

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON D. C.

Original

YUSONG GONG

Supreme Court Case No.: 19-7641

Petitioner

Lower Court Case No.: 19-1068

Vs

UNIVERSITY OF MICHIGAN, et.al.

Respondents

YUSONG GONG,

DAVID J. MASSON, P-37094

In Pro Se Petitioner

Attorney for Pespondents

4937 N. Ridgeside Circle

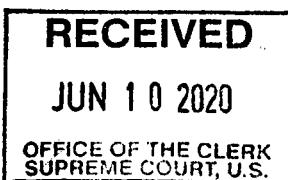
503 Thompson St. #5010

Ann Arbor, MI 48105

Ann Arbor, MI 48109

PETITIONER'S PETITION FOR REHEARING FOR

A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SIX CIRCUIT



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As the rights granted by US Supreme Court Rule 44.2 Rehearing, petitioner respectfully request this Honorable court to re-evaluate this petition based on its public interests.

This case presents recurring questions that have divided the courts of appeals and U. S. Supreme court. This case involves questions related to public interests and government accountability.

QUESTIONS PRESENTED

1. Whether U. S. Supreme Court should extend protections for public university employees who report research misconducts which fraud, wast, and abuse federal funded programs?
2. Whether U. S. Supreme Court should exclude the state immunity when a public university and/or its management violated federal constitutions, laws and/or regulations (such as First Amendment, Title VII of the Civil Rights Act of 1964), and allows public university employees to sue their employers at federal courts for retaliations and/or discrimination?
3. Whether judges at 6th court of appeals and the district court made their decisions in this case and its associated case with bias or prejudice?
4. Whether an enforcement to a settlement agreement in question of prejudice will violate public interests.

LIST OF PARTIES

- * The petitioner is Yusong Gong, a citizen of the United States and a resident of the State of Michigan.
- * The Respondents are the University of Michigan (Health System), the Board of Regents of the University of Michigan, some officials of the University of Michigan Police Department, Timothy Lynch, Richard H Simon, and Michelle Henderson.

Petitioner (appellant/plaintiff) was a full-time employee at UM health system from April 2001 to April 2012. She started as a research assistant II, was promoted to research associate and research specialist II in 2004 and 2009, respectfully, her annual reviews were mostly "Exceed Expectations". She had been awarded additional pay raise and bonuses for her outstanding performance in 2006, 2007, 2010 and January 2012. Plaintiff also worked at Cleveland Clinic as a senior research technologist from September 24, 2012 to March 10, 2013. Both her employments were ended by wrongful termination.

Dr. Richard Simon is a named respondent/defendant, an associate chair at the department of internal medicine. In the case for review, he is responsible for covering up scientific misconducts, disciplining and retaliating petitioner for filing complain on sexual harassment and national origin discrimination at the office of institution equality at UM. Dr. Simon is also responsible for retaliating and firing petitioner because she reported him to UM president and member of UM regents for bulling and covering up scientific misconducts.

Ms. Michelle Henderson is a named respondent/defendant, a HR director at the department of internal medicine, she carried out disciplines and retaliations which directly caused and aggregated petitioner's major depression disorder. Ms.

Henderson is responsible for refusing to provide any accommodation for petitioner's disability. Ms. Henderson is also responsible for retaliating and firing petitioner because she was reported by petitioner to her boss for unprofessional in February 2012. Ms. Henderson left UM in 2015..

Mr. Timothy Lynch is a named respondent/defendant, a vice president at UM, the director of the department of general counsels. Mr. Lynch is responsible for all unlawful legal practices in his department, which include but are not limited to instruct UM lawyers to "be a little bit more creative when the party is difficult, not willing to settle the case in the way which the university wants". Mr. Lynch discriminated petitioner based on her racial and national origin. On January 14, 2016, he told her: "You don't belong here, you should seek help from your own people". He pushed her out of the building and threatened her "I will have you arrested by UM police if you keep trying to meet with leaders here". Mr. Lynch is also responsible for retaliating petitioner because she asked UM leaders to investigate scientific misconducts, filed complaints to EEOC, filed lawsuits at courts. In June, 2016, Mr. Lynch ordered UM depression center to stop all treatments for petitioner "because of (her) prolonged legal issues with the University". On November 8, 2017, Mr. Lynch ordered hospital securities to arrest petitioner while she was waiting to visit a family member at UM hospital because she held a peaceful protest on campus for transparency and equal rights for affordable health care on November 7, 2017. Petitioner was locked at a psychiatric ER for 3 days, she was abused physically and mentally. She was forced to use a dirty toilet (urine on floor and seat) and was threatened to get an injection when she complained. On August 21, 2018, Mr. Lynch ordered the UM

police chief to have petitioner be hosted in a mental facility after she accused respondents' lawyer lying to the court and killing her with stress.

