24-5511 ORIGINAL

No._____

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SUPREME COURT, U.S.

In the
Supreme Court of the United States

JANE DOE, *Pro se* PETITIONER

v.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In 1999, this Court decided *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 and held "a private Title IX damages action may lie against a school board in cases of student-on-student harassment, but only where the funding recipient is deliberately indifferent to sexual harassment" and that Title IX is "in nature of a contract" between recipients and the federal government. Petitioner went beyond this ruling and argued that Title IX lawsuits should be evaluated as breaches of contract between recipients and the federal government, specifically focusing on the validity of the contract (mutual assent) and the performance of contractual obligations (fraud; failure or inadequacy of performance).[1]

Q1: Does it amount to deliberate indifference under Title IX when a recipient (a) fraudulently tailor sexual assault case outcome to secure federal funding; (b) fail to protect students' privacy and respond to the subsequent retaliation complaint?

Q.2: Whether lower courts deprived *pro se* petitioner's 28 U.S. Code § 1654 rights to represent herself in federal court when they denied her an opportunity to be heard in favor of represented[2] party?

PARTIES TO THE PROCEEDING

Petitioner (plaintiff-appellant below) is Jane Doe, a former student at Columbia U. Respondents (defendants-appellees below) are the Trustees of Columbia University.

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[1] See Restatement (Second) of Contracts § 110 (1981) (statute of frauds); § 163 (material misrepresentation); § 17 (mutual assent); § 235(2) (non-performance as immediate breach); § 241.

[2] Columbia was counseled by five former federal clerks, ex-Paul Weiss litigator and professor at Columbia Law School.

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.): *Jane Doe v. The Trustees of Columbia University in The City of*, No. 21-CV-5839-ER, Judgment entered June 27, 2023.

United States Court of Appeals (2d Cir.): *Jane Doe v. The Trustees of Columbia University in The City of*, No. 23-960, Judgment entered May 7, 2024.

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JURISDICTION

The judgment of the court of appeals was entered on May 7, 2024. A petition for rehearing en banc was denied on July 1, 2024 (App., *infra,* 33a-56a). The jurisdiction of this Court is invoked under 28 U.S. Code § 1254 (1).

STATUTES INVOLVED

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S. Code § 1654 - Appearance personally or by counsel.

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S. Code § 1681 - Sex, Title IX of the Education Amendments Of 1972.

STATEMENT

I. DSM-5 and its purposeful exclusion of C-PTSD[1,2] diagnosis

[1]Complex-PTSD, or developmental trauma/complex trauma, has been included in International Classification of Diseases 11th Revision (ICD-11) published by the World Health Organization since 2022 –the global standard for diagnostic health information with inclusion of clinical data from the U.S. as well.

[2] See 6B41 Complex post-traumatic stress disorder - *ICD-11 for Mortality and Morbidity Statistics* 2024 Release https://icd.who.int/browse/2024-01/mms/en#585833559

The DSM-5, published by the American Psychiatric Association[3] (APA) in May 2013, is the authoritative guide for psychiatric diagnoses in the U.S. It is widely used in universities and training programs in psychiatry/psychology/related fields as a teaching tool, insurance billing/reimbursement, eligibility for Social Security disability benefits, rights and accommodations in the workplace/school and public health policymaking. Prominent psychologist Bessel van der Kolk once criticized DSM-5 for not including Developmental trauma in Chapter 10 of his book *The Body Keeps the Score* (2014). He argued that the DSM ignores root causes like abuse/neglect and deprivation, focusing only on symptoms, represents a regression in psychiatric practice, potentially influenced by financial interests from previous DSM earnings, compromised by financial ties with pharmaceutical industries, failing to address the underlying causes of mental health problems, particularly developmental trauma/c-ptsd/complex trauma. Consequently, it offers an excessive array of diagnostic labels for trauma-related issues–leading to pathologizing normal behaviors and over-diagnosis.

"The problem is that following chronic trauma, current clinical practice often reveals no diagnosis, inaccurate diagnosis... or inadequate diagnosis...all of which leads to misguided or complete lack of treatment plans. Further, because there is almost always considerable dysregulation of body (sensory and motor), affect (explosive/irritable or frozen/restricted), cognition (altered perceptions of beliefs, auditory and sensory-perceptual flashbacks and dissociation) and behavior

[3] The publisher of *Gender-Affirming Psychiatric Care* in Nov 2023.

(multiple forms of regression), the diagnosis of bipolar, oppositional defiant disorder/conduct disorder, attention deficit hyperactivity disorder (ADHD) or other anxiety disorders are confusingly made...But the importance is that the developmental trauma disorder would be *primary* and thus guide the treatment plan...and further refine the inclusion (or not) of other comorbid disorders." [4] "if the Editors of DSM V wanted only one trauma diagnosis, then arguably it should have been developmental trauma disorder." Id "the imprecision of DSM PTSD criteria for developmental trauma (our only present diagnostic option), which captures only a minority of these trauma cases, as low as 5 to 25% on two large data bases..." *Id.* However, the DSM erroneously made PTSD a primary diagnosis and C-PTSD secondary, and many doctors often overlook trauma screening before diagnosing or prescribing medication.

Petitioner suffered from Complex PTSD from a young age and had developmental delays in emotion (alexithymia), social cognition, and language[5]. She began seeking diagnosis and treatment for certain psychiatric conditions in 2013 and finally received a correct diagnosis of Complex PTSD from Dr. Melinda Kulish, Ph.D. in 2016 in Cambridge, Massachusetts. From 2013 to 2018, petitioner tried 13 brand-name medications from four categories, none of which provided long-term effectiveness, and each drug ended up causing side effects. Treatment resistance

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[4] *Commentary: Developmental Trauma Disorder: A Missed Opportunity in DSM V* (May 2014)

[5] A child who experiences developmental trauma before the age of 6 may, at a later stage, exhibit some behaviors that overlap with characteristics commonly associated with Autism (dysfunction of the Fusiform Gyrus of the brain). Both C-PTSD and Autism are dynamic disability, meaning their capacity of "doing a task" can change over time and in different situations. (unstable sense of self)

affects 20-60% of patients with psychiatric disorders. Petitioner believes this is primarily because the DSM is not comprehensive for training in psychiatry nor reliable for U.S. doctors to give informed diagnoses; and that the more effective/fast-acting treatments usually have no business with Big Pharma or insurance companies—such as ketamine infusion therapy administered by psychiatrist, MDMA-assisted therapy, dialectical behavioral therapy (DBT) programs, in-person neurofeedback session, etc. Currently, there is no standardized treatment plan for Complex PTSD. Individuals with this condition often need to explore various therapists, modalities, programs, medications, and self-education on psychotherapy to find effective care.

