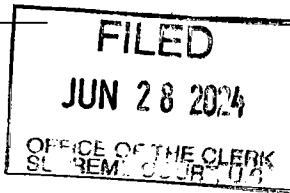


24-5403

No.

ORIGINAL

SUPREME COURT OF THE UNITED STATES



Tynia Levesy

Petitioner,

vs.

Christopher Scolese,

Director, National Reconnaissance Office, et.al.

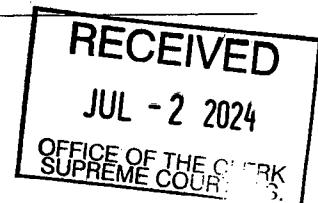
Respondent.

On Petition for a Writ of Certiorari to the United States

Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

- I. Did the Fourth Circuit Court of Appeals Have Jurisdiction Over Petitioner's Claims of a Constitutional Magnitude?**
- II. Was the Fourth Circuit Court of Appeals, Rule 56(d) Reliance on the "Specific Discovery" Principle in Nguyen v. CNA Corp., Consistent with the District Court's Bypass of Directing Parties Under Rule 26(f) ?**
- III. Did the Fourth Circuit Court of Appeals Err When Sidelining Petitioner's Claim That Counsel Should Have Been Appointed?**

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1. Petitioner's rights under the Equal Protection Clause, Section 717 of the Rehabilitation Act, and the ADA were violated by her employer after she disclosed her disability and requested a reasonable accommodation.
2. The Court of Appeals departed from applying the liberal constructions standards traditionally applied for pro se litigants.

IX. Reasons for Granting the Writ

- A. The case should not have been dismissed on the ground that an affidavit failed to articulate (e.g. too conclusory) so as to put matters at issue.

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Cooks v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975)

Henry v. Detroit Manpower Dept., 763 F.2d 757 (1985)

Lolavar v. DeSantibanes, 430 F.3d 221 (2005).

Nguyen v. CNA Corp, 44 F. 3d 234 (1995)

Erickson v. Pardus, 551 US 89, 94, 127 S Ct. 2197 (2007)

Firestone Tire & Rubber Company v. John C. Risjord, 449 US 398, 101 S Ct. 669 (1981)

Progressive Southeastern Ins. Co. v. Britt, 2021 U.S. DIST. LEXIS

Weller v. Department of Social Services, 901 F. 2d 387 (1990)

McCray v. Maryland Dept. of Transportation, 741 F.3d 480, 483 (4th Cir. 2014)

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Section 717 of the Civil Rights Act

IV. PETITION FOR A WRIT OF CERTIORARI

Tynia Levesy, a pro se litigant, a former DDI Data Management Officer with the Central Intelligence Agency, who worked a Joint Duty assignment at the National Reconnaissance Office as a Disability Consultant in EEO respectfully petitions this Court for a writ of certiorari to review the judgment of the 4th Circuit Court of Appeals.

V. OPINIONS BELOW

The decision of the 4th Circuit denying direct appeal is reported as 1:22-cv-01234-RDA-IDD on September 8, 2023. That Order of ROSSIE DAVID ALSTON, at Appendix at #1

VI. JURISDICTION

Tyina Levesy, petition for appeal to the 4th Circuit Court of Appeals was denied on April 1, 2024, by KING, RUSHING, and MOTZ, No. 23-2005, invokes this Court's jurisdiction under 28 U.S.C. 1254, having timely filed within 90 days of the 4th Circuit Court of Appeals judgment.

VII. CONSTITUTIONAL PROVISIONS INVOLVED

1. Section 717 of the Civil Rights Act.
2. Equal Protection Clause of the United States Constitution.

VIII. STATEMENT OF THE CASE

This case presents the question of whether the Court of Appeals departure from the liberal pleading standards set forth in Rule 8(a)(2) was absent in this case, considering that the proper application of legal principles had yet to be determined in the District Court.

Petitioner's complaint alleges that her rights under the Equal Protection Clause, Section 717 of the Civil Rights Act, and the ADA compliance protocol under the CIA/NRO EEOC Special Program for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities EEOC regulations (29 CFR [1614.203(e), and [1614.203] (d)910][82 FR 659-661]); See Appendix #2, Opening Brief to the District Court), were violated via retaliation after filing EEOC claims alleging discrimination, resulting PTSD after she was denied a reasonable accommodation, when she disclosed her disability of PTSD to NRO/Office of Equality and Inclusion (OE&I) Reasonable Accommodation Chief, and the NRO/OE&I Directors that she was raped in April 2015 by a CIA Security Protective Officer. Due to the workplace re-traumatization's, the Petitioner was hospitalized for panic attacks at the CIA and the NRO.

