

ORIGINAL

NO. 23-7336

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JUN 22 2024

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SUPREME COURT, U.S.

*SAC*

In The  
**Supreme Court of the United States**

WEILI CAO-BOSSA,

*Petitioner,*

v.

NEW YORK STATE DEPARTMENT OF LABOR, et. al

*Respondent.*

**PETITION FOR REHEARING ON DENIAL OF  
WRIT OF CERTIORARI**

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## **STATEMENT OF THE CASE**

Petitioner Weili Cao-Bossa, a former New York State Department of Labor employee, alleged discrimination based on national origin and age. The District Court granted summary judgment in favor of the defendants, and the Second Circuit upheld this decision. Petitioner contends that genuine issues of material fact were present and that the courts misapplied the statute of limitations by not recognizing the ongoing nature of the discriminatory acts.

## **QUESTIONS PRESENTED**

1. Whether the United States Court of Appeals for the Second Circuit erred in affirming the District Court's grant of summary judgment despite genuine issues of material fact.
2. Whether denying the petitioner's claims based on the statute of limitations overlooked critical ongoing discriminatory acts and misapplied the discovery rule of the statute of limitations.

## ARGUMENT

### I. Genuine Issues of Material Fact Exist

The District Court's grant of summary judgment was inappropriate because genuine issues of material fact existed. According to *Williams v. Utica Coll. of Syracuse Univ.*, 453 F.3d 112, 116 (2d Cir. 2006), summary judgment is only suitable when no genuine issue of material fact exists. Here, multiple factual disputes necessitated a trial, including the proper evaluation of the petitioner's performance, my ranking on the eligible list of the grade 18 position, and the real reason for the termination.

The Second Circuit overlooked these disputes, as demonstrated in the case documents and the detailed evaluations of the petitioner's performance. The conflicting evidence about the petitioner's job performance and the alleged discriminatory intent should have precluded summary judgment.

Please refer to the respondents' deposition (Docket 58) with exhibits to the SMJ, the eligible list showing I was the 3<sup>rd</sup> and Phoebe Helou was the 4<sup>th</sup> were provided by three different persons (Lindsay, Peg and Kathleen). The AG deliberately chose to use the eligible list on which I was the 4<sup>th</sup> and Phoebe Helou was not even on it to cover up the fact that Kathleen violated Rule of Three. The email showing Kathleen's discriminatory judgment that I was not qualified for a position more than entering debits and credits was also provided by Lin and herself in their dispositions. In the motion, the AG claimed that I agree with the 3-month evaluation on which I felt retarded. The genuine issues existed in SMJ; its supporting documents were contradicted with undisputed

facts in the SMJ alone warrants the denial of the SMJ.

Also refer to my second amended complaint filed on 9/30/19, docket # 25.

It includes the facts that I was treated disparately, the detailed disputes for the performance and my self-initiated development plan on which I felt I had been claimed to be retarded; it also includes “Evaluations in Question” showing my disagreement with those evaluations. The trial courts failed to assess the legal sufficiency of the complaints.

I filed Motion for relief from judgment under rule 60 (b) (Docket 75, 79) confirming that genuine issues existed in the SMJ and I acted nothing but in good faith that June 14 response was not meant to be the formal response.

Appendix a ---- the DOL Complaint Information Form. It shows I filed an original discrimination complaint with the NYS Public Employment Relationship Board (PERB) on Apr 13, 2017. It was denied due to out of the statutory jurisdiction. I then filed the complaint with DHR following PERB's suggestion. It shows my disputes regarding performance issues and real reasons for my termination. It includes the fabricated declination despite my refusal to decline the position, Kathleen Elfeldt's email confirming her discriminatory judgment. The confirmation of declination shows I would be barred from being hired with the grade 14 position from which I was terminated due to incompetency. I was correct about the discrimination right from the beginning! Genuine issues existed in the SMJ.

Appendix b ---- The internal email showing Kathleen violated Rule of Three scienter was from DHR records which was provided by respondents. It reveals the real intent for the fabrication of my declination.

## II. Misapplication of the Statute of Limitations

The courts misapplied the statute of limitations by not recognizing the ongoing nature of the discriminatory acts. According to the Discovery Rule of Statute of Limitations, the statute begins when the plaintiff discovers the injury. Petitioner's claims included ongoing discriminatory actions leading up to my termination in April 2017, which were not discrete acts but part of a continuous pattern of discrimination. It seems that the courts were deceived or misled by the AG's material misstatements based on fabricated evidence.

The court's narrow interpretation of the timeline disregarded the ongoing nature of the discrimination, which persisted until the petitioner's termination. This misapplication of the statute of limitations is a critical legal error warranting reconsideration.

Appendix c --- Case 1:18-cv-01009-LEK-CFH Doc 4, P6. I identified right from the beginning that the denial of the grade 18 was the reason for the later employment and termination. They were directly connected, the statute of limitations should be Feb 9, 2018.

Based on all the previous filing records, especially the SMJ itself, the court have reasons to know the genuine issues existed, the respondents and the AG know perfectly why I was terminated but the AG intentionally provided incorrect and incomplete records to mislead the court with material misstatements. The court has been deceived successfully and erred in granting the SMJ with genuine issues and legal errors.

### III. Exceptional Importance and Conflict with Supreme Court Precedents

This case presents significant questions regarding the interpretation of summary judgment standards and the statute of limitations in discrimination cases, impacting how lower courts address similar claims. Additionally, the decisions conflict with established precedents, such as *Weyant v. Okst*, 101 F.3d 845, 854 (2d Cir. 1996), requiring courts to view evidence in the light most favorable to the nonmoving party. In *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970), the burden of the non-movant to respond arises only if the motion is properly "supported" - and therefore summary judgment only is "appropriate" when the moving party has met its burden of production under Fed. R. Civ. P. 56(c) "to show initially the absence of a genuine issue concerning any material fact." *Id.* at 159. An inappropriate summary judgment full of genuine issues and legal errors is not entitled to be entered as true just because the non-movant failed to respond properly.

The denial of certiorari ignored these substantial issues. It justifies the reconsideration to maintain uniformity in the Court's decisions and addressing critical legal principles affecting numerous cases including my discrimination case.

## CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant this petition for rehearing and reconsider the denial of the writ of certiorari.

Respectfully submitted,

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June 22, 2024

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## Certificate of Compliance

As required by Supreme Court Rule 33.1(h), I certify that the rehearing petition for a writ of certiorari contains less than 3000 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

As required by Supreme Court Rule 44, I certify that the petition is restricted to the substantial grounds not previously presented. It is presented in good faith and not for delay. The contradiction between the summary judgments and its supporting documents, including the depositions with exhibits in support, documents to produce under Rule 26 provided by Respondents and AG, plus the misapplication of statute of limitation warrants a reconsideration.

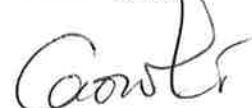
An auto reply was received at 3:18 PM Jun 22 that the rehearing petition was sent to Sara Rosenbluth by [sarah.rosenbluth@ag.ny.gov](mailto:sarah.rosenbluth@ag.ny.gov).

I declare under penalty of perjury that the foregoing is true and correct.

Bossa

Executed on 6/22, 2024

Weili Cao



6/22/24



**Additional material  
from this filing is  
available in the  
Clerk's Office.**