II. The Incident and the "fawn" trauma response[6]

On January 8, 2019, Petitioner had a depressive episode after an unfruitful five-year search for treatment around various areas in the United States. Petitioner reached out to various school mates via Instagram to confide in as a result of such episode. A fellow male student, pseudonymously known herein as John Roe, responded to Petitioner's outreach and engaged in communications with Petitioner intermittently for several hours during the night of January 8, 2019 via direct message on social media. Eventually, John Roe asked Petitioner whether her mental illness was depression and repeatedly invited Petitioner over to his dorm room which was on Columbia's campus.

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[6] *'Fight or Flight' Are Not the Only Ways People Respond to Sexual Assault* (Jan 2020) https://www.vice.com/en/article/fight-or-flight-and-harvey-weinstein-sexual-assault-trial-defense/

In October of 2018, a Columbia student named Kirk Wu committed suicide. His suicide was blamed by some in part due to a long-standing insufficiency of mental health services at Columbia University. Since the time of Wu's death, some members of the Columbia University community encouraged other students to reach out if they were in distress even to those who they never personally met prior. When John Roe invited Petitioner to his dorm room, Petitioner was under an impression that John Roe was trying to provide emotional support to the Petitioner in light of Kirk Wu's suicide. Petitioner subsequently went to John Roe's dormitory. After the initial 40-minute encounter, Roe then manipulated the petitioner into sex without her consent—including unprotected sex. Every new student at Columbia University is required to finish a pre-orientation tutorial concerning sexual assault prevention which covers the legal significance of consent and university policies. John Roe finished this pre-orientation tutorial and was thus aware of the legal requirement to seek affirmative consent from another person before engaging in any sexual activity with such person. Throughout their Jan 8 encounter, Roe never verbalized his intention to have sex with petitioner. Petitioner couldn't understand that her experience with Roe was sexual assault until April 2019, when she went to counseling for sexual health at Columbia's health center and revealed the details of the sexual encounter with Roe to a peer supporter.

From January 2019 to April 2019, petitioner had been encountering Roe in Butler library (university main library) on daily basis. Every time when she saw Roe showing up nearby or talking to her classmates in the library from that

semester, she felt unease, triggered, therefore could not concentrate. Eventually, petitioner stopped going Butler library to avoid Roe. Reduced use of university main library qualifies as "loss of educational benefits". In May 2019, petitioner confronted John Roe about the January 8 sexual encounter and the potential STI transmission between them. John Roe then begged petitioner to not report it to the University because he had previously been falsely sanctioned for sexual assault by the school in 2016, thus he was very fearful to go through the process again. From June 1 to July 22, 2019, Roe promised he would "be a good friend" to petitioner and would "make amends and commit to behavioral change" including seeking professional help. From June to July, 2019, with John Roe's acknowledgment of the sexual assault and his promise to behavioral change, petitioner was holding onto the hope that by not reporting John Roe to any authority might achieve restorative justice. At that time, petitioner had difficulty accepting the reality that she was sexually assaulted by someone she trusted. Petitioner agreed to give John Roe a second chance was in part motivated by her instinct for psychological survival. At some point, petitioner trauma bonded[7] to him, and as a result felt compelled to have a good outcome with him, including a friendship and by helping him with his behavioral change. However, the longer she stayed friends with Roe, the more reactive and unstable she became. Until the end of July 2019, Petitioner realized that John Roe never meant to address his behavior issues/didn't know how, and mischaracterized the petitioner to other students regarding their relationship.

[7] *Understanding And Treating Traumatic Bonds*, Teresa Descilo (2009-2010)

Disillusioned by Roe's duplicity, petitioner decided to report the January 8 incident to Columbia's Gender-based misconduct office ("GBM") in August 2019. In the same month, she also reported the aforementioned sexual assault to the New York City Police Department ("NYPD"). The person who completed the incident report and interviewed petitioner was subsequently interviewed by the GBM office as Witness#1.

From July 2019 to September 2019, GBM office referred petitioner to Counseling and Psychological Services ("CPS") within Columbia Health, where she was working with a clinical psychologist, Dr. Rachel Efron who had been working in Columbia Health over 28 years and specialized in sexual and childhood trauma. Dr. Rachel Efron explained that it's common for certain victims to feel attached to their abusers the way the petitioner had felt. Based on Dr. Efron's testimonials and research, the trauma response petitioner had during the incident was 'freeze,' and after the incident was 'fawn.' In particular, the 'fawn' response is commonly seen in people with petitioner's psychiatric disorder (C-PTSD). In 2022, petitioner made an original argument that the "fawn" response is a form of retroflection[8] under Gestalt therapy, evidenced by the phenomenon of "trauma bond":

> "When a person retroflexes behavior, he treats himself as he originally wanted to treat other persons or objects. He stops directing his energies outward in attempts to manipulate and bring about changes in the environment that will satisfy his needs; instead, he redirects his activity inwards and substitutes himself in place of the environment as the target for behavior. To the extent that he does this, he splits his personality into doer and done to." (Page 146) "the environment—mostly other persons—proved hostile to his efforts to satisfy his needs. They frustrated and punished him.

[8] *Gestalt Therapy: Excitement and Growth in the Human Personality* by Frederick S. Perls, Ralph Hefferline, Paul Goodman (1951), Cir. Ct. Doc.37 at A177.

