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 Rehearing

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Jurisdiction

The order denying the petition for certiorari in this case was entered on October 3, 2024. Therefore, our petition for rehearing is timely submitted according to Rule 44(2) of this Court.

Introduction

In this petition for rehearing, we are bringing to the Court's consideration two issues of constitutional import in order to strengthen our petition for certiorari, and hopefully move this Court to reconsider its denial of the writ of certiorari in this case. We also have included in the Appendix the Conclusions of Law of the hearing officer in order to support this petition for rehearing. *App. 6a-21a.*

The first issue concerns the lack of opportunity to confront and cross-examine the student Génesis Vélez Feliciano (Génesis), who is Petitioner's accuser in this case.

After having familiarized himself with the jurisprudence of this Court, it seems that the lack of opportunity Petitioner had to confront and cross-examine Génesis in the present case constituted a violation of federal due process. The line of cases: *Goldberg v. Kelly*, 397 U.S. 254 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses", at 271), *Greeny v. McElroy*, 360 U.S. 474 (1975), and the cases cited therein, and *Willner v. Committee on Character*, 373 U.S. 96 (1963), support this conclusion. The last two cases just mentioned concern the protection of the interest of one to follow

and practice his chosen profession, as this case essentially is[1].

In this regard, this Court has expressed that it "will not hold that a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted and cross-examined", absent special circumstances. *Greeny*, at 475. It further added that when the government action seriously injures an individual, and the reasonableness of the action depends on fact finding, which in turn depends solely on the testimony of individuals, as this case is, confrontation and cross-examination are required. *Greeny*, at 496.

Also, in *Willner,* at 103, this Court emphasized that procedural due process often requires confrontation and cross-examination of those whose words deprive a person of livelihood. Then, the Court added that "the need of confrontation is a necessary conclusion from the requirements of procedural due process in a situation such as this", *Id.*, at 104, essentially meaning a situation in which there is a deprivation of the right to practice one's profession, which in turn operates as a substantial limitation of one's opportunity to earn his livelihood, as is happening in this case.

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[1] Petitioner has been unemployed since Tapia dismissed him, and the opportunity for him to find a teaching position elsewhere under the circumstances of this case has been drastically limited, if not virtually nonexistent. Therefore, his opportunity to earn his livelihood has been severely affected.

On the other hand, since this case is about hostile environment sexual harassment, the opportunity to confront and cross-examine Génesis was essential, since "[t]he gravamen of any sexual harassment claim is that the alleged sexual advances were 'unwelcome'"[2]. *Meritor Bank v. Vinscon*, 477 U.S. 57, 68 (1986) (citing 29 CFR § 1604.11(a) (1985)).

The second issue concerns the equal protection component of the Due Process Clause of the Fifth Amendment, which prohibits the government from invidious discrimination. *Washington v. Davis*, 426 U.S. 229 (1976). It seems plausible to us that such legal principle extends to the Due Process Clause of the Fourteenth Amendment. We find support to our contention in the words of Justice Sotomayor in the case *303 Creative LLC et al. v. Elenis et al.*, No. 21-476 (slip op.) (Sotomayor, J., dissenting), when she quoted from *Korematsu v. United States*, 323 U.S. 214, 242 (1944) as follows:

> "[D]iscrimination in any form and in any way has no justifiable part whatever in our democratic way of life."

We also found support in the opinion of the

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[2] According to the hearing officer, there was no conduct of a sexual nature on the part of Petitioner in this case, nor was the subjective part of the analysis proven, both of which are essential factors that need to be proven in a case of hostile environment sexual harassment. *App. 19a*, 20a. See also App. 13a-14a, where the case, *University of Puerto Rico in Aguadilla v. José Lorenzo Hernández*, 184 DPR 1001 (2012), is cited.

Court in *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), where it noted that "the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive".

In our petition for certiorari we brought to this Court's attention the fact that the Court of Appeals of Puerto Rico (CAPR) did not apply the clear and convincing criterion of proof in this case, in spite of the fact that this is the right criterion of proof in cases of public employees' dismissals in the Commonwealth of Puerto Rico, as established by the Supreme Court of Puerto Rico case law, and routinely applied by CAPR in such cases. Thus, in our petition for certiorari we contended that this action of CAPR was a violation of the Equal Protection Clause of the Fourteenth Amendment. We also contended that it was a violation of federal procedural due process by that court.

In this petition for rehearing, we would like the Court to consider this action of CAPR from the perspective of substantive due process, because the fact that CAPR routinely applies the clear and convincing standard of proof in public employees' dismissal cases, but intentionally[3] didn't apply it to this case when it was under revision in that court, constitutes an intentional invidious discrimination "so unjustifiable as to be violative of due process".

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[3] As we mentioned in our petition for certiorari in this Court, we asked CAPR to apply the clear and convincing criterion of proof in our petition for rehearing in that court, but that petition was denied.

Bolling v. Sharpe, 347 U.S, at 499.

