

ORIGINAL

No: 20-5754

FILED

SEP 12 2020

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
*Supreme Court of the United States*

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**PALANI KARUPAIYAN,**

-Petitioner

v.

**DEPARTMENT OF EDUCATION,  
NEW YORK CITY**

- Respondent  
-----

On Petition for a Writ of Certiorari  
to the United States Court of  
Appeals for the Second Circuit  
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**PETITION FOR A WRIT OF CERTIORARI**  
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Palani Karupaiyan,  
[Homeless/Evicted]  
Pro se-Petitioner  
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## QUESTION PRESENTED

- 1) When petitioner's home is evicted on Nov 2019,  
District Court dismissed the complaint on Dec 10 2019,  
Plaintiff/petitioner got this appealable order on Mar 05 2020,  
Plaintiff/petitioner filed notice of appeal on Mar 06 2020  
how does the US Court of Appeal have no-jurisdiction under 28  
U.S.C. § 2107; *Bowles v. Russell*, 551 U.S. 205, 214 (2007)?
- 2) 28 U.S.C. § 2107/Rule 4(a)(6) allows 14 days to reopen the case  
for filing notice of appeal when the appealable order has Lack of  
notice, should the District Court deny to reopen for fraction of  
day for filing notice of appeal?
- 3) Because of Petitioner is homeless, his constitutional rights and  
civil rights can be denied?

## PARTIES TO THE PROCEEDING

The **Petitioner** is Palani Karupaiyan, Plaintiff- Appellant.

The **Respondent** is Department of Education, New York City,  
Defendant – Appellee/Respondent,

Other defendants were Vaibhav Wakode, Nadine Brown, Asif  
Ali Khan, Bebe Kamta, Armando Taddei, Alice Carman,  
Jaysmar Bastien, Mani C. Krishnamurthy. These Other  
defendants were employees of the Dept. of Education, NY City.

**No related case(s)**

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## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment/order below

### OPINIONS BELOW

No opinion of the United States Court of appeals. Order of dismissal of appeal appears at Appendix: A to the petition

No opinion of the United States District Court. Order of dismissing the complaint entirely appears at Appendix: B to the petition

Petitioner is unaware the Court of appeal or US District Court orders were published or not.

### JURISDICTION

The date on which the United States Court of Appeals decided my case was June 26 2020. **Pet.App. 1a**

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 11 2020, and a copy of the order denying rehearing appears at Appendix: C. **Pet.App. 13a**

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2107;

*Bowles v. Russell*, 551 U.S. 205, 214 (2007);

*Hamer v. Neighborhood Housing Services*, 138 S. Ct. 13 -  
Supreme Court 2017.

## STATEMENT OF THE CASE

During the Mid-2017, defendant Dept. of Education, NYC, told the plaintiff that only foreigner can work on their contract jobs and US citizen should not work on the contract jobs. When plaintiff questioned this matter, defendant removed the plaintiff from work for retaliation. Plaintiff commenced this action on November 20, 2017. The District Court dismissed Plaintiffs original complaint on December 7, 2017, and granted Plaintiff leave to file an amended complaint. Plaintiff filed an amended complaint on January 11, 2018, and was granted leave to file a second amended complaint, SAC. The Court denied Plaintiffs request to file a third amended complaint when he received the right to sue letter from DOJ. District Court also denied the motion to reconsider 3<sup>rd</sup> amended complaint.

With 2<sup>nd</sup> amended complaint, Plaintiff brings claims for race, color, gender, national origin, religion, age, and disability discrimination, retaliation, hostile work environment, and violation of the Equal Pay Act.

Defendant moved for dismissal of the Second Amended Complaint (SAC) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendant argued

1) Plaintiffs federal claims should be dismissed as time-barred to the extent they are based on events that occurred before February 15, 2017.

2) Defendant argues Plaintiff's Title VII, ADA, ADEA, and GINA claims are barred for failure to exhaust his administrative remedies.

3) The remaining claims, in Defendant's view, must be dismissed for failure to state a cause of action. On Dec 10 2019, District Court decided to dismiss the SAC so Order addresses only the claims raised in the Second Amended Complaint as below:

I. Failure to Exhaust Administrative Remedies

- a. Title VII, Americans with Disabilities Act(ADA), and Genetic Information Nondiscrimination Act-GINA Claims
- b. The Age Discrimination in Employment Act –ADEA Claim

II. Failure to State a Claim Upon Which Relief May Be Granted

- a. NY State and City HRL Hostile Work Environment Claims
- b. Equal Pay Act Claim Fails to State a Claim.

On Dec 10 2019, District Court Judge Hon. William Francis Kuntz II ordered that Defendant's motion to dismiss is GRANTED in their entirety.

Since Nov 2019, the petitioner apartment is evicted. Till today, the petitioner is not able to lease the apartment due to unemployment, corona virus, and his disabilities including Situs inversus Totalis, an Genetic malformation disability.

