No.23-7628

IN THE

Supreme Court of the United States

ELLEN XIA

Petitioner,

VS.

LINA T.RAMEY AND ASSOCIATES

WILLIAM MARTINEZ,

Respondent.

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

PETITION FOR REHEARING

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Pro se Petitioner

LETTER TO SUPREME COURT

Hon'ble Justices,

As an international and pro se plaintiff, I tried my best to follow the rules and adhere to timelines to file my petition on time. However, due to the abuse of power and unnecessary obstacles created in the way, this case comes to request the Supreme Court to rejudge.

The main points of irregularity in the case are that the decision was not giving any opportunity of hearing and testimony to the plaintiff, and secondly, the district court dismissed the claim of the plaintiff with prejudice, which compels the plaintiff to exhaust all possible remedies.

I could not attach the ARB decision dated **Oct 7th, 2024,** due to the page limitation, which clearly explained how the OALJ Judge abused the power and rejected all my remote hearings. It also showed further proceedings to reassess the green card fraud claim.Due to these failed hearing experiences, I was also absent from the next Fifth Circuit Court hearing and Supreme Court conference. However, the ARB decision corrected the OALJ court's mistakes. I realized that an international person could do a remote hearing legally, and hence I am submitting this petition for rehearing.

Further, I would like to clarify that the letter from the Supreme Court clerk to correct and resubmit this petition was dated **Nov 1st, 2024,** which was received by me on **Dec 3rd, 2024,** and due to this delivery issue, there is some delay in filing this corrected petition. However, it is filed within 15 days from the date of receipt of the same from the registry of the Supreme Court. In these circumstances, I request to condone the delay that occurred in the returning and filing of this petition.

Hopefully all the justices could reconsider this case.

Thanks

Ellen

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REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial or controlling effect or to other substantial gounds not previously presented. The Supreme Court recently issued its opinion, after the order of the Fifth Ciruit Court in present case, in Muldrow v. City Of St. Louis, Missouri Et Al, No. 601 U. S. ____ (2024) 22–193. —(April 17, 2024). The Murldrow decision substantially affects and applicable to the case of the Petitioner and creats intevening circumstancs for petitioner's case. The Murldrow decision expands the scope of employment title VII Cases and lowers the hightended theshold approach in Title VII Cases. Additionally, the petitioner wants to present the following grounds for consideration of this court which were inadvertently left out and not raised by the Petitioner due to lack of proper legal assistance as the Petitioner is a pro se litigant. Firstly , A vital point that present petitioner is a pro se litigant and her complaint must therefore be held to " less stringent standard than formal pleading drafted by lawyers" as instructed by this Court in *Haines v. Kerner,* 404 U.S. 519. Secondly, the Petitioner has not been given opportunity to participate in the hearing and/or testify before either ALJ and/or before Fifth Appellant Circuit Court as the Petitioner was not aware about the rules of remote hearing and depsite her requests she was not given proper guidance on the same.

I That in recent decision of Muldraw vs. City of St.Louis Missouri Et Al, No. 601 U. S. ____ (2024) 22–193. —(April 17, 2024) U.S. Supreme Court rejected a heightened threshold approach adopted by the U.S. Court of Appeals for the Eighth Circuit and other circuits in Title VII

employment discrimination cases which is directly applicable to the case of presesnt petitioner.That the Petitioner has raised her claim under Title VII alleging employment discrimination based on sex, race and national origin. Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." §2000e–2(a)(1). The Fifth Circuit Court held that Petittioner's discriminationn claim is deficient because she failed to establish that her claims were caused by her race, national origin, sex or any other protected characterstics. The Fifth Circuit Court ought to have considered Pettiioner's claim in light of the facts that it is raised by a pro se litigant and secondly the court should not adopt a heightened threshold approach in deciding title VII cases.(Muldrow v. City of St. Louis, Missouri). It is held by the Supreme court in Murldrow that the words "discriminate against," refer to "differences in treatment that injure" employees. *Bostock v. Clayton County, 590 U. S. 644, 681 (2020).* Or otherwise said, the statute targets practices that "treat[] a person worse" because of sex or other protected trait. Id., at 658. And that "worse" treatment must pertain to—must be "with respect to"—employment "terms [or] conditions." §2000e–2(a)(1). The "terms [or] conditions" phrase, is not used "in the narrow contractual sense"; it covers more than the "economic or tangible." *Oncale, 523 U. S., at 78; Meritor Savings Bank, FSB v. Vinson, 477 U. S. 57, 64 (1986).* To make out a Title VII discrimination claim, a transferee must show some harm respecting an identifiable term or condition of employment. Now applying this threshold in case of Petitioner, the

