.S. 33, 34 (1915).

At this moment, Petitioner has no effective means other than this Court to vindicate his federal constitutional rights that have been violated in the Commonwealth of Puerto Rico's proceedings.

We respectfully submit to the Court that the aforementioned reasons call for this Court's intervention based upon considerations that make for the advancement of right and justice.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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