

No. 18-8764

# Supreme Court of the United States

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SUPREME COURT, U.S.

Tatyana Evgenievna Drevaleva

*Petitioner Pro Se*

vs.

FILED  
JUN 25 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

1) The U.S. Department of Veterans Affairs

2) Mr. Robert Wilkie in his capacity as an acting Secretary of the U.S.

Department of Veterans Affairs

*Respondents*

~~FILED~~  
JUL 18 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth  
Circuit

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## PETITION FOR REHEARING

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Tatyana E. Drevaleva

Petitioner Pro Se

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## **Table of Contents.**

I.	Part 1. Appointment of a Counsel in a Title VII case.....	6
	Statement of Facts.....	7
	Legal Standard.....	7
II.	Part 2. Whether a Title VII Plaintiff is eligible for an interlocutory Appeal as outlined in 42 U.S.C. §2000e-5(j).....	12
III.	Why this Petition shall be granted.....	16
IV.	Conclusion.....	16

## Table of Authorities

### Statutes

The U.S. Constitution.....	14
Article III, Section 2 of the Constitution of the United States.....	8
28 U.S.C. §1291.....	13, 15
28 U.S.C. §1292.....	13, 15, 16
28 U.S.C. §1915(d).....	11
42 U.S.C. §2000e-5.....	8
42 U.S.C. §2000e-5(f)(1).....	6, 11
42 U.S.C. §2000e-5(f)(5).....	13, 14
42 U.S.C. §2000e-5(j).....	12, 13, 15
Title VII of the Civil Rights Act of 1964.....	6, 7, 8, 10, 11, 12, 14, 15, 16

### Rules

Rule 53 of the Federal Rules of Civil Procedure.....	13
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## Case Law

<i>Bradshaw v. United States District Court for the Southern District of California</i> , Respondent, <i>Zoological Society of San Diego</i> , Real Party in Interest,	
No. 83-7247 (9th Circuit, 1984).....	9
<i>Bradshaw v. Zoological Soc. of San Diego</i> ,	
662 F.2d 1301, 1318 (9th Cir. 1981).....	6, 7, 9, 10
<i>Branch v. Cole</i> , 686 F.2d 264, 266 (5th Cir. 1982).....	11
<i>Camps v. C &amp; P Telephone Co.</i> , 692 F.2d 120, 126 (D.C.Cir.1981).....	12
<i>Caston v. Sears, Roebuck &amp; Co.</i> , 556 F.2d 1305, 1309 (5th Cir.1977).....	12
<i>Drone v. Hutto</i> , 565 F.2d 543, 544 (8th Cir. 1977).....	11
<i>Gonzales v. Carlin</i> , 907 F.2d 573 (5th Circuit, 1990).....	11, 12
<i>Maclin v. Freake</i> , 650 F.2d 885, 888 (7th Cir. 1981).....	11
<i>Mallard v. United States District Court</i> , 490 U.S. 296, 304-05 (1989).....	7

<i>Manning v. Lockhart</i> , 623 F.2d 536, 540 (8th Cir. 1980).....	11
<i>Neal v. IAM Local Lodge 2386</i> , 722 F.2d 247, 250 (5th Cir.1984).....	12
<i>Peterson v. Nadler</i> , 452 F.2d 754 (5th Cir. 1971).....	11
<i>Shields v. Jackson</i> , 570 F.2d 284, 285-86 (8th Cir. 1978).....	11
<i>Ulmer v. Chancellor</i> , 691 F.2d 209, 213 (5th Cir.1982).....	6, 10, 11
<i>White v. Walsh</i> , 649 F.2d 560, 563 (8th Cir. 1981).....	11

Petitioner Tatyana Drevaleva is hereby submitting a Petition for Rehearing of the Court's Order denying my Petition for a Writ of Certiorari pursuant to Rule 44 of the Rules of the United States Supreme Court.

**Part 1. Appointment of a Counsel in a Title VII case.**

Questions presented:

- 1) Appointing a Counsel to a Title VII Plaintiff pursuant to 42 U.S.C. §2000e-5(f)(1), shall the District Court use the elements described in *Bradshaw v. Zoological Society of San Diego*, 662 F.2d 1301 (9th Cir.1981) or the elements described in *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir.1982)?
- 2) What “Commission” is described in 42 U.S.C. §2000e-5 – the Equal Employment Opportunity Commission or the Genetic Nondiscrimination Study Commission?
- 3) Shall the District Court also appoint a Counsel to a Plaintiff who filed a Complaint alleging Age Discrimination or Disability Discrimination, Failure to Provide with Reasonable Accommodations?

