No. _____

IN THE

Supreme Court of the United States

JUSTICIA RIZZO,
Petitioner,

vs.

DOUG COLLINS

DEPARTMENT OF VETERAN AFFAIRS
Respondent,

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS SIXTH CIRCUIT
OCTOBER 7, 2024

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Petitioner, JUSTICIA RIZZO is entitled to Default Judgement.

2. Whether Eastern District Court Judge, David L. Bunning abused discretion when he stated the summons was incorrect.

3. Whether Eastern District Court, abused discretion when claiming the Petitioner could *not* serve the Defendant through the *mail* S she is a party to the civil action.

4. Whether the Eastern District Court was responsible to have the Defendant served by the US Marshalls.

5. Whether the Eastern District Court, abused discretion when denying the Petitioner's motion to enter the MSPB Final Order and The EEOC APPEAL Decision.

6. Whether the District Court ERRED when denying an extension pursuant to Federal Rules Civil Procedure FRCP (4)

7. Whether the District Court Judge abused discretion when he contemporaneously ruled in favor of the Defendant absent a response to the courts.

8. Whether the Sixth Circuit Court of Appeals ERRED, when they failed to REMAND the case back to District Court, for remedy of service rather than upholding the dismissal.

PARTIES TO THE PROCEEDING

All parties appear in the caption of the cover page.

DIRECTLY RELATED PROCEEDINGS

- Justicia Rizzo, No. 23-5957, Sixth Circuit Court of Appeals Affirm Dismissal October **7, 2024**

- Justicia Rizzo, No. 2:23-cv-00036, Eastern District of Kentucky Dismissal September **27, 2023**

- Justicia Rizzo, EEOC Petition No. 2022005061MSPB No. CH-0752-15-01040I-2 Right to File Civil Action **February 14, 2023**

- Justicia Rizzo, No. CH-0752-15-0104-I-2 MSPB Final Decision August **5, 2022**

- Justicia Rizzo AGENCY EEOC**407020140080X**EEOC Request No. 0520170123 EEOC Appeal No. 0120150311 Direct Finding of Discrimination for proposed 30-day suspension March **2017**

- Justicia Rizzo, Criminal Case No. 1:14 po-00002 Southern District Court of Ohio **October 9, 2014**

- Jessica Rizzo Agency 200H-0539-20105013 EEOC Settlement Removal of 14-day Suspension. **November 18, 2011**

- Jessica Rizzo Agency No 200J-0539-2009101914 EEOC Settlement 45,948.50 payment plus $15,880 Attorney Fees Promotion to GS7 **March 8, 2010**

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PETITION FOR A WRIT OF CERTIORARI

Petitioner JUSTICIA RIZZO, ***pro se*** respectfully petitions for a Writ of Certiorari, requesting review of the rulings below, she is seeking a DEFAULT JUDGEMENT against the Department of Veteran Affairs.

CITATION OF OPINONS

The Opinion of the United States Court of Appeals for the Sixth Circuit case **23-5957 (FILED) October 7, 2024 (unpublished)** denying the Petitioner's APPEAL, is reproduced in **Appendix A.** The Eastern District Court of Kentucky case **2:23-36 DLB (unpublished)**, Dismissal for failure to serve the Defendant issued **September 27, 2023** claiming the Petitioner cannot serve the Defendant through the "mail" because she is a party to the civil action, is reproduced in **Appendix B.** Motion on APPEAL to submit oral argument was also **DENIED** .

JURISDICTION

The Petitioner's case falls under the Administrative Procedure Act, via an MSPB Mixed Case claim, where MSPB Board already REVERSED the Petitioners Removal, declaring her a Whistle Blower, also adding to the finding retaliation for protected and concerted activity. The Board authorized, The Petitioner to seek EEOC Review as outlined in the MSPB Final Decision: **MSPB CH-0752-15-0104-I-2-** page **21-22 Section 2.** The Petitioner received the EEOC

Decision Petition **No 2022005061** dated **February 14, 2023**. The EEOC Civil Action was filed on **March 15, 2023**. The Eastern District Court dismissed the cases based on failure to serve the Defendant, claiming she could *not* serve the Defendant through the mail, because she is a party to the civil action. The Civil Dismissal was ordered **September 27, 2023**, The Sixth Circuit Affirmed the Dismissal on **October 7, 2024**. Pursuant to Administrative Procedure Act and 5 U.S.C Subchapter II public law 79-404 June 11, 1946, The US Supreme Court has appellate jurisdiction. The jurisdiction of this court rests on **28 U.S.C. § 1254(1).**

CONSTITUTIONAL STATUTORY PROVISIONS

1. The 5th Amendment's Due Process clause protects people from losing their life, liberty or property without due process. The Supreme Court held that employees have a constitutionally protected property right to their continued employment, which cannot be taken by the government under the U.S. Constitution's Fifth Amendment without due process of law, and their right to evidence that would support their innocence **See Cleveland Bd. Of Educ. v. Louder mill, 470 U.S. 532, 546 1985.**
2. Constitutional Amendment **7.1.2.2** *Mixed Cases* *"In suits at common law, where the value in controversy*

shall exceed twenty dollars, the right of trial by jury shall be preserved, no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law

