Case No. 19-8012

To the U.S. Supreme Court

Tatyana Evgenieva Drevaleva

Petitioner Pro Se

v.

1) Alameda Health System

2) Officers of the Department of Industrial Relations of the State of California Ms. Healy, Ms. Daly, Mr. Santos, and Mr. Rood whom I am suing 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 Rehearing,

Rule 44 of the Rules of the U.S. Supreme Court.

Tatyana E. Drevaleva

Petitioner Pro Se

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The grounds for rehearing:

I am respectfully asking the U.S. Supreme Court to rehear my Petition for Writ of Certiorari because I can't obtain relief through the 9th Circuit due to the June 08, 2020 Mandate and the Panel's "no file" Order (Exhibit 8.) The Clerk of the 9th Circuit rejected my Motion to Recall the Mandate due to the "no file" Order (Exhibit 9.) On June 16, 2020, the California Court of Appeal for the First District, Division Four denied my request to contact with the 9th Circuit and to coordinate my cases (Exhibit 10.) The California Supreme Court ignored my request to contact with the 9th Circuit and to coordinate my cases. This is why I am petitioning to the U.S. Supreme Court, and I am respectfully asking to rehear my Petition for Writ of Certiorari because I can't obtain relief through the California Courts.

Statement of Facts.

On March 04, 2020, a 3 Judge Panel denied my Petition for Rehearing En Banc asserting that the Petition was untimely, see Exhibit 5 to my Petition for Writ of Certiorari. In fact, I filed that Petition on January 27, 2020 which was in in five days after the Panel denied my Petition for Panel Rehearing on January 22, 2020, see Exhibit 4 to my Petition for Writ of Certiorari. Next day, on March 05, 2020, I filed a Petition to the En Banc Coordinator who is the Chief Justice of the Court of

Appeals for the 9th Circuit the Hon. Sidney Thomas, and I asked him to enter an Order that extends the deadline for filing a Petition for Rehearing En Banc. I filed that Petition pursuant to the 9th Circuit's General Order No. 5(b)(2) – "The En Banc Coordinator shall supervise the en banc process, including time schedules provided in this Chapter; shall circulate periodic reports on the status of each case under en banc consideration; may, for good cause, extend, suspend, or compress the time schedules provided in this Chapter; may designate another judge to perform all or part of the En Banc Coordinator's duties during the coordinator's absence; may suggest, for any particular case, a modification or suspension of the provisions of this Chapter; and may for good cause suspend en banc proceedings."

On April 11, 2020 and my May 20, 2020, I filed additional two Letters to Justice Thomas in support to my March 05, 2020 Petition to the En Banc Coordinator. I submitted the new pieces of evidence, and I demonstrated by the preponderance of the evidence that my former employer Alameda Health System didn't say that I had been fired for medical negligence towards the patient. I explained to Justice Thomas that it was essential for me to protect my good name and my good professional reputation from the Libel that was committed towards me by the California Department of Industrial Relations who denied my retaliation and unlawful termination claim and who accused me in committing medical negligence towards the patient. I asked Justice Thomas to enter an Order that

extends a deadline for filing a Petition for Rehearing En Banc. I never heard back from Justice Thomas.

On June 08, 2020, a 3 Judge Panel denied my Petition to the En Banc Coordinator (Exhibit 11) on the ground that Mr. Thomas was not a member of the Panel. To me, it didn't make any sense. The 3 Judge Panel didn't have any right to rule on my March 05, 2020 Petition to the En Banc Coordinator. The June 08, 2020 Order was a clear abuse of discretion. I immediately filed a Motion for Reconsideration that was ignored. On June 08, 2020, the 3 Judge Panel issued a Mandate (see Exhibit 8) and prohibited me to submit any further filings in this closed case. On the same day, I filed a Motion to Recall the Mandate. I received the Clerk's response that the 9th Circuit will not rule on my Motion to Recall the Mandate because of the no file Order (see Exhibit 9.) Therefore, I can't obtain relief through the 9th Circuit who refused to rehear my Appeal En Banc.

In its December 24, 2019 unpublished Memorandum, the 3 Judge Panel abused its discretion and affirmed the Orders of the District Court. In this Petition for Rehearing, I will explain why Hon. Judge Laurel Beeler clearly abused her discretion when she granted AHS's Motion to Dismiss my Amended Complaint on June 07, 2017 (Exhibit 1 to my Petition for Writ of Certiorari) and when she granted the Motion to Dismiss my Amended Complaint that was filed by the

Attorney who represented four Officers of the Department of Industrial Relations, see the July 07, 2017 Order (Exhibit 2 to my Petition for Writ of Certiorari.)

