ORIGINAL

21-1577

No.

In the Supreme Court of the United States

AYYAKKANNU MANIVANNAN,
Petitioner,

v.

DEPARTMENT OF ENERGY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) When a person requests records from a federal agency under the Freedom of Information Act, may the agency redact the requester's *own name* from the requested records, over requester's objection, on the grounds of protecting the requester from an "unwarranted invasion" of the his or her "personal privacy" under 5 U.S.C. § 552(b)(6) and/or § 552(b)(7)(C)? May the agency similarly redact the name of a public official from an official communication under those statutes on the ground of protecting the public official's personal privacy?

2) May a federal circuit court hold that a person failed to exhaust their administrative remedies under the Freedom of Information Act and deny the requester the right to file suit even though the federal agency failed to issue a final determination on his request within the 20-day statutory time limit under 5 U.S.C. 552(a)(6)(C)(i), where the circuit court's decision irreconcilably conflicts with a chorus of other federal circuit court decisions, federal district courts decisions, a letter from the agency telling the requester had exhausted his remedies, and previous rulings by the agency's own Office of Hearing and Appeals?

PARTIES TO THE PROCEEDING

Petitioner is Dr. Ayyakkannu Manivannan, plaintiff-appellant in the court below.

Respondent is the United States Department of Energy, defendant-appellee in the court below.

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Dr. Ayyakkannu Manivannan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in appeal no. 19-02188.

OPINIONS BELOW

The DOE/OHA determination letters explicitly confirming "FOIA twenty-day statutory exhaustion" were issued on 11/14/2017 and 9/22/2017.

The District Court's order granting summary judgment in favor of DOE was entered on 9/30/2019. The opinion of the Fourth Circuit court affirming in part and reversing in part was published on 1/21/2021 at 843 F. App'x 481 (4th Cir. 2021). The Fourth Circuit's order denying rehearing was published on 12/14/2021 and the mandate entered on 12/22/2021.

JURISDICTION

The Fourth Circuit issued its opinion reversing partly the judgment of the district court on 1/21/2021 (App.1) and denied a timely petition for rehearing *en banc* on 12/14/2021 (App.171). This Court has jurisdiction under 28 U.S.C. § 1254(1), 28 U.S.C. § 1651(a).

INTRODUCTION/STATUTORY PROVISION

Congress believed that the "philosophy of full agency disclosure," "put into practice, would help 'ensure an informed citizenry, vital to the functioning of a democratic society needed to check against corruption and to hold the governors accountable to

the governed.'" *U.S. Dept. of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989) (quoting *NLRB* v. *Robbins Tire & Rubber Co.,* 437 U. S. 214, 242 (1978)). Disclosure is the rule, not the exception.

The United States Supreme Court has explained that the, "basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." The "FOIA is often explained as a means for citizens to know 'what their government is up to.'" The Supreme Court stressed that "[t]his phrase should not be dismissed as a convenient formalism." Rather it, "defines a structural necessity in a real democracy." As declared a, "democracy requires accountability, and accountability requires transparency." The FOIA "encourages accountability through transparency."

Though the FOIA rules and regulations are well defined, still Circuit splits are occurring and questions on law remain. First, a question of first impression has arisen regarding whether an agency may properly redact a requester's own name (here, Petitioner Manivannan's) and a public official's name (here, a prosecutor) under 5 U.S.C. § 552(b)(6) and/or (7)(C) to protect a supposedly unwarranted invasion of personal privacy. The Court should act now to protect FOIA, and the Citizens across the country to exercise their rights. Secondly, according to FOIA regulation 5 U.S.C § 552(a)(6)(A), the Agency must issue a determination letter within 20 days of receiving a FOIA request otherwise the requester

exhausted his administrative remedies. The DC Circuit's opinion below and a previous decision by Fourth Circuit both abruptly depart from the Fourth Circuit Court's ruling here, and diverge sharply from the longstanding FOIA precedent on FOIA exhaustion in 20 days.

STATEMENT OF THE CASE

In early 2017, Dr. Manivannan made several FOIA requests to the Department of Energy.