29 CFR § 1614.302 Mixed Case Complaints. A mixed case complaint includes employment discrimination charges based on race, color, religion, sex, national origin, age, disability, or genetic information related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). MSPB has jurisdiction to address. (2) A mixed case appeal is an appeal filed with the MSPB that alleges that an appealable agency action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or genetic information

See Holcomb v. Powell, 433 F3d 889(D.C. Cir 2006)*citing Aka v.* ***Washington Hospital Center, 156 F 3d 1284, 1289 (D.C. Cir 1998) (en banc)****Direct evidence of discrimination is not required in order to prove employment discrimination in mixed-motive cases under Title VII cases in which both a valid and discriminatory motive may be present*

US Supreme Court *recognizes mixed motive cases under* ***Title VII of the Civil Rights Act of 1964*** *in* ***Price Waterhouse v. Hopkins (see 490 U.S. 228 (1989)*** *and Practice Note, Discrimination under Title VII: Basics: Mixed Motives in Disparate Treatment Cases and Mixed Motive as a Limit on Liability).*

The US Supreme Court in Desert Palace, Inc. d/b/a Caesar's Palace Hotel& Casino v. Costa, see US No. 02-679 [June 9, 2003] *decided that unambiguous language of The Civil Rights Act of 1991 did not require heightened evidentiary requirement of "direct" as opposed to circumstantial evidence for mixed case claims.*

3. 14th Amendment of the Constitution Equal protections leading to **Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2,** The 1991 Amendments added the legal remedies of compensatory and punitive damages and the right to trial by jury for those remedies. 42 U.S.C. § 1981a(a)(1). Title VII plaintiffs may recover injunctive and other equitable relief, compensatory and punitive damages, and attorney's fees. 42 U.S.C. §§ 1981a(a)(1), 2000e-5(g)(1), (k). Providing: (a) Employer practices, it shall be an unlawful

employment practice for an employer— to participate in any form of discriminatory practices: because of such individual's race, color, religion, sex, or national origin;

4. ***No Fear Act** – Pub L. 107-174*

   The No Fear Act: *Antidiscrimination and Retaliation Act of 2002,* as amended by the Elijah E. Cummings *Federal Employee Antidiscrimination Act of 2020. Pub. L. No. 107-174, 116 Stat. 566 (2002); Pub L. No. 116-283, div. A, tit. XI, subtit. B, §§ 1131–38, 134 Stat. 3388, 3900–05 (2021).* The No FEAR Act is to hold federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. Congress found that "*agencies cannot be run effectively if those agencies practice or tolerate discrimination.*" **Pub. L. No. 107-174, § 101.Section 202 of the No FEAR Act** requires that federal agencies post a notice on their public websites after a finding of discrimination (including retaliation) has been made and all appeals have been exhausted. **A notice must be posted for at least one year.**

STATEMENT OF CASE

There is a dispute on whether proper service was made on the Secretary of Veteran Affairs in regard to an EEOC Civil Action which is ***part*** of a Mixed Case Claim. Both the Eastern District Court of Kentucky and the Sixth Circuit Court of Appeals argued the Petitioner could *not* serve the Defendant via certified mail, since she is a party to the civil action. The Petitioner requested an Extension to address service, which was DENIED. The Petitioner disagrees with the ruling and believes she's entitled to DEFAULT JUDGEMENT in her EEOC Civil Action.

REASONS FOR GRANTING

The Petitioner technically began a **third** EEOC claim in **2012**, it is now **2025.** The Petitioner is already a recipient of (2) prior EEOC Settlement Agreement(s) with the Cincinnati Department of Veteran Affairs. The Petitioner's first EEOC Settlement came after a female put **sex toys** on her desk, the Petitioner was **fired** through the *mail during Christmas break* after she filed a sexual harassment complaint against a non-veteran **female** perpetrator, who put the sex toys on her desk. The perpetrator only received a letter of reprimand. The Petitioner accepted over $45,000 in monetary award and a promotion as part of her initial EEOC **Settlement Agreement in 2010.** The Petitioner's second EEOC Settlement Agreement came after she

complained about a VA Nurse Manager placing an award recommendation on the Petitioners desk to recommend an award for an employee's skin being "PEACH" in color , the award recommendation further used southern antebellum racial slurs associated with bi-racial people, the Petitioner is bi-racial . When the Petitioner confronted the Nurse Manager, about the award being placed on "her" desk she was issued a 14-day suspension and accused of creating a racially tense hostile environment, **no** discipline was issued to the Nurse Manager, who put the document on the Petitioner's desk. The Petitioner ACCEPTED correction of the 14-day suspension as part of a second **EEOC Settlement in November 2011**. After the Petitioner participated in EEOC Activity, at the Cincinnati VA, the Petitioner was denied performance appraisals for over **3 years** and was prevented from competing for promotions. The Petitioner was the only employee in the entire Geriatrics and Extended Care Department without a performance appraisal for 3 years. Prior to initiating a third EEO claim, the Petitioner was actively seeking mediation to obtain her missing performance appraisals when her supervisor proposed a (30) THIRTY DAY Suspension for having a geriatric bed picked up (1) day late and accused her of deliberately causing a (20) TWENTY dollar debt to the Federal Government. The Petitioner immediately initiated

