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No. 21A 464

FILED
FEB 25 2022

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SUPREME COURT, U.S.

In The
Supreme Court of the United States

BERNICE CURRY-MALCOLM

Applicant,

v.

ROCHESTER CITY SCHOOL DISTRICT, ROCHESTER CITY SCHOOL
DISTRICT BOARD OF EDUCATION

Respondent.

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

**APPLICATION FOR EXTENSION OF TIME TO
FILE PETITION FOR WRIT OF CERTIORARI**

BERNICE CURRY-MALCOLM
Pro se Applicant
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West Henrietta, New York 14586
Telephone: Redacted

BERNICE CURRY-MALCOLM, *PRO SE APPLICANT*

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**APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI**

To the Honorable Sonia Sotomayor, Associate Justice for the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Second Circuit:

In accordance with Rule 13.5 of the United States Supreme Court Rules, Bernice Curry-Malcolm, appearing before the Court as an unrepresented *pro se* litigant, who was the *pro se* plaintiff and then appellant in the proceedings below, makes respectful request for a sixty -day extension of time, up to and including, Monday, May 9, 2022, within which to file her petition for writ of certiorari in this case. Curry-Malcolm's petition for writ of certiorari is currently due March 7, 2022. In support of this application, *pro se* Applicant states:

1. Rule 2.11 of the Code of Conduct and as pursuant to 28 U.S.C. §455 and Cannon 3C(1) of the Code of United State Judges, does the Fifth and Fourteenth Amendments rights to due process and equal protection attached to a judge's conduct of prejudice and bias against a *pro se* litigant calls into question the constitutionality of judicial impartiality as a significant element of justice, and should this Court overrule its standing in *Rippo vs. Baker*?
2. Would a reasonable person and/or disinterested person, with knowledge of the relevant facts, believe that the judge or justice has created an "appearance of partiality and whether the involuntary recusal standard is still good law where it impedes and hinders the *pro se* litigant civil and constitutional rights under the Fifth and Fourteenth Amendments?

3. This Court ruled that “Recusal is required when, objectively speaking, ‘the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable’”, should this Court overrule its standing in *Rippo v. Baker* and allow for the judges to create a judiciary system of bias and prejudices against *pro se* litigant by blocking access to a constitutional and fundamental civil right offered to all people?
4. Whether parties represented by counsel are 100% entitled to dismissal even where they are not entitled just because the other party was a layperson *pro se* litigant, and was it congressional intent for the layperson *pro se* litigants that are unrepresented to have less voice, individual rights, and access to the judicial system than those represented by counsel?
5. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., New York State Human Rights Law Section 296, 42 U.S.C. § 1981, 42 U.S.C. § 1983, prohibits discrimination, whether an employer’s continuing wrongful conduct and actions in an employment discrimination case precludes the Appellant from bringing subsequent actions against the employer, and when, where, how, and under what circumstances of law whether state or federal that prohibits unlawful discrimination and under which anti-retaliation statutes and other similar statutes, regulations, and the constitution is it acceptable to discriminate, including

under the ADEA, against an employee based on upon “previous similar conduct” by the employer?

6. Whether it was congressional intent to allow employers to skirt the constitution and human rights laws where the employer defends, condones, participates in and chooses the same “similar conduct” method of unlawful discriminatory and retaliatory and/or performed by the employer, its employees, officers and/or agents on different days and occurring at different times, by the same and/or different actors, and subsequent to the first, second, third..., and so on in violation of Title VII, ADEA, New York State Human Rights Law, 42 U.S.C. § 1981, 42 U.S.C. § 1983?
7. Whether an Appellant claims, are barred by issue preclusion where the Appellant could not have known, could have been aware of the employers continuing wrong in an employment discrimination case where there was no discovery in any other of the actions, and where there was substantial material evidence in the sole and exclusive possession of the employer, and whether the *pro se* litigant was entitled to discovery prior to dismissal of the complaint. Should this Court overrule *Degan v. United States*, 517 U.S. 820 (1996), *Tagath*, 710 F. 2d at 95, and rule that fundamental to one’s ability to litigate is “not” the ability to obtain discovery of the opposing party’s evidence, thereby removing a necessary tool to effective litigant as afforded to those represented by counsel?