On November 14, 2017, DOE's office of Appeals and Hearing ("OHA") issued a final determination letter on several of those requests (FOIAs 1347, 1348, 0078, 1759), exhausting all remedies based on the twenty-day statutory limit under 5 U.S.C. 552(a)(6)(C)(i). (EXHIBIT 3 in ECF 69, attached below, and FOIA 946 on 9/22/2017 (EXHIBIT 11 in ECF 17, attached below).

Dr. Manivannan thereafter filed an action in federal district court under FOIA seeking to compel the agency to comply with these and other of his FOIA requests, and the agency moved to dismiss his action, arguing that Dr. Manivannan had failed to exhaust his administrative remedies.

On February 21, 2018, Magistrate Judge Aloi issued a report and recommendation, holding that Dr. Manivannan had exhausted his administrative remedies for several of the requests, explaining that "NETL has not issued final determinations within the statutory time limit for the following six FOIA

requests submitted by Plaintiff: (1) HQ-2017-0833-F/NETL-2017-01017-F, (2) HQ-2017-00890-F/NETL-2017-01016-F, (3) HQ-2017-01070-F/NETL-2017-01080-F, (4) HQ-2017-00946-F/NETL-2017-01081-F (5) HQ-2017-01347, and (6) HQ-2017-01348-F (ECF No. 17-10 at 2; ECF No. 30). Judge Aloi's ruling was consistent with OHA's letter of November 14, 2017 stating that Manivannan had successfully exhausted his remedies for those requests.

On February 8, 2019, the same Magistrate Judge made a contradictory report and recommendation stating that Dr. Manivannan did not exhaust his FOIA administrative remedies. (ECF No.79, pages 18&19).

On September 30, 2019, the District Judge erred by affirming Magistrate Judge Aloi's ruling. (ECF 88.) Dr. Manivannan appealed the District Judge's ruling to the Fourth Circuit.

On January 12, 2021, the Fourth Circuit **partly granted and partly denied** Dr. Manivannan's appeal and **remanded** the case back to the district court.

The Fourth Circuit's decision contained two important errors of great significance that this Court should urgently correct on appeal.

First, the Fourth Circuit erred by affirming the district court's ruling that the Department of Energy was permitted to redact Dr. Manivannan's own name,

over Dr. Manivannan's objection to that redaction, for the purpose of protecting Dr. Manivannan's own privacy under 5 U.S.C. § 552(b)(6) and § 552(b)(7)(C).

The Fourth Circuit's ruling also erred by finding that Dr. Manivannan had failed to exhaust his administrative remedies for certain of the FOIA requests. This ruling squarely contradicted not only OHA's decision letter and the Magistrate's Judge's February 21, 2018 ruling — both of which confirmed that Dr. Manivannan exhausted his FOIA administrative remedies because the agency did not respond within the twenty-day statutory time limit — but it also contradicted many other courts of appeals decisions, including CREW v. FEC, 711 F.3d 180, 185 (D.C. Cir. 2013), and Coleman v. DEA, No. 11-1999, 2013 WL 1832078 (4th Cir. May 2, 2013).

Dr. Manivannan filed a motion for rehearing en banc asking the court to rehear the portion of the Fourth Circuit's decision denying Dr. Manivannan's appeal.

On December 14, 2021, the Fourth Circuit issued an order denying rehearing en banc. The mandate issued on December 22, 2021. Dr. Manivannan now petitions this Court for review.

On March 21, 2022, this court permitted to submit this Petition within 60 days.

REASONS FOR GRANTING THE PETITION

A. FOIA exemptions (b)(6) and (b)(7)(C) preventing disclosures to protect violations of personal privacy cannot possibly allow an agency to redact the requester's own name.

Dr. Manivannan's FOIA request No. 1070 sought certain communications about Dr. Manivannan in the possession of the Department of Energy.