Proceedings at the District Court.

During the litigation at the District Court, Magistrate Judge Hon. Laurel Beeler did the following:

A. Improperly continued the Case Management Conference and banned Discovery
B. Always judged on papers and never invited the Parties to the Courtroom
C. Denied my Administrative Motion where I asked the Court to compel Alameda Health System (AHS) to present evidence of AHS's alleged status as a Public Agency. During the litigation at the District Court, AHS claimed that it was a Public Agency, and therefore AHS claimed exemption from both the National Labor Relations Act nor the Labor Management Relations Act. On May 16, 2017, I filed an Administrative Motion where I asked the District Court to compel AHS to present the evidence that would confirm AHS's alleged status as a Public Agency. Specifically, I asked the Court to compel AHS to present the following documents:

1) Copies of the forms prescribed by the Secretary of State on which Alameda County Medical Center and Alameda Health System submitted its application to be considered as public agencies in 1998 and 2014

2) Copies from the office of the Secretary of State regarding Alameda County Medical Center and AHS:

1. The full, legal name of the public agency

2. The official mailing address of the governing body of the public agency

3. The name and residence or business address of each member of the governing body of the public agency

4. The name, title, and residence or business address of the chairman, president, or other presiding officer, and clerk or secretary of the governing body of such public agency.

I wanted to see this information related to three separate dates:

a) September 18, 1998 when ACMC filed with the Secretary of State to be considered as a public agency,

b) June 22, 2004 after signing the Assembly Bill No. 2630, and

c) September 3, 2014 after ACMC changed its name to AHS.

3) Also, I wanted to see the same copies of filings with the clerk of Alameda County for the same three dates along with copies of applications.

My request for the documents that would confirm AHS's alleged status as a Public Agency was compliant with the California Government Code Section 946.4(b), "**the burden of proof is on the public agency**." However, Judge Beeler ignored my Administrative Motion and never ordered AHS to present the mentioned above documents that would confirm AHS's allegation of its status as a Public Agency. In her June 07, 2017 Order, page 7, Judge Beeler wrote, "It is beyond serious dispute that AHS is a public agency. Its genesis statute declares it to be just that. See Cal. Health & Safety Code § 101850(a)(2)(C.)[24] [[24] Strictly speaking, the statute uses AHS's previous name: the Alameda County Medical Center.] Ms. Drevaleva charges AHS with denying her affiliation to the Union‖ and thus violating 29 U.S.C. § 157 of the NLRA. Neither the NLRA nor the LMRA applies to AHS. Governmental entities are excepted from the NLRA. E.g., *Saipan Hotel Corp. v. N.L.R.B.*, 114 F.3d 994, 997 (9th Cir. 1997) (**citing 29 U.S.C. § 152(2)**). The LMRA, for its part, is the comprehensive federal labor law, which, by its terms, is applicable only to labor relations in the private sector. *Santa Clara Valley Transp. Auth. v. Rea,* 140 Cal. App. 4th 1303, 1307 (2006). [P]ublic entities are not "employers" within the meaning

of [this] federal law. *Santa Clara Valley Transp. Auth. v. Rea,* 140 Cal. App. 4th 1303, 1308 (2006) (citing **29 U.S.C.§ 152(2)**). These statutes do not provide the plaintiff with federal-question jurisdiction."

Therefore, Judge Beeler made two mistakes:

a) She assumed that, for the purpose of determining whether AHS is a Public Agency, the name "Alameda Health System" was equivalent with the previous name "Alameda County Medical Center." However, after I obtained the documents from the Office of the Secretary of the State of California Ms. Alex Padilla, I discovered that, for the purposes of determining the status as a Public Agency, the names "Alameda Health System" and "Alameda County Medical Center" were not equivalent. Alameda County Medical Center obtained its status as a Public Agency in 1998. In 2013, the hospital changed the name from Alameda County Medical Center to Alameda Health System. However, in 2013 Alameda Health System didn't file an application to be considered as a Public Agency with the Office of the Secretary of State. Alameda Health System filed such an application only in 2014. In 2015, the Office of the Secretary of State granted AHS's

application, and Alameda Health System was officially considered as a Public Agency only starting 2015.

