

No. 18-1473

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In the  
Supreme Court of the United States

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ZELMA RIVAS,

*Petitioner,*

v.

NEW YORK STATE LOTTERY,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Second Circuit

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PETITION FOR REHEARING

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OCTOBER 30, 2019

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## PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, petitioner respectfully petitions this Court for rehearing of its October 7, 2019 order dismissing the writ of certiorari for this case.



## REASONS FOR GRANTING THE PETITION

Deputy Solicitor General, Andrea Oser, from the New York State Attorney General's Office, The Capitol, Albany, New York 12224; (518) 776-2046. Email: andrea.oser@ag.ny.gov. On June 11, 2019, Deputy Solicitor General, Andrea Oser, signed a Supreme Court of the United States WAIVER, Supreme Court Case No. 18-1473, *Zelma Rivas v. New York State Lottery* stating: I DO NOT INTEND TO FILE A RESPONSE to the petition for writ of certiorari unless one is requested by the Court. Please enter my appearance as Counsel of Record for all respondents. I am a member of the Bar of the Supreme Court of the United States.

In September of 1997 plaintiff complained to the Defendants. Plaintiff advised the Defendants she was harassed by Lottery employees and working in a hostile work environment. In 1998, plaintiff filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). In 1998, the Defendants responded to plaintiff's complaint by harassing her. The Defendants constructed a room, on the lobby floor,

next to the security guards. On July 20, 1998, the Defendants ordered plaintiff to work in the room; she was isolated from all Lottery employees. The room could not be seen by anyone because it was hidden from sight. As a result of the forgoing, plaintiff filed a complaint regarding the violation of her Civil Rights and disparate treatment with the NYS Division of Human Rights, the EEOC and Federal Court. On March 6, 2000, the day before the Civil Rights hearing, the Lottery attorney and Lottery affirmative action officer, moved plaintiff out of the room into an office with other employees. At the Civil Rights hearing, the Defendants submitted false instruments; made to appear as if plaintiff worked in an office with other employees; and not confined in the room; isolated. The Defendant's conduct demonstrates the furtherance of the policy of discrimination, retaliation and the creation of a hostile work environment.

Plaintiff establishes proof of causation through direct evidence of retaliatory animus directed at her by the Defendants. The Defendants used their authority to further the creation of a discriminatory abusive hostile work environment. In 1999, plaintiff filed a complaint with the EEOC. On February 21, 2001, Assistant Attorney General (AAG), Roger W. Kinsey, represented the Defendants, the State of New York, the NYS Attorney General's Office, at the Examination Before Trial (EBT) held at the State Capitol. *See Rivas v. N.Y. Lottery*, No. 00-cv-746, Dkt. No. 58 (N.D.N.Y. Mar 26, 2002), *affd*, *Rivas v. N.Y. State Lottery*, 53 F.App'x. 176 (2d Cir. 2002). The AAG asked the plaintiff questions that violate Title VII of the Civil Rights Act of 1964. The AAG asked the plaintiff if she was married; how many children she had; the

sex of her children; her ethnic background; whether she was a naturalized citizen or born here; where was she born; if she had family in the area; where she resided; how long she lived at her current address; if she owned the property where she was living or if she was renting; if the property belonged to a relative; and other questions that violate Title VII of the Civil Rights Act of 1964. An attorney, representing the Union, (the plaintiff was a member of the Union), was also present at the EBT. While in the isolation room, plaintiff was denied access to the employee bulletin board. The bulletin board contains information on mandated State and Federal laws; and, other employee information. The AAG representing the Defendant, the State of New York, the NYS Attorney General's Office, conspired with the Defendants, and used legal means to perform illegal action; violating the plaintiff's Civil Rights and, harassing her throughout the legal proceeding. Every time the plaintiff complained she was getting harassed by Lottery employees, the Defendants retaliated against her by escorting her out of the Lottery building, in front of employees, and ordering her to be evaluated by the Employee Health System (EHS). The plaintiff was found fit to perform her job duties after every EHS examination. The Defendants used the EHS as a means to harass the plaintiff.

