

No. 24-5390
In the
Supreme Court of the United States

Paulina Buhagiar, Petitioner
vs.
Wells Fargo Bank, N.A., Respondent

On Petition for a Writ of Certiorari
To the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

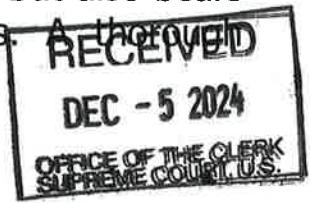
Petitioner Paulina Buhagiar respectfully petitions for a rehearing of this court's regarding the court's order dated November 4, 2024, which denied petition for writ of certiorari.

REASON FOR GRANTING REHEARING

Pursuant to Rule 44.2, a petition for rehearing may be granted based on "intervening circumstances of a substantial and controlling effect." In the initial petition, Paulina Buhagiar articulated compelling reasons that justified this Court's review. Specifically, the existence of significant remedies that were overlooked in the original ruling warrants reconsideration.

The petitioner contends that the Court's decision did not fully account for recent developments in case law and statutory interpretation which have emerged since the initial filing. These developments are critical as they directly impact the legal landscape surrounding the issues at hand. The petitioner believes that these intervening circumstances demonstrate a substantial change in the context of the case, thereby necessitating a fresh examination by this Court.

Furthermore, it is essential to highlight how these new circumstances could influence the outcome of the case, if reviewed. The petitioner asserts that addressing these matters is not only crucial for her situation but also bears broader implications for similar cases across jurisdictions.



analysis by this Court could provide clarity and guidance on these emerging legal principles.

Most importantly, this petition for rehearing is intended to establish the right of the petitioner to the claims being raised and in sheer good faith. This is not intended to delay the processes of the court.

Considering these issues, the petitioner respectfully requests that this Court grant her petition for rehearing to ensure that justice is served and that all relevant factors are duly considered.

I. QUESTIONS PRESENTED

1. Whether the Ninth Circuit erred in affirming the district court's grant of summary judgment in favor of Wells Fargo on Buhagiar's claims of discrimination and retaliation under Title VII, § 1981, and the ADA, despite evidence suggesting she was performing according to the employer's legitimate expectations and had engaged in protected activities.
2. Whether the Ninth Circuit erred in rejecting Buhagiar's claim of ineffective assistance of counsel in a civil case, despite alleged mishandling by her previous attorney that may have impacted the outcome.
3. Whether the Ninth Circuit erred in affirming summary judgment on Buhagiar's claim for intentional infliction of emotional distress under Arizona law, given the alleged extreme and outrageous conduct by Wells Fargo.

II. STATEMENT OF THE CASE

Plaintiff-Appellant Paulina Buhagiar, proceeding pro se, appealed from the district court's order granting summary judgment to Wells Fargo Bank, N.A. on her claims of discrimination and retaliation pursuant to Title VII, § 1981, and the ADA, as well as her claim of intentional infliction of emotional distress (IIED). The district court's decision was affirmed by the Ninth Circuit.

Buhagiar, who was hired in May 2016, as an Operations Processor II. Later in October 2018, Buhagiar applied for a different position and was hired in November 2018 as Operation Processor III. Shortly thereafter, Buhagiar experienced discrimination based on her race and disability and was retaliated against for engaging in protected activities. Additionally, her previous lawyer's ineffective assistance negatively impacted her case.

III. REASONS FOR GRANTING THE REHEARING

Discrimination Claims Under Title VII and § 1981:

Buhagiar presented evidence suggesting that she was performing according to Wells Fargo's legitimate expectations. But her advancement from Operations Processor II to III and the absence of poor performance write-ups in her previous role were overlooked by the court.

The Court referred to the McDonnell Douglas burden-shifting framework, yet it was not properly applied as Buhagiar's evidence of satisfactory performance was not given due consideration. Instead, the Court heavily sided with the report of the defendant that she allegedly made substantial errors and failed to improve with instruction in her position as Operations Processor III.

Annette Badon's log should not be given much weight as it is self-serving and should be expected to favor Wells Fargo's claims that Buhagiar acted poorly in her role and below Wells Fargo's legitimate expectations. Assuming that Wells Fargo's action is warranted, the same could be explained since Buhagiar is suffering from a mental health issue.

ADA Discrimination Claim:

The district court erred in concluding that Buhagiar did not establish a prima facie case of ADA discrimination. Evidence indicating Wells Fargo's awareness of her hospitalization and subsequent condition was sufficient to suggest a perceived disability. Although Buhagiar indicated that she was given a Return-to-Work Release, she also relayed to her supervisor that

she was "still sick" which means that she is not completely well, but still managed to work for Wells Fargo.

In addition, labor laws prohibit employers from discriminating against employees based on certain protected characteristics, including race, color, national origin, religion or sex. The records show, and with all due respect, Wells Fargo is guilty of discrimination.

Copy of the Charge of Discrimination is hereto attached as Annex "A" has been submitted.