In such an unequal contest—he was a child—he was sure to lose Consequently, to avoid the pain and dangerous entailed in renewed attempts, he gave up." (146) "Punishment has the effect, not of annihilating the need to behave in the way that met with punishment, but of teaching the organism to hold back the punishable responses. The impulse or the wish remains as strong as ever and, since this is not satisfied, it is constantly organizing the motor apparatus—its posture, pattern of muscular tonus, and incipient movements—in the direction of overt expression. Since this is what brings punishment, the organism behaves toward its own impulse as did the environment—that is, it acts to suppress it. Its energy is thus divided." (146) "What started as conflict between organism and environment has come to be an 'inner conflict' between one part of the personality and another part—between one kind of behavior and its opposite." "in repression, on the contrary, we have lost awareness both of what is repressed and the process by which we do the repressing." (147) "In practice, however, the undoing of a retroflection is not so straightforward. Every part of the personality comes to its defense as if to head off catastrophe. The person is overcome with embarrassment, fear, guilt, and resentment. The attempt to reverse the self-aggression, to differentiate the clinch of the two parts of the personality, is responded to as if it were an attack on his body, his 'nature', on his very life." [9](148) "A main reason for the fear and guilt in reversing retroflection is that most retroflected impulses are aggressions, from the mildest to the cruelest, from persuasion to torture...reversing the retroflection does not manufacture aggression that was not already there. It was there-but applied against the self instead of against the environment." (148) "It is a doing of one thing and also its opposite at the same time in such fashion s to achieve a net effect of zero. So long as the conflict endures, the use of the arm for other purposes is impaired, energies are squandered, and the state of affairs is the same as the military situation of a stabilized battleline. Here the battleline is within the personality." (162) "The only way that will work is an indirect one: become vividly aware of the symptoms, accept both sides of the conflict as *you*—this means to re-identify yourself with parts of your personality from which you have dis-identified, and then discover means by which both sides of the conflict, perhaps in modified form, can be expressed and satisfied." (166)

Consequently, some victims of sexual assault at certain stage of their recovery need to process their trauma in a "performative" fashion—as performative as carrying a mattress around campus. Columbia's Title IX Investigative Team, who had no clinical background, do not recognize "freeze" and "fawn" as trauma response

[9] "Trauma bond"

and reaction to fear. Although fear is an essential element of definition of coercion under Columbia 's then Title IX policies.

III. Columbia's 22-month Title IX proceeding

After petitioner's reporting, the GBM office voluntarily linked petitioner to a pro bono counsel from Sanctuary for Families—a non-profit organization providing serving domestic violence victims. Petitioner was never asked to sign a Retainer Agreement with the counsel, nor did the counsel ever explain to her the attorney-client privilege absence of a Retainer Agreement in a Title IX proceeding. During conversation, this pro bono counsel discouraged Petitioner from suing John Roe at civil court if Roe is not a wealthy individual like Harvey Weinstein, advised petitioner to exaggerate certain details of the alleged incident, asked from petitioner contact information of the NYPD detective she met and filed the incident report. From September 2019 to March 2020, whenever petitioner met with the old Title IX investigators regarding her case, they were able to precisely address her concerns/questions without petitioner revealing what's in her mind. Petitioner only discussed with her pro bono counsel about her concerns and questions every time before she met with the Title IX investigators at Columbia. Concerned that the pro bono counsel might have been collaborating with Columbia regarding complainant's case and overall situation, petitioner eventually decided to retain her own counsel, a former Manhattan prosecutor.[10]

[10] In retrospect, this pro bono counsel only ended up jeopardizing petitioner's Title IX case and the criminal case.

Although some general aspects of the Title IX complaint review process that mimic those of the criminal justice system, Title IX proceedings do not fall under the purview of the state or federal criminal courts, universities are not required to comply with the federal rules of Evidence. Therefore, suborning false testimony would not be a disbarrable offense for an attorney at Title IX proceeding within universities as it would at federal court.

From 2019 to 2020, Columbia was accused of anti-male/pro-female allegation in the case *Feibleman v. Trustees of Columbia University in City of New York, Slip Copy* (2020). The complainant in Mr. Feibleman's Title IX case who subsequently became witness in the lawsuit *Feibleman v. Trustees of Columbia Uni.* was also assisted by a pro bono counsel from Sanctuary for Families at both proceedings.

In January 2020, the GBM office had a complete staff turnover in an effort to evade discovery in *Feibleman*, and a dozen of Columbia's Title IX cases had paused, including Petitioner's case. since January 2020, the SVR advocates she had been seeing suddenly changed their belief that John Roe could be expelled by the University, although they still believe and validate petitioner's experience.

From February 2020 to June 2020, the Team conducted several interviews to parties and two additional witnesses. (hereinafter "Witness#2 and Witness#3") As part of the GBM procedure, witnesses will review evidence and testimonials submitted by parties regarding the alleged misconducts before they answer investigators' questions. Witness#2 and #3 saw petitioner's written submission which includes her explanation for once requesting Roe to give her his social media

password, that it was petitioner's concern [not her actual knowledge] that Roe might procure sex from [adult females] on social media—just like her own experience with Roe back in January 2019. However, after Witness#2 saw petitioner's testimonial during investigative interview, he then started to tell other students, through multiple ways and platforms, that Roe had been procuring sex from minors as young as 13-year-old on social media and preying on girls who are vulnerable and "friendless" (so they have no one to turn to about Roe's behavior).

Witness#2 reached out to all his mutual friends with Roe, asking around whether anyone they knew had any negative interpersonal experience with Roe and let those potential victims to contact him. Eventually two female students claimed to be sexually assaulted by Roe during 2017-2018 and a couple of other female students alleged intimate violence or sexual harassment by Roe. Since Witness#2 was interviewed by the Title IX Team in June 2020, he had been acting on petitioner's behalf (without her knowledge and permission), mischaracterized her as "friendless and scared " to other students that she does not associate with, improperly weaponized her personal[11] experience to retaliate against Roe, and emotionally blackmailed hundreds of community members to disconnect with, expose or even stalk Roe during online class ("loss of educational benefits") [in case he harm more 13-year-old or vulnerable girls].

After petitioner explicitly disapproved their retaliatory activities, Witness #2 then mischaracterized her to others as "a person of grievance" who cares only about

[11] Before petitioner sued Roe in October 2020.

herself and not about other sexual assault victims. Though not a legal expert or official person, Witness #2 had a sense that his behaviors might backfire someday. Therefore, he disguised his true intentions by exploiting others' victimhood and involving as many students as possible in his bullying activities to diffuse responsibility and preserve his public image. After all, Witness #2 was in a student leadership role in the Christian Union at Columbia.