Other Issues

Bias of the Court of Appeals of Puerto Rico

The bias of CAPR in favor of Respondents in this case is much too obvious not to be noticed. The consideration of this matter is important in this case because due process demands impartiality on the part of those who function in a judicial capacity. *Schweiker v. McClure*, 456 U.S. 188 (1982) (citations omitted).

In our petition for certiorari we advanced some reasons to support the conclusion that CAPR was biased against Petitioner in rendering its judgment, including the fact that CAPR based most, if not all, of its conclusions on the testimonies of the University of Puerto Rico in Utuado (UPRU) witnesses, giving them total credibility —regardless of the credibility that the hearing officer had given to them in particular instances of their testimony—, and the fact that CAPR avoided discussing many of the material issues that we brought to its attention, including the material issue of the change of grades for the students in the Mate 3012 course, included in our tenth statement of error in our writ of judicial review in that court. In this petition for rehearing, we bring to the Court's attention a very important instance of the bias of CAPR against Petitioner, that we would like the Court to take into consideration.

In its judgment, CAPR concluded Petitioner was given the opportunity to participate in the informal part of the proceedings, including the fact that he was notified about the complaint presented against

him by Génesis, and that he was allowed to express and defend himself against that complaint both verbally and in writing in the informal part of the proceedings. *App. Pet. 30a.* This, however, conflicts with the conclusions of the hearing officer, *App. 20a,* and the testimony of Vivian Vélez, *App. 2a-4a,* who was the functionary that led the informal part of the administrative investigation in this case. This particular instance of CAPR bias to favor Respondents in this case is constitutionally worrisome.

A Previous Complaint

In its judgment, CAPR brought attention to the fact that Petitioner had previously had a "similar complaint". However, we clarify to the Court that this previous complaint is not yet final and firm as of today. It is currently in the administrative forum of the University of Puerto Rico. That complaint was filed by a student who had also failed a course she took with Petitioner. She did that approximately nine months after she was no longer Petitioner's student. In that complaint, the student did not allege conduct of a sexual nature on the part of Petitioner, as occurred with Génesis' complaint, however, UPRU administrators styled it as a sexual harassment complaint[4].

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[4] At the time of both mentioned complaints, there was not a Title IX official at UPRU, which is a violation of Title IX. In other words, there was not an official trained for that very important function. In Génesis' case, Vivian Vélez led the informal part of the investigation, even though she was the acting Dean of Academic Affairs, and even though Certification

The Picture of April 5, 2018[5]

In this petition for rehearing, we decided to include a photo of the students of the Mate 3012 course and an email sent to Petitioner by Génesis, hoping that this Court will perceive the injustice that has been committed against Petitioner in this case.

On April 5, 2018, the students of the Mate 3012 course were not in the classroom when Petitioner came in to teach the class. Petitioner waited for awhile to see if they would come and when they didn't Petitioner went back to his office and sent them an email explaining that they were responsible for the topics that were planned to be covered on that day and that in due time he would be sending the homework they had to do related to those topics. Immediately thereafter, some of the students replied to that email informing Petitioner that they had returned to the classroom and asking him to come back to teach the class. One of the respondents to that email was Génesis, who emphatically expressed: "WE ARE in the classroom"[6]. *App. 29a.*

In order to show Petitioner that they were in the classroom, the students decided to take a picture of

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130 expressly excluded her in any investigation under Certification 130. Therefore, the participation of Vivian Vélez in the administrative proceedings was totally arbitrary.

[5] This picture is part of the evidence submitted to the administrative and judicial forums in Puerto Rico.

[6] The email reads in Spanish: "Nosotros ESTAMOS en el salón".

themselves while in the classroom. Judging from the way that Génesis looks in that picture, it seems implausible that she had been feeling harassed in any way by Petitioner during the time she was his student, much less intimidated, threatened or frightened by him[7], as required by state's case law. *App. 13a-14a.* In the same way, that picture undermines Tapia's determination that there was an *"intimidating, hostile and offensive environment in the study environment of the University"* as he concluded in his Resolution.

Voidness of Tapia's Decision and CAPR Affirmation of that Decision

In this case, it is factual that Petitioner was not called to participate in the informal part of the proceedings[8]; that he did not have the opportunity to confront and cross-examine Génesis; and that he was not permitted to cross-examine Vivian Vélez and Marisol Díaz in regard to the illicit change of grades of the students in the Mate 3012 course even though that testimony was material to Petitioner's theory of the case. All this made the administrative

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[7] One student declared that the alleged conducts of the petitioner toward Génesis had begun on January, 2018, and the other two declared that the alleged conducts had begun in March, 2018. However, Génesis never said when the alleged conducts started. On the other hand, the record shows that nobody had complained about Petitioner in any way, until the students went to Vivian Vélez asking for help so they wouldn't fail in the Mate 3012 course.