Some UM police department and hospital security officials (respondents refused to release their names) are unnamed respondents/defendants. They are responsible for unlawfully restrained, arrested and abused petitioner for their personal gain, such as job security and promotion. In April, 2008, UM police issued petitioner a trespassing warning tickets after she reported to an official that a faculty in the building had physically assaulted her and made false statement in a group meeting to harm her reputation. UM police rejected her appeals until later 2011 for "he is a professor, you might be hurt by him again if we allowed you being there". In later 2009, UM police placed a charge of malicious destruction of property without no evidence against petitioner after the same faculty made a false accusation of "a post was defaced". On November 8, 2017, a hospital security restrained and bruised petitioner after he received an ordered to knock her out by an injunction.

All members of the board of regents, UM president and Health System CEO are unnamed respondents/defendants. They are responsible for willful neglect of duty because they allowed misconducts at UM out of control for many years. In 2011, they did not response to petitioner's report on concerning of retaliation by Dr. Richard Simon because she refused to help him for covering up scientific misconducts. In 2015, they did not response to petitioner's request for investigation of scientific misconducts after they received evidence in documents. In 2017, they ignored petitioner again after she reported to them that she was retaliated by UM legal department, she was barred from receiving health care, she was poisoned by a prescription drug for illness she never had.

According to 42. U.S.C. §1983 and all individuals listed above as named and unnamed defendants are liable to petitioner (the party injured) in an action at law, suit in equity, or other proper proceeding for redress.

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ADDITIONAL STATUTORY PROVISIONS INVOLVED

Rule 44.2. Rehearing: Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ will not be extended. The petition shall be presented together with certification of counsel (or of a party unrepresented by counsel) that it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay; one copy of the certificate shall bear the signature of counsel (or of a party unrepresented by counsel). The certificate shall be bound with each copy of the petition. The Clerk will not file a petition without a certificate. The petition is not subject to oral argument.

18 U.S.C. § 371 (1994): If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object

of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S. Code § 241. Conspiracy against rights: If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured. They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

STATEMENT

I. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge validation and enforcement of a settlement agreement under Civil Rights Act of 1964.

II. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge the legality of a public university and its divisions under First Amendment, The Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9), The Whistleblower Protection Enhancement Act of 2012, The False Claim Act, 31 U.S.C. §§ 3729 – 3733

III. This case presents a recurring question that has divided the courts of appeals and U. S. Supreme court: how to judge the legality of a public university and its division under Title VII Civil Rights Act of 1964.

IV. This case has raised issues on government accountability.

V. This case has raised questions with great public interests.

SUMMARY OF GROUNDS FOR REHEARING

1. Without supreme court enforcement, defendants will not stop creating conspiracies to harm The United State. **New evidences show that defendants have been creating new conspiracies to damage the public.**
2. Without supreme court's clear instructions, the 6th court of Appeals will continue make judgments differently from others and conflict with the supreme court¹

3. Without supreme court's clear instructions, defendants will continue using Eleventh Amendment as a bullet free shell while creating misconducts and damaging the United states.
4. Without supreme court's clear instructions, the 6th court of appeals will continue allowing public universities to misuse Eleventh Amendment to damage the United States.

GROUND FOR REHEARING

A

In the original PETITION FOR WRIT OF CERTIORARI filed on January 29, 2020, petitioner pointed:

1. The 6th Court of Appeals' decision on the validation of the release-dismissal agreement from an associated case (13-10479) conflicted with Supreme Court's three general considerations when determining whether enforcement of a release-dismissal agreement is appropriate.
2. The proceedings of case 13-10479 contained evidences of prosecutorial misconducts. To enforce the above release-dismissal agreement will affect public² interests and government accountability.
3. The Fourteenth Amendment (rev. 1992) clearly states: 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.

