

In The  
Supreme Court of the United States

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VIDYA SAGAR, PH.D.,

*Petitioner,*

v.

STEVEN T. MNUCHIN,  
SECRETARY OF THE TREASURY,

*Respondent.*

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

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**PETITION FOR REHEARING**

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**TABLE OF CONTENTS**

|   |    |
|---|----|
| TABLE OF AUTHORITIES .....                      | ii |
| REASONS FOR GRANTING THE PETITION .....         | 1  |
| I. Due Process Standard was Violated.....       | 1  |
| A. Brief Factual Background .....               | 1  |
| B. Midyear Review .....                         | 3  |
| C. Yearend Review .....                         | 4  |
| II. Law Should Be Interpreted as Written.....   | 6  |
| A. Mixed Case.....                              | 6  |
| B. Whistle Blowing of Wasteful<br>Expenses..... | 8  |
| III. CONCLUSION .....                           | 9  |
| Certificate.....                                | 11 |

## TABLE OF AUTHORITIES

### CASES

|   |   |
|---|---|
| <i>Gibson v. Berryhill</i> , 411 U.S. 564 (1973) .....                                  | 5 |
| <i>Marbury v. Madison</i> , 5 U.S. 137 (1803) .....                                     | 9 |
| <i>In re Murchison</i> , 349 U.S. 133 (1955) .....                                      | 5 |
| <i>Perrin v. United States</i> , 444 U.S. 37 (1979) .....                               | 9 |
| <i>Perry v. Merit Systems Protection Bd.</i> , 137 S.<br>Ct. 1975 (2017) .....          | 8 |
| <i>Piskadlo v. Veterans' Admin., ETC.</i> , 668 F.2d<br>82 (CA, 1st Circuit 1982) ..... | 6 |
| <i>Sandifer v. U.S. Steel Corp.</i> , 134 S. Ct. 870<br>(2014) .....                    | 9 |
| <i>Stella v. Mineta</i> , 284 F.3d 135 (D.C. Cir. 2002) .....                           | 6 |
| <i>Tumey v. Ohio</i> , 273 U.S. 510 (1927) .....  | 5 |
| <i>Withrow v. Larkin</i> , 421 U.S. 35 (1975) .....                                     | 5 |
| <i>Wren v. Merit Systems Protection Bd.</i> , 681<br>F.2d 867 (D.C.Cir. 1982) .....     | 6 |

### STATUTES

|                           |   |
|---------------------------|---|
| 5 C.F.R. § 1201.151 ..... | 7 |
| 5 U.S.C. § 2302 .....     | 8 |

|                                |   |
|--------------------------------|---|
| 5 U.S.C. § 2302(b)(8) .....    | 1 |
| 29 U.S.C. § 633a .....         | 1 |
| 29 C.F.R. § 1614.302(a) .....  | 7 |
| 42 U.S.C. § 2000e-3 .....      | 1 |
| 42 U.S.C. § 2000e-16 .....     | 1 |
| 42 U.S.C. § 2000e-16 (e) ..... | 5 |

## **PETITION FOR REHEARING**

Pursuant to Supreme Court Rule 44.2, Plaintiff/Petitioner Vidya Sagar (“Sagar”) respectfully petitions for rehearing of the Court’s denial of writ of certiorari on October 7, 2019, No. 19-133.

### **REASONS FOR GRANTING PETITION**

The amended complaint is for wrongful termination on account of statutory prohibited discriminations: Retaliation (42 USC §2000e-3, 42 USC §2000e-16), Age Discrimination in Employment Act (29 USC §633a), Harassment, and for Whistle blowing of wasteful expenses (5 USC §2302(b)(8)). Amended Complaint, document number 41 and Answer document number 42 in the United States District Court for the District of Columbia's docket (“District Court”).

#### **I. Due Process Standard was Violated**

##### **A. Brief Factual Background**

Plaintiff/Petitioner applied for full time permanent IT Specialist position, GS-15, in August/September 2010. App. 91. The director Compliance and Document Matching, Gregory Michael Barry (“Barry”), selected Sagar from around 100 resumes. Sagar joined Internal Revenue Service (“IRS”) on 12/20/10 and worked to support the Patient Protection and Affordable Care Act (“PPACA” or “ACA”), Premium Tax Credit (“PTC”) project. App.170.

There were 21 federal employees. Sagar was the most aged and experienced member of the PTC project. App. 171.