It means that in 2013, when I was employed by Alameda Health System, AHS was not a Public Agency. However, in her June 07, 2017 Order, Judge Beeler improperly claimed that AHS was a Public Agency, and therefore AHS was exempt from the National Labor Relations Act nor the Labor Management Relations Act.

b) Ruling that Alameda Health System was a Public Agency and therefore it was an exempt from the NLRA and the LMRA, Judge Beeler cited 29 U.S.C. § 152(2.) However, this statute refers to the **State** [of California] and its **Political Subdivision**. Read the plain language of the statute, "(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or **any State or political subdivision thereof**, or any person subject to the Railway Labor Act [45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an

employer), or anyone acting in the capacity of officer or agent of such labor organization."

The plain language of 29 U.S.C. § 152(2) speaks about the State and its Political Subdivision. Contrary, Alameda Health System is neither the State of California nor its Political Subdivision. Opposing AHS's Motion to Dismiss my Amended Complaint, I wrote, "Citing *Santa Clara Valley Transportation Authority* (2006) is irrelevant because AHS is **not** a public entity. Citing 29 U.S.C. § 152(2) is irrelevant because AHS is not the United States, not any wholly owned Government corporation, not any Federal Reserve Bank, **not a State and not a political subdivision thereof**. The text of 29 U.S.C. § 152 doesn't contain any definition of a public entity, public employer, public agency, and public employee. I already provided provisions of law that specifically define public entities, public agencies and public authorities and public employees: Government Code 812.2, ... 29 U.S. Code § 203(x) or FLSA, ... 29 U.S. Code § 203(d) and 29 U.S. Code § 203(e) or FLSA, 49 USCS § 5102. Moreover, according to FLSA or 29 U.S. Code § 203(r), AHS performed its duties for business purposes which is true because they receive

money from Medicare, Medicaid and private insurance companies."

However, Judge Beeler didn't care about the plain language of 29 U.S.C. §152(2.) She ruled that AHS was a "Public Agency", and therefore she ruled that AHS was exempt from both the NLRA and the LMRA.

D. Accused me in conducting medical negligence towards the patient despite my former employer AHS and the Department of Industrial Relations (DIR) of the State of California and its Officers didn't say that I had been fired for committing medical negligence towards the patient

E. Granted DIR's Officers with absolute immunity for discretionary acts despite the Officers didn't follow the requirements of the California Labor Code Section 98.7 that mandated DIR to interview the claimant, to interview the respondent, to interview the witnesses, and to review the documents from AHS. During the investigation of my both wage claim and the retaliation and unlawful termination claim, DIR didn't interview me, didn't interview AHS, didn't interview the witnesses that I listed in my June 18, 2014 letter to DIR, and didn't review the documents from AHS regarding my employment

F. Granted DIR's Officers with absolute immunity for discretionary acts whereas DIR accused me in conducting medical negligence towards the patient, and my former employer AHS didn't say that I had been fired for committing medical negligence towards the patient

G. Granted DIR's Officers with absolute immunity for discretionary acts whereas during the litigation at the District Court DIR and its Officers didn't say that I had committed medical negligence towards the patient (however, DIR said that I had been fired for committing medical negligence towards the patient in its December 29, 2016 Determination Letter), and DIR never presented any explanation and any piece of evidence regarding the allegation of the medical negligence

H. Granted DIR's Officers with absolute immunity for discretionary acts and entered a Judgment in favor of four Officers Ms. Daly, Ms. Healy, Mr. Santos, and Mr. Rood despite three Officers Ms. Daly, Ms. Healy, and Mr. Rood had never been served with the Amended Complaint and with the Summons, and therefore they were not before the Court

I. Refused to rule on my Request for Entry of Default against Mr. Santos despite Mr. Santos filed a response to my Amended Complaint one day outside the deadline, and he was not incapacitated, and he was not in the military

J. Applied a Prima Facie Case for my Title VII claim against AHS at a pleading stage before conducting Discovery in violation of *Swierkiewicz v. Sorema, N.A.*, 534 US 506, 508 (2002)

K. Didn't thoroughly evaluate the elements of the Prima Facie Case and ruled that I couldn't satisfy the Fourth Element of the Prima Facie Case. However, the Fourth Element is variable. See *McGinest v. GTE Service Corp.,* 360 F.3d 1103 (9th Cir. 2004), "Although this fourth factor is not identical to the one employed in *McDonnell Douglas*, it is widely recognized that the test is a flexible one and the prima facie case described was "not necessarily applicable in every respect to differing factual situations." *McDonnell Douglas*, 411 U.S. at 802 n. 13, 93 S.Ct. 1817; see also *Swierkiewicz v. Sorema*, 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002). GTE's suggestion that McGinest does not establish the fourth factor is unpersuasive."