4. In the case for review, the lower court not only wrongly used Eleventh Amendment as an excuse, not only allowed defendants to continue their unlawful practices to discriminate, to retaliate and to cover up misconducts at the University without any legal consequence, but also abridged the First Amendment, prohibited petitioner from raising questions on conspiracies between the lawyers and judges.

5. Public university employees need federal protections for protecting federal funded programs. The US Supreme Court should consider to extend protections to public university employees under Whistleblower Protection Act of 1989, 5 U.S.C. 2302(b)(8)-(9), The Whistleblower Protection Enhancement Act of 2012 and False Claim Act, 31 U.S.C. §§ 3729 – 3733.

6. The 6th court appeals only accepts the EEOC form 5 as the formal charge regardless, such approach is wrong and conflicts with all other circuits and the supreme court (Edelman v. Lynchburg College, 535 U.S. 106,110 (2002)), and 29C.F.R. §§ 1626.3, 1626.6, 1828.8.

B

In the PETITION'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION filed on March 27, 2020, Petitioner pointed:

1. Respondents lied to this court in many ways, which include creating fake court document as evidence.³
2. Respondents has a history of bribing plaintiff's attorney.
3. The Judge and court staffs at the State Court have been under investigation for judicial misconducts which is associated with the current case for review.

C

In this PETITION FOR REHEARING FOR PETITION FOR WRIT OF CERTIORARI, petitioner wants to emphasize:

1. Without supreme court enforcement, defendants will not stop creating conspiracies to harm The United State.

(1) Defendants have never stopped retaliating staffs/ ex-staffs who reported misconducts and requested for investigation. President and all Regents of the University have received copies of evidence in person (ECF 30 Exhibit1, ECF 39 Exhibit10, 11, 12,13), but they decide not doing any investigation instead threatening the whistleblower “getting arrested by UM police if you keep asking to meet leaders at the University—Timothy Lynch, named defendant”.

(2) Defendants tried to have plaintiff promise never reporting their misconducts to any government agencies (ECF 39, Exhibit 7& 8). According to a personal communication, Mr. David Masson has recently offered a research fellow “much more and better than you asked for” to encourage him to co-operate with the university by not reporting research misconducts to a government agency.

(3) Defendants are creating new conspiracies now to deal with newly reported misconducts by others. From the News reports, UM leaders have created a channel in May, 2020 to bypass a court to provide monetary relieves to a group of men and their attorneys which include a cousin of a UM regent and a brother of Judge Sean Cox. These guys claimed they were sexually assaulted by a physician⁴ during their male health exams in 1960s and 70s. The accused physician died in 2008. The member of UM regents has said in public “Whatever Tom says, I

believe". The brother of Judge Sean Cox has flooded the district court with 45 lawsuits for the same issue within a month.

2. Without supreme court's clear instructions, the 6th court of Appeals will continue make judgments differently from others and conflict with the supreme court.

(1) The 6th court of appeals accepts EEOC form 5 as the formal charge and refuse to consider EEOC intake questionnaire as supplement.

In contrast, the Fifth and Seventh Circuits allows an intake questionnaire as a charge when it contains all the information necessary for a charge. EEOC treats intake questionnaire as a charge by providing notice to the employer and instigating conciliation efforts. The Fourth and Ninth Circuits, holds that an intake questionnaire could be a charge, regard-less of how it is treated by the EEOC, if it includes all the requisite information necessary for a charge.

In Edelman v. Lynchburg College, 535 U.S. 106,110 (2002), the Supreme Court stated that "a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of." Additionally, the Court held that Title VII is "a remedial scheme in which lay persons, rather than lawyers, are expected to initiate the process... [and as a result], the lay complainant who may not know enough to verify on filing will not risk forfeiting his rights inadvertently."(Edelman v. Lynchburg College, 535 U.S. 106,110 (2002)), and 29C.F.R. §§ 1626.3, 1626.6, 1828.8)

(2) The 6th court of appeals agreed with Judge Sean Cox, the controversial release-discharge agreement from case 13-10479 is valid and enforceable regardless it is a result of conspiracies and judicial misconducts. ⁵

In contrast, the Supreme Court looks to three general considerations when determining whether enforcement of a release-dismissal agreement is appropriate. (1) the agreement was voluntary; (2) there was no evidence of prosecutorial misconduct; and (3) enforcement of the agreement will not adversely affect relevant public interests (Patterson v. City of Akron Ohio, et al., 619 Fed. Appx. 462 *; 2015 U.S. App. LEXIS 12898).