The NRO/OE&I Chief said that the Petitioners should make a accommodation request to the CIA. The Petitioner stated that the CIA already had a pending accommodation request number AR3612 that was requested in 2017.

The Petitioner asked the NRO/RA Chief to please place her RA request into the NRO/EASE database with the disability request for other PWD that works for the NRO, and to please coordinate her new accommodation request with the CIA in accordance with the NRO/OE&I reasonable accommodation policy. The NRO/RA Chief and NRO/OE&I Directors did not place her request into the NRO EASE database. Therefore, the Petitioner filed an EEO complaint around 10/1/2018. On 10/23/18, the Petitioner met with 2 NRO Program Officers to explain why she did not feel safe at work because when going to meetings and classes at other Agency buildings, she was often triggered by Security Officers because the CIA Security Officer that raped her, worked at various gates, and entry ways where she would have no choice but to cross paths with him, and even when passing the main NRO Security desk, while others felt safe she did not. The NRO/OE&I Directors treated the Petitioner differently during the 30-day EEO Counseling stage that was being finalized. The EEO Counselor asked the Petitioner for an example of an accommodation that was provided to another officer, that is similar to her request. The Petitioner printed the example. On the morning of October 24, 2018, the Petitioner was accused of leaving PII on a printer in the secured OE&I office. During that meeting, the NRO/OE&I Directors retaliated against the Petitioner by pushing a threat button on her that dispatched armed NRO/Security Officers, because she advocated for herself. The Petitioner departed the meeting crying and tearing up a sheet of paper they accused her of not being authorized to have in her possession. The Petitioner was authorized to have the PII

accommodation request in her possession because it was sent directly to her via the NRO internal email system, as a part of her role and responsibility as the NRO/OE&I Disability Program Consultant. The Petitioner walked out of the OE&I office to go report the NRO/OE&I Directors wrongful PII accusations to the NRO/Program Security Officers she met on 10/23/2018. The NRO/OE&I Directors immediately pushed the threat button on the Petitioner and called the 24/7-armed security officers on the Petitioner because they did not know the Petitioner whereabouts. The Petitioner was deemed a threat and tracked by a host of armed NRO Security Officers. When the armed security officers located her in the Program Security Office, they all pointed their weapons directly at her, the Program Security Officer stepped in between the Petitioner and the weapons and closed the office door. A female EAP officer arrived while she was under duress, and within minutes the Petitioner was escorted off the NRO work premises. The NRO/OE&I Director decided to end Petitioners joint duty assignment within an hour after she was assaulted by deadly weapons. The NRO/OE&I Directors immediately created false narratives to corroborate the harmful actions they executed on the Petitioner. The NRO/OE&I Director claimed that her 2-year joint duty assignment was only for 1 year and that it ended on 10/10/2018. The NRO/OE&I Director coordinated with the DDI/CIA HR Office to direct assign the Petitioner back to the CIA. As a result of the 10/24/2018 weapon assault, the Petitioner has C-PTSD that caused grave damage to her well-being. All under the pretext of a mentally ill bad behavior policy to deny a reasonable accommodation.

APPEAL

1. Dismissing the ADA claim because "the Rehabilitation Act is the exclusion means by which a plaintiff may raise a claim against federal agencies relating to disability discrimination" was improper, given that Petitioner's opening brief to the US District Court cited Section 501 of the Rehabilitation Act.

The Court of Appeals error was its failure to uphold that; a federal statute, i.e., the "ADA must not be construed to deny plaintiff's colorable claim." *Bowen v. Michigan Academy of Family Physicians*, 476 US 667, 681, n12, 90 L.Ed 2d, 623, 106 S Ct. 2133 (1986). To invoke federal jurisdiction, Petitioner bears the burden of establishing the three irreducible minimum requirements of Article III standing; and injury in fact, causation, and redressability. *Beck v. McDonald*, 848 F. 3d 262 (2017).

The Petitioner's complaint before the district court clearly articulated that when it came to "advancement programs, the Section 501 rule specifies that the plan shall require the agency to take specific steps to ensure current employees with disabilities have sufficient opportunities for advancement." [Compl. Doc. at 50, the ADA's compliance protocol required under Disability Hiring and Advancement [1614.203(d)(1)][82 FR 659-661]. The NRO did not introduce a 'Plan', nor did the steps taken to rescind, offer and opportunity for advancement. A "plaintiff need not establish that the conduct she opposed actually constituted an ADA violation." *Ross v. Communications Satellite Corp.*, 759 F. 2d 355, 357 n.1 (4th Cir. 2016)

2. Wanting remand is her relief because Court of Appeals analysis of the Rule 56(d) affidavit failed to articulate what specific discovery was needed; all the while, knowing that the district court foreclosed her right to exhaust procedures under Rule 26(f).