[8] This follows from the record of the case. See, for example, the Legal Conclusions of the hearing officer in Appendix B.

hearings unfair for Petitioner. In this regard, this Court has observed that an administrative order is void if it has been issued through a hearing that is manifestly unfair, or if the facts found do not, as a matter of law, support the order made[9]. *ICC v. Louis and Nashville R. Co.*, 227 U.S. 88, 91 (1913) (citations omitted). Accordingly, we ask the Court to consider whether Tapia's order dismissing Petitioner is void as a matter of federal law under the circumstances of this case.

As for a judgment, this Court has noted that a judgment is void when it has been affected by a fundamental infirmity, *U.S. Aid Funds, Inc., v. Espinosa,* 559 U.S. 260 (2010), and has further added that "[a] judgment rendered in violation of due process is void in the rendering state and is not entitled to full faith and credit elsewhere". *World-Wide Volkswagen Co., v. Woodson*, 444 U.S. 286, 291 (1980).

Considering the above, and the arguments set forth in our petition for certiorari, we respectfully ask the Court to consider whether the judgment of CAPR in this case is void, since it was issued in violation of the Equal Protection Clause of the Fourteenth Amendment, in violation of state's due process, and possibly in violation of the Due Process Clause of the Fourteenth Amendment, since, as we submitted to the Court in our petition for certiorari, the clear and convincing criterion of proof should be the one to be applied in the present case as a matter

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[9] Both instances of "voidness" are present in this case.

of federal law.

Similarly, we would like to stress that CAPR judgment is void as a matter of state case law since the Supreme Court of Puerto Rico has established that a judgment is void when it has been issued in violation of due process[10], as the judgment of CAPR in this case certainly is, for it was issued without applying the clear and convincing criterion of proof which is part of state's due process in this case.

The importance of the consideration of "voidness" in this case lies in the fact that this Court has noted that the courts of the United States "[a]re bound to give to the judgments of the State courts only the same faith and credit which the courts of another State are bound to give to them". *Pennoyer v. Neff,* 95 U.S. 714, 732,733 (1878).

Final Remarks

In this case, not only is Petitioner losing his job and his livelihood, but also, as a practical consequence of the circumstances of this case, his career as a professor is prematurely ending, and his retirement plans are potentially affected.

This certainly is inequitable; particularly when it is happening based on a sexual harassment charge that was not proven in the administrative proceedings, through State's proceedings that are totally unconstitutional, and based on testimonies of

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[10] *Rivera v. Jaume,* 157 D.P.R. 562 (2002), 2002 TSPR 100.

students[11] whose grades have been illicitly altered by the very administrators who started the complaint against Petitioner, including the final grade of Génesis, who is Petitioner's accuser in this case, who was guided by Vivian Vélez to do so, as the evidence in the record of this case shows.

This administrative case is erroneous in fact and erroneous in law. Thus, the Constitution, equity and principles of natural justice dictate that Petitioner's dismissal by Tapia should not stand[12].

This Court has been very protective of the rights of individuals to hold their government employment opportunities and to practice their chosen profession. The following quote, whose application in the present case is sorely needed, partially attests to this:

> "When something as valuable as the opportunity to work is at stake, the government may not reward some citizens and not others without demonstrating that its actions are

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[11] Petitioner never accepted, and never will, the allegations contained in the "Formulation of Charges". We make the observation that the disadvantage of Petitioner in this case is enormous, for he was in the classroom accompanied by eight (8) failing students —whose testimonies and accounts were fully supported and encouraged by the University administrators— and had no witnesses to testify in his favor.

[12] The hearing officer's Conclusions of Law in Appendix B support the fact that Tapia's determination should not prevail in this case. We hope it gives the Court a better perspective about this case.

> fair and equitable. And it is procedural due process that is our fundamental guarantee of fairness, our protection against arbitrary, capricious, and unreasonable government action".

Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972) (Marshall, J., dissenting, at 589).

The Constitution promises that a State shall not "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"[13]. In this case, Petitioner is losing his job — which happens to be a tenured position at the University of Puerto Rico— without the protections provided by the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, and without this Court's intervention he will lose it, since he has no other forum to vindicate those rights apart from this forum.

Conclusion

In light of the foregoing, we pray for this Court to reconsider its order of October 7, 2024, and grant our petition for certiorari in this case in order to avoid a miscarriage of justice.

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[13] U.S. Const. amend. XIV, § 1.

Respectfully submitted,

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CERTIFICATE OF PETITIONER

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

APPENDICES

APPENDIX A:

WITNESS – MRS. VIVIAN Y. VÉLEZ VERA

R. What do you mean did it pass through my hands?

Q. As part of your investigation you did interviews, signed documents...

A. No, no, that's a determination. That is a document that rectory prepared.

Q. You...

A. In response...

Q. You, who were part of the informal stage of this procedure, in accordance with Roman Article Nine (IX) of the Certification 130, did you notify the defendant that a complaint for violation of Certification 130 had been filed? You.

A. No.

ATTY. BEATRIZ A. TORRES TORRES

We would request that the question be repeated.

ATTY. CARLO I. RIVERA TURNER

Q. Very good. You... What's more, let's do it, so as not to do three questions. You, or your work team, which I see there are three, I refer to the Dean of Student Affairs and the Student Attorney, from your work, was any document issued notifying the defendant that a complaint had been formally initiated for violation of Certification 130?