In August 2020, Witness#2 encouraged those Roe's accusers to publicize their experience with Roe on Instagram anonymously to alert the public (although Roe can easily identify those individuals through their narratives—if those stories were true). Those published narratives, though made in good faith, virtually included no facts about the assault in question, including where and when it was perpetrated, the attack's severity, specific sexual/genital contact, etc.

There has never been a minor accused of Roe of sexual misconduct so far. All Roe's accusers of any sexual misconduct are female adults in Columbia community. However, the only reason why those new accusers chose to expose Roe publicly, at the risk of getting themselves into defamation suits, was because they were convinced by Witness#2 that Roe had been preying on minors as young as 13-year-old on social media.

In or around June 2020, petitioner informed the Team that her personal information was spread among other students and her victimhood was misused by Witness#2, and asked the Team to take action to protect her privacy and personal autonomy; Roe also reported to the Team that he was being retaliated (a prohibited

activity under Title IX) against by Witness#2 because he had continued to participate the Title IX proceeding to exercise due process rights instead of voluntarily admitting his assault on petitioner to the school—as he once promised to Witness#2 in July 2019. But the Team took no action.

Since February 2020, petitioner's case got delayed due to *Feibleman*; In October 2020, petitioner filed a civil lawsuit against John Roe based upon sexual assault, battery, infliction of emotional distress and prima facia tort at S.D.N.Y. In January 2021, petitioner also filed a complaint with Office for Civil Rights against Columbia based on its untimeliness as a form of deliberate indifference. In March 2021, Columbia then resumed the investigation oand started drafting the investigative report. In May of 2021, petitioner received the full Title IX investigative report including the analysis and findings.

In the findings the Team concluded that petitioner's sexual assault allegation was "not credible" [regarding her sexual assault allegation] and found Roe "not responsible" based on four grounds: (1) petitioner's change of perception about the incident was not corroborated by the April 29, 2019 session notes written by health center peer support[12]; (2) Witness#1/NYPD statements of the alleged sexual encounter being consensual (3) petitioner once "threaten" Roe [to seek professional help otherwise she will report him] and displayed "clear resentment", therefore she have [unspecified but bad] motive to cause Roe harm, thus her allegation must be

[12] The Team omitted the fact that Columbia has internal policy that refrain health care providers from giving direct advice regarding student's sex experience—including charactering their sexual encounter as assault (otherwise many its employees would be subpoenaed for potential legal proceeding)

false; (4) petitioner did not act like a victim of sexual assault after the alleged incident.[13]

Petitioner had explained and dispelled each of the above confusions in her investigative interview and written submission with evidence, but Columbia determined those as 'irrelevant' and chose not to address or rely on those materials, which had been distorted/falsified/ignored.

In the report, The Team truncated petitioner's recount of her experience with Roe and attempted to deflect her characterization of Roe to herself. In the analysis and finding section of the investigative report, the Title IX Team: (1) excluded Dr. Rachel Efron's expert testimonials/medical records in her medical records regarding her sexual trauma ("fawn") and relationship with Roe after the incident; (2) concluded that it was petitioner's pre-existing mental condition subjected her to abuse, though none of them had any clinical background; (3) sexualized details of the assault throughout the investigative report. (4) falsified the NYPD detective/Witness#1's testimonials to become exculpatory evidence. (5) refused to hold a live hearing with all witnesses' participation and cross-examination; (6) failed to address the likelihood of petitioner having willingly engaged in unprotected sex during her menstrual cycle, which resulted in her contracting a common STI[14] by April 2019; (7) concluded that it was the petitioner's pre-existing

[13] The GBM team resembles the DSM panel's mind pattern in focusing on the superficial issues while knowingly ignoring the underlying cause.
[14] An STI is the initial infection stage; an STD is when the infection has progressed to cause symptoms or damage to the body. There is a higher risk of transmitting STIs, among other health concerns, during menstruation.

psychiatric condition that subjected her to abuse (conflating the concepts of recidivism and revictimization).

The credibility determination in the report exhibited a pattern of two-way distortion: distorting every inculpatory evidence to be exculpatory; distorting every exculpatory evidence to be inculpatory as possible as they can. When distortion is not possible, they then treat such evidence with deliberate indifference–e.g. Mr. Feibleman's audiotape.

Columbia tailored this Title IX outcome, in part, due to its attempt to dispel anti-male/pro-female doubts surrounding *Feibleman v. Trustees of Columbia University in City of New York, Slip Copy* (2020).

There was a female student of Columbia named Emma Sulkowicz, who alleged of being raped by a peer student and then started to carry a mattress around campus symbolizing her unrecognized trauma and the unspoken reality at the time of her sexual violence, such artistic performance later drawn nationwide attention and media criticism. Upon belief, Columbia had been treating the male accused unfavorably and in a discriminatory manner ever since the Emma Sulkowicz's case in or around 2015, which may include depriving those male respondent of due process rights; Until *Doe v. Columbia Uni.* 831 F.3d 46 (2d Cir. 2016) and *Feibleman v. Columbia University* (S.D.N.Y.2020), in the wake of 2020 Title IX rules that provided stronger due process rights for accused males, Columbia then tilted to favor the male respondent, which include discriminating female complainants by depriving their rights and benefits entitled under Title IX such as

rights for expert witnesses. Columbia handled Petitioner's Title IX case the similar way it handled Feibleman's Title IX case back in 2016 with deliberate indifference to certain evidence.

IV. Policies of Deliberate Indifference[15]

There are several provisions in Policy that was drafted, interpreted at the odds with purpose of Title IX statute (amounts to an "official policy")[16], and the following implementation of those (amounts to an "official decision") can effectively make it impossible for a complainant to prove the alleged sexual assault occurred.

With respect to determining relevance of evidence the Policy prescribe:

> "The Investigative Team will . . . ask each party to provide a list of witnesses and/or any relevant documents or evidence to be considered. The Investigative Team has the discretion to determine the relevance of any proffered witness and/or evidence and determine that certain witnesses and/or evidence should be included or excluded in the investigative process."

