

23-7005

No. 23-7005

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

CHAN – PETITIONER

Vs.

MAURA TRACY HEALEY, Governor of the Commonwealth of Massachusetts; JAMEY TESLER, Secretary & CEO of Massachusetts Department of Transportation; STEVE POFTAK, General Manager of Massachusetts Bay Transportation Authority, MBTA, and Vice-chair of the Fiscal Management & Control Board, FMCB; BRIAN SHORTSLEEVE, General Manager of the MBTA and Board Member of the FMCB; VINCE POON, Former Benefit Manager of the MBTA; MASSACHUSETTS BAY TRANSPORTATION AUTHORITY; MASSACHUSETTS DEPARTMENT OF TRANSPORTATION; FISCAL MANAGEMENT AND CONTROL BOARD-RESPONDENTS

FILED
MAR 11 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT APPEALS for the FIRST CIRCUIT
PETITION FOR WRIT OF CERTIORARI

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FILED
MAR 15 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS(S) PRESENTED

Question 1: The Massachusetts Government is entrusted by its people to govern fairly and rationally. This lawsuit accuses its state government agencies, the governor and administrators of acting illegally and prejudicially. Should the US Supreme Court let them get away with their misbehaviors or actions without re-evaluation and consequence?

Question 2: Should the judicial system of the United States allow the defendants of this case go unpunished or unreprimanded for their violations of the Equal Protection Clause of the 14th Amendment of the US Constitution?

Question 3: Should Class of One victims of discriminations be neglected and take a back seat in the grievance process of the US judicial system? Before the codifications of Protected Classes in civil rights advancement, wasn't it true that civil rights pioneers like Rosa Park and James Meredith were all Class of One discrimination victims in the fifties and sixties? Therefore, should Class of One victims enjoy the same level of legal consideration as the codified Protected Classes?

Question 4: How far could the 2 landmark cases law of Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) and Engquist v. Oregon Dep't of Agric., 553 U.S. 591, 603 (2008) go in protecting de facto violations of the Equal Protection Clause of the 14th Amendment of the US Constitution committed by government officials? Ashcroft and Engquist rulings actually were never meant to protect perpetrators of discriminations recklessly. They have certain rational limits and boundaries. This Petition of Writ of Certiorari aims to uncover the limits and boundaries of these 2 legal rulings.

LIST OF PARTIES (Defendants)

Petitioner, Appellant and Plaintiff: SIMON CHAN

Defendants and Appellees: **MAURA TRACY HEALEY**, Governor of the Commonwealth of Massachusetts; (This civil lawsuit originally named **Governor Baker** of Massachusetts as the lead defendant in USDC-Mass case 1:20-cv-11449DJC in year 2020. However, **Governor Baker** left office in 2023 and was then succeeded by Governor Maura Healey. After that, the 1st Circuit Appeal Court superseded Baker by installing Healey as the lead defendant); **JAMEY TESLER**, Secretary & CEO of Massachusetts Department of Transportation; **STEVE POFTAK**, General Manager of Massachusetts Bay Transportation Authority, the MBTA, and Vice-chair of the Fiscal Management & Control Board, the FMCB; **BRIAN SHORTSLEEVE**, General Manager of the MBTA and Board Member of the FMCB; **VINCE POON**, Former Benefit Manager of the MBTA; **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**; **MASSACHUSETTS DEPARTMENT OF TRANSPORTATION**; **FISCAL MANAGEMENT AND CONTROL BOARD of MBTA**.

RELATED CASES

Chan vs Healey (Baker) et al, US Court of Appeals, 1st Circuit, Docket 22-1093: See Appendix A & Appendix I

Original Case before Appeal at USDC, Massachusetts: Chan vs Baker et al,

Docket 1:20CV11449DJC: Appendix C

CASES cited in the Appeal Brief:

Engquist v. Oregon Dep't of Agric., 553 U.S. 591, 603 (2008)

Clubside, Inc. v Valentin, 468 F.3d 144, 159 (2d Cir.2006)

Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)

Village of Willowbrook v Olech 528 US 562 (2000)