A. From us to him?

Q. Yeah.

A. No.

Q. Very good. In other words, the...let's call it your office, but I am referring to the joint work that you did with the Dean of Students and the

Student Attorney. From the work you did, from your office, no document came out implying or requiring the professor to present his defense or position on the allegations.

A. Yes, documents came out.

Q. Look at the question.

A. Yeah.

Q. Listen to it.

A. Yeah.

Q. Did any documents leave your office? When we talk about the office we refer to the team work of three people, in which the professor is required to present his defenses and that there is a complaint for violation of Certification 130. Yes or no?

A. Well, if it is expressly yes. This one...it doesn't say title, it doesn't say 130. The truth is...

Q. Look... Judge, if you can tell her to answer.

A. ...You are notified.

HEARING OFFICER

Witness. In fact, counsel, I can tell you in advance that this Examining Officer understands that up to this point no document has been presented during this informal process that would have warned the defendant in writing that a formal investigation was being conducted under Certification 130, that he was advised that he had the opportunity to present a sworn statement and that he also had the right to be represented by an attorney. We are aware, I understand that it is clear from the documents[,] and the witness, well, has sometimes responded in the same way. So, I understand that...

ATTY. CARLO I. RIVERA TURNER

And that the point has been overcome.

HEARING OFFICER

Yeah.

ATTY. CARLO I. RIVERA TURNER

And that in none of the documents that... You have just done it masterfully. I would like to do it like you. But you missed the point that in none of the documents has he been invited to present his position or his defenses regarding the allegations of Certification130.

HEARING OFFICER

Right, his statement.

ATTY. CARLO I. RIVERA TURNER

Right.

HEARING OFFICER

So far, no document has been submitted from which such a warning arises either.

APPENDIX B:

UNIVERSITY OF PUERTO RICO IN UTUADO
UTUADO, PUERTO RICO

UNIVERSIDAD DE PUERTO RICO EN UTUADO

Complainant

v.

DR. LUIS S. ARANA SANTIAGO

Respondent

Subject: Disciplinary Action

REPORT OF THE HEARING OFFICER

Once the Administrative Hearings has concluded on November 1, 2019 and the case has been submitted by the parties for resolution, this Report is timely submitted in accordance with Article XIV of the Institutional Policy against Sexual Harassment at the University of Puerto Rico, Certification No. 130 (2014-2015).

[...]

VII. Conclusions of Law

Certification Number 130 (2014-2015), known as the Institutional Policy Against Sexual Harassment at the University of Puerto Rico, has the purpose of establishing the University's policy regarding sexual harassment, defining the different modalities of sexual harassment and delimiting the Informal and Formal Procedure to be followed to handle complaints of this type, among other matters.

Art. VIII of Certification No. 130 defines sexual harassment and its modalities, as follows:

> *A. "Sexual harassment in employment, study environment or provision of services consists of any type of unwanted sexual advances, requests for sexual favors, or any other verbal or physical conduct of a sexual nature or that is reproduced using any means of communication including, but not limited to, the use of multimedia tools through the cyber network or by any electronic means or when one or more of the following circumstances occur:*
>
> > *1. When submitting to such conduct becomes implicitly or explicitly a term or condition of a person's employment, studies or services.*
> >
> > *2. When the submission or rejection of said conduct by the person becomes grounds for the taking of decisions regarding any aspect related to*

employment or studies that affect that person.

3. When that conduct has the effect or purpose of unreasonably interfering with the performance of that person's work or studies or when it creates an intimidating, hostile and offensive work or study environment.

B. Sexual harassment applies to situations in which the prohibited conduct occurs between people of the same sex or opposite sexes. There are two (2) modalities:

1. Quid pro Quo- Harassment that involves sexual favors as a condition or requirement to obtain benefits in employment or in study or service. This type of harassment manifests itself when the submission or acceptance of this conduct becomes, explicitly or implicitly, one of the terms or conditions of a person's employment or studies, or when the submission, acceptance or rejection of the conduct prohibited becomes the basis for making decisions in employment or studies that affect that person.

2. Hostile or offensive work or study environment - Sexual harassment that, although it does not have an economic impact, creates a hostile or offensive environment in the work or study environment. Thus, it constitutes sexual harassment to subject the person to

> *expressions or acts of a sexual nature in a generalized or severe manner that has the effect of altering their employment or study status or creates a hostile and/or offensive work or study environment, including the use of information technology resources of the University of Puerto Rico or private electronic means to cause a hostile work or study environment."*

Art. IX of Certification No. 130 establishes an Informal Procedure so that any person who believes it have been subject to actions constituting sexual harassment can complain so that it could be investigated and the corresponding action be taken; while offering the respondent the opportunity to be informed of the allegations against him and to present his position and defenses that he may wish to present. This Informal Procedure begins with the presentation of the student's complaint to the Student Attorney or the Dean of Students Office. No later than seven (7) business days from the presentation of the complaint, a confidential investigative process will begin which will include sworn statements from the complaining student, the accused party and any other person who knows about the facts. The Policy establishes that within no more than fifteen (15) business days from the beginning of the investigation, the office in charge of the investigation will submit a report to the appointing authority, with the result of the investigation and its recommendations. If it is

determined that the formulation of charges proceeds, the Formal Procedure established in Arts. XI-XIV of Certification No. 130 will begin, and culminates with the Report of the designated Examining Officer and will offer all the guarantees of due process of Law.