EEOC activity, along with the discriminatory claim associated with the proposed 30-day suspension: The Appellant also claimed she had been physically assaulted by the Assistant Nurse Manager, over a timecard. As part of The Petitioner's third EEOC claim, The Petitioner stated her supervisor failed to assign a backup timekeeper, which caused finance to threaten to bring the Petitioner up on "criminal charges" for posting her own timecards, though it was being directed by her supervisor. After receiving an ultimatum from finance not to post her own timecard, The Petitioner was **directed** to the same Nurse Manager who had previously put the racially charged award recommendation on her desk, to have that same nurse to post her time. The Nurse Manager refused to post the Petitioner's timecard and stormed out of the office slamming an office door into the back of The Petitioner's shoulder. The Petitioners supervisor confirmed the Petitioner was hit with the door but characterized the nurse managers behavior as an "accident" though the same nurse manager had also been accused of hitting another employee with a door. The Petitioners was actively seeking an **EEOC** claim, when she became an eyewitness to patient neglect and abuse, thus causing the timeline of her MSPB and EEOC cases to get intermingled. The Petitioner alleges she was subject to the following events leading up to her 2014 removal.

1. After the Appellant reported patient neglect to the Inpatient Advocate, the Appellant was threatened with death by a VA Charge Nurse who barged in the Nurse Mangers Office twice during the Fact-Finding Investigation. The Charge Nurse was given a 3 THREE DAY suspension and was reported to have been forced to retire. The Charge Nurse was not involuntarily reassigned, she was **not** brought up on criminal disorderly conduct charges in Federal District Court , she was **not** forced to meet with a psychiatric nurse on a closed psychiatric ward as part of a Threat Assessment Team , she was **not** involuntarily reassigned, she was **not** stripped of her duties, she was **not** terminated, however the Petitioner **was**.

   ***See* Coleman-Adebayo v. Leavitt, 400 F. Supp. 2d 257** *August 18, 2000, a federal jury found EPA guilty of violating the civil rights of Coleman-Adebayo on the basis of race, sex, color and a hostile work environment, under the Civil Rights Act of 1964.*

2. The Appellant claims in addition to being a witness to a specific patient neglect / abuse allegation, she was taking minutes on several committees to include but not limited to : Pain, Drug, Staff Meeting, and Residential Counsel Meetings, as a result of these meetings the Petitioner was made aware of various sentinel events resulting in

harm and/or death of VA geriatric patients. The Petitioner wrote a letter to the Obama White House reporting allegations of patient neglect and civil rights violations , in which the former Director Linda Smith responded to.

3. While the Appellants EEOC case was processing, activities regarding the specific patient abuse/neglect incident were being investigated at the same time. The Petitioner was *involuntarily* reassigned to the Cincinnati campus even though she lived less than a mile from the Fort Thomas campus.

   See Muldrow v. City of St. Louis U.S No. 22-193 .4.17.24, *"holding that Title VII of the Civil Rights Act of 1964 prohibits discriminatory job transfers that cause some harm with respect to an identifiable term or condition of employment, but the transferee need not show the harm was significant."*

4. The Appellant sought help from the **AFGE Local 2031 Union President,** whom she alleges refused to represent her, though she was an AFGE Union Steward at the time. The AFGE President, proceeded to mandate quid pro quo, even demanding nude photos. The AFGE President's position should be compared to a supervisor because the VA has exclusive bargaining rights with AFGE. The AFGE President was holding the Petitioner's

rights hostage after she refused to participate in quid pro quo. The AFGE President was a VA Food Service Worker on 100% official time, he was drawing a paycheck from the Cincinnati VA, not AFGE.

***See* Simpson v. City of Tuscaloosa, 186 F.3d 1328, 1331-32 (11th Cir. 1999) (citations omitted) (emphasis added); see also Staub v. Proctor Hosp., 131 S. Ct. 1186, 1193 (2011)** *("The employer is at fault because one of its agents committed an action based on discriminatory animus that was intended to cause, and did in fact cause, an adverse employment decision.").*

5. To circumvent the need for the AFGE Local President's representation, the Petitioner attempted to run for an AFGE Officer Position, which would subject her to automatic National Representation. However, the Petitioner alleges both VA management, to include but not limited to HR, General Counsel, VA Police, Finance, and the Director conspired with AFGE to participate in a criminal wheel conspiracy to violate the Petitioners rights, and some employees also participated in a scheme to help run an *illegal union election*. The Petitioner was removed from being a Union Steward, and the (3) people the Petitioner was **assigned** by AFGE to represent on EEOC cases were also further retaliated against.

