NO. 24-400

In The

Supreme Court of the United States

Jennifer Tom – Petitioner in pro se,

vs.

Carolyn W. Colvin Acting Commissioner of the SOCIAL SECURITY ADMINISTRATION (SSA) - Respondent

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On Petition for Writ of Certiorari to the Supreme Court of Washington

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PETITION FOR REHEARING

Jennifer Tom
Petitioner in pro se
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Date: December 24, 2024

CORPORATE DISCLOSURE

All parties appear in the caption of the case on the cover page there are no corporations. The former Commissioner of Social Security Administration Martin J. O'Malley stepped down November 2024 and On November 30, 2024, Ms. Colvin was designated by President Biden as the Acting Commissioner of Social Security.

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PETITION FOR REHEARING

Jennifer Tom – Petitioner in pro se petitions for rehearing of this Court's December 9, 2024 Order denying her petition for a writ of certiorari.

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 grounds not previously presented." Edmund Burke said "All that is necessary for the triumph of evil is that good men do nothing," Justices take an oath we the people need to be upheld so that when we seek justice, we receive it.

"The revised Judicial Oath, found at 28 U. S. C. § 453, reads:

> 'I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and

that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God.'"
www.supremecourt.gov

"The mission of the Supreme Court of the United States is to ensure equal justice under the law and to interpret and protect the Constitution. The Supreme Court is the highest court in the United States and is responsible for:

- Deciding whether laws and actions by the executive and legislative branches are in line with the Constitution
- Protecting civil rights and liberties
- Ensuring that each branch of government recognizes its own limits of power

The Supreme Court's mission is expressed in the phrase "Equal Justice Under Law", which is written above the main entrance to the Supreme Court building." www.supremecourt.gov

In Tom v Social Security Administration (SSA) two major issues are present that the Supreme Court cannot allow to continue unchecked and claim to uphold the most important reason the Supreme

Court exists the tenet of "Equal justice Under Law" 1) Ending the culture of Higher Courts' Infallible Blind Belief that Lower Court Judges and Attorneys are never dishonest, do not misrepresent material facts, do not withhold evidence and conduct a thorough review of all evidence before submitting briefs and evidence and decisions and 2) Issue of Courts ignoring the Withholding of Evidence by Attorneys against pro se parties.

The Supreme Court must ensure that lower courts uphold their duty to deliver fair and impartial rulings. It is essential to prevent attorneys from getting away with withholding evidence and drafting decisions in their favor against pro se parties. This is crucial to avoid repeating the unlawful actions seen in Tom v. Social Security Administration, which justifies granting Tom's petition for certiorari.

I. Ending the culture of Higher Courts' Infallible Blind Belief - Higher Courts hold an Infallible blind belief that Lower Court Judges and Attorneys are never dishonest, do not misrepresent material facts, do not withhold evidence and conduct a thorough review of all evidence before submitting briefs and evidence and decisions.

a. Due to an Infallible blind belief in the lower court's decisions, higher courts often fail to conduct genuine de novo reviews. They tend to trust the statements made by lower court judges and attorneys, which leads them to forgo a comprehensive review of the evidence themselves. This reliance results in higher courts quoting the conclusions of lower court judges and attorneys as if they were their own, especially when they believe that the pro se party did not provide evidence, as claimed by the lower courts. Consequently, this practice perpetuates the injustices of the lower courts through the higher courts' disingenuous de novo review.

Rule 56. Summary Judgment:

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter

of law. The court should state on the record the reasons for granting or denying the motion.

Tom responded to SSA's motion for summary judgment (MSJ) by systematically disproving 93.48% of SSA's stated facts. She presented 616 pages of undisputed evidence showing that 129 out of 138 of SSA's facts were false see Appendix pages 23a-129a noted to 9th Circuit Court Pet.App.104a.

The Civil Court's Summary Judgment Decision stated "It is not the court's duty 'to scour the record in search of a genuine issue of triable fact'; instead, the nonmoving party must 'identify with reasonable particularity the evidence that precludes summary judgment.'" Pet.App.40a and accused Tom of failing to provide evidence to support her claims, Pet.App.45a-52a.

