

NO: 18-6717

**IN THE SUPREME COURT OF THE UNITED STATES**

LEI YIN -PETITIONER

Vs.

THERMOFISHER SCIENTIFIC -RESPONDENT

*ON WRIT OF CERTIORARI*

*TO THE UNITED STATES COURT OF APPEALS*

*FOR THE FIRST CIRCUIT*

**PETITION FOR REHEARING**

LEI YIN, Pro Se living with SSDI

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CASE #18-6717

Pursuant to Rule 44 of this court, Lei Yin, a Pro Se living with SSDI as petitioners, hereby respectfully petition for rehearing of this case before a full nine-Member Court.

1. This case involves a challenge by the federal court systems (US District Court of MA, US Court of Appeals for the First Circuit) to a US citizen's fundamental Constitutional Right that "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.C. § 1654, Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92).

Briefly, my Personnel Record from my previous employer ThermoFisher Scientific (back in 2010) had been destroyed after I had left ThermoFisher without my acknowledge and without my consent. A brand new set of documents had been made up by Thermo Fisher as my Personnel Record on after my departure in 2010, without my acknowledge and without my

consent. The newly madeup set of documents had released to many third parties as my HR record without my acknowledgement and consents.

Please NOTED that right before I left Thermo Fisher in 2010, I had received an Official Award from Thermo Fisher **to** honor my excellent service in Thermo Fisher. But the newly made-up fake version of my "Personnel Record" had the worse possible negative statements that guarantee to fail my job huntins. My family had broken up. I was suffered severe depression, my wife had left me, and she had sent me to prison and hospitals for numerous times for treatments. I am living on SSDI for many years.

After I had found out my Personnel Record in Thermo Fisher had been updated without my acknowledge, I had filed a case against Thermo Fisher in US Federal District Court in 2017. The Court had refused to issue Summons to me not only after the case had been opened on May 15, 2017 (17-cv-10900), but also after my show-cause-statement had been approved by the seating District Judge on September 26, 2017. Seeing the Federal Rules Of Civil Procedure (Rule 4) being obstructed by Federal District Court , I had filed formal complaint to Chief Judge of District Court of MA and to the first circuit of Appeals Court separately on December 2<sup>nd</sup>, 2017. One week after I had filed complain, the District Judge dismissed my case on Dec 11, 2017. Appeal was timely filed, and appeal was dismissed by 1<sup>st</sup> Circuit on July 11, 2018. Petition of Rehearing and Clairification was filed on July 17, 2018, in which my Pro Se Right and Constitutional Rights were declared to 1<sup>st</sup> Circuit. Petition for Rehearing was denied by 1<sup>st</sup> Circuit on August 1<sup>st</sup>, 2018 .

Petition for a Writ of Certioari was timely filed and was denied by this court on Jan 7, 2019. Petition for Rehearing was timely filed.

Since Thermo Fisher had faked my HR files and given the possible worsen performance rating to third parties, my family had broken up. I was suffered severe depression, my wife had left me, and she had sent me to prison and hospitals for numerous times for treatments. I am living on SSDI for many years.

I am a Pro Se living with SSDI for the past 8 years come to you, to ask you to protect my Constitutional Right, including the right to be protected by Due Process and Due Fairness in Federal Court system.

2. This case involves a challenge by the respondent Thermo Fisher Scientific to well-stated federal and state laws and Regulations on employee Personnel Record Law. Fair Labor Standards Act (FLSA) requires employers must keep for at least two years all records (including wage rates, job evaluations, seniority and merit systems, and collective bargaining agreements) that explain the basis for paying different wages to employees of opposite sexes in the same establishment.

In Massachusetts, the Personnel Record Law, M.G.L. c. 149, §52C (the “Law”), sets out what must be included in a “personnel record” as well as various employer obligations and employee rights concerning personnel record access, challenges and retention. In Massachusetts, Chapter 240 of the Acts of 2010, section 148, employers are required to notify workers within 10 days when any addition to their personnel record is made, if that addition could negatively impact the employee’s employment status, pay, salary increase, prospects for promotion, transfer or training, or if the information could result in disciplinary action. In addition, the Massachusetts employee has the right to inspect his or her personnel file after receiving such notification. The law signed by Governor Deval Patrick was made retroactive to August 1, 2010. Although the new law limits the employee’s inspection of his or her personnel file to twice per calendar year, that limit excludes inspections triggered by notification that new negative material has been added. Employers must make the personnel file available to an employee within 5 business days after a written request by the employee.

My Personnel Record from my previous employer Thermo Fisher Scientific had been destroyed after I had left Thermo Fisher without my acknowledge and without my consent. A brand new set of documents had been made up by Thermo Fisher as my Personnel Record on after my departure, without my acknowledge and without my consent. The newly

madeup set of documents had released to many third parties as my HR record without my acknowledgement and consents. Right before I left Thermo Fisher, I had received an Award from Thermo Fisher to honor my excellent service in Thermo Fisher, the newly madeup fake version of my "Personnel Record" had the worse possible negative statements that guarantee to fail my job huntins.