6. The Petitioner alleges The VA recruited **AFGE Union Stewart (s)** to file FALSE charges against her leading to a discriminatory prosecution of disorderly conduct, surrounding an AFGE Union Meeting that took place **after duty hours**. The Petitioner was prosecuted in the Southern District Court of Ohio. **See case 1:14 po-00002.**

See Berry v. Stevinson Chevrolet, 74 F.3d 980, 986 (10th Cir. 1996) *(the filing of criminal charges can constitute the requisite adverse Action....[and] malicious prosecution can constitute adverse employment action")*

See Davis v. Department of Interior, 114 MSPB 527 7 (2010) *cases sited therein. Thus, a prima facie of disparate treatment discrimination can be established by any proof of actions taken by the employer that show a discriminatory animus. Addressing generally the requirements of Title VII of the Civil Rights Act but specifically race and sex discrimination, it clarified that to meet the burden of proof that the agency's action was discriminatory, the appellant need not introduce evidence of a similarly situated employee not in his or her protected group who were treated more favorably, but may rely on any evidence giving rise to an inference that the unfavorable treatment at issue was due to illegal discrimination*

7. The Petitioner alleges on the **SAME** day she was prosecuted (3) African American males who were involved in **physical altercations during business hours** were **not** prosecuted.

See **Reeves V. Sanderson Plumbing Products, Inc.530 U.S. 133, 143 (2000),** *The Agency's articulated appear to be a sham and pretext for unlawful discrimination, since the same actions were not taken against other employees guilty of similar or harsher offenses. Inferring the defendant's unlawful motive is unpersuasive, the factfinder is entitled to consider a party's dishonesty about a material fact as 'affirmative evidence of guilt,* ***quoting Wright v. West, 505 U.S. 277, 296(1992).*** *The inference may be particularly strong if the factfinder's disbelief of the defendant's reasons "is accompanied by a suspicion of mendacity."* ***St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511 (1993)***

8. The Petitioner alleges a non-veteran female AFGE Union Steward physically assaulted the Union President in the VA Cafeteria in the presence of over 60 people, and was **not** prosecuted, that same employee is allegedly guilty of time keeping fraud as part of the VANEEP program where she also FAILED classes the VA was paying for. The same perpetrator used threatening behavior toward her instructor after she failed her classes, but was **not**

disciplined or fired, instead the real bully who was not only stalking the Petitioner, but grabbed the Union President in the face , was protected for a NON service connected disability and later promoted, noting the Union President is married and the perpetrator was not his wife. In fact, the Petitioner was actively facilitating EEOC paperwork for the AFGE Local President's wife, which he confirmed via MSPB testimony.

9. The Petitioner hired a court reporter to depose the AFGE Local President, over allegations of sexual harassment. The AFGE President, ultimately showed up late for the deposition, demanded the same female who snatched him in the face to be present at his deposition , the Local President refused to answer questions , then stormed out of the disposition in a rage knocking a VA computer to the floor and slamming the door so hard he busted a whole in the wall . The deposition was directly across from the VA police office and Former Deputy Chief Beasley, of the VA police eyewitnesses and testified of such at the Petitioners MSPB case. The AFGE Union President was not criminally charged with disorderly conduct, was not required to meet with a psychiatric nurse as part of a Threat Assessment, he was not fired, he has since reportedly been promoted from a Food Service worker to a Labor Relations Specialist.

See **Meritor Savings Bank v. *Vinson,*** *legal case in which the U.S. Supreme Court on June 19, 1986, ruled unanimously (9–0) that sexual harassment that results in a hostile work environment is a violation of Title VII of the Civil Rights Act of 1964, which bans sex discrimination by employer, including same sex harassment*

See ***Burlington Northern & Santa Fe (BNSF) Railway Co. v. White, 548 U.S. 53 (2006),*** *is a US labor law case of the United States Supreme Court on sexual harassment and retaliatory discrimination. It was a landmark case for retaliation claims. It set a precedent for claims which could be considered retaliatory under Title VII of the Civil Rights Act of 1964. In this case the standard for retaliation against a sexual harassment complainant was revised to include any adverse employment decision or treatment that would be likely to dissuade a "reasonable worker" from making or supporting a charge of discrimination*