Harlow v. Fitzgerald 457 US 800, 818 (1982)

Doe v. Nebraska 4: CV 95-3381

Thomas v. University of Houston 02-20988 5th Circuit

STATUES:

The Preamble of the United States Constitution

The Equal Protection Clause of the 14th Amendment of the US Constitution

INDEX TO APPENDICES:

APPENDIX A : Judgment Issued by US Appeals Court, 1st Circuit, 22-1093

APPENDIX B : Petitioner's Appeal Brief to US Court of Appeals, 1st Circuit

APPENDIX C : MBTA Appellees' Brief to US Court of Appeals, 1st Circuit

APPENDIX D : Appellees Baker/Healey/DOT's Brief to 1st circuit Court

Exhibit A annexed in Appendix D is the original
complaint

Filed with the USDC Massachusetts, **Dk**
#1:20CV11449DJC

APPENDIX E: Original USDC Complaint - Dk #1:20CV11449DJC

See **Exhibit A** of **APPENDIX D**

APPENDIX F: Petitioner Reply Brief to 1st circuit Court

APPENDIX G: Petitioner Counter Motion & Brief to 1st circuit Court

APPENDIX H: Docket Report of USCA-1st Circuit #22-1093

APPENDIX I: Docket Report of USDC Massachusetts #1:20CV11449DJC

Appendix J = Motion Re Forma Pauperis

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**: *Judgment of Appeal Denial*

The ~~opinion~~ of the United States court of appeals appears at Appendix A to the petition and is

reported at No Opinion was Conveyed to Petitioner; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 11th 2024 or 12-11-2024

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSITUTION AND STATUTORY PROVISIONs INVOLVED

Petitioner Chan alleges that the defendants have violated the Equal Protection Clause of the 14th Amendment of the US Constitution which states the following: 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**. The Preamble of the US Constitution also bears huge relevance to this case which states the following: We the People of the United States, in Order to form a more perfect Union, establish Justice, **insure domestic Tranquility**, provide for the common defense, **promote the general Welfare**, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The mission phrases of **promote the general Welfare** and **insure domestic Tranquility** were properly cited and applied in the Appeal Brief arguments. I wish the honorable SCOTUS reviewers would lend it some weight.

STATEMENT OF THE CASE

In order to optimize the efficiency of the petition for the Writ of Certiorari on this case, Petitioner Chan moves to drop all appeals on Count I, Count IV, Count V and Count VI claims in the district court and appeal court pleadings. Petitioner only want to appeal **Count II** (violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634 (ADEA) and **Count III** (Violations of the Equal Protection Clause of the 14th Amendment and Title VII of the Civil Rights Act (Count III) & 42 U.S.C. § 1983) claims that were denied by the US Appeals Court. 1st Circuit (Docket 22-1093, original USDC Mass docket 1:20-cv-11449DJC).

This civil case was about the Massachusetts Bay Transportation Authority's (abbreviated as the MBTA, the subway & bus system of Massachusetts state that is heavily subsidized by the federal government) closure of its Customer Call Center in year 2017. It was essentially an industrial plant closure to be outsourced by a private entity. During the plant closure, the MBTA automatically laid off all the Customer Call Center's 14 telephone answering representatives with only 3 weeks meager severance pay. Petitioner Chan was one of the laid-off workers. But at the time, inexplicably and shockingly, the MBTA surreptitiously set up a new department called the Customer Experience Centre to rehire all the 9 supervisors and managers who just lost their jobs at the foreclosed Call Center. This act of creating new jobs to rescue the managers was indeed an act of granting **job welfare**. The ugliness of this act was that after taking care of the managers, the MBTA did not offer any equivalent or similar job rescue measure to the laid-off Call Center Representatives and separated them permanently from MBTA employment with no mercy at all. This double standard act was the basis of this lawsuit.

The main challenge for this writ request is that the distinguished defense counsels, honorable US district court judge and the US Appeal judges of this case have collectively misread the case law applications of **the Engquist v. Oregon Dep't of Agric.**, 553 U.S. 591, 603 (2008) and **the Ashcroft v. Iqbal**, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Due to the compelling impact of the above 2 landmark cases, prevailing jurists tend to have over-reacted to the coverage range of the 2 cases and neglected their actual limitations. Therefore, Chan would contest their applications in the

following arguments.