Petitioner has made specific allegations with specific details about the discriminatory treaement offered by her supervisor William Martinez and the discrimination she has faced at LTRA by other employees due to her sex and ethincity and ultimate outcome of this treatement resulted into her laid off from the company on the recommendation of her Supervisor William Martinez clearly shows that she was discriminated and her laid off is due to such discrimination. In view of the Muldrow opinion, the Fifth Appellant Court ought to have considered the discriminatory treatement faced by the Petititoner and should not have taken a hightened approach in evealuating the employment discriminatin claim of Petitioner.

Moreover, the courts below has applied wrong standard in evaluating the Petitioner's claim of employment discrimination and hostile work evniornement. The District Court has granted the motion of defendant to dismiss the claim of the petitiner under Rule 12(b)(6). For a defendant to prevail on a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), it must show beyond all doubt that a plaintiff can prove no set of facts in support of her claims that would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957);Luckey v. Harris, 860 F.2d 1012, 1016 (11th Cir. 1988). The motion to dismiss stage, the Court is required to accept all of the plaintiff's well-pleaded facts as true, and all reasonable inferences are to be construed in the light most favorable to Plaintiff. Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1274, n. 1 (11th Cir. 1999) Consequently, a motion to dismiss a complaint must be decided on questions of law and questions of law only. When faced with a motion to dismiss for failure to state a cause of action, the Court must confine itself strictly to the allegations within the four

corners of the complaint. Crowell v. Morgan Stanley Dean Witter Servs., Co., 87 F. Supp. 2d 1287, 1290 (S.D. Fla. 2000). That in the present case the District Court has gone beyond the complaint and allowed the dismissal motion of the respondent without properly considering the allegations of the Petitioner. Addiontially, due to the lack of opportunity to testify in support of her claim the Petitiioner's claims got rejected on the basis of dismissal motion of the resondent by considering the petitioner's claim as deficient and lacking standard of survival.

With regard to the Petitioner's claim of hostile work environment Petitioner alleges that she was discriminated against on the basis of her sex ,race, national origin because she was subjected to sexual harassment by her supervisor while she was employed with the Respondent LTRA.There are two types of sexual harassment cases: (1) sexual harassment which culminates in a tangible employment action such as discharge, demotion, or undesirable reassignment (traditionally referred to as `quid pro quo' harassment); and (2) sexual harassment in which no adverse tangible employment action is taken, but which is sufficiently severe to constructively alter an employee's working conditions (traditionally referred to as `hostile work environment' harassment). Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998). (1998); Frederick v. Sprint/United Mgmt. Co., 246 F.3d 1305, 1311 (11th Cir. 2001). The Courts below ought to have recognized that Petitioner's allegations falls under both the categories as Petitioner's allegations that she was isolated and not given training with other similarly situated employees, her supervisor William subjected her to sexual harrassment by watching her while going to rest

room , he watched her chest, cracked inappropriate jokes , followed her during lunch time, put a mini telescope and balck hair on his table to thretn her that he was watching her are the claims falling under second category and ultimate outcome of this actions which resulted into laid off of the Petitioner from the Respondent organization is first category harrassment. However, both the courts below failed to recognized these claims which ultimately resulted into dismissal of the claim of the petitioner.

That Courts below have recorded incorrect finding that the Petitioner has not exahusted all the admininstrative remedies in as much as that the courts below have ignored the fact that Petitioner has already exhausted her administrative remedies by filing a complaint before EEOC and the letter of EEOC dated September 20, 2021 is produced as Document 39-2 with the evidence by the Petitioner. Not only this , the Petitioner has also filed an appeal before against EEOC decision before Appellant Authority on October 16, 2021 and after exausting all the administrative remedies the Pettioner filed the complaint before the District Court.