The Title IX Team determined that Dr. Rachel Efron's expert opinion in petitioner's medical records is "beyond consideration" and therefore irrelevant (the absence of any discussion regarding petitioner's trauma response in report reflect this "official decision" of deliberate indifference). This determination can effectively make it impossible for victims of sexual assault to prove they were injured by the sexual assault, whose trauma response ("fawn" and "freeze") are counterintuitive and contrary to common sense.

With respect to inclusion/exclusion of evidence the Policy prescribe:

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[15] See Cir. Ct. Doc. 37, A166

[16] In *Hayut*, 352 F.3d at 751–53, there is no discussion about university policy's deficits or ambiguities.

> "A party has the right to request that evidence regarding their mental health diagnosis and/or treatment be excluded from consideration when responsibility is being determined," but that if a party "wishes to present evidence of their own mental health diagnosis and treatment, he/she may do so *in limited circumstances*."

The above provision at least have two interpretations: (1) A complainant (if the allegation were true[17]) has right to request that evidence regarding their mental health diagnosis and/or treatment be excluded from consideration when [Respondent]'s responsibility [for alleged misconduct] is being determined"; or (2) A Respondent has right to request that evidence regarding their mental health diagnosis and/or treatment be excluded from consideration when [the respondent]'s responsibility[for alleged misconduct] is being determined."

The above interpretations applies to two completely different context: (1) is applicable when a complainant wants to provide evidence regarding the alleged misconduct—medical records proving the injury resulted from the assault; while (2) is more applicable when a respondent wants to acquit themselves by showing the alleged misconduct is due to mental health issues, and allowing them to retain their own expert may have conflict of interest, so it's more appropriate to let the school to retain an unbiased expert for them.

Petitioner's case fits context (1), however the Title IX Team obviously chose the (2) interpretation and forbidden her to prove her injury resulted from the alleged misconduct.

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[17] For complainants who made false allegation and request evidence regarding their mental health to be included, may also have conflict of interest if were allowed to retain their own expert. However, in petitioner's case, all her expert testimonials are produced by Columbia's own employees.

With respect to expert witness/testimonial the Policy prescribe:

> "If the Investigative Team determines that expertise on a topic will assist the Hearing Panel in making its determination(s), the Investigative Team may include in the investigative record medical . . . expert testimony and materials . . . that it deems relevant and reliable. A party may also request that a topic be considered by an expert, but a party is not permitted to retain their own expert to consider a topic or submit testimony and/or records as part of the investigation. In the limited circumstance that the Investigative Team grants a party's request for an expert to consider a topic, then the Investigative Team will retain an appropriate expert."

The expert witness and their testimonials including Dr. Rachel Efron and SVR advocate were all Columbia's own expert/employees, originally referred to petitioner by the Title IX Team upon her request in 2019, to consider topics of sexual violence and trauma. After petitioner gained understanding of her own experience, Columbia then refused to admit those expert testimonials.

With respect to hearing process and panel the Policy prescribe:

> "witnesses are not involved in the hearing process."

> "[hearing panel is] tasked with evaluating and analyzing all relevant information in the Investigative Report ...as well as any relevant additional submissions and information presented by the parties in the hearing process."

The first provision above can be interpreted in two ways: (1) witnesses are prohibited from attending hearing in all circumstances; or (2) witnesses are generally not required to attend hearing, but if there is 'obvious need' to investigate an issue with witnesses' participation—and they are willing to, then they can attend.

Those two interpretations could subsequently lead to opposite procedures and outcomes. In petitioner's case, Witness#1's interview response is contradicted by Columbia's own healthcare policy and the original incident report written by himself. The Title IX Team's stereotype of sexual assault victim is contradicted by its' own training material for adjudicating sexual assault case (written by Dr. Rachel Efron). Without involving these individuals in a live hearing, it's impossible to prove her credibility if her allegation of sexual assault was true and to hold Columbia accountable if the Title IX Team had falsified evidence to tailor a predetermined outcome.

The second provision above in regard to hearing process/panel suggests that ever since the Team determined that petitioner 'medical records/expert testimonials as "irrelevant", it will be barred from reconsideration by subsequent hearing panel and appellate panel. What's not presented/involved in the hearing cannot be brought up in appellate review, since the latter is more concerned with whether the Team and hearing has complied with university policy and procedure in place—not in compliance with the purpose of Title IX statute.

The hearing process proved to be a matter of mere formality and it's within Petitioner's Title IX rights to not submit to a bad faith, discriminatory proceeding.

Upon observation, the Title IX Team tend to interpret its Policy by literal meaning of the English language, forgetting the purpose of Title IX statute: to adequately investigate sexual assault case on campus. Policy deficits ("official policy") and numerous improper, bad faith interpretations ("official decisions") make

it very likely for universities to violate Title IX by nominally complying with its own policies.

With respect to confidential resource on campus the Policy prescribe:

> "Confidential resources, such as counseling staff, Disability Services staff, and staff from Sexual Violence Response, are not obligated to report disclosures of gender-based misconduct except for aggregate statistical data that does not include individuals' names or identifying information. They will not share identifying information with SCCS about a student or an incident *without the student's permission*, except under exigent circumstances as required by law."

The Title IX Team chose not to interview the GHAP peer support, in part, due to its confidential status. According to the Policy, the confidentiality can be waived if the student gave permission (after all it's the student's private information these rules meant to protect), and the Title IX Team was never prohibited to interview staff in those office when students permitted them do so. By submitting her April 2019 session notes written by this GHAP peer support, Petitioner already waived her confidentiality voluntarily. On the other hand, the Title IX Team apply the confidentiality rule inconsistently: the session notes produced by this peer support was also confidential, however, the Team chose to admit it as evidence.