Sagar previously worked for PeopleSoft/Oracle Consulting. To support PeopleSoft/Oracle software Sagar worked for multiple Peoplesoft/Oracle clients. These included major financial institutions, Citigroup, JPMorgan Chase, HSBC, Societie General and others including Carrefour, Hartford Insurance, Sprint Nextel, Harris Corporation and others. App. 98-100. Sagar is a Project Management Professional ("PMP") certified by the Project Management Institute ("PMI"). App. 95.

Sagar got his Ph.D. from the Catholic University of America ("CUA") (App. 96) and was professor of Project Management (adjunct) at the University of Maryland University College ("UMUC"). UMUC recognized twenty years of Academic Leadership and Service with Commitment to Excellence certificate dated September 29, 2012. App. 103. UMUC has been renamed as University of Maryland Global Campus.

Sagar's graduate school students prepared Enterprise Lifecycle documents. There were multiple student teams in PMAN 634 class. Team management plan prepared by PMAN 634 students, September 30, 2011, show serious learning experience. App. 107.

Sagar was teaching PMP certification preparation boot camps. Students included IRS managers. Mr. Ercel E Potter a.k.a. Butch Potter, IRS Cybersecurity Policy and Programs Strategic Planning, Investments and Governance manager was one of them. He attended, took the exam, and got certified as PMP. App. 104-106.

Sagar took the initiative to create a strategic team at PTC. As per job description duties (App. 93), Sagar worked with the stakeholders to define the PTC project architecture.

There had been extensive waste of taxpayer money.

The ACA expenditures were more than \$168 million for 2011 and \$ 488 million in total between 2010 and 2012. App. 172. Sagar complained and recommended in-house software development. Sagar's discriminating officers, Peter Gianakos ("Gianakos") and Matthew B. Brady ("Brady") retaliated and terminated Sagar on 11/2/11. App. 172, 174.

## **B. Midyear Review**

Barry, Director Compliance and Document Matching, was Sagar's supervisor on 12/20/10.

Gianakos came on board on 3/27/11 and became first line supervisor. App. 110. Brady was promoted on 3/27/11 with \$13,000 raise; joined PTC project around 7/19/11; became first line supervisor/manager ("FLM"). App. 111, 180, ¶ 4. Brady and Gianakos were under one year trial period for supervisory/managerial positions. App. 181, ¶ 8.

Minimum supervisory period needed for a front line manager to review an employee was 60 days. (Response to Interrogatory No. 5. App. 111-112).

Brady did Sagar and Matthew David Sikowitz's midyear progress reviews on 4/27/2011. These were done remotely (not face-to-face). At that time, Brady was not in PTC as manager of record. Brady was not eligible to do reviews. App. 145, 151-

154, 180, 184-185. After conducting the review, Brady deleted rating official's [Brady's] signature from Sagar's review.

The due process standard was violated.

### **C. Yearend Review**

On September 29, 2011, Brady conducted Sagar's annual review. He assigned following ratings: Responsibilities: Not Met; Commitments: Met; Summary Evaluation Rating: Minimally Satisfactory. App. 155. He decided to terminate Sagar on 9/29/11.<sup>1</sup>

Sagar requested review by a higher level official on October 5, 2011. App. 155-156.

The request did not go to the higher level official, Mr. Barry.

Gianakos testified in his deposition, "I was the senior level -- I was the senior manager and I did review the evaluation. The performance evaluation did not go to Greg [Director, level 3 supervisor at that time]. The frontline manager and the next level manager is the approver. So Matt submitted it to me for approval and I approved it. It doesn't go any higher than that." App. 176-177.

It was violation of agency's grievance policy.

6.771.1.5 Definitions

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4. Deciding Official (DO) --A management official designated to decide the formal grievance. The deciding official must be at a higher

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<sup>1</sup> Concomitantly Brady was premeditating to wrongfully terminate Sagar. App. 181, ¶ 7; 183; 190, ¶ (j).



organizational level than the official involved in the matter(s) being grieved. The management official, who recommended, advised, or decided on the matter being grieved is considered to have been involved and must disqualify himself as the deciding official, unless he is the head of the agency. When a deciding official is disqualified, the person at the next higher administrative level will be the designated deciding official. App. 90.

The Supreme Court in *Withrow v. Larkin*, 421 US 35,46,47 (1975) has stated: Concededly, a "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U. S. 133, 136 (1955). This applies to administrative agencies which adjudicate as well as to courts. *Gibson v. Berryhill*, 411 U. S. 564, 579 (1973). Not only is a biased decision maker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison, supra*, at 136; cf. *Tumey v. Ohio*, 273 U. S. 510, 532 (1927).

Discriminating officials failed in their primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes... 42 U.S.C. 2000e-16 (e). App. 83.