10. The Petitioner claims after someone else's paper got mixed in with a budget report she printed off, the VA attempted to defame her mental health status. At the time the Petitioner printed the budget report, she was oblivious that she had accidently picked up someone else

paper. Upon reporting to her desk, the Petitioner determined she had printed off the wrong budget report and tore HER OWN report in half and put the report in the trash, so she would not get the two report(s) confused. The Petitioner was approached about a missing document which she discovered she had ACCIDENTLY torn up someone else paper which had been inadvertently mixed in with the Petitioner's budget report. Though the Petitioner admitted to accidently throwing away the paper, and it was (1) Isolated incident, the Agency deemed the incident intentional and this incident was used to characterize the Petitioner as being mentally unstable (sic). The former Director, Linda Smith confirmed via her MSPB testimony, people in the Directors suite had often accidently thrown away other people's documents from a community printer, yet somehow the Petitioner was accused of intentionally throwing away the document. The nurse involved further defamed the Petitioner's mental health status, though the nurse is not a mental health professional as outlined in emails the nurse sent to management. The Petitioner was never questioned about the incident, there was no fact finding, there was a backdoor campaign taking place behind the Petitioners back. The Petitioner, however argued the Agency had failed to implement RHICO

secure printing, which is a technological program that requires a VA Badge to be entered into the printer so only the intended recipient of printed documents can access those documents. In fact, when the Petitioner worked at the VA nursing home, the Petitioner had an individual printer in her office as the Petitioner's position was strictly administrative, due to potential HIPPA risks, her access to a printer was limited to the one located in her office. AFGE never defended the Petitioner's change in working conditions and claims the whole situation over the (1) document may have been a set up.

See Walker v. Ford Motor Company, 684 F2d 1355, 1358(11 Cir 1982). *Moreover, the alleged harassing conduct must also be sufficiently continuous, not merely episodic, in order to be considered to be pervasive. The Supreme Court found that employment discrimination laws enforced by the Commission are not to be used as general civility code, rather to forbid behavior so objectively offensive that alter the conditions of the victim's employment*

11. The Petitioner was actively involved in both her EEOC case and the representation of other employee(s) prior to her termination. The Petitioner was scheduled to participate in an EEOC Pre Hearing Conference which was scheduled in **March of 2013** for a US Air Force

Veteran and herself. While the Petitioner was **on** the phone with the EEOC Judge, the same nurse who accused the Petitioner of deliberately throwing away a document came barging into the Petitioner's Office, disrupting an EEOC Pre Hearing Conference and falsely accused the Petitioner of using threatening behavior towards "her". It is noted, the Petitioner had **no** work related activities with the nurse , and there was **no** need for her to come barging in the Petitioners Office, there is no record of the Petitioner entering anyone's office, it was a telehealth nurse who came barging into the Petitioners office, while the Petitioner was participating in an EEOC pre-hearing conference.

See Staib V. Social Security Administration EEOC Appeal No. 01A22011 (September 2003) *In order to establish a claim of hostile work environment, a complainant must show that 1. She is a member of a protected class, 2. She was subject to unwelcome conduct, 3. the harassment complained was based on her protected class 4. The harassment had the purpose or effect of unreasonably interfering with her work performance and/or creating an intimidating, hostile, or offensive work environment and there is a basis for imputing liability to the employer*

12. After the EEOC Prehearing Conference, the Petitioner was stripped of her badge, keys and computer access, was put on Administrative Leave and was being ordered to meet with a psychiatric nurse whose office was on a closed psychiatric ward.

See Cox v. City of Chi.,868 F2d 217, 223 (7th Cir 1989) *An employee's retaliatory action that has a chilling effect on the employee's ability to exercise her own rights is enough to show irreparable injury.*

13. The Petitioner, was prevented from being able to properly represent (2) African American male veteran(s) who had worked at the VA for over 20 years, but never received promotion pass GS6, even though they were training employees GS11, 12, and 13. Both veterans were retaliated against for their EEOC activity and ultimately retired with over 20 years of service without having ever been promoted. The Petitioner argues, The Agency violated **VEVRAA Vietnam ERA Veteran's Readjustment Act** *is a federal law that that prevents employment discrimination against veterans and requires employers to take affirmative action to hire, promote and retain them.*

14. The Petitioner remained on Administrative Leave, while the VA police played musical chairs with the Federal judges, the VA repeatedly postponed the criminal

hearing until a specific magistrate judge was scheduled to preside. The Petitioner claims despite the VA advertising a "VA Justice Program" for veterans with disabilities, she was DENIED representation, DENIED access to put evidence on the record, all of the Petitioners witnesses were **not** subpoena, and the Petitioner was **not** put under oath. The Petitioner claims she was discriminatorily convicted of criminal disorderly conduct, and even though she obtained evidence to clear her of the charges during her MSPB hearing, the courts continued to disallow her submit the appropriate evidence to absolve her of the charges. See Southern District of Ohio **No.: 1:14-CR-00124** Date: **October 9, 2014** convicted of petty offense, of disorderly conduct.

