No. 19-262

In The

Supreme Court of the United States

Xiao-Ying Yu,

Petitioner,

v.

Maryland Department of Health, Secretary Robert Neall and Maryland Department of Budget and Management, Secretary David Brinkley

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

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PETITIONER FOR REHEARING

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November 14, 2019

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STATUTES INVOLVED

STATUES PROVISIONS AND REGULATIONS:

Eleventh Amendment- U.S.CONST:

" The judicial power of the Unites States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

Fourteenth Amendment-U.S. CONST.:

Section 1.
"...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5.

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

28 U.S. C. §1331

" The district courts shall have original jurisdiction of all civil actions arising under the constitution, laws or treaties of the United States."

CFR§1630.15-Defense.

"(d) Charges of not making reasonable accommodation. It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

29 CFR§1630.9-Not making reasonable accommodation.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business. (b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

29 U.S.C. § 621, e. seq: Prohibition of age discrimination ("ADEA")

§ 623 (a).Employer practice:

(1) to fail or to refuse to hire or to discharge any individual or otherwise discriminate against individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise

adversely affect his status as an employee, because of such individual age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(d). Opposition to unlawful practice; participate in investigations, proceedings, or litigation. It shall be unlawful for an employer...discriminate against any individual.., because such individual has opposed any practice made unlawful by this section, ...or because such individual ...made a charge,..."

29 U.S.C. § 794(a) Section 504 of the Rehabilitation Act:

"No otherwise qualified individual with a disability in the United States as defined in section 705(20) of this title shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Rule 29 CFR 825.220 Protection for Employees who Request Leave or otherwise Assert FMLA Rights:

"**(a)** The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections...

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. An employer may be liable for compensation and benefits lost by reason of the violation, ... *See* § 825.400(c). Interfering with the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by a covered employer to avoid responsibilities under FMLA...

(c) The Act's prohibition against interference prohibits an employer from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights. *See* § 825.215.

(d)...

(e) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.,* filing a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations."

42 U.S.C. Chapter 126-Equal opportunity for individual with disability § 12101 et seq., ("ADA"):

42 U.S.C. Chapter 126, Subchapter I, Employment
§ 12112 Discrimination:
"(a) No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application peocedure, the hirring, advancement, or discharge of employees, employee compensation, job training, and othere terms, conditions, and privileges of employment."

§ 12117 Enforcement
"(a) Power, remedies, and procedures
The power, remedies, and procedures set for forth in sections ....provides to ... or to any person allerging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment."

42 U.S.C. Chapter 126, Subchapter IV-Miscellaneous Provisions

§12202. State Immunity

"A State shall not be immune under the eleventh amendment to the constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this chapter , remedies (including remeedies both at law and in equity) are available for such a violation to the same extent as such remmedies are available for such a violation in an action against any publix or private entity other than a state."

§12203. Prohibition against retaliation and coercion

"(a) Retaliation:

No person shall discriminate against any individual because such individual has opposed an act or practice made unlawful by this charpter or because such individual made a charge, testified, or participate in any manner in an investigation, proceeding, or hearing under this charpter."

(c) Remedies and procedures: The remedies and procedures avaiable under section 12117, 12133 and 12188 of this title shall be avalable to aggreved persons for violation of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively."

42 U.S.Code §1983:

"Every person who, under color of any statute..., any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

42 U.S.C. §§ 2000e et seq. Title VII of the civil rights Act of 1964 law: ("Title VII"):

§2000e-2. Unlawful employment practices
"(a) Employer practice: It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual , or otherwise to discriminate against individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employment or applicants for employment in any way which would deprive or tend to deprive any individual of employment

opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

...

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practice:

Except as otherwise proved in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."

§2000e-3. Other unlawful employment practices

"(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings:

"It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an

investigation, proceeding, or hearing under this chapter."

