

18-9250
No. _____

ORIGINAL

Supreme Court of the United States

Tatyana Evgenievna Drevaleva

Petitioner Pro Se

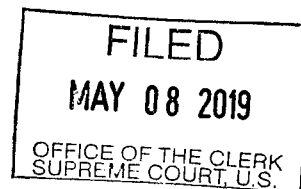
v.

1) Alameda Health System

2) Officers of the Department of Industrial Relations of the State of California

Ms. Catherine Daly, Ms. Joan Healy, Mr. Bobit Santos, and Mr. Eric Rood in their
individual capacities

Respondents



On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the 9th Circuit

Petition for a Writ of Certiorari

Tatyana E. Drevaleva

Petitioner Pro Se

I. Questions presented:

- 1) Shall the Court of Appeals expedite an Appeal in an employment retaliation case if the Plaintiff is suffering for many years (over five and a half years) from irreparable harm due to the lost earnings and damaged reputation as a result of being unlawfully terminated from the job?
- 2) Shall the Court of Appeals expedite an Appeal in an employment retaliation case if the fired Plaintiff can't get a job in his/her professional field, and the employee is forced to be a slave and to do involuntary servitude which is against the Thirteenth Amendment to the U.S. Constitution?
- 3) Shall the Court of Appeals expedite an Appeal in an employment retaliation case if the fired Plaintiff is suffering for many years (over five and a half years) from the cruel and unusual punishment which is a result of retaliation and unlawful termination and which is against the Eighth Amendment to the U.S. Constitution?
- 4) Shall the Court of Appeals expedite an Appeal if the Plaintiff is a 52 yo woman who notifies the Court that she needs to undergo medical treatment such as the In-Vitro Fertilization procedure?

II. A list of all Parties in the proceeding in the Court whose judgment is sought to be reviewed.

1) Tatyana Evgenievna Drevaleva – Plaintiff/Appellant - Petitioner Pro

Se. I was a Plaintiff at the District Court of Northern California and an Appellant at the Court of Appeals for the 9th Circuit.

Tatyana E. Drevaleva

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2) Alameda Health System (AHS) – Defendant/Appellee - Respondent.

AHS was a Defendant at the District Court of Northern California and a Appellee at the U.S. Court of Appeals for the 9th Circuit.

AHS was represented by the Narayan Travelstead Professional Law Corporation.

Mr. Timothy C. Travelstead, Esq.

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3) Officers of the Department of Industrial Relations (DIR) Ms.

Catherine Daly, Ms. Joan Healy, Mr. Bobit Santos, and Mr. Eric Rood
in their individual capacities – Defendants/Appellees - Respondents.
They were Defendants at the District Court for Northern California
and Appellees at the Court of Appeals for the 9th Circuit.

Ms. Doris Ng, Esq.,

STATE OF CALIFORNIA

Department of Industrial Relations

Division of Labor Standards Enforcement

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San Francisco, California 94102

Tel.: (510) 285-1634

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dng@dir.ca.gov

III. Corporate Disclosure Statement according to Rule 29.6 of the Rules of the U.S. Supreme Court – not applicable.

IV. The Orders of the lower Court that are challenged in this Petition:

- 1) The Order of the Court of Appeals for the 9th Circuit dated February 28, 2019 that denied my Motion to Expedite Time of Appeal and that prohibited me to file further Motions (see Exhibit 1.)

V. The basis for jurisdiction in the U.S. Supreme Court:

I am filing this Petition under Rule 11 of the Rules of the U.S.

Supreme Court which says, “A petition for writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

See 29 U.S.C. §2101(e.)

VI. The Constitutional provisions that are involved in this case:

- 1) The Eighth Amendment to The U.S. Constitution
- 2) The Eleventh Amendment to The U.S. Constitution
- 3) The Thirteenth Amendment to The U.S. Constitution.