15. After, the Petitioner was criminally convicted, she was further brought up on Administrative charges for the **same** events of the December 2013 union meeting, the difference is most of the people who lied in criminal court forgot the story they had made up, and ended up testifying to what actually happen in the Union meeting, the same VA employee who filed a FALSE police charge claiming the Petitioner was talking about the "devil" , ended up quoting scripture verbatim about the "devil" at the MSPB hearing articulating *"The devil is the father of lies". (sic)*

16. After being terminated the Petitioner learned 3-4 pages of VA employees had accessed her medical records and learned that Employee Assistance had established the Petitioner as having a Service-Connected Disability as early as 2011 and had documented the status as VERIFED in all capital letters in the VA records. The Petitioner claims several VA employees accessed her records then attempted to use knowledge of her disability against her in order to defame her mental health status and violated **VEVRAA.**

17. The MSPB Initial Decision resulted in the Petitioner's removal being reduced to a 3-day suspension which was the SAME disciplinary action given to a Charge Nurse who not only failed to provide medical care to a patient in distress, but she also threaten to kill the Petitioner twice, per the Petitioner's former supervisor testimony .

See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), or the mixed motive theory codified in 42 U.S.C. § 2000e-2(m). *Under either theory, the same set of facts is presented in support of a discriminatory treatment claim. It is only after full presentation of the evidence a determination can be made on the question of whether the plaintiff established facts regarding the defendant's liability for discrimination, whether directly, or through existence of pretext or a mixed motive.*

18. The VA submitted a Fraudulent Petition for Review, less than 24 hours before the decision was to be final. Due to a lack of quorum the Petitioners MSPB case was delayed 5 years, only for the MSPB Board to rule that the Agency was never entitled to a review in the first place. *See Petitioner* ***MSPB Final Order CH-0752-15-0104-I-2-page 4 paragraph 3 lines 13-14.*** *(posted online)*

19. The VA FAILED to follow Interim relief, failed to properly reinstate the Petitioner but instead, gave her job to someone else, the person who currently holds the Petitioners job has been promoted. The agency claimed it was "**unduly disruptive**" to return her to her position and instead involuntarily reassigned her to the IN-PATIENT PTSD Clinic. OPM Rules however deemed, if the Agency determined the Petitioner's return to duty was to be unduly disruptive, she should have been placed in a **paid nonduty status**. The Petitioner was FIRED Again during Interim Relief after REFUSING to do the Job in the PTSD clinic. **(APPENDIX C PG 103)**

The ***Supreme Court*** *holds Title VII requires an employer to hire a victim of unlawful discrimination with seniority starting from the date the individual was unlawfully denied the position* ***See Franks v. Bowman Transportation Co., Inc., 424 U.S. 747*** **(1976)**

The Supreme Court holds that Title VII disparate impact plaintiffs do not need to prove bad faith to be entitled to backpay **See Albemarle Paper Co. v. Moody, 422 U.S. 405, (1975)**

The Petitioner claims the VA was aware she had PTSD for MST and was intentionally inflicting emotional harm on her. The Petitioner was subject hearing female veterans crying and having what sounded like nervous break downs. When the Petitioner started crying after the PTSD supervisor threatened her, for not wanting to be in the PTSD clinic and requested AFGE representation. The PTSD supervisor harassed her. The Petitioner's request for Employee Assistance was DENIED.

The Supreme Court holds that employers are liable if supervisors create a hostile work environment ***See Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998),***

The Supreme Court holds that involuntary job transfers can violate Title VII of the Civil Rights Act of 1964, even if the transfer does not result in a loss of pay or benefits. ***See Muldrow v. City of St. Louis U.S No. 22-193 .4.17.24,*** *"holding that Title VII of the Civil Rights Act of 1964 prohibits discriminatory job transfers that cause some harm with respect to an identifiable term or*

condition of employment, but the transferee need not show the harm was significant."

See Vance v. Ball State University, No. 11-556 (June 24, 2013), *The Supreme Court held that an employee is a "supervisor" for purposes of vicarious liability under Title VII only if the employee is empowered by the employer to take tangible employment actions, i.e., to effect a "significant change in employment, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a change in benefits, against the victim.*

See also Ferrall v. Secretary of Navy, EEOC 07A30054 (2003), *A preexisting condition does not require a reduction of damage award., The agency is responsible for the greater emotional harm. This is the so called "eggshell" complainant.*

20. The PTSD supervisor gave the Petitioner the number to the psychiatric emergency center instead of Employee Assistance, then continued to harass her until the VA police ORDERED the PTSD supervisor to leave the Petitioner alone. The Petitioner refused to do the job, or any of the duties of the PTSD clinic and was ultimately re-fired while the MSPB case was on Petition for Review.
21. While in the PTSD clinic, the Petitioner alleges she was exposed to something that affected her breathing, she

believes a toxic substance was intentionally placed in her office as the PTSD supervisor also ran the research department, which is where the VA alleged where the Petitioner worked. The Petitioner filed an OSHA and Safety claim, to rule out mold and/or construction dust, all of which were deemed to be clear of. The Petitioner also requested a reasonable accommodation to be transferred out of the PTSD clinic and she applied for a position as the EEO Manager, Safety and Contracting Officer but she was denied competition and was re-fired. Ultimately VA General Counsel, Nicholas Kennedy, recruited people to give false testimony at the Petitioners secondary MSPB case, then compared the Petitioner to the Disciple Peter and referred to the Petitioner as a "Martyr", loosely implying the VA attempted to kill her. It is noted Whistle Blower Dr. Temeck was physically attacked leaving the VA and died of her injuries and appears to be a victim of a cold case murder.