In response to this request, the agency produced documents that included e-mails to and from an agency employee, Mark Hunzeker, which included certain redactions. In one of those documents – an email from Mr. Hunzeker to an agency contractor, Marisa Williams – the agency had redacted and withheld from the document a small section of text that, read together with the context of the email, could only have been the redaction of Dr. Manivannan's own name. (EXHIBIT 11 in ECF69 (attached below for convenience). That document also contained a redaction that clearly, based on the context, removed the name of a public prosecutor that was at the time working with the Department of Energy to unlawfully collect privacy-act protected government records that the prosecutor later used in securing Dr. Manivannan's wrongful conviction, which was later vacated and dismissed.

The agency made these redactions pursuant to the FOIA exemption set forth in 5 U.S.C. § 552(b)(6). Under § 552(b)(6), documents (or parts of documents) are exempted from disclosure under FOIA if they qualify as "personnel and medical files and similar

files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Dr. Manivannan challenged the redaction of his own name in the District Court and asked the district court to conduct an *in camera* review to confirm that the redacted portion was Dr. Manivannan's own name. During the hearing in the district court, Dr. Manivannan specifically challenged redaction of EXHIBIT 11 in ECF69 (attached below for convenience) because it involved the **redaction of his name and the public prosecutor's name** during the hearing with the District Court Judge (transcripts, refer pages 7, 8 of informal opening brief of Appellant to Circuit Court, submitted on 11/21/2019). The District Court judge did not say that Petitioner "failed to overcome the presumption of good faith" as the Circuit Court interpreted, instead the District Court Judge was pleased by stating, "*You've done a good job, Dr. Manivannan, making your position.*" The judge's statement was clear for the *pro se* Appellant to conclude that he had satisfied the presumption.

Nevertheless, the district court erroneously declined to conduct the in-camera review and declined to order the agency to produce an unredacted version of the document.

Dr. Manivannan appealed to the Fourth Circuit. Although the Fourth Circuit agreed with Dr. Manivannan that the agency had improperly redacted several other documents, the Fourth Circuit failed to

reverse the district Court's ruling with respect to the redaction of Dr. Manivannan's own name.

For FOIA 1070, the Fourth Circuit held under 5 U.S.C. § 552(b)(6) that "Manivannan failed to overcome the presumption of good faith according to the agency's relatively detailed and nonconclusory affidavits."

This was clear error. In the district court and on appeal, Manivannan had specifically challenged redaction of EXHIBIT 11 in ECF69 because it involved the **redaction of his name and the public prosecutor's name** during the hearing with the District Court Judge (transcripts, refer pages 7, 8 of informal opening brief of Appellant to Circuit Court, submitted on 11/21/2019). Dr. Manivannan also offered two specific points to overcome the presumption of good faith during hearing: (1) The unredacted content of EXHIBIT 11 in ECF69 explicitly (crystal-clear) designates only the Appellant since there was no other employee under investigation or being prosecuted in Centre County, PA, at that time; and (2) The middle portion of EXHIBIT 11 in ECF69 related to ATTAPS of privacy timecards about the Appellant is redacted under exemption (b)(5) and now, Circuit Court has remanded the exemption (b)(5) to District Court. This exemption (b)(5) un-redaction of ATTAPS timecards of the Petitioner will unambiguously overcome the presumption of good faith exposing his correct argument.

By contrast, the Agency did not provide any presumption of good faith for these name redactions

under exemption (b)(6). It is absurd, even after being challenged an in-camera review of redacted Petitioner and public Prosecutor names.

This Court should grant review to address this important issue under FOIA, which this Court has never previously addressed. The case presents an important issue regarding the interpretation of the statute. What could be the unwarranted invasion of personal privacy of the Petitioner (myself, Manivannan) and a public prosecutor (public servant)? It is a violation of the fundamental constitutional right of the Petitioner (a citizen) when **courts will not allow un-redaction of his name and the Public Prosecutor Miller/McGoron's names**. How could privacy be invaded when in camera review was performed? FOIA law says that redaction of names under exemption (b)(6) is for "privacy," but the same law failed to provide guidelines to Judges on a Petitioner citizen's own name and public official names when challenged.