VII. Table of Contents.

1) Questions presented.....	2
2) A list of all Parties in the proceeding in the Court whose judgment is sought to be reviewed.....	3
3) Corporate Disclosure Statement according to Rule 29.6 of the Rules of the U.S. Supreme Court.....	5
4) The Orders of the lower Court that are challenged in this Petition.....	6
5) The basis for jurisdiction in the U.S. Supreme Court	7
6) The Constitutional provisions that are involved in this case.....	8
7) Table of Contents	9
8) The authorities that have been involved in this case	10
9) A concise statement of this case setting out the facts material to consideration of the questions presented.....	11
10) Why this Petition shall be granted.....	20
11) Conclusion.....	22

VIII. The authorities that have been involved in this case.

Statutes

The Eighth Amendment to the U.S. Constitution.....	2, 8, 17, 18, 21
The Eleventh Amendment to The U.S. Constitution.....	8, 14
The Thirteenth Amendment to the U.S. Constitution.....	2, 8, 17, 19, 21
29 U.S.C. §2101(e).....	7
Rule 11 of the Rules of the U.S. Supreme Court.....	7
Rule 29.6 of the Rules of the U.S. Supreme Court.....	5
The California Labor Code Section 98.7.....	12, 13

Case Law

<i>Baqir v. Principi</i> , 04-2369 (4th Cir., 2006).....	20
<i>Efrain Reynaga v. Roseburg Forest Products</i> , No. 14-35028 (9th Cir., 2017).....	20
<i>Young v. United Parcel Service, Inc.</i> , 575 U.S. ____ (2015).....	20

IX. A concise statement of this case setting out the facts material to consideration of the questions presented.

Petitioner Tatyana Evgenievna Drevaleva started to work as a part time probationary Monitor Technician at Alameda Health System (AHS) on April 01, 2013. Initially, I approached Manager of Step Down Unit Mr. Verrilien Clerve and asked him questions about unpaid overtime, unpaid shift differentials, denial of my affiliation to the Union, not received 15 minute breaks, and not received 10 minute breaks that I was entitled to receive as an employee who was constantly observing video display screens. I also asked to transfer me to a full time position because I was actually working full time but I was considered as a part time employee for the purpose of benefits and retirement. My questions to Mr. Clerve remained unanswered.

On approximately August 25, 2013, I approached newly appointed Director of Step Down Unit Mr. Gilbert Harding and asked him the same questions. Mr. Harding promised to think about it, but nothing actually changed. On September 05, 2013, I sent a letter to Mr. Harding where I listed these questions and asked to give me a written answer. Two days after I sent this letter, on September 07, 2013, I was fired without being

given any prior Notice and an opportunity to be heard in twenty minutes after the beginning of my shift.

While working at AHS, I did not get any verbal warning, and I was not written up. I got a good Letter of Reference from Assistant Manager Mr. Masangkay.

I requested my Personnel File, and I learned that the reason of terminating my employment was "Probationary Release." However, I was fired in a violation of AHS's internal policies because I had not been given a prior Notice and an opportunity to be heard.

After being fired from AHS, I was receiving my Unemployment Insurance compensation, and my professional Certified Cardiographic Technician certificate was not revoked.

In September 2013, I timely filed both retaliation and unlawfully termination claim and a wage claim with the Department of Industrial Relations (DIR) of the State of California, the Division of Labor Standards Enforcement (DLSE.)

I filed my retaliation and unlawful termination claim under Labor Code Section 98.7 (see Exhibit 2.)

Deputy of the Labor Commissioner Mr. Bobit Santos quickly denied my wage claim stating that DIR did not have jurisdiction "over claims for

overtime, rest period premiums, differential pay, or waiting time penalties for county employees.”

In June 2014, I received a letter from Deputy of the Labor Commissioner Ms. Catherine Daly who was investigating my retaliation and unlawful termination claim. Ms. Daly said that the reason of the termination of my employment at AHS was medical negligence towards the patient. I responded that, to the best of my knowledge, I had not committed medical negligence towards the patient. I provided Ms. Daly with a detailed explanation and a list of witnesses.

According to the old version of Labor Code Section 98.7, DIR was obligated to process my retaliation and unlawful termination claim for 60 (sixty) days. DIR was obligated to interview the claimant and the respondent, to interview witnesses, and to review relevant documents. Also, the Deputy of the Labor Commissioner was obligated to submit a Report to the Labor Commissioner, and the Report shall have included the statements of the claimant, the respondent, the witnesses, and the documents obtained during the investigation.

On December 29, 2016 (in three years and four months instead of statutory sixty days), DIR issued a Determination Letter that denied my retaliation and unlawful termination claim stating that the reason of the

termination of my employment at AHS was medical negligence that I allegedly committed towards the patient. DIR even did not send me this Determination Letter thus depriving me an opportunity to file an Appeal with Director of DIR Ms. Christine Baker.