They ignored due process.

## II. Law Should Be Interpreted as Written

Lower Courts had not interpreted the law as written.

### A. Mixed Case

District court opined, "Sagar's probationary status means this case is not "mixed" *Stella v. Mineta*, 284 F.3d 135, 142 (D.C. Cir. 2002)." App. 16.

Circuit court also cited *Stella*. App. 2, ¶ 2. Moreover, this was not a "mixed case" over which the district court had jurisdiction, because such cases *must* include a claim appealable to the Merit Systems Protection Board (MSPB), and it is undisputed that appellant was a probationary employee who could not have appealed his termination to the MSPB. App. 2. Also cited *Wren v. Merit Systems Protection Bd.*, 681 F. 2d 867, 871 (D.C.Cir. 1982).

"We add that all we decide is that the Merit Systems Protection Board has no jurisdiction over this appeal by petitioner, a probationary employee. The **question remains open** whether such a probationary employee can bring suit directly in a District Court or the Court of Claims, without any review by the MSPB, **on the allegation that his removal was invalid**". *Piskadlo v. Veterans'Admin., ETC.*, 668 F. 2d 82, 84 (CA, 1st Circuit 1982).

Sagar approached MSPB, but on procedural grounds, MSPB did not entertain it. Document No. 56-71 in district court's docket.

**29 CFR §1614.302(a).**

§ 1614.302 Mixed case complaints.

(a) Definitions—

(1) Mixed case complaint. **A mixed case complaint is a complaint of employment discrimination filed with a Federal agency** based on race, color, religion, sex, national origin, **age** or handicap related to or stemming from an action that **can be** appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address.

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(b) Election. An aggrieved person may initially file a **mixed case complaint with an agency** pursuant to this part or an appeal on the same matter with the MSPB pursuant to 5 CFR 1201.151, **but not both**. An agency shall inform every employee who is the subject of an action that is appealable to the MSPB and who **has either orally or in writing raised the issue of discrimination** during the processing of the action of the right to file either a mixed case complaint with the agency or to file a mixed case appeal with the MSPB. The person shall be advised that **he or she may not initially file both a mixed case complaint and an appeal on the same matter** and that **whichever is filed first shall be considered an election to proceed in that forum**. App. 84, 85

The statute refers to “can be” which is different than “must be”. It provides for alternative forums: MSPB or Agency. It provides for an election, MSPB or Agency.

## B. Whistle Blowing of Wasteful Expenses

5 USC § 2302 Prohibited personnel practices (App. 77)

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(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

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(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,...

Whistle blowing is in public interest. A whistle blower complains against extreme odds of retaliation. Brady and Gianakos retaliated against Sagar with vengeance. The statute does not prohibit whistle blowing during probation.

If the employee asserts no civil-service rights, invoking only federal antidiscrimination law, the proper forum for judicial review... is a federal district court. *Perry v. Merit Systems Protection Bd.*, 137 S. Ct. 1975, 1979 (2017) (majority decision).

[c]omplains of serious adverse action prompted, in whole or in part, by the employing agency's violation of federal antidiscrimination laws, the district court is the proper forum for judicial review. *Id.* at 1988.

As this Court has recognized, “[i]t is a fundamental canon of statutory construction that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.” *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876 (2014) (quoting *Perrin v. United States*, 444 U.S. 37, 42 (1979)).

There is no reason why this Honorable Court should not discharge its duty to "say what the law is." *Marbury v. Madison*, 5 US 137, 177 (1803).

### III. CONCLUSION

Lower courts have applied deprecated laws. Have not updated case law to conform to statutory changes. Have ignored violation of the due process and equal protection of the laws, guaranteed by the 14 th Amendment of the U.S. Constitution.

Most of similar matters get settled/ dropped and never reach this Court. It requires perseverance, time and expense to reach this Court for correct interpretation of the laws. In this case: A. Mixed Case Complaint; and B. Whistle Blowing of Wasteful Expenses.

Case law shows that First Circuit and D.C. Circuit need clarifications. In this matter a ruling from this Court has become necessary and it is urgently needed. It would also help this Court in monitoring of lower Courts. It would aid in just interpretation of laws conforming to updated statutes. It would help the petitioner and employees like him to get justice.

Petition for Rehearing should be granted.

Respectfully Submitted,

/s/

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**Certificate of Counsel (pro se)**

The grounds for this Petition for Rehearing are for substantial and controlling affect not previously presented, and that it is presented in good faith and not for delay.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Vidya Sagar', with a long horizontal stroke extending to the right.

Vidya Sagar, petitioner, pro se

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