42 U.S.Code §2000d-4a.

" For the purpose of this subchapter, the term "program or activity" and the term "program" mean all of the operations of -

(A) department, agency, special purpose district, or other instrumentality of a State or a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government."

42 U.S.Code §2000d-7(a)(1)

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in federal court for a violation of section 504 of the Rehabilitation Act of 1973 (29 U.S. C. 794), Title IX of the Education Amendment of 1972 [20 U.S. C. 1681 et seq., the Age

discrimination Act of 197 [42 U.F42 U.S.C. 6101 et seq,] , Title VI of the civil rights Act of 1964 [42 U.S.C. 2000d et seq.] or the provisions of an other Federal statute prohibiting discrimination by receipts of Federal financial assistance."

OTHER AUTHORITIES

The Supremacy Clause of the Constitution:

" This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."
Art. VI, cl.2.

PETITION FOR REHEARING

Pursuant to the Court's Rule 44.2, Petitioner herein respectfully petitions for rehearing of the Court's order denying certiorari in this case. Petitioner further requests to defer consideration of this petition pending the Court's forthcoming decision and opinion in *BNSF Railway CO. v. EEOC* regarding the petition against Ninth Circuit's decision in favor of the victim of Title I of ADA discrimination. Alternatively, Petitioner requests that the Court grant the petition, vacate the judgment of U.S. Court of Appeals at Fourth Circuit ("Fourth Circuit") and remand to Fourth Circuit for further proceeding in the light of decisions made for the victims of workplace Title VII, ADA and ADEA discrimination and retaliation (Bend County v. Davis, 139 S. Ct. 1834 (2019); *Head v. Wilkie*, et al. (2019); and *Nall v. BNSF Railway CO.* 2019).

GROUNDS FOR REHEARING

According to this Court's Rule 44.2, the ground of petition for rehearing should be limited to intervening circumstances or substantial grounds previously were not presented. After Fourth Circuit released the judgment, there is a new decision and forthcoming decision of similar cases in this Court. Also, there are conflicts in several Circuits' decisions for Title VII and ADA claims.

A. The Petition should be granted based on this Court's decision and Solicitor General's amicus curiae in the case of Fort Bend County v. Davis that EEOC charge-filing requirement is not a jurisdictional prerequisite to sue.

Despite the receipt of EEOC's right-to-sue letter docketed in District Court (Petition-appendix#27b), Fourth Circuit affirmed District Court's dismissal of Petitioner's Title VII, ADEA and ADA claims by alleging that Petitioner failed to exhaust her administrative remedies before EEOC, and "lack of subject matter of jurisdiction".

For "lack of subject-matter of jurisdiction", the text of Title VII provides no indication that Congress intended the exhaustion requirement to be jurisdictional. Federal district courts have subject-matter jurisdiction over Title VII claims based on 28 U.S.C § 1331 and 42 U.S.C. § 2000e-5(f)(3). "Neither 28 U.S.C § 1331, nor Title VII's jurisdictional provision, 42 U.S.C. § 2000e-5(f)(3)... specifies any threshold ingredient akin to 28 U.S.C. § 1332's monetary floor." *Arbaugh v. Y&H Corp* 546 U.S. at 515 (2006). Thus, neither the text nor the structure of Title VII provides a clear indication that Congress intended the exhaustion requirement to limit district court's subject-matter jurisdiction. If Congress has not spoken clearly, this Court will presume that the

requirement is a claim-processing rule-"mandatory" to be sure, but not "given the jurisdictional brand," *Henderson v. Shinseki,*, 562 U.S. 428,435(2011). This Court has applied this both in the Title VII context and else-where, and has repeatedly rejected claims that statutory prerequisites are jurisdictional and has consistently held that Congress did not clearly state its intention to make the prerequisite jurisdictional. *Fort County, Texas, v. Lois M. Davis,* 139 S. Ct. 1843 (2019)

In addition, the United States supported the employee Davis, contending that "Title VII's charge-filing requirement is not a jurisdictional prerequisite under this Court's precedent".