With respect to privacy and retaliation and the Policy prescribe:

> "If there is reason for concern about possible retaliation or harm, the University will take measures in consultation with the affected Students."
> "Any adverse action or threatened action, taken or made, personally or through a third-party, against someone who has reported a gender-based misconduct complaint (a Complainant) or has been the subject of a gender-based misconduct complaint (a Respondent) or any other individual (a Witness, Third-Party Reporter or Advisor, etc.) because

> the individual engages with the Office and/or the disciplinary process; Retaliation includes maliciously or purposefully interfering with, threatening, or damaging the academic or professional career of another individual, before, during or after the resolution of a report of gender based misconduct under this Policy."
> "It will inform all University affiliates, including students, faculty and staff participating in a disciplinary process, that they are expected to maintain the privacy of the process."
> "The University values the privacy of its students, employees, and other community members. Community members should be able to seek the assistance they need without fear that the information they provide will be shared more broadly."

However, in June 2020 when Petitioner reported to the Title IX Team that her private information related to the incident was spreading among the student body (because Witness#2 was mischaracterizing her to other students and misusing her victimhood to retaliate against Roe), the Title IX Team took no action to protect her privacy.

In June 2020, when Roe reported to the Title IX Team that he was being retaliated against and defamed by Witness#2, the Title IX Team took no action at all—this "official decision" also amounted to a form of deliberate difference (as participating Title IX proceeding is a protected activity under Title IX). The Title IX Team explained that since Witness#2 was no longer a student, even there is retaliation they cannot do anything. However, in the Policy there are provisions regarding sanctions on graduated students.

Columbia politicized its Title IX process at the expense of both male and females' Title IX rights. It has been misusing its federal funding by perpetuating a system of sex discrimination and hiring wrong individuals to handle sexual violence complaints, which need to be addressed in a balanced and realistic manner. Since

2015, for cases where the accused received correct findings and sanctions, are likely the coincidence that the party who is discriminated against based on her/his gender happened to be the guilty one (usually the male respondent). Instead of an outcome of an informed and fair proceeding.

On June 2, 2022, Judge José A. Cabranes, subsequently filed a separate opinion concurring in the judgment of the Court for *Vengalattore v. Cornell Univ.*, No. 20-1514, which includes the following:

> "The day is surely coming — and none too soon — when the Supreme Court will be able to assess the various university procedures that undermine the freedom and fairness of the academy in favor of the politics of grievance. In sum: these threats to due process and academic freedom are matters of life and death for our great universities. It is incumbent upon their leaders to reverse the disturbing trend of indifference to these threats, or simple immobilization due to fear of internal constituencies of the "virtuous" determined to lunge for influence or settle scores against outspoken colleagues."

REASONS FOR GRANTING THE PETITION

A. Conflict with statute 28 U.S.C. § 1654–a civil right to proceed *pro se* in federal court.

This petition feels like déjà vu, as the petitioner has presented the same arguments three times before the district court, the panel, and the full circuit court. In her pleading papers, petitioner sufficiently alleged and proved every element of deliberate indifference claim with material facts and concrete, uncontested evidence, and adequately contested the authenticity of the documents incorporated to the complaint by reference:

(a) Loss of educational benefits—i.e. reduced use of Butler library.

(b) "Clearly unreasonable"—policy deficits and improper interpretations on (1) determining relevance of evidence/victim's medical records showing injury from the alleged incident, (2) lack of live hearing with cross-examination when there is an "obvious needs" after falsifying NYPD detective's testimonial; (3) no meaningful measure to protect parties' privacy—resulting in students undergoing further sex harassment/retaliation; (4) noncompliance with its own procedure/failure to consider Dr. Rachel Efron's expert testimonial on "fawn" trauma response; (5) inaction to Roe's retaliation complaint.

(c) Concrete, uncontested evidence—Training material presented to the GBM office's hearing panelists for adjudicating campus sexual misconduct written by Dr. Rachel Efron in 2005, and the NYPD detective's original incident report contradicting Columbia's account of the detective's response during the Title IX investigative interview.

The district court completely ignored the above facts, supporting evidence, and pertinent precedents in favor of the represented party, leaving the petitioner's arguments unaddressed; and improperly relied on Columbia's Title IX report—which was produced from a proceeding not *quasi-judicial*. The panel and the full circuit court also turned a blind eye to the above facts, arguments, and evidence in the same way as the district court did, and additionally interjected a point on its own that was not thoroughly argued by the parties or analyzed by the court. As a result, this petition became inevitably demonstrative.

"An opportunity to be heard is the minimum procedural protection for every litigant, especially for *pro se* parties. *Pro se* petitioner's constitutionally protected interest is in a meaningful opportunity to be heard. Obviously, valuation of this interest includes the value of the underlying substantive claim which she may be either prevented or deterred from bringing. It also includes the value of this opportunity itself. A meaningful opportunity to be heard is a core due process value."[18] "Nowadays, the privileged not only can retain the best legal resource for themselves, but they can also control others' access to the legal resource (Columbia reached settlement with several counsels who once represented female students in filing Title IX complaints with courts and agency—certain provisions in the settlement agreement refrained them from taking new clients who intend to file Title IX complaints against it. (petitioner couldn't find a suitable lawyer within a limited timeframe, so she decided to proceed *pro se*, studied Title IX law, and prepared the initial Complaint in two weeks.) It's crucial to ensure self-represented parties to have a meaningful opportunity to appear before the court."[19] This case is a clear-cut candidate for this Court's review. This Court should grant certiorari and decide this petition without additional amicus briefs from either side and oral argument. (Respondent has seen all the arguments of the petition in petitioners' previous filings with the lower courts and waived live oral argument at the circuit court[20] in order not to incriminate themselves.) All the information and arguments

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[18] Case: 21-2348, Doc.28 at 3 (2d Cir. Oct.17, 2021)
[19] Cir. Ct. Doc.83 at 1.
[20] The law firm Columbia retained, Kaplan Hecker & Fink (recently changed to Hecker & Fink), has represented it on several Title IX lawsuits over the past years. If Columbia has been tailoring sexual

not directly related to the petitioner's own claim are equivalent to amicus briefs advocating for an adequate national Title IX policy.

"The facts in this case are so developed that nothing remains but questions of law—the determination of issues depends upon the construction of a written instrument (such as a contract) and its legal effect."[21] This court should remand this case with instructions that permit the petitioner to move for summary judgement.