8. Whether in the *pro se* litigant case, there was an unduly high pleading standard applied when held that the proposed complaint failed to state a cause of action against the defendants, and where the Appeals court ruling was in direct conflict with a prior panel ruling on the Court? Does the complaint satisfy the pleading requirement under Rule 8(a)(2), when it contains sufficient factual matters, accepted as true, to state a claim of relief that is plausible on its face in an employment discrimination case (*Ashcroft v. Iqbal*, *Swierkiewicz v. Sorema*, *McDonnell Douglas v. Green*)?
9. The ADEA prohibits age-based discrimination, whether *pro se* litigant established a *prima facie* case of discrimination and retaliation based on her age?
10. Whether *pro se* litigant established an employer-employee relationship contractual when the plaintiff-appellant factually stated that she was employed under an employment contract with the Rochester City School District and there was a binding employment contract, and the school district breached the employment contract. Whether appellant established breach of contract?
11. The Court of Appeals stance on appellant's claims of continuing wrong and continuing violation of unlawful discrimination and retaliation against her by her employer, including post-employment discrimination and retaliation, contradicts this Court ruling in *Lucky Brand Dungarees, Inc., v. Marcel Fashions* (2020).

12. Does the pro se appellant establish a prima facie case of discrimination and retaliation under Title VII, the ADEA, and New York Human Rights Law where she meets all the prongs and where an employer offered reasons for taking the discriminatory and retaliatory actions are false and pretextual to discrimination?
13. The Second Circuit overreached in its affirmation when it exceeded in its jurisdiction by pre se ruling on a remand by another panel within the Court and in regard to ruling on issues not before the court in the instant appeal, in direct contradiction
14. The Court of Appeals' *sua sponte* dismissal of the complaint was an abuse of discretion and is in conflict with this Court and other circuits.

The United States Court of Appeals for the Second Circuit's Summary Order and Judgment was entered on December 6, 2021 (Appendix A "App. A" hereto), affirming the dismissal of Applicant's discrimination and retaliation complaint. Curry-Malcolm filed a timely motion to stay the mandate on December 20, 2021. That motion is pending.

Under Rule 13.5, a Supreme Court Justice may extend the time for seeking certiorari for up to sixty additional days.

The Supreme Court has certiorari jurisdiction over this case under 28 U.S.C. § 1254 (1).

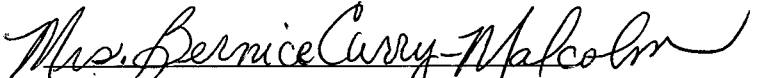
Reasons for Granting An Extension of Time

1. *Pro se* Applicant's need for additional time is heightened by the fact that she appears *pro se* and currently appears as *pro se* on other matters that are currently pending before the United States Court of Appeals for the Second Circuit, and before the New York State Court of Appeals.
2. Applicant requests an additional thirty days to properly prepare and file her petition for writ of certiorari.
3. Applicant's need for additional time is also heightened by the extraordinary circumstances of the passing of a loved one. Applicant makes prayerful and respectful request that she is granted the additional time.
4. Thus, granting an additional thirty-days will ensure that these important issues to be raised are properly, rather than hurriedly, presented to the Court.
5. Curry-Malcolm's cases raises substantial questions that warrants review by this Court. New York State Human Rights Law Executive prohibits discrimination based on race (Black/African American), color (Black/African American), age (Applicant was fifty-eight years of age when the discriminatory acts against her began) and/or sex (female, excludes sexual harassment and sexual violence), and/or gender (female), and retaliation and prohibits retaliation while engaging in a protected activity. This case presents issues of national importance concerning employment discrimination and post-employment retaliation.

WHEREFORE, In light of the circumstances presented and passing of Applicant's aunt, preparing an adequate petition for writ of certiorari will require an extension of time, affording good cause for a sixty-day extension to and including May 9, 2022.

Dated: February 25, 2022

Respectfully Submitted,


Bernice Curry-Malcolm, *pro se*

COPY TO:

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