Based on above, the petition should be granted. Fourth Circuit's judgment to affirm the dismissal for lack of subject-matter of jurisdiction should be vacated and remanded for further proceedings based on the reason described above.

B. The petition should be granted because Congress enacted the anti-retaliation provision of Title VII to forbid employment discrimination; abrogated State's Eleventh Amendment immunity to suit for the deprivation of citizen's property without "due process" guaranteed by §1's protection of Fourteenth Amendment, and amended Sections 504 Rehabilitation Act via 42 U.S.C. § 2000d-7(a)(1) Prohibiting the

State's (Who Receives Federal Funding) Immunity to Employee's ADA Claim.

Several Circuits reversed district courts' dismissal of employees' Title VII claims based on that Title VII's prohibitions on racial, sex and national origin discrimination and retaliation (42 U.S.C. § 2000e-2(m) and 2000e-3(a)) are valid exercises of Congress power to enforce litigation under Fourteenth Amendment and State do not have Eleventh Amendment immunity to Title VII actions (*Lunnie v. Univ. of Arkansas*, 8th Cir. 225 F. 3d.(2001); *Downing v. Board of Trustees of Univ. of Alabama*, 11th Cir. 321 F. 3d.1017 (2003); *Robinson v. Shell Oil CO.* 117 S. Ct. 843, 136 L.Ed.2d 808, (1997)).

In addition, as Petitioner addressed in her certiorari and Application for suspension of the Court's order denying the certiorari, Congress abrogated States' Eleventh Amendment immunity to claims like her case. *Kimel v. Florida Bd of Regents.* 528 U.S. 62. 73 (2000) stated Congress both unequivocally intends to do so and acts pursuant to a valid grant of constitutional authority. There is dispute in the second part of these requirement. § 5 of Fourteenth Amendment authorizes Congress to enforce the substantive guarantees contained in § 1 of Fourteenth Amendment by enacting "appropriate legislation." See *City of Borene v. Flores* 521 U.S. 507, 536 (1997). In the case *Board of Trustees of the University of Alabama v. Garett,* 531 U.S. 356 (2001),

respondents Garrett and Ash filed separate lawsuits against petitioners, Alabama University employers. The State employer transferred Garrett (who has breast cancer needing time-consuming radiation and chemotherapy), and Ash (who has lifelong severe asthma) to positions with lower salaries. Then Garrett and Ash were seeking money damages under Title I of ADA, which prohibits States and other employers from "discriminating against a qualified individual with a disability because that disability... in regard to. terms, conditions, and privileges of employment," 42U.S.C.§12112(a). The district court granted employer's summary judgment, agreeing with them that ADA claim exceeds Congress' authority to abrogate State's Eleventh Amendment immunity. But Eleventh Circuit reversed the district court's decision on the ground that ADA validly abrogates such immunity. In another case, *Tennessee, v. Lane,* 541 U.S. 509 (2004), the petitioners were disabled Tennesseans who could not access the upper floors in State courthouses. They sued in Federal Court, arguing that since Tennessee State was denying them public services because of their disabilities, it was violating Title II of ADA. Under Title II, no one can be denied access to public services due to his or her disabilities; it allows those whose rights have been violated to sue States for money damages. Tennessee State argued in their motion to dismiss the case based on the principle on *Board of Trustees of the University of Alabama v.*