L. Refused to exercise the Diversity of Citizenship jurisdiction over AHS despite I filed my Amended Complaint from New Mexico. The Judge cited *Grupo Dataflux v. Atlas Global Group LP,* 541 U.S. 567, 574–75 (2004) and *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization,* 858 F.2d 1376, 1380 (9th Cir. 1988). However, both case laws didn't apply to my situation. In my Petition for Writ of Certiorari, I cited *Curry v. U.S. Bulk*

Transport, Inc., 462 F.3d 536, 540 (6th Circuit, 2006), "The general rule is that diversity is determined at the time of the filing of a lawsuit. See *Smith v. Sperling,* 354 U.S. 91, 93 & n. 1, 77 S.Ct. 1112, 1 L.Ed.2d 1205 (1957). Notwithstanding this general rule, persuasive authority counsels that in a situation such as this where an amended complaint is filed to include the identity of a previous unidentified defendant, diversity must be determined at the time of the filing of the amended complaint."

M. In my Amended Complaint, I complained that Alameda Health System violated its own policy that mandated AHS to provide additional 10 minute breaks to the employees who constantly observe video display screen for more than two consecutive hours. I asserted the violation of the OSHA because there was no any provision in the California statutes that would describe exactly this type of violation of health and safety (protecting the employees who are forced to constantly look at the computer screens for 12 hours.) However, in her June 07, 2017 Order, Hon. Judge Beeler ruled that "Nothing in the complaint alleges an OSHA violation. No factual allegation suggests that this is an occupational-safety case. And none of the specific laws that the plaintiff cites — 29 U.S.C. §§ 651, 654, 662; 29 C.F.R. § 1977.11 — gives this court federal-question jurisdiction through OSHA." However, I wanted to file a Petition for Rehearing En Banc, and I wanted to

argue that, because I can't invoke any California statute that protects the employees who constantly observe the video display screens, the OSHA preempts my claim on the ground of the impossibility preemption, see *Gade v. National Solid Wastes Management Assn.,* 505 U.S. 88 (1992.) However, the 3 Judge Panel denied my Petition for Rehearing En Banc that I submitted to Justice Thomas, issued a Mandate, and prohibited me to submit any further filings in this closed case. Therefore, I am asking the U.S. Supreme Court to intervene.

N. Refused to exercise Supplemental Jurisdiction over my State claims pursuant to 28 U.S.C. § 1367, see *Arbaugh v. Y & H Corp.,* 126 S. Ct. 1235, 1240 (2006)

O. Defined the "due process" claim against 4 Officers as "the DLSE defendants did not want to take into their consideration all the[] facts."

The 3 Judge Panel refused to accept my pieces of evidence that were not available during the litigation at the District Court and that demonstrated that I was not fired for medical negligence. I need to protect my reputation from Libel. Therefore, I am respectfully asking the U.S. Supreme Court to rehear my Petition for Writ of Certiorari.

I declare under the penalty of perjury, under the Federal laws, and under the laws of the State of California that all foregoing is true and correct. Executed at San Francisco, CA on June 27, 2020.

Respectfully submitted,

s/ Tatyana E. Drevaleva
Tatyana Evgenievna Drevaleva
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415-806-9864; tdrevaleva@gmail.com
Date: June 27, 2020.

Certificate of Compliance.

This Petition was written on 14 pages using 3,000 words.

s/ Tatyana E. Drevaleva
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Date: June 27, 2020.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 17, 2020

Tatyana E. Drevaleva
3015 Clement St., Apt. 204
San Francisco, CA 94121

No: 19-8012

Dear Ms. Drevaleva:

The petition for rehearing in the above-entitled case was postmarked June 5, 2020 and received June 10, 2020 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Also, the petition exceeds the 15 page limitation set out in Rule 33.2(b).

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By COPY
Clara Houghteling
(202) 479-5955

Enclosures