I filed a lawsuit against both AHS and DIR at the District Court of Northern California. My original and amended Complaints against AHS were dismissed for lack of subject-matter jurisdiction and for failure to state the claim upon which relief could be granted. My original Complaint against DIR was dismissed because of the protection of the Eleventh Amendment to The U.S. Constitution. In my amended Complaint, I listed four Officers of DIR as Defendants whom I was suing in their individual capacities. Despite there was no record that could explain the allegation of the medical negligence, and despite there was no evidence of the alleged medical negligence, Magistrate Judge Hon. Laurel Beeler granted DIR's officers with discretion and immunity and dismissed my Complaint. Ms. Beeler entered a Judgment in favor of the Defendants. I timely filed an Appeal at the Court of Appeals for the 9th Circuit. Ms. Beeler named my Appeal frivolous and withdrew my *in forma pauperis* status. After responding to the Order to Show Cause, I

was allowed to submit my Opening Brief. In 2018, the Parties completed briefing, and in June 2018 the Parties filed the paper copies of the Briefs.

Throughout the whole process of litigation at both the District Court and the Court of Appeals for the 9th Circuit, both AHS and DIR/Officers never said that I had conducted medical negligence towards the patient.

In 2018, I filed a Motion to Expedite Time on Appeal at the 9th Circuit. I said that I was suffering from irreparable harm due to lost earnings and damaged reputation. I was unable to purchase a house and a car. I was unable to study in the United States, to obtain a degree, and to obtain a job with a higher salary. Because I lost health benefits after being fired from AHS, I was forced to spend a few years in Russia to undergo a complete medical examination and to perform In-Vitro Fertilization procedures. I did not have money even for my basic needs. While being in Russia, I literally picked clothe from garbage cans, washed it, and wore it because I had no money to purchase the new clothe. Often, I was unable to purchase food in Russia, and, because Russia does not provide its citizens with Food Stamps, I was forced to ask the nearby hospitals to give me the leftovers of the food that was unused by the patients. Despite being certified as an Electrocardiography Technician in the United States, I was unable to get a job in Russia in my

professional EKG Technician field because this certificate was not recognized in Russia, and I worked as a Conductor on the public transportation selling tickets for \$150 per month.

I've been unable to pay my credit cards off in the United States for over five years. I also borrowed money from my friends, and I was unable to pay back. My debt now is huge, and my credit history is very bad now even though it was excellent before.

After I returned back to the United States in 2016, I was unable to get a job as an Electrocardiography Technician. For many months I was unemployed, and I was receiving Food Stamps and General Assistance. In November 2016, I was forced to accept a job as a Caregiver taking care of elderly people through the In-Home Supportive Services of San Mateo County and the company "California Caregivers."

Only in April 2017 I was able to get a job as a Medical Instrument Technician (EKG) at the Raymond G. Murphy VAMC.

In my 2018 Motion to the 9th Circuit, I explained that I had been suffering for a very long time (over five years) as a result of retaliation and unlawful termination which is a cruel and unusual punishment and that was committed by AHS and supported by DIR and its Officers. I said that no one person shall suffer from a cruel and unusual punishment

because it was prohibited by The Eighth Amendment to The U.S. Constitution. Also, I explained that no one person shall suffer from being deprived to work in his/her professional field as a result of retaliation, and no one person shall be a slave or to do involuntary servitude in the United States because it was prohibited by The Thirteenth Amendment to The U.S. Constitution. Working as a Caregiver for a miserable salary was slavery and involuntary servitude because I was certified to work as an EKG Technician, and I was entitled to a higher salary and benefits that I couldn't obtain working as a Caregiver. I had wonderful Letters of Reference as an EKG Tech from my previous employers such as UC Davis Medical Center, Kaiser Permanente Medical Center, "On Assignment" staffing agency, "Maxim Staffing Solutions" staffing agency, and the San Francisco VAMC. I also had a Performance Evaluation from the San Francisco VAMC in 2013 where my performance was rated as outstanding and exceptional. I had knowledge of EKGs, and I loved my profession. While working in hospitals, I did my best to the patients, to my co-workers, and to my Supervisors. I believe that the Patient is the most precious human being in the World, and I was honored to perform 12 lead EKGs, Holter Monitors, and Stress Tests to my darling Patients.

Also, I asked the Court to expedite my Appeal because I am a 52 yo female, and I needed to earn money and to perform an IVF procedure.

In 2019, my Motion to Expedite an Appeal was denied by the 9th Circuit without any explanation, and the 9th Circuit prohibited me to file any further Motions regarding this matter.