My requests to Thermo Fisher to get access to my so-called Personnel Record had been denied by Thermo Fisher. There was also a written agreement between me and Thermo Fisher regarding reference check shortly I left Thermo Fisher in 2010 and that Agreement had also been broken up by Thermo Fisher.

My family had broken up. I was suffered severe depression, my wife had left me, and she had sent me to prison and hospitals for numerous times for treatments. I am living on SSDI for many years, with each day taking about 15 prescriptions. My life is ruined by malicious act of respondent Thermo Fisher.

About the time to issue Summons to plaintiff in Federal Court, Federal Court Law on Proposed Rule and Forms Governing Proceedings are crystal clear. In CONGRESSIONAL ACTION ON PROPOSED RULE AND FORMS GOVERNING PROCEEDING UNDER 28 U.S.C. §§ 2254 AND 2255, and ORDERS OF THE SUPREME COURT OF THE UNITED STATES ADOPTING AND AMENDING RULES, "Rule 4. Process (a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. (b). Same: Form. The summons shall be signed by the clerk, be under seal of the court, contain the name of the court and the names of the parties, be directed to the defendant,.....(Appendix N). In the Book "Federal Civil Rules Handbook" 2017, by Baisker\_Mckee, Janssen, Corr "RULE 4 SUMMONS (b) Issuance. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant." It is clear in my case, that on May 11, 2017, the clerk

“shall” and “must” sign , seal , and issue it to the plaintiff. Seating Judge’s instruction to Clerk not issuing summons to a Pro Se plaintiff has clearly violated Rule 4, set by United States Congress and United State Supreme Court. Since the seating Judge is a Federal District Court Judge, and his violation of Federal Court Rules had been further validated by United State Appeals Court for 1<sup>st</sup> Circuit, only United States Supreme Court have the power to correct those courts’ violation to Rule 4.

The seating Judge had sited “Case is dismissed for failure to state a claims upon which relief can be granted” on Dec 11, 2017, shall also be corrected for obvious two reasons. The twelve Claims in present filling are widely covered from discriminations (Count One, Count Two), retaliation (Count Five), defamation (Count Eleven), to breach of contract (Count Eight), breach of covenant of good faith and fair dealing (Count Nine), Tort (Count Eleven) etc. Many of those claims have no filling limitation and have no CAP limitation for relief. Written evidence provided to court, for example, has already proven the Count Eight Claim which is breach of contract. As for Tort Claim (Count Eleven), all four elements of TORT are clearly there : Defendant acted intentionally or recklessly; and Defendant's conduct was extreme and outrageous; and Defendant's act is the cause of the distress; and Plaintiff suffers severe emotional distress as a result of defendant's conduct. More importantly, at this early stage before Discovery phase, I donot need to prove my Claims. The Court will have to believe what I Claimed are true.

The present case is about whether the Rule set by United State Congress and ordered by United States Supreme Court shall be followed by United States District Court District of Massachusetts and United States Court of Appeals for the First Circuit. Or the Federal Court System will treat a poor Pro Se differently following a separated procedure.

The present case is also about whether a Pro Se’s rights, as provided and protected by United States Constitution shall be preserved in the daily practice of United States Federal Courts System.

The present case is about whether a party like Thermo Fisher can maliciously deprive a citizen's life and health, and his constitution right to pursue happiness.

For all above reasons, the petition for rehearing shall be granted.

Respectfully submitted.



Lei Yin, Pro Se with disability SSDI

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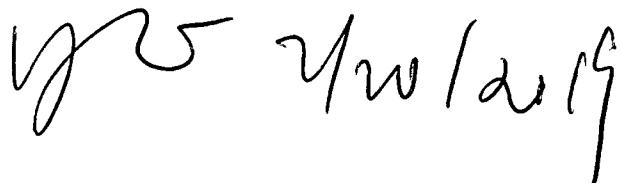
Andover, MA 01810

Feb 20, 2019

**Certificate of Counsel**

**I hereby certify that this petition for rehearing is presented in good faith and not for delay.**

**Lei Yin, Pro Se with disability**



**Certificate of Service** (I , Lei Yin, certify that I have this day, Feb 20th, 2019,  
served copy of the foregoing by first class mail to :

Mr Jack Levitan, Clerk Office  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543



and TO: Andrew C. Pickett, Jackson Lewis P.C. 75 Park Plaza, 4<sup>th</sup> Floor, Boston, MA  
02116 [Andrew.Pickett@jacksonlewis.com](mailto:Andrew.Pickett@jacksonlewis.com)