Retaliation Claims:

It was found by the Court that the temporal proximity between Buhagiar's protected activities and adverse employment actions was sufficient to establish a prima facie case of retaliation. However, it still ruled that there was no retaliation because Wells Fargo had a legitimate, non-discriminatory reason for making such an adverse decision. This is simply not right.

Even if it is granted that Buhagiar did perform poorly in some of her roles, the decision to assign her to mailroom duties – a task way below what she was able to do and could not supposedly help her to improve in her role as Operation Processor III – clearly indicates a retaliation by Wells Fargo because of her complaint to Randy Richardson. This could even be taken as a way to humiliate her.

The district court improperly dismissed this evidence and failed to recognize the potential pretext in Wells Fargo's explanations. Taking the her situation deeply, the petitioner seemingly is a victim of constructive discharge. Constructive Discharge refers to a situation wherein an employer makes working conditions so difficult and unpleasant, that the employee is forced to leave or quit his/her job. It can also be because of one serious incident, a collection of incidents or changes in terms of employment which force the employee to resign.

After complaining to Mr. Richardson, Buhagiar was then promptly demoted to a lowly mail matter sorter. Going from a Wells Fargo Operations Processor III position, this was very demeaning. Objectively taken, this

will survive the test of common sense: the petitioner was singled out, after she made the complaint to Mr. Richardson.

Buhagiar did not immediately recognize the harmful effects of the demotion as a result of the discrimination on her well-being. However, as time went on, self-pity manifested itself, which only worsened her situation. This adversely affected the physical and emotional state of Buhagier, causing anxiety and suffering – eventually requiring intervention by paramedics due to elevated blood pressure. Following this, Buhagiar requested a three-day sick leave, but was denied by Badin.

It cannot be denied there is a cause-effect link. The labor discrimination committed by the employer, Wells Fargo, adversely affected Buhagiar's well-being. The fear of losing her job combined with the shame of being demoted, was overwhelming and detrimental to her overall health.

Wells Fargo's defense argument is flawed and has no validity. The harmful effects of the demotion and discrimination suffered by the petitioner are what matters. Furthermore, the wrongful act of discrimination by Wells Fargo in the workplace, is considered an unlawful employment practice. Arizona law prohibits employers from constructively discharging employees.

The respondent, Wells Fargo, failed to exercise fairness to the petitioner. The respondent is guilty of discrimination, thus liable and responsible for the damage suffered by the petitioner. Thus, any person, including Wells Fargo Bank, who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Because of this discrimination, the petitioner suffered severe anxiety, depression and heart-related complications. Wells Fargo should be declared liable to pay the damages. Copies of the medical report signed by Christina Thomas "Annex B", Jason Capel "Annex C", Agnes Szpunar "Annex D", Dr. Mohammad R. Hojati "Annex E", and Dr. Moodabagil Nikkil, MD "Annex F", is hereto appended as Annex "A" to Annex "F". All of this evidence has been submitted.

Ineffective Assistance of Counsel:

Although generally there is no right to effective assistance of counsel in civil cases, the egregious mishandling of Buhagiar's case by her previous attorney warrants reconsideration, particularly given the potential impact on the case outcome, as the issue of discrimination against race and disability is involved.

IIED Claim:

The district court, with all due respect, improperly granted summary judgment to Wells Fargo with regard to Buhagiar's IIED claim. The alleged conduct by Wells Fargo, including humiliation, discrimination, adverse employment actions, and failure to provide proper accommodations, meet the threshold for extreme and outrageous conduct under Arizona law.

Wells Fargo has failed in the exercise of its rights and in the performance of its duties to act justly against people of different color and those with apparent disability. Wells Fargo did not treat the petitioner fairly by minimizing her accomplishments, denying her disability, and lived experienced. Moreover, Wells Fargo's actions were unlawful, and they negligently caused damage to the petitioner, thus it should be held liable to indemnify the petitioner for the damage done.

The petitioner takes refuge at the Highest Court of the land to protect her rights trampled by the respondent, Wells Fargo. Accordingly, the petitioner is begging the Supreme Court to re-hear this case so that the injustices committed by Wells Fargo will be properly addressed and fairly decided, to restore faith in our legal protections against workplace discrimination especially those people with apparent disability and racial insecurities.

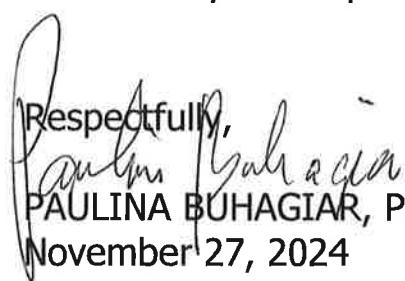
CONCLUSION

For the reason afore-stated, petitioner prays that the Petition for Rehearing be granted.

It is likewise prayed of this Supreme Court that monetary claims be awarded

to herein petitioner and all other reliefs and remedies just and equitable under the circumstances are also prayed for.

This petition is filed in good faith without malicious intent to cause undue delay to the proceedings of this case.


Respectfully,
Paulina Buhagiar
PAULINA BUHAGIAR, Petitioner
November 27, 2024