REASON FOR GRANTING CETORTAI

A. DEFAULT JUDGEMENT

The Petitioner, argues she is eligible to serve the Defendant through the mail as outlined in Federal Rules of Civil Procedure **FRCP (4),** after exercising due diligence in providing proper service, she argues she is entitled to a DEFAULT JUDGEMENT on the basis, the record in this

case, demonstrates there has been a FAILURE to plead or otherwise defend as provided by **Rule 55(a)** of the Federal Rules of Civil Procedure.

1. The Petitioner timely filed her CIVIL COMPLAINT on **March 15, 2023**, in the Eastern District of Kentucky, (Covington) which was sealed by the clerk. (Appendix C PG87)
2. The Defendant for the Civil Action was Secretary of Veteran Affairs Denis McDonough, which *was* the Head of the Agency for the *"UNITED STATES" pursuant to* **10 EEOC management Directive 110 Administrative Appeals, Civil Actions pg.** 7 of 8 *"Where it states in Pertinent Part "You must name the person who is the head of the agency or department head as the Defendant.* The Petitioner has since substituted the party in accordance with **Federal R. 25**
3. The Petitioner argues she served the appropriate parties as outlined in **FRCP 4** *(1) "Serving the United States and its Agencies, Corporations, Officers or Employees.* Further noting **FRCP** 4 does **not** explicitly rule out obtaining electronics signature. FRCP 4 simply indicates service must be made via registered or certified mail, thus the Petitioner has proven proper service on the Defendant. See Docket# 16,17,18,19 ***(APPENDIX C PGS. 79-85 & 93-102)***

independent third party. **See (APP C PGS 95-102)** *Docket # 31-32.* The courts have padded her case with litigious mumbo jumbo. The Petitioner claims the courts are pretending as though, they lack cognitive sense, simply because the Petitioner mistakenly stated "she" served the Defendant herself, it's obvious based on the motions and evidence the Petitioner misspoke. All motions filed included a completed certificate of service

See Conley v. Gibson, 355 U.S. 41 at 48 (1957) *"Following the simple guide of rule 8(f) that all pleadings shall be so construed as to do substantial justice"... "The federal rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." The court also cited Rule 8(f) FRCP, which holds that all pleadings shall be construed to do substantial justice.*

See Rodriguez v. Westchester Medical Center (WMC) ...Supreme Court, Appellate Division, Second Department, New York. Jul 21, 2021 Citations 196 A.D.3d 659 (N.Y. App. Div. 2021)152 N.Y.S.3d 456 *"The Supreme Court providently exercised its discretion in granting the Plaintiff's cross motion which was to deem the notice of claim timely served*

Nunc pro tunc, and properly DENIED the defendants' motion to dismiss the complaint on the ground that the plaintiff failed to serve a timely notice of claim"

7. The Petitioner argues, both the Federal District Court and the 6th Circuit granted pauper status, therefore they had the responsibility to ORDER the US Marshalls to serve the Defendant on her behalf, since they were the ones disputing proper service. Judge Bunning previously had the Defendant served in a previous case he also dismissed **See 2:18 CV-00135-DLB-CJS Docket 8,9,1011,12**

   See Sprung V. Negwer Materials Inc. 775 S.W.2 d 97 (1989) Supreme Court Decision *Defendant negligently disregarded legal process. Once he was validly served, he was charged with notice and in all court for all subsequent proceedings. Plaintiff proceeded property under the rules. Defendant ignored them, If Judgements are properly rendered, they should not be disturbed by loose interpretation of cases and newly created and imposed rules. Dereliction by a defendant should not be so rewarded. No additional notice was required under the law*

8. The Petitioner argues, she's been in litigation for over 10 years, and has suffered a delay of justice due to ongoing outrageous government conduct, including that

of federal judges. The District Court has improperly dismissed her Civil Action twice and she has had to start the entire process over, rather than the courts remanding the cases for proper ruling.