I have no other choice than to petition to the U.S. Supreme Court and to pray for relief. My point of view is: no one retaliated/discriminated and unlawfully terminated employee shall suffer for many years (in my case, for five and a half years) as a result of a cruel and unusual punishment for asking questions about unpaid overtime, unpaid shift differentials, denial the affiliation to the Union, not received breaks, and for asking to consider the employee as a full time employee for the purpose of benefits and retirement because the employee was actually working full time. The cruel and unusual punishment like prolonging the time of investigating the employee's claim and prolonging the time of processing the employee's lawsuit is prohibited by The Eighth Amendment to The U.S. Constitution.

Also, no one retaliated/discriminated and unlawfully terminated employee shall suffer for many years from being unable to find a job in his/her professional field as a result of the employer's

retaliation/discrimination and the Public Entity's Libel regarding the reasons of the termination of the employee's job. During all these hard years of suffering, the retaliated/discriminated and unlawfully terminated workers are forced to be slaves and to do involuntary servitude accepting low paid jobs as Caregivers etc. The slavery and involuntary servitude are prohibited by The Thirteenth Amendment to The U.S. Constitution.

Also, the processing times of employee's claims, lawsuits, and appeals shall be shortened because the employee is actually suffering from irreparable harm due to the lost past, present, and future earnings and a damaged reputation as a result of retaliation/discrimination.

Starting December 2018, I've been even unable to pay rent, and my Landlord filed an eviction lawsuit against me. I was unable to pay for my cell phone, and it was off for many days. I was unable to communicate with anybody using my cell phone.

I was unable to pay even money for Public Transportation. In February 2019, I was stopped by the Colma Police for riding BART (the Bay Area Rapid Transit) without a ticket. I explained to the Police Officer that I did not have money, and I couldn't afford to pay almost four dollars to purchase the ticket. The Police Officer issued a verbal warning to me.

X. Why this Petition shall be granted.

I believe that I am raising a very important question of law – to shorten time on processing the employment retaliation/discrimination cases and appeals. It is the intention of the Congress to end both retaliation and discrimination at a work place. The processing times on the employee's retaliation and discrimination cases could take many years. For example, driver Peggy Young suffered for nine long years until she won in her Pregnancy Discrimination case against UPS, see *Young v. United Parcel Service, Inc.*, 575 U.S. ____ (2015.)

Millwright Efrain Reynaga and his son Richard Reynaga had seven long years from the moment of retaliation and unlawful termination in 2010 to the reversal of the summary judgment by the Court of Appeals for 9th Circuit in 2017. See *Efrain Reynaga v. Roseburg Forest Products*, No. 14-35028 (9th Cir., 2017.)

Cardiologist Dr. Riaz Baqir fought against the VA Medical Center for seven long years until he lost his battle. Dr. Baqir was fired from the Asheville VA Medical Center in 1999, and the Court of Appeals for the Fourth Circuit affirmed the Secretary's Motion for Summary Judgment only in 2006. See *Baqir v. Principi*, 04-2369 (4th Cir., 2006.)

There are many other examples of how retaliated, discriminated, and

unlawfully terminated employees go through the horror for many years. I have a personal experience suffering for five and a half years from the retaliation and unlawful termination committed by Alameda Health System. I don't want any employee to suffer for many years as a result of being cruelly thrown out of job. I believe that every unlawfully fired employee deserves being treated fairly by the U.S. Court system. Currently, the process of litigation could take many years. However, the employee and his/her family need to eat every day, need to have a roof above their heads, and need to have the fair opportunities for the future. Delaying the employee's lawsuit and appeal for many years, the Courts violate The Eighth Amendment to the U.S. Constitution because they subject the employee to an extremely cruel and unusual punishment. Also, the Courts shall assist the employee to get immediately reinstated back to work in his/her professional field and thus to prevent the employee's acceptance of the dirty, humiliating, and low paid jobs outside of his/her professional field. No one unlawfully terminated employee shall serve as a slave or to do involuntary servitude because it is against The Thirteenth Amendment to the U.S. Constitution. Also, every employee shall not suffer from the irreparable harm due to the lost earnings and benefits, humiliation, and damaged reputation.

XI. Conclusion.

I am respectfully asking the U.S. Supreme Court to reverse the Order of the 9th Circuit and to shorten a time on my Appeal.

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 May 08, 2019.

Respectfully submitted,

s/ Tatyana E. Drevaleva

Tatyana Evgenievna Drevaleva



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Date: May 08, 2019.