Garrett (2001) in which the Supreme Court reversed Eleventh Circuit's decision, and held that Congress had, in enacting certain provisions of the ADA, unconstitutionally abrogated the sovereign immunity of States by letting people sue States for discrimination on the basis of disability. In Lane's case, the majority justice of this Court ruled that Congress did have enough evidence that the disabled were being denied those fundamental rights that are protected by Due Process clause of the Fourteenth Amendment, among those rights being the right to access a court. While in Garrett's case, this Court said, Garrett's petition applied only to Equal protection claims, and there is no indicator from the records that the State employer violated the scope of "Due Process claims" of §1's protection of Fourteenth Amendment. Therefore, although this Court held that Congress's abrogation does not valid States' Eleventh Amendment Immunity to ADA claim (Title I employment discrimination) in Garrett case, the State officials are not immune from employee's suit, if the circumstances indicate that Congress may abrogate a State's immunity guaranteed by the § 1 of Fourteenth Amendment, as this Court stated "The Eleventh Amendment and the principle of State sovereignty which it embodies are necessarily limited by the enforcement provisions of the Fourteenth Amendment." The Court added, "Congress may, in determining what is 'appropriate legislation' for the purpose of enforcing the provisions of the Fourteenth

Amendment, provide for private suits against States or State officials which are constitutionally impermissible in other contexts." *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976). Federal courts can exercise jurisdiction when the State attempts to deny a civil right to a citizen, in violation of Fourteenth Amendment, especially, due process and equal protection clauses in § 1 of Fourteenth Amendment protects Employees' property from government employer's deprivation without proof of mitigation/hearing (*Goldberg v. Kelly*, 397 U.S. 254, 1970).

Furthermore, Congress amended (42 U.S.C. § 2000d-7(a)(1)) for Section 504 of Rehabilitation Act of 1973, Title 29 USCS § 794 (incorprating 42 U.S.C. § 2000d-4a), and emphacized that by accepting federal funds, States would waive their Eleventh Amendment immunity from a suit brought against it under the Rehabilitation Act, ADEA or other discrimination Statute prohibits. Petitioner addressed it in certiorari and response to Respondents' motion to dismiss on 3/22/3018. Respondents and lower courts failed to indicate that any of Petitioner's exhibits related to federal CDC funding which Respondents received did not exist or was invalid. Nor did they allow Petitioner to argue the genuine factual and legal issues regarding the deprivation of her property without due process at both lower courts.

In *Stewart v. Lancu, U.S. Patent and Trademark Office,* Fourth Circuit reversed district court's decision regarding violation of Stewart's civil rights under Title VII and Rehabilitation Act, and remand for further proceedings in January 2019. During which, however, Fourth Circuit used different principle to affirm District Court's dismissal of Petitioner's claims under Title VII, ADA and Rehabilitation Act, by alleging State' immunity to most of her claims and her failure to state claims. Neither respondents and lower courts proved whether State employer ever took any legitimate action to control the hostile working condition in response to Petitioner's multiple internal appeals as well as EEOC's Title VII, ADA and ADEA charges about Ms. Barra's discriminatory and retaliatory behaviors; or responded to the Petitioner's accommodation request to transfer/hire her to work in the Epidemiologist III position she applied for and was evaluated as "best qualified" by MDH, or to reassign/remain her in the CDC funded 1305 program to work with co-workers together for different supervisor under seniority system despite knowing that Petitioner's mental disability and FMLA were caused by Ms. Barra's harassment and retaliation and State Medical Director recommended MDH to accommodate her to work for different supervisor separating her from the cause (Petition-Appendix-Exhibit "Pet-E"#21, App.305-311); or provided any legitimate, non-retaliatory and non-

pretext reason of "undue hardship" to reject accommodation on 9/3/2014 after they received Petitioner's EEOC ADA, Title VII and ADEA charge file on 9/2/2014 by email[1]; nor did Respondents and lower courts prove a mitigation or hearing prior to termination of Petitioner's seniority job supported by CDC funds.

In contrast, the petition-related appendix showed Respondents' statement that Ms. Yu is "an individual with disability who, with a reasonable accommodation, cannot perform essential functions of the position" in the termination notice without any proof when, where and how long Petitioner had ever been accommodated to return to work in seniority system supported by CDC under a different supervisor as State Medical Director recommended; neither it was clear how and what indicators did Respondents use to conclude Petitioner's failure to perform essential function as their failure-to-accommodation as 29 CFR 1630. (Pet-E#26, App.395).