4) Shall a trial in the Title VII case occur in the State where the Plaintiff was discriminated and not in the State where the Plaintiff filed a Complaint?

### **Statement of Facts.**

On April 18, 2019, the Court of Appeals for the 9<sup>th</sup> Circuit affirmed the Order of the District Court of Northern California that denied my request to appoint a Counsel in a Title VII case. The Panel didn't identify any reasons why it affirmed the Order. The Panel named my Appeal of the District Court's Order denying my request to appoint a Counsel frivolous and dismissed my Appeal.

### **Legal Standard.**

On November 19, 2018, Hon. Judge William Alsup denied my request to appoint a Counsel in a Title VII case. The Judge cited *Mallard v. United States District Court*, 490 U.S. 296, 304–05 (1989) and claimed that “there is no constitutional right to appointment of counsel in civil cases.” Also, the Judge cited *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981) and stated that the Court had to evaluate the following Plaintiff's conditions in order to appoint a Counsel:

- (1) plaintiff's financial resources
- (2) plaintiff's efforts to secure counsel
- (3) whether plaintiff's claims have merit.

The Judge denied my request to appoint a Counsel because I hadn't demonstrated my efforts to secure a Counsel.

I objected. I said that I was discriminated and unlawfully terminated from my job in the State of New Mexico, and I filed a Complaint for Damages in the State of California. Title VII is not a civil case. It is a criminal case pursuant to 42 U.S. Code §2000e-5 where the word "criminal" was pronounced three times. I said that, because Title VII is a criminal case, the trial shall occur in the State of New Mexico pursuant to Article III, Section 2 of the Constitution of the United States that says that "The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

Therefore, I demonstrated to the District Court that I was not even looking for the Counsel because I didn't know in what State I should be looking – in California where I filed my Complaint or in New Mexico where the trial could

occur. The Counsel who is licensed to practice law in California may not be licensed to practice law in New Mexico, and vice versa.

I will make a suggestion that the panel agreed with Mr. Alsup citation of the Second factor listed in *Bradshaw v. Zoological Soc. of San Diego*, 662 F.2d 1301, 1318 (9th Cir. 1981) - plaintiff's efforts to secure counsel, and the Panel affirmed Mr. Alsup's Order because I hadn't demonstrated that I was looking for a Counsel.

However, the Panel's decision conflicts with the subsequent case decided by the 9<sup>th</sup> Circuit.

Read *Bradshaw v. United States District Court for the Southern District of California*, Respondent, *Zoological Society of San Diego*, Real Party in Interest, No. 83-7247 (9th Circuit, 1984),

“The three factors listed in the text are applicable in all cases. They are usually the only relevant factors. The record before us does not provide any basis for consideration of other factors in this case. We do not mean to suggest, however, that in other cases where the particular facts so warrant other similar factors may not be taken into account by the district courts, so long as they are treated in a manner consistent with the policy of the statutory provision.”

I believe that my situation is different from *Bradshaw* because I was discriminated in New Mexico and filed a lawsuit in California. Therefore, I believe

that the Factor 2 in Bradshaw (the efforts to find a Counsel) was inapplicable to me. However, the District Court was so rigid in its unwillingness to deviate from the three factors described in *Bradshaw*, and the Court refused to take into consideration other factors that were present in my case.

The Panel's decision also conflicts with the point of view of the 5<sup>th</sup> Circuit which applied a different standard to appointing a Counsel to a Title VII Plaintiff.

The Fifth Circuit has directed that requests for appointment of counsel in civil cases will be granted only upon a showing of "exceptional circumstances" considering four factors:

- (1) the type and complexity of the case;
- (2) whether the [pro se litigant] is capable of adequately presenting his case;
- (3) whether the [pro se litigant] is in a position to investigate adequately the case; and
- (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.

See *Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir.1982.)