B. This court should decide that responding to a sexual assault complaint in a fraudulent manner is a violation of Title IX

"When Congress acts pursuant to its spending power, it generates legislation "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Davis* *640 (1999) "Title IX relies on a contractual framework, and in contract law, 'bad faith' can be concluded when there has been dishonesty or misrepresentation of material facts in a course of dealing." Columbia's then-employee, Kevin Pitt, falsified witness's testimonials for Petitioner's Title IX case in favor of male respondents, which amounted to bad faith." D. Ct. Doc. 73, ¶¶ 249-250 (Sep 2022) See "breach-of-contract claim on the theory that no enforceable agreement was made in the first place. See Restatement (Second) of Contracts § 110 (1981) (statute of frauds); id. § 152(1) (mutual mistake); id.§ 163 (material misrepresentation)."*Soule*, Menashi Concurring at 4 footnote (Dec 2023)

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assault case outcomes for over a decade, that indicates the law firm could have been knowingly defending fraudulent activities. (Kaplan Hecker & Fink successfully represented E. Jean Carroll in her defamation and sexual battery cases against Trump. The boutique law firm only recruits former federal clerks nationwide.)

[21] Cir. Ct. Doc. 37 at A226

"There have been hundreds of 'erroneous outcome' lawsuits across nation in recent years—most of those are advocating due process (for the male accused) or academic freedom, and one way to preserve those rights is to require schools to hold a live hearing with cross-examination in its Title IX process when there is an 'obvious need'. However, there hasn't been a court issued opinions on this matter from the perspective of a female complainant. (1) A live hearing with cross-examination in a Title IX process is as important to female complainants as it is to male respondents, and (2) the requirement of admitting medical records from alleged victims into evidence. Without these two procedures, a school can freely tailor a predetermined Title IX outcome to meet its administrative needs, effectively making it impossible for a complainant to prove her sexual assault case." Cir. Ct. Doc. 50

C. This court should decide that responding to retaliation and privacy complaints with "immobilization" amounts to deliberate indifference under Title IX.

It's well-settled that no response or 'immobilization'[22] to a sexual harassment complaint amounts to deliberate indifference under Title IX, and retaliation is a recognized form of sexual harassment. Columbia first failed to protect parties' privacy in the Title IX process (no meaningful protective measure in place for parties' privacy), making both parties vulnerable to further sexual harassment[23], eventually resulting in retaliation against the male accused and

[22] *Vengalattore v. Cornell Univ.*, No. 20-1514, Jose Cabranes Concurring (2d Cir. June 2, 2022)
[23] *NJ boarding school student Jack Reid's parents reveal last conversation before suicide* (May 2, 2023)

loss of personal autonomy for the female accuser. Essentially, witness#2 robbed others' victimhood and used it as both sword and shield for his private agenda.

"In recent years, there has been a disturbing trend of weaponizing the victimhood of sexual assault across all contexts. Sexual assault is bad because it's a deprivation of one's personal autonomy (over the body), misusing others' victimhood to disguise a school-wide bully by third party is also a violation of personal autonomy (over decision-making). Witness#2 does not want to be perceived as emotional blackmailing or vengeful person, so he took advantage of Petitioner's 'friendless status' (not Roe) and told other students that it was her idea to expose Roe. Misusing or weaponizing victimhood of sexual assault takes two forms: (1) when someone misusing the concept of victimhood by making false allegation or disproportionate representation—i.e., Fiebleman's accuser, Amber Heard; (2) misusing others' victimhood for personal/political agenda—i.e., Andrew Cuomo, Witness#2. D. Ct. Doc. 78 at 13.

Group decision-making is often more prone to errors than individual decision-making due to the mutual reinforcement of behaviors within the group. This herd mentality can escalate the severity of bullying and inhibit bystander intervention, as individual students may fear becoming targets themselves. Therefore, it's imperative to safeguard the personally identifiable information of the complainant/respondent in a Title IX procedures to prevent peer retaliation.

Under the 2024 Title IX final rules, there is essentially no 'statute of limitations' for reporting a sexual harassment complaint to a school, and schools

can potentially sanction graduates retroactively for past offenses. It is only a matter of time before those who engaged in retaliation against Roe (defamation; due process rights) and disrespected the petitioner's personal autonomy (misusing her victimhood; privacy) are sanctioned by Columbia.

D. Intra-circuit conflicts with two prior rulings of the Court of Appeals for the Second Circuit

1. *Soule ex rel. Stanescu v. Connecticut Association of Schools, Inc.*

In *Soule*, a full court of the Second Circuit unanimously affirmed *Davis* and held that Title IX is "in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. 451 U.S. 1, 17 (1981) ...there can 'be no knowing acceptance if a State [or funding recipient] is unaware of the conditions or is unable to ascertain what is expected of it"; and the Court adopted a "sequencing approach" that has "the benefit of aiding in the development of the law...If courts skip ahead to ask whether damages will be available under *Pennhurst*, then there may be fewer opportunities for Title IX law to develop on the merits in suits seeking only monetary relief, which means fewer opportunities for funding recipients to be put on notice as to what Title IX requires of them."

The above arguments originated with this petitioner (Reply Br. 7, 10) as she reached merits of two deliberate indifference claims (Reply Br.10). The circuit court's decision on the appeal is inconsistent with *Soule*.

2. *Khan v. Yale Uni.*

In *Khan*, the circuit court ruled that universities' Title IX process does not qualify as quasi-judicial, thus absolute immunity does not apply. See "That court has now responded that absolute immunity does not apply in this case because Yale's disciplinary hearing was not a quasi-judicial proceeding in that it lacked procedural safeguards—e.g., an oath requirement, cross-examination, the ability to call witnesses, meaningful assistance of counsel, an adequate record for appeal—associated with judicial proceedings. See *Khan v. Yale Univ,* 347 Conn.1, 295 A.3d 855 (2023)." Consequently, courts should refrain from crediting information on universities' Title IX investigative report. On appeal, petitioner argues that the district court improperly credited Columbia's Title IX investigative report, the circuit court however ignored *pro se* petitioner's arguments.

E. Conflict with supreme court's ruling in *Davis*[24] on deliberate indifference under Title IX.

Respondent failed to recognize the contractual nature of Title IX as specified in *Davis*, let alone the validity or performance of such contract; and had "repeatedly failed to 'articulate consistent principles for how the recipient will determine which procedures apply' in its opposition to SAC and brief." Cir. Ct. Doc. 113 at 6.