The Court of Appeals final decision was silent as to what extent it considered or discredited Petitioner's supplemental information in her motion for appointment of counsel. The Magistrate in Petitioner's case, Ivan D. Davis, relies Cooks v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975); which based findings on a 9th Circuit case, U.S. v. Gardner, 352 F.2d 792 (9th Cir. 1965);(Slaughter v. Maplewood, 731 F.2d 587 (9th Cir. 1984), where remanding was proper when the "record showed that [the] district court may have erroneously found it had no discretion to appoint counsel", in a case seeking civil damages.) While a district court "has broad discretion in determining whether to appoint counsel in employment discrimination cases, the exercise of that discretion necessarily entails a reason and well informed judgment" Id. Slaughter. Deprived of a scheduling order (FRCP 16(b)(2)); to no avail, Petitioner made an email inquiry (Appendix #3) to the DOJ seeking a Rule 26(f) conference, i.e., 'Meet & Confer", suggest mediation, or pursue discovery. (A party "may not seek discovery from any source before the parties have conferred as required by Rule 26(f)". Perry v. Safeco, 2018 US Dist. LEXIS 231306);("Affidavit[s] presented to the district court...particularly specific[d] legitimate needs [warrants] for further discovery." Nguyen v. CNA Corp. 44 F.3d 234 (1995));("summary judgment before discovery forces the non-moving party into a fencing match without

a sword or mask." *McCray v. Maryland Dept. of Transportation*, 741 F.3d 480, 483 (4th Cir. 2014)).

Coupled with Petitioner's 'meet and confer' inquiry to the DOJ, and there being no discovery; to deny Petitioner's motion for mediation on the basis of Rule 83.6(A), the district court defied it's prior holding citing when it is "reasonably conceivable...that a compromise could be reached that would resolve the dispute a judge must not become convinced and far removed that mediation is not of benefit." See: *Progressive Southeastern Co., v. Britt*, 2021 U.S. DIST. LEXIS 93600. Rather than extend special judicial solicitude to the Petitioner's request for counsel, the Magistrate leaves the record void of any proof of a concerted effort of consideration.

In *Weller v. Department of Social Services*, 901 F.2d 387 (1990), the court of appeals recognized that an "untutored hand required special judicial solicitude", while at the same time acknowledging that it does not recognize obscure or extravagant claims that defies its most concerted efforts to unravel them. First, none of the discrimination allegations with Petitioner's case before the court of appeals revealed 'extravagance' as to her clear and plain (Rule 56(d)) statements; and second, the Magistrate's denial to appoint counsel under *Cooks v. Bounds* (circa. 1975) grounds of "ONLY in exceptional circumstances" have run counter to this Court's holding in *Henry v. Detroit Manpower*. (circa. 1985) At the "center of one's right to counsel is the imbalance in a complainant who is usually a member of a disadvantaged class, [i.e. disabled], is opposed by an employer who not infrequently is one of the nation's major procedures, who has at his disposal a vast

array of resources and legal talent....This imbalance in civil rights litigation is at the center of the right to counsel issue because it illustrates the futility of a civil rights plaintiff who is unable to hire counsel proceeding pro se after rejection of such motion for appointment of counsel. As Congress recognized, rejecting such a motion means the curtain drops before the play begins." *Henry v. Detroit Manpower Dep't*, 763 F.2d 757 (1985).

REASONS FOR GRANTING THE WRIT

This Court must grant certiorari because it has been here before in *Firestone Tire & Rubber*, 449 U.S. at 377, 101 S Ct. at 675 (1981), holding that "A civil rights litigant, untrained in the law, may well decide that [she] is incapable of handling the trial and drop [her] claim..." And that is exactly what, I, the Petitioner did in my appeal before the EEOC (EEOC Case No. 17-12, Hearing 570-2017-01373X; See Appeal in Appendix #3), where I voluntarily dismissed some of my previous claims. ("A decision to deny counsel for a pro se civil rights litigant is the denial of an asserted right, the legal and practical value of which would be destroyed if it were not vindicated before trial." (Id. *Firestone*)

XI. APPENDIX

#1: Final Decision of the District Court

#2: District Court Opening Brief with Exhibits

#3: EEOC Appeal w/ Exhibits

#4: DOJ Email Reply dated 7/6/2023