I checked the citation of *Ulmer*, "A federal court has discretion to appoint counsel if doing so would advance the proper administration of justice. 28 U.S.C. § 1915(d) (1976). Although "(n)o comprehensive definition of exceptional circumstances is practical," *Branch v. Cole*, supra, 686 F.2d at 266, a number of factors should be considered in ruling on requests for appointed counsel. These include: (1) the type and complexity of the case, *Branch v. Cole*, supra, 686 F.2d at 266; *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981); (2) whether the indigent is capable of adequately presenting his case, *Branch v. Cole*, supra, 686 F.2d at 266; *Maclin v. Freake*, supra, 650 F.2d at 888; *Drone v. Hutto*, 565 F.2d 543, 544 (8th Cir. 1977); (3) whether the indigent is in a position to investigate adequately the case, *Maclin v. Freake*, supra, 650 F.2d at 888; *White v. Walsh*, 649 F.2d 560, 563 (8th Cir. 1981); *Shields v. Jackson*, 570 F.2d 284, 285-86 (8th Cir. 1978) (per curiam); *Peterson v. Nadler*, 452 F.2d 754 (5th Cir. 1971); and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination, *Maclin v. Freake*, supra, 650 F.2d at 888; *Manning v. Lockhart*, 623 F.2d 536, 540 (8th Cir. 1980)."

Also, see *Gonzales v. Carlin*, 907 F.2d 573 (5<sup>th</sup> Circuit, 1990), "Congress specifically authorized courts to appoint counsel for Title VII complainants in suits brought under Title VII. 42 U.S.C. § 2000e-5(f)(1). Thus, "whatever the fate of

such cases with respect to the *in forma pauperis* statute, the District Court should not neglect a highly remedial provision of Title VII itself in considering whether to appoint a lawyer to represent" a Title VII plaintiff. *Camps v. C & P Telephone Co.*, 692 F.2d 120, 126 (D.C.Cir.1981). District courts analyzing the merits of a Title VII plaintiff's request for counsel should consider: (1) the merits of the plaintiff's claims of discrimination; (2) the efforts taken by the plaintiff to obtain counsel; and (3) the plaintiff's financial ability to retain counsel. *Caston*, 556 F.2d at 1309; see also *Neal v. IAM Local Lodge 2386*, 722 F.2d 247, 250 (5th Cir.1984). No single factor is conclusive."

Source: <https://www.leagle.com/decision/19901480907f2d57311358>

According to *Gonzales*, no single factor is conclusive. However, Hon. Mr. Alsup made a conclusion based on a single factor that I didn't demonstrate the efforts to secure the Counsel, denied my request to appoint a Counsel, and named my Appeal frivolous. The 9<sup>th</sup> Circuit affirmed Mr. Alsup's Order without explaining the reason about why this decision was reached.

**Part 2.** Whether a Title VII Plaintiff is eligible for an interlocutory Appeal as outlined in 42 U.S.C. §2000e-5(j.)

On May 23, 2019, Chief Justice of the 9th Circuit Mr. Sidney Thomas denied my “Motion to relieve the plaintiff from the responsibility for a frivolous appeal” stating that the 9<sup>th</sup> Circuit didn’t have jurisdiction over my Appeal. On May 31, 2019, the 9<sup>th</sup> Circuit issued a Mandate confirming that the Judgment that was entered on January 24, 2019 took effect.

Read 42 U.S.C. §2000e-5,

“(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28.”

Also, read 42 U.S.C. '§2000e-5(f)(5),

“(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.”

To me, it is absolutely clear that the Legislature intended to expedite every Title VII case. It is outlined at 42 U.S.C. §2000e-5(f)(5) – “to cause the case to be in every way expedited.” However, the reality is that almost every Title VII case lasts for years and even decades. I wonder why the U.S. Courts don’t want to follow the Legislative intent and to shorten the period of suffering of a Title VII Plaintiff. Reading case law, I discovered that almost every Title VII case is fiercely rejected by the District Court, and this rejection is subsequently supported by the Courts of Appeals and even the U.S. Supreme Court. The Plaintiff is pushed into slavery and involuntary servitude which is against the U.S. Constitution. My personal experience is that I’ve already suffered for two years as a victim of a Title VII discrimination committed by the Federal Government, and it seems that nobody cares about me. The U.S. District Court is not in hurry to expedite my case. Hon. William Alsup procrastinated for 8 months before he is ready to hear my Motion for Leave to File an Amended Complaint and two other Motions. The Chief Judge of the District Court of Northern California Ms. Hamilton recklessly ignored my Application to Appoint a Master or to certify my case to the Chief Justice of the 9<sup>th</sup> Circuit. She simply didn’t respond to my Application. The U.S. Supreme Court denied my Petition for a Writ of Certiorari No. 18-9250 where I requested to expedite my other case. My question is – did the Justices of the U.S.

Supreme Court have a personal experience being thrown out of job and suffering from the absence of money and benefits? Why shall a Title VII Plaintiff whose only fault is that she is a woman suffer for 2 years from being thrown of job only because she is a woman???