It is highly important that Supreme Court address whether the redaction of petitioner's name and public officials' names under FOIA exemption (b)(6) violates one's privacy especially when a citizen challenges his/her own name.

Petitioner Dr. Manivannan is a public citizen requesting to un-redact his and public prosecutor names. EXHIBIT 17 (ECF 69) in page 22a below (**Hunzeker commenting Dr. Manivannan's bank balance to prosecutor McGoron**) provided by the

agency without redaction is a good example of the **inconsistencies of applying FOIA exemptions.**

B. The Fourth Circuit's Erroneous Ruling That A FOIA Requester Could Fail to Exhaust His Administrative Remedies Even Though the Agency Failed to Respond withing the Twenty-Day Statutory Limit Creates a Split of Authority Between the Fourth Circuit and Other Circuit Courts.

In the decision below, the Fourth Circuit misconstrued its own decision in Coleman and D.C. Circuit's in Crew. This Writ challenges the current Fourth Circuit's squarely split decision on FOIA exhaustion compared to Crew v. FEC, 711 F.3d 180, 182-185 (D.C. Cir. 2013) (**Kavanaugh, J.**) and Coleman v. DEA, 714 F.3d 816 (4th Cir. 2013), ruled in Fourth Circuit by Hon. **Judge Traxler** (the same Judge in Manivannan case).

There are hundreds of cases available in all Courts of Unites States on FOIA statutory time exhaustion. Two cases that are split in decisions with the current case: (1) by the Fourth Circuit Hon. **Judge Traxler** (Judge for Manivannan write case and Coleman case with split rulings) stating, "DEA violated its statutory deadline for responding to Coleman". See Coleman v. DEA; (2) Current Supreme Court **Justice Kavanaugh** while on DC Circuit ruled "determination" within the meaning of 5 U.S.C. § 552(a)(6)(A)(i) within 20 working days of receiving

Crew's FOIA request, Crew is deemed to have exhausted its administrative appeal remedies under Section 552(a)(6)(C)(i), and its suit may proceed." "Holding that the twenty-day statutory timeline begins "once an agency receives a proper FOIA request." See Crew v. FEC. For the current case, Dr. Manivannan produced the best evidence for agency's failure on statutory deadline (similar to Coleman and Crew), the decision letter by OHA. (EXHIBITS 3 in ECF 69 & 11 in ECF 17, attached below)

Thus, the colossal split on FOIA exhaustion within twenty-day statutory time limit damages the uniformity of Court's decision. The points raised are crucial to secure uniformity of Court's decision, since they are of national concern and vital to the functioning of a democratic society when the basic function of FOIA is impinged upon by Courts that are engaging in contradictory and split egregious errors.

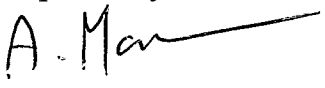
Regarding FOIAs 1347, 1348, 0078, 1759, 890, 946, 1070 agency DOE OHA decided and directed Dr. Manivannan to the District Court by stating, "Since the DOE has not issued a final determination for these requests within the statutory time limit, you may be deemed to have exhausted your administrative remedies and may proceed with this matter in federal district court. 5 U.S.C § 552(a)(6)(C)(i)." (Agency letters in EXHIBITS 3 in ECF 69 & 11 in ECF 17, attached below). It is important to point that Fourth Circuit made proper decision to vacate and remand FOIA 946 listed in the same agency decision letter on FOIA exhaustion along with 890 but made split decision. When an agency

letter stated both FOIAs 946 & 890 exhausted administrative remedies, how can the Fourth Circuit rule in Petitioner's favor for 946 but not 890 (EXHIBIT 11 in ECF 17). Also, as per the agency letter, there was no mention about any fee requirement as stated by Circuit Court for these FOIAs.

CONCLUSION

Petitioner requests the Supreme Court to address the two vital issues: Firstly, secure the uniformity of courts' decision on FOIA exhaustion (split decision on well established law). Secondly, they must address whose privacy is violated when Petitioner challenge his name and public officials name redaction under FOIA exemption (b)(6). For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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