Art. XVI of Certification No. 130 establishes that the Complaint must be resolved within a period of six (6) months from its filing, except in exceptional circumstances, to which we add the written consent of the parties or justified cause, in accord to Law 170 of August 12, 1988, as amended, known as the Uniform Administrative Procedure Law, 3 LPRA secs. 2101 et seq.

According to Art. XV of Certification No. 130, after evaluating the Report of the Examining Officer, the Appointing Authority will impose the corresponding disciplinary sanction, if any, as provided in the General Regulations of the University of Puerto Rico.

Law Number 3 of January 4, 1998, known as the "Law to Prohibit Sexual Harassment in Educational Institutions", recognized the particular context in which sexual harassment takes place in educational institutions, as well as its particular implications to the right to education. For these purposes, Law No. 3, supra, prohibits sexual harassment against students in educational institutions in Puerto Rico[1]. This statute defines

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[1] The term "educational institution" covers any student at "any elementary, secondary or higher school, university, institute, vocational

sexual harassment in these institutions, and it recognized as public policy, ensuring that students, both children, youth and adults, have the right to carry out their studies free of the pressure that constitutes sexual harassment. 3 LP.RA secs. 149a and 149b(a). To achieve it, it provides the student with various remedies, such as filing a complaint with the institution, among others.

In addition, the Legislative Assembly of Puerto Rico imposes various obligations on educational institutions in order to prevent, discourage and avoid this type of conduct, as well as civil liability for actions that constitute sexual harassment. 3 LP.RA. secs. 149e-149i. To this end, the degree of responsibility imposed on educational institutions varies depending on the harasser's relationship with the institution. In regard to actions constituting sexual harassment by its teaching and non-teaching staff, [they will] be responsible "regardless of whether or not the specific acts in dispute were prohibited by the educational institution, and regardless of whether the institution and the teaching and non-teaching staff knew it or should have been aware of the prohibition of the conduct". 3 LRRA. sec. 149e.

It should be noted that in the Statement of Motives of Law No. 3, *supra*, it is recognized that "harassment manifests itself mainly in the teacher-student relationship and mostly against women."

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or technical school, private or public, recognized or not by regulatory bodies that offer programs of study or skills... " 3 L.P.R.A. sec. 149b(b).

Art. 4 of Law No. 3, *supra*, define sexual harassment in educational institutions as:

> *"...any type of unwanted explicit or implicit sexual conduct or approach to any student of the institution committed by a principal, school superintendent, supervisor, agent, student, person not employed by the institution, or employee of the teaching staff or non-teaching staff of the institution.*
>
> *Unwanted sexual harassment will be understood as the request for sexual favors and any other conduct, explicit or implicit, verbal or physical of a sexual nature to the student when one or more of the following circumstances occur:*
>
> *(a) When that unwanted conduct or approach has the effect or purpose of intimidating or threatening the student, unreasonably interfering with that person's academic performance, or when it creates a hostile or offensive environment.*
>
> *(b) When the subjection or rejection of said unwanted behavior or approach by the person becomes the basis for making decisions regarding any aspect related to the person's studies.*
>
> *(c) When submitting to said unwanted conduct or approach becomes implicitly or explicitly a condition of remaining in*

the educational institution. Art. 4, Law 3-1998, 3 L.P.R.A. sec. 149c."

It is clear from the aforementioned text that Law No. 3, supra, prohibits sexual harassment in educational institutions in two (2) modalities: quid pro quo and hostile, intimidating or offensive environment. For its part, the first modality is prohibited by subsections (b) and (c). These subsections proscribe sexual harassment in exchange for something; it may be a condition for the student to remain in the educational institution or for submitting or rejecting the harassment to be the basis for making a decision regarding the student.

On the other hand, sexual harassment due to a hostile, intimidating or offensive environment in educational institutions is prohibited in subsection (a) of the cited legal precept and is configured when the sexual conduct of a person has the purpose or effect of intimidating, threatening the student or unreasonably interfering with the performance of his studies or when the sexual conduct turns the study environment into one that is intimidating, hostile or offensive. Art. 4, Law No. 3, supra. Now, to determine what conduct would be considered sexual harassment due to a hostile environment, it is necessary to analyze all the circumstances in which the events occurred. 3 LP.R.A. sec. 149d.