3. Without supreme court's clear instructions, defendants will continue using Eleventh Amendment as a bullet free shell while creating misconducts and damaging the United states.

(1) Can federal court issue an injunction against any public university leader who has violated federal law?

In current case, all UM regents and the president and Timothy Lynch are UM leaders who have intentionally violated the First Amendment, Whistleblower Protection Act 1989, Civil Rights Act of 1964 in bad faith. The 6th court of appeals mistakenly classed them as supervisors, not proper defendants under Title VII.

(2) Does Eleventh Amendment automatically protect a public university from liability when it is in federal court?

In current case, the university pays all it's legal expense with insurance and invest incomes. The money from the State of Michigan is for teaching and students' financial aids only and about 3.4% of the university annual budget.

4. Without supreme court's clear instructions, the 6th court of appeals will continue allowing public universities to damage the United States

(1) NIH approximately lose up to \$ 4.7 billions each year because of scientific misconducts.⁶

In FY2018, NIH issued 47,000 competing and non-competing research project grant (RPG) awards totaling about \$26 billion, half of the top 20 NIH funded institutions are public universities.

Based on the survey data, 1.97% of scientists admitted that they fabricated, falsified or modified data or results at least once, and 14.12% of researchers believe that their colleagues had involved research misconducts (Fanelli D (2009) How Many Scientists Fabricate and Falsify Research? A Systematic Review and Meta-Analysis of Survey Data. PLoS ONE 4(5): e5738).

In 2019, UM received \$454,017,078 from NIH and have 1071 employees work full time for these projects. As estimating, approximate \$8.9 million to \$ 64.1 million NIH funding was wasted at UM because of scientific misconducts.

(2) Without supreme court's clear instructions, the 6th court of appeals will continue allowing public universities to defraud federal funded programs.

Thanks for selfless whistleblowers and False Claim Act, the US department of justice can recover some fund from private universities. In April 2017, Brigham and Women's Hospital in Boston, Massachusetts, and its health-care network agreed to pay the federal government \$10 million to settle fraud allegations in stem-cell research funding. In 2019, Duke University settled a False Claims Act lawsuit related to scientific research misconduct and agreed to pay \$112.5 million back to the federal government.

Unfortunately, the 6th court of appeals holds that public universities are immured from being sued at the federal court for First Amendment violation, the FCA only applies to private business, and the WPA/WPEA only protects federal employees working in federal buildings. The public university, such as the

University of Michigan becomes a play ground for unethical individuals to defraud government programs and wast public money without any consequence.

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REASONS FOR GRANTING THE PETITION

1. This petition has raised questions which have great public interests;
2. This petition has raised questions on government accountability;
3. This petition has raised questions of judicial misconducts at lower courts.
4. Without clear instructions by the US Supreme Court, more Americans will be suffered, more federal funding and programs will be wasted and damaged by misconducts and conspiracies.

CONCLUSIONS

The petition for rehearing for petition for writ of certiorari should be granted.

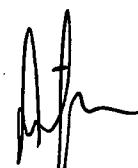
Respectfully submitted By:

Yusong Gong (petitioner/plaintiff)

June 1, 2020

4937 North Ridgeside Circle,

Ann Arbor, MI 48105



6/1/2020

SHIREEN SAMADANI
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF WASHTENAW
MY COMMISSION EXP. NOV. 23, 2020
ACTING IN THE COUNTY OF WASHTENAW

8

CERTIFICATE OF GROUNDS

I hereby certify that the newly found evidences which are stated in this petition as ground C1(2) and C1(3) are limited to intervening circumstances of substantial or controlling effect or to other substantial ground not previously presented.

Yusong Gong



6-2-2020

Yusong Gong (petitioner/plaintiff)

June 2, 2020

4937 North Ridgeside Circle,

Ann Arbor, MI 48105

CERTIFICATE OF PETITION

I hereby certify that this PETITIONER'S PETITION FOR REHEARING FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIX CIRCUIT is presented in good faith and not for delay.

Yusong Gong



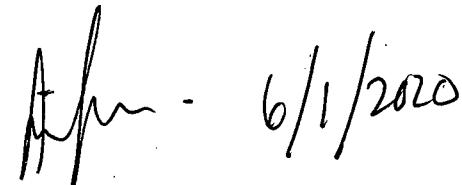
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