My point of view is as follows:

Creating Section (j) of 42 U.S.C. §2000e-5, the Legislature intended to expedite every Title VII case as much as possible. Therefore, the Legislature allowed the Courts to process interlocutory Appeals of the Title VII Plaintiffs pursuant to 28 U.S.C. §1292. However, the 9<sup>th</sup> Circuit refused to process my interlocutory Appeal saying that the decision of the District Court was not final. This decision is against the plain language of 42 U.S.C. §2000e-5(j) that specifically says that a Title VII Plaintiff is entitled to an interlocutory Appeal pursuant to 28 U.S.C. §1292. It is just a common sense that a Title VII Plaintiff doesn't have to wait for a few years until the fraudulent and erroneous decision of the trial Court becomes final, the Plaintiff will be eligible to appeal it pursuant to 28 U.S.C. §1291, and the Court of Appeals will procrastinate for a few more years before it issues an Opinion. The Plaintiff needs food and money every day, and the Plaintiff can't wait for a few years until the Courts make up their minds about the Title VII case.

### **Why this Petition shall be granted.**

This petition shall be granted because I am raising very important questions – to appoint a Counsel in a Title VII case and to expedite this case every possible way. The U.S. Supreme Court shall follow the intention of Congress to end discrimination at a work place. The U.S. Supreme Court shall accept the side of a discriminated and unlawfully terminated employee and not the side of the employer. No one employer can avoid liability for discriminating and unlawfully terminating a Plaintiff because she is a woman. The Federal Government is not immune for committing the crime of discrimination and unlawful termination.

### **Conclusion.**

I am respectfully asking the U.S. Supreme Court to grant my Petition for rehearing, to appoint a Counsel to represent my Title VII case, to allow me to file an interlocutory Appeal pursuant to 28 U.S.C. §1292, and to expedite my case in every possible way.

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct. Executed at Daly City, CA, on June 25, 2019.

Respectfully submitted,

s/ Tatyana Drevaleva

Plaintiff-Appellant Pro Se

792 N. Mayfair Ave., Daly City, CA, 94015

415-806-9864, tdrevaleva@gmail.com

Date: June 25, 2019

Signature



**CERTIFICATION OF PETITIONER TATYANA E. DREVALEVA,**

**Rule 44(2) of the Rules of the U.S. Supreme Court.**

Petitioner Pro Se Tatyana E. Drevaleva is hereby certifying that the grounds for this Petition for Rehearing are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented in my Petition for a Writ of Certiorari. This Petition for Rehearing is presented in good faith and not for the purpose of delaying the proceeding.

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct. Executed at Daly City, CA on June 25, 2019.

Respectfully submitted,

s/ Tatyana Drevaleva

Plaintiff-Appellant Pro Se

792 N. Mayfair Ave., Daly City, CA, 94015

415-806-9864, tdrevaleva@gmail.com

Date: June 25, 2019

Signature



## PROOF OF SERVICE.

At the time of the service, I am over 18 yo and not a Party in this action.

My address is: 225 HYDE ST. # 603 SF, CA 94102

*+ Certificate*

On June 25, 2019, I mailed a Petition for Rehearing in case No. 18-8764 by the U.S. mail to the Solicitor General of the United States to the following address:

Room 5616

Department of Justice

950 Pennsylvania Avenue, N. W.

Washington, DC 20530-0001

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct.

MARK SKLAR

Name

  
Signature

Date: June 25, 2019.

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On June 25, 2019, I mailed a Petition for Rehearing in case No. 18-8764 by the U.S. mail to Assistant U.S. Attorney to the following address:

Ms. Kimberly Robinson  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct.

MARK SKLAR

Name

  
Signature

Date: June 25, 2019.

## PROOF OF SERVICE.

At the time of the service, I am over 18 yo and not a Party in this action.

My address is: 225 HYDE ST. #603 SF, CA 94102

On June 25, 2019, I mailed a Notice of a Change of Address by the U.S. mail to the  
Solicitor General of the United States to the following address:

Room 5616

Department of Justice

950 Pennsylvania Avenue, N. W.

Washington, DC 20530-0001

I declare under the penalty of perjury and under the Federal laws that all  
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MARK SKLAR

Name



Signature

Date: June 25, 2019.

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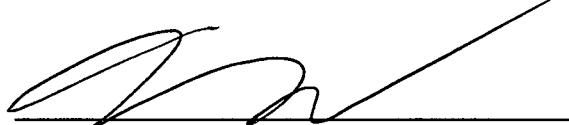
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Date: June 25, 2019.