Consequently, the Civil Court made a credibility determination that favored SSA and deemed Tom's

evidence not credible, which violates Rule 56. It seems the Court held an infallible blind faith in the attorneys representing SSA, their briefs and evidence. This bias extended to the point of dismissing all 600-plus pages of Tom's evidence and arguments, claiming she provided no proof against SSA's assertions of a lack of evidence supporting Tom's claims. The Court also overlooked Tom had requested reasonable accommodations which, on their face, were considered "ordinary or in the run of cases" see Pet.App.100a, 169a, 218a, 257a-258a, 267a, 273a-275a, 288a-290a, 299a-300a, 315a, among others. Noted the lack of defense for Doan's alleged harassment:

> "Kijakazi does not dispute that Doan was Tom's supervisor, nor does she raise an affirmative defense in moving for summary judgment. She argues only that, as a matter of law, Doan's alleged

> actions were not severe or pervasive enough to state a claim for harassment or hostile work environment.
>
> The Court disagrees and concludes that Tom has raised a disputed issue of fact on this question. A jury who believed Tom's version of events could conclude that Doan engaged in a pattern of harassing behavior that a reasonable disabled person would find to be severe and pervasive, rather than concluding, as Kijakazi suggests, that Doan's behavior, while perhaps rude or distasteful, was not actionable because it was simply part of "the ordinary tribulations of the workplace." ..." Pet.App.55a-56a

And

> Id. at 59-60. Crediting this evidence, a jury could conclude that Doan's behavior was more than an isolated incident and was, instead, sufficiently severe or pervasive to alter the conditions of Tom's employment. Summary judgment on this claim is therefore denied." Pet.App.55a-59a

The 9th Circuit echoed claims Tom's failed to provide evidence, which is unfounded, as many documents supporting Tom's claims were obtained

during the discovery process and were part of SSA's response to Tom's amended consolidated complaint Pet.App.212a-313a. Tom cited facts SSA had admitted and testimony from SSA managers to validate her claims providing detailed documentation to support her position and counter SSA's defense see Appendix A, Pet.App.91a-204a.

Furthermore, the 9th Circuit affirmed the Civil Court's statement that Tom had not shown that the requested reasonable accommodations were "reasonable on [their] face," that is, "ordinarily or in the run of cases" Pet.App.3a. However, this assertion is inaccurate. Tom provided evidence that telework was reasonable and commonplace Pet.App.100a, 169a, 218a, 257a-258a, 267a, 273a-275a, 288a-290a, 299a-300a, 315a, among others.

Tom demonstrated she was capable of working on

SSA laptops and SSA did provide 2 uncontaminated laptops. Tom consistently received successful performance appraisals throughout her career, proving that she performed the essential functions of her job with the laptops provided by SSA, even when they were contaminated. For details regarding the condition of the first two laptops (which were not originally contaminated) and the third laptop (which was contaminated before it was issued to her), see Pet.App.110a, 156a-157a, 171a-172a, 217a, 223a, 253a, 259a, 269a-270a, 304a-306a, and also refer to Pet.App.93a, 103a-104a, 171a, 176a, 218a, 220a, 258a, 274a to see Tom was not terminated because she could not perform her job on SSA laptops or due to disabilities while working from home as part of SSA's pilot telework program not as an RA.

"Defendant admits that the agency has approved requests for telework under the Article 39 WAHBE policy as well as telework as a reasonable accommodation to employees..." Pet.App.218a

"Defendant admits that the EEOC AJ wrote, related to undue hardship, "If Complainant is credible and her symptoms are genuine, **then the current accommodations are not working**, and the Agency **must consider full-time teleworking.** To **justify not allowing** Complainant to **telework full-time**, the Agency **must demonstrate undue hardship**. In its MSJ, SSA did not address the undue hardship of full-time telework because the Agency contends the other accommodations provided are effective." Pet.App.267a (emphasis)

"Q Did management ever ask you, as my first line supervisor whether or not you believed that **instead of terminating me offering me the ability to telework five days a week** or the
[Cv. Dkt. No 3-17 p. 27 lines 23-25]
fulltime should have been tried before proposing my termination?
A Yes, I was asked.
Q And what was your answer?
A **Pretty much that the quality of your work would -- would be good and that you'd be okay to telework five days a week**, unfortunately you could not help with spiking, which is an essential duty of your position.
[Cv. Dkt. No 3-17 p. 28 lines 1-8
Pet.App.102a-103a (emphasis)

Despite SSA's promise not to use "Spike" as a defense justifying denying telework as a reasonable accommodation per Discovery Dispute Decision Pet.App.205a-211a, the courts allowed SSA to retract that admission. Additionally, the claim of being AWOL was real was not supported by testimony or evidence presented; in fact, the testimony indicated the opposite was true Pet.App.101a-103a.