Finally, the Supreme Court, in the normative case University of Puerto Rico in Aguadilla v. José Lorenzo Hernández, 184 DPR 1001 (2012), adopted an analysis similar to that applied in worker-

employer cases[2], which is composed of two (2) parts: subjective and objective. According to our highest forum, what constitutes sexual conduct in the form of a hostile or intimidating environment cannot be evaluated exclusively based on the perception of one of the parties involved. To determine what conduct is considered sexual harassment due to a hostile environment, it is necessary to analyze all the circumstances in which the events occurred.

The subjective analysis aims to establish whether the student felt threatened; intimidated; if he perceived that the environment at the educational institution became intimidating, hostile, offensive, or interfered with her performance as a result of the harassing behavior.

On the other hand, the purpose of the objective analysis is to determine whether the conduct can reasonably be understood as threatening, intimidating, unreasonably interfering with the student's studies, or creating a sufficiently hostile, intimidating or offensive environment for the student when examining the totality of the circumstances of each case.

On the objective aspect, UPRG v. José Lorenzo, *supra*, invites us to use, in an illustrative manner, the Revised Sexual Harassment Guidelines: Harassment of Students by School Employees, other Students and Third Parties (Guidelines). These Guidelines were designed as a result of the federal statute against discrimination in educational

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[2] See *Delgado Zayas v. Hosp. Int. Med. Avanzada*, 173 D.P.R. 643 (1994).

institutions, Title IX of the Federal Education Law, supra, and are a set of criteria established by the federal Department of Education to analyze whether or not hostile environment sexual harassment under Title VII it has been configured.

Thus, based on the Guidelines, UPRG v. Lorenzo, supra., points out that the following factors must be taken into account: 1) the degree to which the conduct affected the student; 2) the type, frequency and duration of the behavior; 3) the identity and relationship between the alleged harasser and the student; 4) the number of individuals involved; 5) the age and sex of the alleged harasser and the victim; 6) the location of the incident, the size of the educational institution and the environment in which the events occurred; 7) other incidents at the institution; 8) incidents that are gender-based, even if they are not harassment of a sexual nature.

Given the legal context outlined above, let us first proceed to examine whether in the present case the process established in Certification No. 130 were adequately complied with. We will then proceed to analyze whether the proven facts constitute sexual harassment, according to the formulation of the charges. Let's see.

In accordance with the rights and remedies provided by Law No. 3, supra, and by Certification No. 130, the student Génesis Vélez Feliciano filed a Complaint of sexual harassment against the Respondent. The administrative matter began with the Informal Process and continued with the Formal Procedure, when the Complainant determined that

there were sufficient allegations to establish that the Respondent had violated Certification No. 130 and the General Regulations of the University of Puerto Rico.

We understand that, during the course of the Informal Process, the requirements established in Certification No. 130 were not met. The documents provided to the Respondent at the beginning of the Informal Process do not contain concrete or specific allegations of the actions or comments that were attributed to him. Nor was the Respondent informed of his right to present his position and defenses or obtain a sworn statement from him.

It follows from the Minutes of the meeting held with the Respondent on May 24, 2019 (**Exhibit 4 of the Respondent**) that the majority of the students' complaints were related to academic matters, and that the only issue that was discussed that could be understood as a allegation of sexual harassment, is related to a complaint from students where they allege that "*It is constantly pointed out that they have no voltage, except for one student. They reiterate that he makes inappropriate comments.*" It is evident that this allegation does not contain sufficient information to alert the Respondent that he was being the subject of an Informal Process under Certification No. 130 for actions constituting sexual harassment.

Nor does it appear from the Minutes of May 24, 2019 (**Exhibit 4 of the Respondent**) that the Respondent was informed of the need to present a sworn statement, to present his position on what was alleged or to present the defenses that he would

like to establish. Certification 130 was not even mentioned.

Although the investigation's report of the Informal Process was submitted eighty-four (84) calendar days after the investigation began, this in violation of Article IX, Part K, of Certification 130, it does not arise from the administrative record that during that period the Respondent had been required to provide a sworn statement, or to explain his position or present any defenses that he wanted to establish, or that he was informed that he was being subject to an Informal Process for actions constituting sexual harassment.

Given the facts outlined above, it is evident that the Respondent was not adequately informed of the rights that protected him during the Informal Process established in Certification 130 and that it was not carried out in an adequate or timely manner.

Let us now analyze whether the facts proven in the present case constitute sexual harassment under any of the modalities that were formulated to the Respondent.

It emerges from the evidence presented for the record that several students approached the Student Attorney to file complaints against the Respondent for the poor grades they were obtaining in the course and because they understood that the professor was not fulfilling his teaching role.

The Student Attorney referred the students to the Dean of Academic Affairs, who is the appropriate official to address the students' academic complaints.

After meeting with the students, the Dean of Academic Affairs discovers that there [were] complaints against the Respondent about behavior that he exhibits towards the student Génesis Vélez Feliciano that could constitute sexual harassment.

Since the claimant in this case was a student, the matter should have been referred exclusively to the Student Attorney Office or the Dean of Students Office, however the matter continued to be processed through the Dean of Academic Affairs.