The decision of lower courts for Petitioner's ADA, Title VII and ADEA claims is different from

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[1] MDH's "undue hardship" dated 9/3/2014 was prior to the changes of office structure (October 2014) making the office medical director no longer to supervise a staff in order to prevent Ms. Yu from returning work under different supervisor (written request by Petitioner in June and July 2014), despite such "reasonable accommodation" was not unduly burdensome and disproportionate to the harm to either both departments nor her co-workers (Pet-E#22, App328, Pet-E#24, App.373).

recent decisions for Title VII or Title I of ADA claims made by other Circuits, see *Tebi v. City of Debary FL.*, (2019); *Head v. Wilkie, et al.* 2019) and *Flora Nall v. BNSF Railway CO*, (2019). Fifth Circuit reversed the district court's decision, and remained employee Nall's Title I of ADA (Parkinson's disease) discrimination to the District Court for further proceedings. These Circuits made their judgments based on investigations: 1) if petitioner is qualified protected class, such as disability employee and capable to do the job, and if there is ADA discrimination; 2) how did employer evaluate employee's ability for essential function with accommodation; 3) if there is the protected activity and causal connection linking to adverse actions against employee's prior complaints of Title VII, ADA and ADEA, and if employer ever took action to control discrimination; 4) if failure-to-accommodation is ADA discrimination or/and retaliation and whether failure-to-accommodation by some reasons or "undue hardship" is real pretext.

The investigation of above issues conducted by district court and Ninth Circ. was presented in the current case (No. 18-1139) at this Court: BNSF Railway CO. v. EEOC. In which, employee Mr. Russell Holt filed charge with EEOC alleging that BNSF had violated ADA. EEOC brought suit against BNSF. District court held that BNSF violated ADA by requiring Mr. Holt to pay for an MRI medical examination as a condition of obtaining a job. Ninth

Circuit affirmed district court's finding of liability, but vacated and remanded for further proceedings on the injunction. Ninth Circuit denied BNSF's petition for rehearing en banc. BNSF brought the petition to this Court.

Petitioner addressed these issues through her pleadings, appeal (Pet-#9, 10, 2b&3a), certiorari and related appendix including the new evidence proved by EEOC-FOIA recording file (Pet-E#23&24). As indicated above, Fourth Circuit's judgment lacks factual and legal bases and should be vacated and remanded for further proceedings.

C. The State employer's response to the petition should be requested because employer should be liable for the supervisor's harassment, discrimination and retaliation (Vance v. Ball State University, 133 S. Ct. 2434, 2013) and because it is a pre-required condition for granting a petition.

In Petitioner's case, the employer agreed that Ms. Barra was Petitioner's former supervisor based on their responses in the district court and Fourth Circuit. However, Respondents failed to provide any legitimate, un-discriminatory, un-retaliatory and un-pretext reasons for Ms. Barra's disparate treatments of Petitioner on the annual performance evaluations (Pet-E#13, App.237-238); her racial and national origin/ethnic harassment, discrimination and

retaliation on 1/31 and 2/3/2014(Pet-E#15, App.248); her unlawful change of Petitioner's job description form in the terms, conditions and the privileges of her employment under seniority system (Pet-E#12&18, App.235; 282); her motivation for MDH HR to conduct the constructive discharge forcing Petitioner to resign or retire during accommodation interactive period; leading to final rejection of accommodation and consequent termination without mitigation as well as Ms. Barra's interference with EEOC's investigation even after termination on 4/19/2017 (Pet-E#23, App.358, proved by EEOC-FOIA records) under McDonnell Douglas framework. Therefore, the response and the liability from Respondents for Ms. Barra's harassment, discrimination and retaliation should be requested according to the Court justices' opinions and the view of the United States presented by the Office of Solicitor General in *Vance v. Ball State University.* 133 S. Ct. 2434 (2013). Also, the petition should be granted for her as victim of Title VII and ADA discrimination and retaliation based on this Court's decisions in *Teamsters v. United States*, 431 U.S. 324 (1977) and *Firefighters v. Scotts,* 467 U.S. 561(1984) involving violation of constitution.