On Engquist v. Oregon Dep't of Agric., 553 U.S. 591, 603 (2008) case law: The reason that Defendants cannot shield themselves from this case law is that honorable Chief Justice Roberts's ruling intends solely to allow government actors (administrators) using rational and logical discretions in hiring/firing employees or awarding contracts. It never gives any green light to government actors to act capriciously and callously. Had the MBTA fired the entire department's employees across the board without executing any job creation plan to rescue the managers, there would have been no case to file for discrimination. When the MBTA created and granted new jobs to the 9 high pay managers of the foreclosed department and at the same time kicked the 14 rank and file representatives out of its workforce, it was an act of arbitrarily granting **job welfare** to a favored group and at the same time, throwing the disfavored group under the bus of unemployment. It violated the Equal Protection Clause of the 14th Amendment. The afore-mentioned points have been articulated succinctly in the Argument Section (Page 7 to Page 10 of the Appeal Brief, Appendix-B). Therefore, Engquist ruling could not bail out the Appellees of Equal Protection violations.

After Chan had written extensively in the Appeal Brief pleadings that the MBTA was actually acting as a **welfare grantor of job welfare** instead of a government actor in making hiring/firing decisions, all Appellees counsels shied away from challenging Chan's welfare grantor assertion. Since they did not offer one single word to dispute this assertion, the assertion is therefore established in this case. Once the act of granting welfare is established, the Engquist case law no longer applies in this case.

On Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) case law: Both the US Court of Appeals (1st Circuit) and all Defendants/Appellees of this case rely heavily on Ashcroft v. Iqbal in supporting their arguments of this case's dismissal. Petitioner Chan asserts that Ashcroft v. Iqbal essentially does not apply to the circumstances of this case. The central premises of Ashcroft v. Iqbal is shielding supervisory responsibility (in this case, Defendants Governor Healey/Baker and Secretary of Transportation Tesler, etc.) from logical inference and presumption of

wrongdoings. It gives high level officials tremendous **plausible deniability** in allegations of wrongful acts. However, in defending Chan's allegations, all Defendants and their counsels did not deny nor disputed any of the factual details presented by Chan's pleadings. They only disputed that the wrongful acts alleged by Chan were not wrong, but legitimate. For example, MBTA defendants/appellees' lawyer Denise Brogna stated in her Appeal Brief (1st paragraph of Page 7 in Appendix-C) the following:

The MBTA notified Chan that to "achieve maximum cost efficiency and productivity" it was reorganizing his department and eliminating his position, and he would be terminated on June 30, 2017. Id. All call center representative positions were eliminated. Id. Supervisors and managers from the department would be given new jobs as customer experience officers, but the call center representatives were not offered such positions. Id.

In the above pleading, Appellee counsel Brogna had abandoned the evidence shield offered by Ashcroft case. On behalf of her MBTA Defendants and Appellees, counsel Brogna just flatly and unequivocally admitted the wrongdoings alleged by Chan. Therefore, US Appeals Court should have tossed the Ashcroft case law out of the window in the appeal ruling. Instead, Honorable Appeal judges adopted the Ashcroft case law as the center-piece case law to deny Chan's appeal. That makes no sense.

In a deeper sense, Counsel Brogna's Appellees were like saying to the US District Court and Appeal Court, "**we've done exactly what Chan had alleged, so what? There is nothing wrong!**" Chan prays that the US Supreme Court would look at the allegations differently from Defendants.