The conduct exhibited by the Respondent towards the student Génesis Vélez Feliciano, as perceived by the students, is based on comments that she had "voltage" but not the other students; that she liked men with money and strong men; that she asked her boyfriend if he could do the [mathematical] exercises on his mind; in addition to him clinging to her desk, putting his hands in his pockets and pulling up his pants. It should be noted that we found inconsistency between what was perceived by the students and what was perceived by the student Génesis Vélez Feliciano, according to previous statements that are part of the administrative record. These inconsistencies mainly have to do with the occasions on which the Respondent carried out these comments or actions.

The students who declared that they felt very uncomfortable with the actions and expressions of the Respondent to the student Génesis Vélez Feliciano, however these expressions did not deserve credibility. We base this on the fact that the students alleged that this situation began in March 2018 and lasted until almost the end of the course

and they only informed the Complainant when they presented their complaints of an academic nature, on the last day to withdraw partially, in May 2018. 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 it. They also did not express in which way, if any, the Respondent's comments and/or conduct interfered with their performance [in the course].

In our opinion, the students attribute their poor grades and/or poor achievement in the course to the fact that the Respondent was not fulfilling his teaching role and not to his behavior or expressions to the student Génesis Vélez Feliciano. Furthermore, it does not appear from the administrative record that the student herself indicated that said behavior or expressions were unreasonably interfering with her studies.

Since the student Génesis Vélez Feliciano did not appear at the Administrative Hearing, and consequently the content of her previous statements was not admitted as they constituted hearsay, the Respondent could not prove the subjective aspect required to establish whether sexual harassment took place in some of its modalities.

Nor do we understand that the conduct and expressions made by the respondent in the classroom can reasonably be understood as creating a sufficiently hostile, intimidating or offensive environment that constitutes sexual harassment. Although we understand that the Respondent's

conduct and expressions could be considered in poor taste and/or not appropriate for a classroom, we are of the opinion that they are not serious or sexually connoting enough to be perceived as sexual harassment by any other reasonable student.

In light of the totality of the evidence presented we conclude that:

a. In the Informal Process, the Respondent was not adequately informed about the allegations against him and about his right to present his position and defense, as provided in Certification No. 130;

b. The Informal Process was not carried out in an adequate or timely manner, as it was handled by officials to whom it did not correspond, and there was an unjustified delay in completing the investigation and submitting the corresponding report; and

c. The conduct and expressions attributed to the Respondent, in addition to the other evidence presented in the present case, when analyzed objectively and subjectively do not constitute any of the forms of sexual harassment as formulated to the Respondent.

VII. Recommendation

Having undertaken the processing of this Complaint and having received the corresponding evidence, this Hearing Officer recommends that all charges against Dr. Luis S. Arana Santiago be dismissed, given that from the entire record it could not be proven

that he has violated the Institutional Policy Against Sexual Harassment at the University of Puerto Rico during the MATE 3012 M-25 course.

Given in Arecibo, Puerto Rico, today November 26, 2019.

s/ Lcdo. Luis Sevillano Sánchez
Hearing Officer
PO Box 141118
Arecibo PR 00614-1118
Tel. 787-878-5132
Fax. 787-880-3073
sevillano@prtc.net

I CERTIFY that today, November 26, 2019, a COPY of this Report was filed and the ORIGINAL document was sent by certified mail with return receipt to the Appointing Authority, through Dr. Luis A. Tapia Maldonado, Rector, University of Puerto Rico in Utuado, PO Box 2500, Utuado PR 00641-2500 and by email to aluis.tapia@upr.edu.

APPENDIX C:

DECLARATION

I declare under penalty of perjury that the following statements are true and correct, as it follows from the record of this case.

1. That I was never informed by the administrative officials in charge of the informal part of the investigation, meaning Vivian Vélez Vera, Marisol Díaz Ocasio, and María Rodríguez Sierra, about an investigation against me for violations to Certification 130, meaning sexual harassment.

2. That the students David Ureña Negrón, Esteban Tellado Zequeira, and Jann Romero Santiago declared in the hearing of October 30, 2019 that their final grade was change from **F** to **C** in the Mate 3012 course I was teaching during the second semester of the academic year 2017-2018, and that they mentioned Vivian Vélez Vera, acting Dean of Academic Affairs, Marisol Díaz Ocasio, Student Attorney, and María Rodríguez Sierra, acting Dean of Students Affairs, as having participated in that change of grades of the students in the Mate 3012 course, M25.

3. That I did not participate in the aforementioned change of grades of the students, as was required by Certification No. 40.

4. That my theory of the case was that the sexual harassment complaint was in response to the dissatisfaction of the administrators of the University of Puerto Rico in Utuado (UPRU) for the academic failure of the students of the Mate 3012

course, M25.

5. That the acting rector at the time, José Heredia Rodríguez, denied me teaching two summer courses in 2018, despite the fact that these courses had been assigned to me by the chairman of the Department of Natural Sciences earlier in the second semester of the academic year 2017-2018.

6. That in or about January 2019, Tapia restricted my entrance to UPRU, so that I had to be escorted by University guards to wherever I needed to go in the University.

