No. 17-6206

IN THE

SUPREME COURT OF THE UNITED STATES

SURAN WIJE, PRO SE,
PETITIONER

V.

DOCTOR ANN STUART; DOCTOR ROBERT NEELY; DOCTOR ANN STATON; DOCTOR JENNIFER MARTIN; DOCTOR DANIEL MILLER; DOCTOR BARBARA PRESNALL; DOCTOR ANALOUISE KEATING; DOCTOR LINDA RUBIN; DOCTOR STEPHEN SOURIS; DOCTOR CLAIRE SAHLIN; DOCTOR CHRISTIAN HART; DOCTOR DANIELLE PHILLIPS; AND TEXAS WOMAN'S UNIVERSITY,
RESPONDENTS

On Appeal from the United States Court of Appeals for the Fifth Circuit
No. 16-40495

PETITION FOR WRIT OF CERTIORARI REHEARING

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Petition for Writ of Certiorari Rehearing

According to Rule 44, a petition for rehearing of a writ of certiorari "shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented" (Rules of the Supreme Court of the United States (SCOTUS), p. 57). Earlier, Petitioner could not "see the forest for the trees," since he was so focused on each detailed element of a claim rather than the holistic legal procedure. Now, however, Petitioner will assess three substantially intervening circumstances not previously addressed.

1. Local Procedural Custom Caused Fundamental Error

The following are some of the technical difficulties Petitioner encountered as described by the Court of Appeals (citing JUDGMENT; Document: 00514077602; Document 116; PageID #: 745):

A. "Wije's initial brief must present his arguments, as we do not consider arguments raised for the first time in a reply brief. See *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993)."
B. "Wije's brief is insufficient and prevents us from being able to evaluate his legal argument."
C. "Wije has failed to preserve his argument on appeal."

Being new to brief writing and having been previously denied a legal education due to LSAC.org's "scarlet letter" flagging of students with invisible disabilities, Petitioner admittedly made many mistakes the first time writing a brief; however,

he promptly corrected these shortcomings in the reply brief—especially after reviewing Respondents' brief as an example or template.

Unfortunately, as explained in the item "A" local procedural tradition above, only the initial brief can present the arguments and an improved reply brief cannot. Unlike *Yohey* who was assigned a lawyer—twice—unrepresented Petitioner needed an iterative process where inevitable technical mistakes could be immediately rectified. Contrary to *U.S. v. Sanchez*, 88 F.3d 1243, 319 U.S.App.D.C. 180 where "courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result," the Fifth Circuit Court of Appeal's preferred practice of disregarding corrections coupled with its rehearing denial resulted in conflicting or prejudiced informal appellate procedures as well as the fundamental error or injustice of dismissing a plausibly meritorious case. Comparing the inconsistencies in *Yohey v. Collins* to *U.S. v. Sanchez*, the geographical harmonization of this procedural custom could help to create a more universally streamlined path to justice in the important circuit courts for both the represented and unrepresented alike.

2. Merits and Material Facts Overlooked

The characteristics of a meritorious lawsuit are a valid claim with adequate facts demonstrating a legal harm to the court. Furthermore, the Court of Appeals expounds in greater detail (PageID #: 745):

A. "The brief must, for example, set out the 'facts relevant to the issues submitted for review, describ[e] the relevant procedural history, and identify[] the rulings presented for review[.]' FED. R. APP. P.28(a)(6)."

B. "It must contain 'citations to the authorities and parts of the record on which the appellant relies[.]' FED. R. APP. P. 28(a)(8)(A)."

While Petitioner initially missed this mark in the first brief, he did reasonably satisfy this standard in the reply brief by utilizing the Issue, Rule, Analysis, and Conclusion (IRAC) method taught to law students.

Then, for each element in the Title VI, IX, and Section 1983 claims, Petitioner described the pertinent facts, cited case law, statutes, and legal authorities. Petitioner even provided documentary evidence that is difficult to dispute, because the evidence represents Respondents own policies, communications, and intentional actions. The Court of Appeals acknowledged some of these facts in the judgement when it stated (PageID #: 744),

> Wije alleges that he was discriminated against when a professor changed grading criteria after an exam was administered [analogous to voter ballot tampering] and again when that professor penalized him for missing class to attend an award ceremony [where the Fulbright awards are a federally-funded activity]. He engaged in the University's grade-appeal process and alleges that the individual defendants were involved at some point during that process. He also alleges that he was retaliated against when he was

denied admission to a graduate program in Women's Studies at the University [, which had never admitted a male of color].

However, despite all this, the material facts of the appeal—supported by evidence—were overlooked due to the local procedural tradition of *inadvertently* denying the unrepresented an iterative process where inevitable technical mistakes during brief writing could be cured. The facts and their documentary evidence in this plausibly meritorious case are in plain sight, but they are omitted due to that custom established in *Yohey*. Yet, that must not happen according to *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, where the "Court of Appeals has duty to insure that pro se litigants do not lose right to hearing on merits of claim due to ignorance of technical procedural requirements."

3. New Unproposed Issue:

When Respondents or attorneys for the State of Texas were permitted to evadingly brief Title VII (employment discrimination) rather than Title VI (education discrimination), a situation analogous to Govt. Code § 68081 arose:

> Before the Supreme Court, a court of appeal, or the appellate department of a superior court renders a decision in a proceeding other than a summary denial of a petition for an extraordinary writ, based upon an issue which was not proposed or briefed by any party to the proceeding, the court shall afford the parties an opportunity to present their views on the matter through

> supplemental briefing. If the court fails to afford that opportunity, a rehearing shall be ordered upon timely petition of any party.

Moreover, this new unproposed issue of Title VII employment discrimination is not "fairly included" (*People v. Alice* (2007) 41 Cal.4th 668, 677-679) in past issues briefed, because as Petitioner decried in his brief, "Title VII does not appear even once in all of Petitioner's [or Respondents'] filings, documents, and the two-volume record on appeal (ROA)" (please see Question 2 in the "Statement of the Case" section).

SCOTUS Rule 44 warns not to revisit previously presented matters and Petitioner would never waste time and money on a duplication of effort. In order to better educate himself on properly presenting questions, Petitioner has been visiting the SCOTUS website where he noticed that most briefs present only one question to this Honorable Court. Therefore, while still attempting to encapsulate past questions and concerns, Petitioner requests the Supreme Court to grant this petition for rehearing with a single sentence, single question:

> While difficult for a layperson or the unrepresented pro se to understand, our federal courts do not proffer justice, instead, they provide only a *chance* for justice; therefore, in a plausibly meritorious Title VI and IX discrimination plus retaliation claim for equal access to education with both longitudinal and documentary evidence of wrongdoing, when the Court of Appeals effectively prohibited corrections to briefing errors, denied a rehearing on the

merits, and permitted the State to evadingly brief Title VII (employment discrimination) rather than Title VI (education discrimination), was our enshrined *chance* for "Equal Justice Under Law" lost?

Certification of Pro Se (Unrepresented by Council)

I, Suran Wije, as an unrepresented pro se, hereby certify that this petition for rehearing is presented in good faith and not for delay.

Suran Wije

Suran Wije

Friday, December 29, 2017

Certificate of Service

I, Suran Wije, hereby certify that a true and correct copy of the foregoing instrument has been forwarded by first class mail [or, delivered in person] to each attorney/party of record on this date: Friday, December 29, 2017.

Suran Wije

Suran Wije

Friday, December 29, 2017