During the Trial the defendant attorney was communicating with petitioner thru email. But for this

appealable order, Defendant attorney did not send a copy of order of dismissal to the plaintiff/petitioner thru email.

Due to Homeless, petitioner was not able to get the District Court's order of dismiss the complaint (dated Dec 10 2019) until March 05 2020.

On March 06 2020, Petitioner filed **Combined Notice of appeal and motion for extension of time** with good cause that the petitioner was homeless, petitioner got final order on March 05 2020 with District Court. District Court denied the motion to request for additional days to file notice of appeal until today (Mar 06 2020).

#### **PROCEEDINGS IN THE USCA-2<sup>nd</sup> CIRCUIT.**

At the Court of Appeal, I requested that did I need to file motion to request for additional days for Notice of appeal with Court of appeal since District Court denied my extension request. I was replied by Court of appeal that here is appeal so such extension request is not needed.

On June 26 2020, Court of appeal dismissed the appeal for lack of jurisdiction under 28 U.S.C. § 2107; Bowles v. Russell, 551 U.S. 205, 214 (2007). (sua sponte)

Along with dismissal of appeal, Petitioner's motion with USCA 2<sup>nd</sup> circuit for expedite the appeal due life threatening genetic illness which was denied as moot. Petitioner's motion to forma pauperis was denied as moot.



On Aug 11 2020, Court of appeal, 2<sup>nd</sup> circuit denied the appellant's motion for panel reconsideration, or, in the alternative, for reconsideration en banc.

Court of Appeal's order of dismissal of appeal and order denying reconsideration were send to wrong address of appellant when the appellant updated the change of address with Court of appeal.

Court of appeal approved the petitioner for e-filing but failed to send the docket entries thru email notification.

As well, Court of Appeal did not to provide the order(s) thru email.

Also I have requested the appellee's attorney to communicate with me thru email.

In USCA Appellee did not claim about the appellant's appeal is time or untimely.

NOW the petitioner filed his Petition for a Writ of Certiorari is timely.

## REASONS FOR GRANTING THE WRIT

In Bowles v. Russell, 551 US 205 - Supreme Court 2007, petitioner moved to reopen the filing period pursuant to Federal Rule of Appellate Procedure 4(a)(6), which allows a District Court to grant a 14-day extension under certain conditions, see 28 U.S.C. § 2107(c). The District Court granted Bowles' motion but inexplicably gave him 17 days to file his notice of appeal. He filed within the 17 days allowed by the District Court, but after the 14-day period allowed by Rule 4(a)(6) and § 2107(c). The Sixth Circuit held that the notice was untimely and that it therefore lacked jurisdiction to hear the case under this Court's precedent.

In Bowles, @2372 US Supreme Court vacate the decision of the Court of Appeals and remand for consideration of the merits.

In Hamer v. Neighborhood Housing Services, 138 S. Ct. 13 - Supreme Court 2017 @ 17 that

*“This case presents a question of time, specifically, time to file a notice of appeal from a District Court's judgment. In Bowles v. Russell, 551 U.S. 205, 210-213, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007), this Court clarified that an appeal filing deadline prescribed by statute will be regarded as*

mandatory claim-processing rules, and therefore misapplied *Bowles*.

Simple argument is *Bowles* was reversed under Rule 4(a)(6), *Hamer* was reversed under Rule 4(a)(5) when District Court granted (extra) additional time. In my case because of District Court did not grant any additional day(s) (within 14 days), USCA 2<sup>nd</sup> circuit dismissed my appeal. Suppose District Court should have reopened the docket for up to 14 or more additional days to file notice of appeal, my appeal should be dismissed by USCA.

In prose, I did not claim the extension to file notice of appeal under 28 U.S.C. § 2107 but my request should be under Federal Rules of Appellate Procedure. In other words, I filed combined notice of appeal with extension request which did not note that my request under 28 U.S.C. § 2107.

In my case, District Court entered the order of dismissal of complaint on Dec 10 2019, due to home eviction petitioner become homeless. Plaintiff got the appealable final order on Mar 05 2020. On Mar 06 2020 petitioner filed **Combined Notice of appeal and motion for extension of time (together)**, the request was instantaneous reopen to docket, file notice of appeal

which did not need even single complete (24 hour) day docket need to reopen(extension).

Because of homeless, address-less, got applicable order on Mar 05 2020 and filing notice of appeal with extension request on Mar 06 2020 is **good** **cause/excusable neglect**.

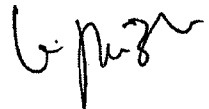
This case is similar to lack-of-notice situation, within 180 days of entering appealable order, I filed notice of appeal with extension request on next day of I got appealable order which should not be dismissed by USCA.

Because of the petitioner is homeless, his civil rights and fair justice should not be denied to him.

### **CONCLUSION**

For any and all foregoing reasons, Petitioner prays that this Court issue a Writ of Certiorari to review the judgement/order of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,



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