7. That Tapia ignored my formal request for a copy of the entrance restriction's letter that was sent to the University guards.

8. That in the hearings held in UPRU about the Formulation of Charges, my legal counsel was not permitted to cross-examine Vivian Vélez Vera and Marisol Díaz Ocasio about the change of grades of the students in the Mate 3012 course, in spite of the fact that my counsel made an extensive offer of proof for those testimonies to be permitted.

9. That I was never afforded the opportunity to confront and cross-examine my accuser, Génesis Vélez Feliciano, during the proceedings at UPRU.

10. That the photo of April 5, 2024, was sent to me by the Students of the Mate 3012 course, and the email that reads "Nosotros ESTAMOS en el salon", was sent to me on April 5, 2024 by Génesis Vélez Feliciano.

11. That I translated the documents in the Appendix from original documents contained in the administrative record, and they are a bonafide translation of the originals.

/s/ Luis S. Arana

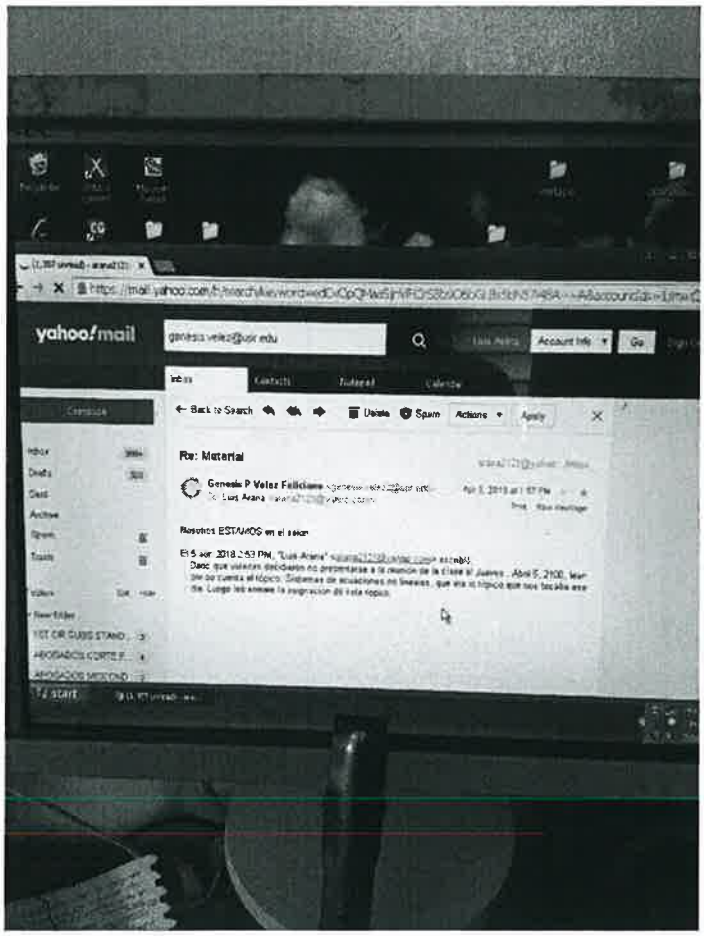
APPENDIX D:

1) Génesis Vélez Feliciano is the female in the back.

2) The two males which are not the one in the front testified at the hearings.

3) The male in the front was the one that led the academic complaint.

APPENDIX E: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Genesis P Velez Feliciano
Apr 5, 2018 at 1:57 PM
Resolvimos ESTAMOS en el salon
START

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October 24, 2024

Clerk
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20002

RE 23-1368: LUIS S. ARANA, AKA LUIS S. ARANA SANTIAGO V. LUIS TAPIA MALDONADO, ET AL.

Dear Sir or Madam:

I certify that at the request of the Petitioner, on October 24, 2024, I caused service to be made pursuant to Rule 29 on the following counsel for the Respondents:

RESPONDENTS:
Juan M. Casellas Rodriguez
P.O. Box 195287
San Juan, PR, 00919-5287
787-625-6535
jmc@npclawyers.com

This service was effected by depositing three copies of a Petition for Rehearing in an official "first class mail" receptacle of the United States Post Office as well as by transmitting digital copies via electronic mail.

Sincerely,

Jack Suber, Esq.
Principal

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Notary Public
State of Maryland
Montgomery County
My commission exp. October 12, 2026

Sworn and subscribed before me this 24th day of October 2024.

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October 24, 2024

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1 First Street, NE
Washington, D.C. 20002

RE 23-1368: LUIS S. ARANA, AKA LUIS S. ARANA SANTIAGO V. LUIS TAPIA MALDONADO, ET AL.

Dear Sir or Madam:

As required by Supreme Court Rule 33.1(h), I certify that the Petition for Rehearing referenced above contains **2,944** words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

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

Sincerely,

Jack Suber, Esq.
Principal

LISA KAY NICHOLSON
Notary Public
State of Maryland
Montgomery County
My commission exp. October 12, 2026

Sworn and subscribed before me this 24th day of October 2024.

Lisa K Nicholson