The courts incorrectly concluded that full-time telework was not feasible claiming Tom could not perform the essential functions of her job. Despite Tom receiving successful performance appraisals her whole career 2008-2018, which is proof Tom was effectively performing the essential functions of her job without a reasonable accommodation. Per *Complainant v. Dep't of Housing & Urban Dev.*, undefined – found:

"In fact, the Agency rated him at least "fully successful" throughout the relevant time period when he was unable to report to Minneapolis. The evidence supports the AJ's conclusion that Complainant has performed the essential functions of his position without regularly reporting to the Minneapolis office. Consequently, we find that the record supports the AJ's finding that Complainant was qualified for his Financial Analyst position."

And

"Under these specific circumstances, we find that substantial evidence supports the AJ's conclusion that Complainant's requested accommodations would not constitute an undue hardship on the Agency and, therefore, the Agency denied him a reasonable accommodation for his disability. In so finding, we note that the fact that Complainant received a "fully successful" annual evaluation while telecommuting 100 percent of the time greatly undermines the Agency's contention that his inability to report to the Minneapolis office creates an undue burden on the Agency. Finally, we remind the Agency that the federal government is charged with the goal of being a "model employer" of individuals with disabilities, which may require it to consider innovation, fresh approaches, and technology as effective methods of providing reasonable accommodations. Rowlette v, Social Security Administration, EEOC Appeal No. 01A10816 (Aug. 1, 2003); 29 C.F.R. §1614.203(a). We believe that providing Complainant with this

reasonable accommodation furthers this goal."

Tom adequately responded to SSA's alleged facts, properly citing and quoting critical parts medical documentation in her exhibits Appendix 47a-58a, 66a-94a,104a-105a.

The 9th Circuit Court of Appeals upheld the Civil Court's decision, Tom failed to show illegal discrimination due to her disability. However, Tom provided evidence that supported her claims and challenged SSA's defense which neither court acknowledged existed.

II. Issue of Courts ignoring the Withholding of Evidence – There is a concerning issue of evidence being overlooked by Judges when Attorneys withhold evidence that would benefit pro se parties. Unfortunately, the Supreme Court does not have a civil equivalent to the Brady violation, which would enable pro se litigants to hold corrupt Attorneys accountable for withholding evidence. This culture unjustly perpetuates the belief that all attorneys are infallible, honest and credible and pro se parties are not as inherently trustworthy and credible,

> undermining the principle of equal justice under the law whether it is a criminal case, civil case or other type of case.

There is a promises Courts would uphold parties admissions, which has not happened in Tom v. Social Security Administration case(s). The 9th Circuit's infallible blind belief in the Civil Court's with SSA's attorney's, led to an oversight of the fact that the Civil Court's summary judgment was based on its finding that SSA attorney's briefs and evidence were credible, while Tom's were not.

The 9th Circuit did not act on Tom's motion to compel because it was filed by a pro se party. If SSA had submitted a similar motion, the court would have processed it promptly, as it did with SSA's request for a 90-day (see Pet.App.86a-87a). SSA claimed it needed more time to provide complete excerpts of records for both parties but

later admitted it failed to do so Pet.App.190a. Allowing the opposing party's attorney to decide what evidence a pro se party can use undermines equal justice under the law. The fact that the 9th Circuit Court permitted its clerk to dismiss Tom's motion to compel the submission of all evidence under 9th Cir. Rule 30-1.3 and 30-1.4 —despite it remaining untouched for ten months—shows a troubling bias. The dismissal occurred just five minutes before ruling in favor of SSA, claiming Tom failed to provide evidence. If the situation were reversed, the court would not have rewarded a pro se party for withholding evidence, especially after receiving a 90-day extension to provide records for both parties.