In the entire Reply Brief (Appendix-D) of governor/secretary Appellees, Defense Counsel Lucia did not articulate a single word to dispute any elaborate factual details of chain of events articulated in Chan's pleadings as well. That means Lucia accepted all factual sequence of this case's allegations. He only contests that Chan's factual allegations were insufficient to link his state CEO defendants to actual participation of wrongdoings. However, even if we leniently assume that defendant/appellee governor and transportation secretary did not know what happened to the MBTA Call Center back in year 2017, they would have known it in August of 2020 after Chan had filed a lawsuit with US District Court of Massachusetts which named the governor and transportation secretary as co-defendants. Therefore, proof of knowledge of allegations is indisputable in this case. Once Governor and Secretary had hired lawyers to defend themselves in the US district court

in 2020, it means they had fully known all the allegations and are aware of the events transpiring before and after the MBTA Call Center's plant closure. Since they have not made any remedy or corrective action to cure the alleged violations after gaining full knowledge of the lawsuit's allegations, it means that they own the allegations equally like the lower level MBTA defendants. The ignorance and unawareness defense of Governor and Secretary had already melted away in 2020 when they answered this lawsuit. Therefore, the Ashcroft ruling lends no help to Appellee Governor and Secretary at all.

Petitioner Chan had cited the *Harlow v. Fitzgerald* 457 US 800, 818 (1982) case in Appeal Court's Counter Motion, see Appendix G. Chan wish to quote Page 4 of Appendix G in the following:

In the *Harlow v. Fitzgerald* 457 US 800, 818 (1982), it states Qualified immunity does not protect officials who violate "clearly established statutory or constitutional rights of which reasonable person would have known". This is an objective standard, meaning that the standard does not depend on the subjective state of mind of the official but rather on whether a reasonable person would determine that the relevant conduct violated clearly established law. A reasonable person would no doubt judge the double dealings of the Defendants between the CCMs and the CCRs as obvious wrongdoings against the law and the constitution. It is also not rocket science for Defendants to be able to comprehend their acts as illegitimate. (CCM means the Call Center Managers, the favored Group, CCR means the Call Center Representatives, the laid-off workers group) Due to the reluctance of counsel Lucia to challenge Chan's Harlow case citation, Chan prays this Court would give appropriate weight to Harlow case's application to this case pending before the Court.

Finally, Chan herewith cite the case law of *Clubside, Inc. v Valentin*, 468 F.3d 144, 159 (2d Cir.2006); (see Appendix B, page 14 in the following): *The case law of Clubside, Inc. v Valentin, 468 F.3d 144, 159 (2d Cir.2006) would like to know if the MBTA had a stated government policy on the discrepancy in treatments between 2 teams of workers because it says, "no rational person could regard the circumstances of the plaintiff to differ from those of a comparator to a degree that would justify the differential*

treatment on the basis of a legitimate government policy; and (ii) the similarity in circumstances and difference in treatment sufficient to exclude the possibility that the defendants acted on the basis of a mistake.” The above Similarities between the CCR and CCMs are indisputable and of high degree.

Their difference in treatments to the 2 teams was clearly well planned, intentional, not any basis of mistake. The MBTA Defendants never publicized or stated a legitimate government policy basis on the job relief benefits granted to the CCMs, neither by any form of letter, email, memorandum departmental standing order, official circular notice nor any verbal utterance. The Defense lawyers have filed close to 120 pages of pleadings and documents to defend this case. Not one single word in the 120 filed pages has stated any officially

articulated policy or rationale on relocating CCMs to new jobs and at the same time, terminating all CCRs jobs.

REASONS FOR GRANTING THE PETITION

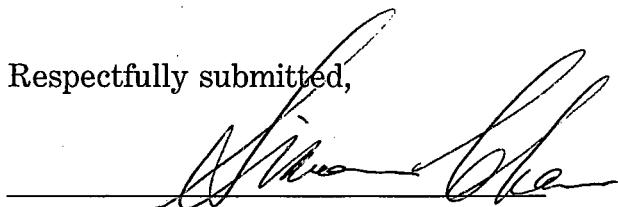
1. If the Certiorari is granted, Petition Chan shall invite the entire 14 laid-off workers to join His lawsuit or to negotiate a settlement of rehiring with Appellees. Chan doesn't any job, but some of his co-workers are still very young and employable.
2. Justice will be served if petition granted.
3. To cure the Erroneous Applications of the Engquist v. Oregon State and Ashcroft v. Iqbal cases law in this case.

CONCLUSION

Petitioner humbly prays for granting of
Writ.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3-9-2024