D. The petition should be granted or held as increasing conflicts regarding decisions of Title VII, ADA and ADEA claims and debates about State's immunity to be

preempted from Congressional abrogation of State's immunity and power to enforce the litigation for State's receipt of federal funds and deprivation of petitioners' property without due process as retaliation against their prior EEOC's Title VII, ADA and ADEA charges.

This petition for rehearing is contemplated on the ground of increasing conflicts among Fourth Circuit (18-1889, Petitioner's case) and other Circuits on review and decisions for discriminatory and retaliatory claims under Title VII, ADEA, ADA and Section 504 of the Rehabilitation Act (*Tebi v. City of Debary FL.*, 2019); *Head v. Wilkie, et al.* 2019); *Nall v. BNSF Railway CO.* (2019) and *Wallace v. Seton Family of Hospital*, (2019); *Crawford v. Chipotle Mexican Grill*, (2019); *Cisneros v. Wilson*, 226 3F. 3d. 1113 (2000) *Koslow v. Pennsylvania*, 158 F. 2d. (2002); and *Wilson v. Pennsylvania State Police Dept.* WL. 31482373, 2002); as well as current petition presented before this Court (*BNEF Railway CO. v. EEOC*).

Because there is no legitimate basis for letting Fourth Circuit's judgment become final based on that "interests of justice" recognize that common claims should not be treated differently on the basis of no more than the "timing of litigation in different courts" (see Supreme Court Practice, p.818-821), this petition, coupled with the request for deferred

consideration of BNSF CO. v. EEOC, will preserve an ideal vehicle for review of the immensely important constitutional question (related to mixed-retaliation factors in ADA hiring, accommodation, constructive discharge and termination), should the Court' intervention and supervision become necessary like *Garrett's case*.

At the same time, holding the case will address the development of debates whether State's immunity to employee's Title VII, ADA and ADEA claims can be preempted from Congressional clear intention to abrogate State's Eleventh Amendment immunity and to enforce the litigation for deprivation of citizen's property without "Due process" and "Equal Protection" under § 1 and 5 of Fourteenth Amendment to U.S. CONST., Section 504 Rehabilitation Act, Title VII, 42 U.S.Code §1983, and the Supremacy Clause of the Constitution Art. VI, cl.2; and whether local rules can override Constitution resulting in prevention of petitioners from arguing genuine factual and legal issues about the deprivation of their property without due process and equal protection at federal courts. These issues cannot be addressed and resolved by other Courts.

CONCLUSION

For the reasons presented above and in the petition for certiorari, this Court should defer consideration of the petition pending this Court's

decision and opinions in ADA claim: *BNSF Railway Co. v. EEOC*, either remand or affirm Ninth Circuit's decision, at which time the petition for rehearing should be granted based on the comparison of the merits in that case with this case. Alternatively, the Court should grant the petition immediately, vacate the Fourth Circuit's judgment, and remand for further proceedings under this Court's intervention and in light of other Circuits' actions described above.

Respectfully submitted,

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CERTIFICATE OF THE PETITIONER

UNREPRESENTED BY COUNSEL

NO. 19-262

Xiao-Ying Yu

Petitioner

v.

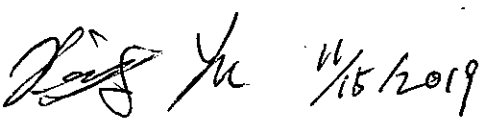
Maryland Department of Health, Secretary Robert R. Neal, and

Maryland Department of Budget and Management,

Secretary David Brinkley

Respondent.

As required by Supreme Court Rule 44.2, I certified that the Petition for Rehearing is presented in good faith and not for delay.



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