This ruling reflects an infallible blind belief that SSA's attorney provided all exhibits referenced by

both parties in their briefs. Alarmingly, the court knew just two days after SSA filed its response along with excerpts of record, that SSA withheld Tom's evidence from the excerpts of records (see Pet. App. 182a-204a) and ten months later ruled in SSA's favor.

When the courts recognize a Brady violation, they pause to address the issue. However, in civil cases, there is no equivalent violation that prompts such a response. In Tom v. SSA, Tom alerted the 9th Circuit Court that SSA withheld evidence, SSA admitted see Pet.App.190a. SSA won the case by claiming Tom failed to provide evidence. Tom filed rehearing requested with the 9th Circuit to reopen the case, citing her evidence in line with the court's rules, which required SSA to include all of Tom's evidence along with their own see Pet.App.186a-

191a. She also raised this issue with the Supreme Court, arguing that SSA unlawfully won because of the withheld evidence. If a civil equivalent to a Brady violation existed, it could have enabled Tom to compel the court to address the withholding of evidence, ensuring a fair legal process based on both parties' evidence.

III. This is an appropriate case for rehearing.

No reasonable person reviewing the civil court and 9th Circuit records could conclude Tom failed to provide or cite evidence as allowed by the courts.

SSA acknowledged its responsibility to provide both parties complete evidence and admitted to willfully excluding Tom's evidence, claiming it was irrelevant. Tom informed the 9th Circuit on August 2, 2023, that SSA had excluded her evidence. Ten months later on May 2, 2024, the clerk dismissed Tom's motion to

compel just five minutes later, the court issued a decision in favor of SSA, stating Tom failed to provide evidence.

Tom's claims have been consistent in court, a fact SSA criticized in their reply to MSJ. Sticking to the truth should be considered an asset in court, not a drawback. The records show that the courts dismissed Tom's evidence by claiming it did not exist, which facilitated a ruling in favor of SSA. If one party fails to provide evidence, the court typically relies on the evidence presented by the other party. The higher court accepted the lower court's claims with blind faith, Tom a pro se party, had not submitted evidence, and therefore saw no need to check for any missing details since they thought Tom pro se party had not supported her case.

SSA claimed to have fired Tom for being AWOL, but

she provided evidence that AWOL accusations were false. Unfortunately, all the courts see is AWOL and reacted without considering the specifics of Tom's case. Applied a blanket assumption that AWOL is always valid, ignoring Tom's evidence, including manager testimonies that supported her claim that AWOL was not real. See Irina T. v. Robert Wilkie, Secretary, Department of Veterans Affairs, Appeal No. 0120180568, Agency No. 200I-0614-2016101883, it demonstrates that AWOL does not automatically equate to justifiable dismissal.

The records show Tom consistently provided evidence to support her claims while disproving SSA assertions and misrepresentations. Tom v SSA exemplifies fraud and corruption within the legal system, revealing that courts often neglect the truth and fail to consider evidence from both parties. They

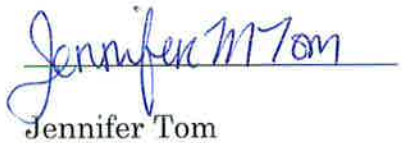
evade this responsibility by claiming pro se party had not provided evidence, which higher courts endorse. The Supreme Court duty to uphold the law fairly, irrespective of wealth must ensure lower courts adhere to the law, ignoring evidence from pro se parties to favor the government is unlawful in any context, whether it be death penalty, civil, or disability discrimination cases. As a citizen of the United States and a former federal employee, I have fulfilled my duty by reporting unlawful activities perpetuated by SSA, their attorneys, and lower courts. I have done my part despite the personal suffering, and I can rest knowing I've alerted the proper authorities, even if I cannot compel them to act justly.

CONCLUSION

For the foregoing reasons, and those stated in the

petition for a writ of certiorari, this Court should grant rehearing, grant the petition for writ of certiorari.

Respectfully submitted,



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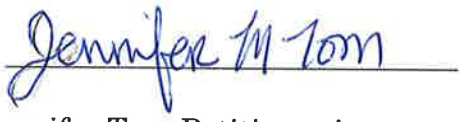
December 24, 2024

CERTIFICATE OF COUNSEL

Petitioner is pro se, I hereby certify that this petition for rehearing is presented in good faith and not for delay per Rule 44.2.



Jennifer Tom Petitioner in pro se

APPENDIX

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