State V. Stella (2000) Supreme Court Albany County New York *The totality of circumstances in this case, does not mandate a dismissal of action. Rather in the interest of Justice, the court finds the action was timely commenced and the time for service should be extended, Nunc pro tunc. The Motion to Dismiss the Action DENIED*

9. The Petitioner argues she originally DID make an ERROR in service, as she initially sent the summons and civil action to DOJ Attorney Tiffany Fleming, who was assigned to her *previous* civil action(s) EEOC & MSPB that were consolidated. The same courts dismissed her case allowing a FRAUDULENT claim for Summary Judgement to be sustained. The Petitioner claims this instant case is directly tied to the previous dismissed case(s). The Petitioner already had an independent EEOC case in court, yet was upset that her MSPB case was stuck in limbo and she attempted complete the EEOC civil action while her MSPB mixed case was on interim relief. The Petitioner disputed summary judgement, arguing her case fell under

collateral estoppel since the VA had failed to petition any of her charges. The MSPB issued a Final Decision on **August 5, 2022,** prior to the 6th Circuit dismissing the consolidated cases. The Petitioner filed a motion to adduce new evidence, but the 6th Circuit argued the Petitioner had *not* completed the Administrative Process. The initial summary judgement was incorrect on its face because the motion the Agency submitted for summary judgement included evidence that had already been proven as FASLE and fell under **collateral estoppel**. The federal courts never reviewed the administrative record or any of the testimonies. The evidence reviewed by multiple administrative judges have led these judges reporting off the record, "**The VA is actually guilty of criminal behavior."** The evidence would reflect, the Petitioner has not threatened anyone, yet reacted to being retaliated against, discriminated against, lied on, sexually harassed, physically assaulted, and cars vandalized. The Petitioner was the one being both threatened and harassed. The Federal Judges have allowed the REAL criminals to evade responsibility for breaking multiple laws, rules and regulations while they have tagged teamed the Petitioner with improper judgements. The Federal Courts published FALSE information to be

posted for public record in order to help defame the Petitioners character, then both courts moved to mandate and strike all the evidence in this case from public view, only establishing the Eastern District Court and 6th Circuit are partakers in the ongoing racketeering schemes with the Cincinnati VA.

10. The Petitioner CORRECRTED service on the Department of Veteran Affairs within the 90-day window and timely served the Secretary of Veteran Affairs, the US Attorney General, the State Attorney General and the Agency General Counsel *See Docket # 15, 16,17,18, 19, 31-32* See APP CPGS 79-87 & 93-102

Boucher v. Potter, No. 1:04-CV-1541, 2005 WL 1183148, at *4 (S.D. Ind. May 18, 2005)*Because Boucher properly served the United States Attorney's Office within 120 day time period , and because she cured the failure to serve the Attorney General within a reasonable time" Under Rule 4 (i)3 of the Federal Rules of Civil Procedure, the motion to dismiss is denied*

Mayes v. U.S. Postal Serv., 19-CV-355 (JLS) May 19-CV-355 (JLS) (W.D.N.Y. May. 13, 2020) *On balance, the court DENIED Defendant's motion to dismiss, granted the Plaintiff an extension of time for service until the date that service was complete on the United States, and declares Plaintiff's late service on Defendant is effective*

Nunc pro tunc merits, rather than disposing of them on procedure or technical grounds.

11. The Petitioner argues the Supreme Court should set a standard for justice, she asks for review all of the exhibit(s) in **Appendix C**, which show the Defendant has been properly served. The Supreme Court should recognize the Petitioner did not serve the Defendant herself, but she paid the USPS to serve the Defendant. The Supreme Court should either Grant DEFAULT Judgement (or) alternatively GRANT an extension and order the US Marshalls to serve the Defendant on the Petitioner's behalf.

See Covington v. Department of Health and Human Services, 750 F.2d 937 "*A decision made "with blinders on, based on misinformation or a lack of information, cannot be binding as a matter of fundamental fairness and due process.".*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be **GRANTED.**

Respectfully Submitted, Dated: **March 14, 2024**

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AFFIDAVIT IN SUPPORT OF WRIT OF CERTIORARI

Pursuant to 28 U.S.C. §1746. Describing sworn declarations under penalty of perjury: I, **JUSTICIA RIZZO**, ***pro se***, the undersigned, hereby declares under penalty of perjury, the Writ of Certiorari with Appendix are true to the best of my knowledge; documents within the appendix have been edited from their original format.

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

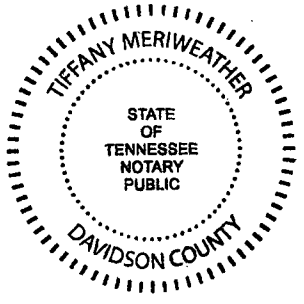
STATE OF TENESSEE

COUNTY OF Davidson

sworn or affirmed and subscribed before me this 12th [day] of March [month], 2025 [year]. The affiant is [ ] personally known to me, or [X] produced the following identification: **TN DRIVERS LICENSE:**

Justicia Rizzo [Affiant Signature]

[Notary Seal]:



Tiffany Meriweather
(Signature of Notarial Officer)

Tiffany Meriweather
Name typed, Printed or stamped

N/A
Serial number if applicable

Notary Public Tennessee

My Commission Expires: 11/2/2026

Document Prepared by:

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