F. Conflict with the Title IX 2024 Final Rules published [redacted]; which outline the minimum requirements that funding recipients nationwide must meet in exchange for federal funding.

Cir. Ct. Doc. 38 Brief at 5	Citations from Brief Overview ("O") and Summary ("S") of Key [25] Provisions of Title IX Final Regulations:

[24] *Davis v.Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, *640 (1999)
[25] *Brief Overview of Key Provisions of the Department of Education's 2024 Title IX Final Rule* (April 2024) Cir. Ct. Doc. 104 at 2

(2) lack of live hearing with cross examination & falsifying evidence	"...if the institution provides access to an investigative report/or description of the evidence, it must provide access to the underlying evidence upon the request of any party; a reasonable opportunity to respond..." (O 2, 3; S 7) "...a recipient must...create an audio or audiovisual recording, or transcript of any live hearing and make it available to the parties for inspection and review." (S 9)
(1) determining relevance of evidence (4) noncompliance with its own procedure	"If a recipient adopts grievance procedures that apply to the resolution of some, but not all complaints, articulate consistent principles for how the recipient will determine which procedures apply." (S 6) "nothing in the regulations precludes a recipient from requiring an employee or other person authorized...to participate as a witness in a Title IX proceeding..." (S 10)
(3) to protect parties' privacy	"...to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the sex-based harassment grievance procedures." "...prohibit a recipient from disclosing personally identifiable information obtained in the course of complying with Title IX..." (O 2; S 7, 8, 12)
(5) inaction to Roe's retaliation complaint	"...a recipient must prohibit retaliation, including peer retaliation... using the same procedures it uses for other forms of sex discrimination." (O 3, S 9)

After petitioner filed the second Fed.R.App.P. 28(j) letter[26], the panel decided the appeal before the other party's time to respond had elapsed.

G. The final frontier in Big Pharma accountability is the DSM-5

There have been national efforts to hold Big Pharma accountable in recent years—e.g. the federal 340B Drug Pricing Program, regulation of pharmacy benefit

[26] Cir. Ct. Doc. 104

managers (PBMs), and striking down the bankruptcy agreement in Harrington v. Purdue Pharma, etc. Most drugs involved in these actions are related to physical illnesses, particularly complex chronic conditions. Americans are prescribed medications either for physical conditions or mental conditions. The final frontier in Big Pharma accountability is the DSM, which significantly influences diagnostic criteria, approval of new drugs and how U.S. doctors are trained–which in turn affects whether a person will be prescribed psychiatric drugs at all.[27]

Lawmakers and those questioning the medical consensus on mental disorders should look into the DSM:

"With nearly 70 percent of DSM-5 task force members reporting financial relationships with pharmaceutical companies -- up from 57 percent for DSM-4...The DSM is developed by an APA-appointed task force and panels consisting of experts in various fields of psychiatry. But many of these experts serve as paid spokespeople or scientific advisors for drug companies or conduct industry-funded research." [28] "This manual plays a central role in the approval of new psychiatric drugs and the extension of patent exclusivity, and it can influence payers and mental health professionals who seek third party reimbursements" as well as "broadening diagnostic categories and influencing what drugs will be prescribed and covered by insurance" [29] "...key opinion leaders—"physicians who influence their

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[27] *This Teen Was Prescribed 10 Psychiatric Drugs. She's Not Alone*, The New York Times (Dec 2022)
[28] *DSM-5 Criticized for Financial Conflicts of Interest,* ABC News (March 2012)
[29] *Undisclosed financial conflicts of interest in DSM-5-TR: cross sectional analysis,* BMJ 2024;384:e076902 (Jan 2024)

peers' medical practice, including but not limited to prescribing behavior...the role of the key opinion leader is essentially a marketing one" *Id.*

"The revision effort leading to the publication of the ...DSM-5 was flawed in process, goals and outcome. The revision process suffered from lack of an adequate public record of the rationale for changes, thus shortchanging future scholarship. The goals, such as dimensionalising diagnosis, incorporating biomarkers and separating impairment from diagnosis, were ill-considered and mostly abandoned."[30] "It was argued that the revised criteria illegitimately expanded psychiatric diagnosis into areas of normal-range distress and other problems in living, undermining the integrity of psychiatry as a medical discipline, obscuring the meaning of its research results and potentially leading to unwarranted and possibly harmful treatment...'Many millions of people with normal grief, gluttony, distractibility, worries, reactions to stress, the temper tantrums of childhood, the forgetting of old age and 'behavioral addictions' will soon be mislabeled as psychiatrically sick..."*Id.* "DSM-5's false positives problem also consisted of 'acts of omission' in which DSM-5 failed to address manifest threshold issues. For example, the evidence is overwhelming that ADHD is highly over-diagnosed...However, instead of trying to refine the diagnostic criteria to address a massive false-positives problem, the DSM-5 instead altered the ADHD criteria to facilitate expanding diagnosis to adults, which risks perpetuating the same high false positive rate among adults as well by encompassing normal variation within disorder." Id.

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[30] *DSM-5, psychiatric epidemiology and the false positives problem*, J. C.Wakefield, Epidemiology and Psychiatric Sciences, 24(3): 188–196 (June 2015)

"Two lawsuits have been filed in federal courts in the US states of California and New Jersey asserting that the Novartis Pharmaceutical Corporation and the American Psychiatric Association conspired to create a market for methylphenidate (Ritalin), the drug used to treat hyperactive children, and expand its use."[31]

"[T]he record reflects that psychiatrists in general are at war over the propriety of the classifications of psychosis as specified by the American Psychiatric Association [DSM]."[32]

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted.

Jane Doe, *Pro se*

August 2024

Jane Doe

(Signature)

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[31] *US parents sue psychiatrists for promoting Ritalin*, Fred Charatan, BMJ. 2000 Sep 23; 321(7263): 723

[32] *The DSM in Litigation and Legislation*, Journal of the American Academy of Psychiatry and the Law, vol. 39 no.1 6-11, Ralph Slovenko (Feb 2011)