II The Distrct Court of Northen District of Texas has dismissed the claim of the plaintiff on the ground that she has amended her complaint twice and therefore permitting futher pleadings attempts would be an ineffecient use of the parties and the court's resources , cause unnecessary and undue delay and also be futile. Similary the District court granted the defendant's motion to dismiss for failure to state a claim upon which relief may be granted. Theses dismissals were upheld by the Fifth Circuit Appellant Court ignoring the fact that the pro se litigants are not expected to meet out the standard of drafting as drafted by lawyers and a liberal approach should be adopted in cases of pro se litigants. Courts of this Circuit have interpreted the Supreme

Court's instruction in *Haines* as encompassing all filings submitted by *pro se* litigants, not just their pleadings. *Richardson v. United States* 193 F.3d 545, 548. Plaintiff is proceeding *pro se* and therefore the Court must liberally construe his pleadings. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285 (1976); *Haines v. Kerner,* 404 U.S. 519, 520 - 1, 92 S.Ct. 594, 596 (1972) (per curiam); *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197 (2007). While *pro se* pleadings are held to a less stringent standard than those drafted by attorneys, even under this less stringent standard, a *pro se* complaint is still subject to dismissal. *Haines,* 404 U.S. at 520-21. "[T]he mandated liberal construction afforded to pro se pleadings 'means that if the court can reasonably read the pleadings to state a valid claim on which the petitioner could prevail, it should do so.'" *Barnett v. Hargett, 174 F.3d 1128, 1133 (10th Cir.1999)*

III The Petitioner has not been given an opportunity of Personal hearing or gave her testimony before ALJ court and/or Fifth Circuit Court. The Petitioner timely appealed the Administrator's Determination and requested a hearing before the Office of Administrative Law Judges (OALJ). That prior to the hearing before ALJ , the respondent raised objection about taking Petitioner's testimony remotely due to her characterization of a Chinese law, commonly referred to as a blocking statute. The ALJ agreed with these concerns and advised Petitioner that she would need to travel to the United States or a special administrative region of China to testify at the hearing. Neither the ALJ nor any of the parties provided a legal foundation for granting OALJ the authority to order an unrepresented complainant to hire an attorney or obtain authorization from an unspecified "official" in order to be permitted to testify,The Petitioner's Certificate of Compliance was rejected by the ALJ

despite of the fact that his own research indicated that the depositions of Chinese nationals are routinely permitted in Macau without objection or reprisal and that parties to litigation often agree to hold depositions in Macau or another special administrative region of China. Thereafter, the ALJ scheduled a in person hearing wherein the counsel for the Administrator and Respondent appeared and presented opening arguments and the ALJ admitted evidence into the record. The Petitioner was present as "an observer" via telephone but she was not permitted to provide her own opening statement or respond to the arguments, and she was not allowed to testify to support her claims.

That the ALJ has not permitted Petitioner to participate and testify from China or Macau on the ground of mere existance of a blocking statue which was turned out to be fatal to the case of the Petitioner as Petitioner's Green Card claim was summarily dismissed on the ground of lack of testimony. These rejection of the ALJ court has been turned down by the ARB Decision dated October 7, 2024 and case was reminded with direction to allow the Petitioner to testify remotely.

IV The Petitioner submits that Petitioner brought forth her claim for promissory estoppel and fraud because the Respondents had promised to transfer her H-1B visa to a green card which fact is evidence from the evidence on record which include E-mail printouts. However, the Fifth Circuit court has failed to consider the evidences of the Petitioner for fraud and promissory estoppel and dismissed the complaint on surmises and conjunctures. In case Chaudhry v. Mobil Oil Corp., 186 F.3d 502 (5th Cir. 1999), While the case dealt with breach of contract with the h1b employee. This fraud green card claim in the ARB decision was remanded back to the OALJ court with further reaccess.

CONCLUSION

For the forgoing reasons and those stated in the petition for a writ of certiorari, the Court should grant rehearing, grant the petition for writ of certiorari, and review the judgment below. Alternatatively, the case be reminded back to the Distrcit Court to decide the issues on merits and afreash.

Respectfully Submitted,

ELLEN XIA
Dec 10th 2024
PETITIONER

POOF OF SERVICE BY MAIL

As the Pro Se petitioner, The address is 11816 Inwood Rd Apt 77921, Dallas, Texas 75244

On Dec 10th, 2024, I served the foregoing document described as PETITION FOR REHEARING on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid through United States mailing service.

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

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

ELLEN XIA
Dec 10th 2024
PETITIONER