On September 21, 2010, at Arbitration, the plaintiff, a SG-11, submitted copies of her years of outstanding evaluations. The plaintiff was assigned the job duties of a SG-15 and SG-18. The plaintiff was responsible for responding to more than 10,000 emails a year from the questions @ lottery email box; among numerous other job duties. The plaintiff,

working out-of-title, for years, requested an upgrade. The plaintiff had the highest score on the SG-15 eligible list and, she was on several SG-18 eligible lists. The Defendants denied her request. The plaintiff continued to receive outstanding evaluations. Plaintiff alleges the preponderance of evidence she submitted at Arbitration proved she qualified for an upgrade but was denied under circumstances that give rise to an inference of unlawful discrimination. Plaintiff is of a minority status. Plaintiff's complaint sufficiently attests that the Defendants action was part of an ongoing discriminatory practice. As stated by an EEOC employee in his letter dated April 9, 2013 to the plaintiff, he states 'he spoke to the investigator assigned to the case and, the Lottery made the decision to fire you (plaintiff) years ago and never changed their position'. *Zelma Rivas v. New York State Lottery*, Sup. Ct., Case 18-1473, App.51a. At Arbitration, the plaintiff also submitted copies of years of police reports; letters to the US Department of Justice; her Employer; NYS Inspector General's Office, and many other agencies requesting relief from the Defendants' relentless harassment. The plaintiff provided credible evidence of specific acts of the violation of her civil rights and discrimination. On September 21, 2010, the Arbitrator agreed to drop all the charges against the plaintiff and vacate his decision to terminate her employment if she agreed to sign a Consent Award offered by the Defendants. The Consent Award stipulated the plaintiff agree never to work for the State of New York; or assist any Lottery employee facing disciplinary action, with the monetary funds she would receive from the Consent Award; among other stipulations. Worth mentioning, the Consent Award, was

a lump-sum payment of the plaintiff's vacation accruals. An attorney, from the plaintiffs Union, sent her a letter dated October 12, 2010, urging her to accept the Consent Award and resign. The Arbitrator and the Defendants charged the plaintiff with misconduct because she refused to accept the Consent Award and resign. The Consent Award is evidence that the Defendants reasons for terminating the plaintiff's employment are factually false. The Consent Award as an alternative to charges of misconduct against the plaintiff contradicts the Defendants reasons for her termination. The plaintiff maintains the credible evidence provided at Arbitration negates the validity of the false charges imposed by the Defendants and refutes their allegations. The Defendants did not act in good faith or behave with the highest standard of integrity and transparency. The Defendants behaved in a manner that would be construed as against the best interests of the plaintiff. The Defendants misconduct; terminating the plaintiff's employment, by deceptive means, caused the plaintiff and her family undue suffering. The plaintiff plausibly alleges that the Defendants took an adverse employment action against her because she opposed unlawful employment practices. It is inconceivable that the Defendants would offer the plaintiff a Consent Award as an alternative to charges of misconduct, if the charges levied against her were true.

In December 2012, the plaintiff was hired by the Office of Temporary and Disability Assistance (OTDA) as a Fair Hearings Specialist SG-14 and assigned to work on the 15th floor, where she remains; to date. The plaintiff is blacklisted and targeted. By order of management, employees working for OTDA, are



prohibited from associating with the plaintiff. After almost seven years of working for OTDA, hundreds of employees employed by OTDA, the plaintiff does not have a working relationship with any OTDA employee. Shortly after becoming permanent State employee, at OTDA, plaintiff inquired about promotional opportunities. Plaintiff was advised by an OTDA employee, OTDA management made it unequivocally clear, the only promotion the plaintiff would receive would be into the street. The plaintiff, has a Master's degree. The plaintiff has gone on more than one hundred interviews within OTDA and other State agencies; combined. All opportunities of advancement have deliberately been thwarted by the Defendants.

Plaintiff plausibly alleges that the employer took an adverse employment action against her because she opposed unlawful employment practices. *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 90 (2d Cir. 2015). The Defendant company "blacklisted" the plaintiff; a former employee. Plaintiff states a claim for retaliation. *Wannamaker v. Columbia Rope Co.*, 108 F.3d 462, 466 (2d Cir. 1997). Plaintiff alleges, the Defendants took adverse employment actions against her at her subsequent jobs.



### CONCLUSION

For the forgoing reasons, and for the reasons stated in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial and grant the petition for writ of certiorari and rehearing of this case.

Respectfully submitted,

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OCTOBER 30, 2019

**RULE 44 CERTIFICATE**

I, Zelma Rivas, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

  
Signature

Executed on October 28, 2019  
Date

  
Notary Public

**Shylla Beyer**  
Notary Public, State of New York  
Qualified in Saratoga County  
No. 01BE6325404  
Commission Expires May 26, 20**23**