No.

In the Supreme Court of the United States

YHANKA VERAS,
Petitioner,

v.

NEW YORK DEPARTMENT OF EDUCATION, et al.

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the American With Disabilities Act (ADA) affords a litigant, such as Yhanka Veras, an *accommodated plausibility* standard under *Twiqbal*, for Rule 12.b.6 motion practice, when invisible/mental disability is operative?

PARTIES TO THE PROCEEDING

All parties to the proceedings are listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Ms. Yhanka Veras respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the United States Court of appeals for the Second Circuit is unreported and is reproduced in the Appendix at 1a–5a. The decision of the U.S. District Court for the Southern District of New York is unreported and is reproduced in the Appendix at 6a–36a.

JURISDICTION

The United States Court of Appeals for the Second Circuit issued its judgment on February 6th, 2025. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Equal Protection Clause

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1651(a).

The **All Writs Act of 1789**, which provides in relevant part as follows:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S. Code § 1915

> **Proceedings in forma pauperis**
>
> Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

42 U.S. Code § 2000e–2, Civil Rights Act of 1964, *herein* Title VII.

> (a) Employer practices
> It shall be an unlawful employment practice for an employer—
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S. Code § 12101 est seq
Americans With Disabilities Act of 1990

> **(1)**
> Physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination.

This action is brought pursuant to "Title VII" of the Civil Rights Act of 1964, Americans with Disability Act, "ADA," The Rehabilitation Act of 1973, New York State Human Rights Law "SHRL," New York City Human Rights Law and State tort law: Intentional Infliction of Emotional Distress.

STATEMENT OF THE CASE[1]

At the root of Ms. Veras' writ is the underlying rebuke from Senator Ted Cruz, regarding the judge who entered the verdict, stating perfunctory, when the said magistrate judge Sarah Netburn, sought to become a federal judge – that she was unfit to be a judge and whose confirmation to federal judgeship was denied by the senate as follows - *in a first 10-11 vote; a Democrat senator voted against Netburn's appointment as federal judge*[2].

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[1] This statement of case and facts is taken operatively from the dismissed matter 1:23-cv-0051 (RAC) (SN), to illustrate the lack of serious review undertaken by the second circuit.

[2] A. https://www.reuters.com/legal/government/first-us-senate-panel-rejects-biden-judicial-nominee-new-york-2024-07-11/
The case which got Judge Netburn in trouble involved the decision she issued as a magistrate judge recommending that a transgender inmate convicted of child sex abuse be transferred to a women's prison. *Id. See also:*
B.

The suggestion, that the same Magistrate Judge, who ruled in a dispositive capacity here, and in a matter in which appellant never consented to her claims being decided by a magistrate judge: ECF: 64 (reassignment of matter back to District Judge), ECF: 106-109 (unfairness), ECF: 137 (threats of sanctions against Appellant counsel), made a decision that is sound is unsupported by the dark clouds surrounding Netburn's denial of federal judgeship and these docket entries. Appellant restates that the level of bias against Ms. Veras by Judge Netburn, exemplified by misinterpretation of law, outside of its jurisprudence; *conclusory vis-à-vis trial ready*, was informed by personal favoritism towards Appellee. Most impartial judges would not conclude that a litigant, such as Veras, with both invisible and visible disability, has failed to plead plausible claims under these facts and deny Veras any sort of discovery. This was a Netburn error, squarely adopted by Federal Judge

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https://www.judiciary.senate.gov/press/rep/releases/graham-statement-on-blocking-radical-biden-judge-from-advancing-to-the-floor.

To argue that even though the U.S. Senate had issue with Netburn, and that the decision in the Veras matter does not exemplify a lack of fitness, is not supported by the finality of the refusal by the U.S. Senate to confirm her to a federal judgeship and the reasons they gave. The senate is an independent part of government, and its checks and balances, has the same weight as the judiciary. In this case, one branch of government raised serious concerns regarding Netburn's decision making abilities. To see this appeal as an isolated matter regarding Netburn would be injustice to Veras. *See also*:

C.
https://www.instagram.com/sentedcruz/reel/C7haYg2JYoP/

Senator Cruz, stating that Netburn is "radical, and I think you have no business being a judge."

Rochon, but stopped straight in its path by the U.S. Senate - to protect the public from her intended federal judgeship.

The fact that the U.S. Senate had an opportunity to examine Judge Netburn's decisions, comes at the heels of this appeal, and providentially, in aide of Veras.

This is a civil rights action for employment discrimination in which the plaintiff, YHANKA VERAS, sought relief from the defendants' violation of her rights as secured by, Title VII of the Civil Rights Act of 1964 ("Title VII"), Americans with Disabilities Act, the Rehabilitation Act of 1973, the New York State Human Rights Law ("SHRL"), and the New York City Human Rights Law ("CHRL") as well as for Negligent Infliction of Emotional Distress ("IEMD"). Plaintiff does not assert Title VII and ADA Disability violations against Manual Vidal Ramirez, Javier Trejo, Yvette Abbott and Salvador Fortunato pursuant to Order, Docket (Dkt). But asserts the human rights violations, State and City, and the negligent infliction of emotional distress against all defendants.

Plaintiff has procedurally exhausted all administrative requirements needed for the Federal, State and Human Rights claims, a precondition of this complaint.

At the core of Ms. Veras' employment discrimination claim is discrimination and retaliation against her because she is a disabled woman, as well as for religious affiliation under the Yoruba religion. Plaintiff asserts that defendants have collectively conspired to use her disability against her – weaponized it - to force her into early retirement. An infraction of the above stated laws.

This discrimination was further inflamed because Ms. Veras, who was a Union representative since September 1998, refused to decide support staff complaints/grievances in a manner suggested or favourable to Mr. Javier Trejo.

Specifically, one case in which Ms. Veras acted as Union Representative involving Andres Ortiz, who was accused falsely and criminally of sexual harassment. This pitted Mr. Trejo against Ms. Veras because Ms. Veras passionately defended Mr. Ortiz.

Defendants discriminated against Ms. Veras by denying her various jobs she was qualified for and by withholding disability accommodations and ridiculing her religious practices. The ultimate result was a transfer to a school with no disability accommodations (Park East High school) "PEH," for the deliberate purposes of punishing and "fixing" her - by creating a

situation in which her disability hindered her duties, an illegal practice under stated laws.

During Ms. Veras employment by defendants, they maintained an environment which ignored her disability, harassed her for practice of her "Yoruba" religion and sought to undermine her humanity by refusing to acknowledge her professional excellency, tenure, seniority, and job performance because she was a disabled woman practicing Yoruba religion.

Of note, Ms. Veras excelled in her job despite her disability - receiving awards for excellence. Furthermore, Ms. Veras has been employed as a summer aide in all summers since 1999 and was qualified for the position she applied for in the summer of 2019. That Ms. Veras, a disabled person, was a hard worker is further supported by the fact that she has worked for the New York Department of Education since 1992. During that time defendants had no problem(s) with the quality of her work. It is only when after doing her job as a Union Rep, that her disability was weaponized against her and used to force her into retired. This is illegal.

PARTIES

11. Plaintiff, "YHANKA VERAS," "employee," is a United States citizen and resides in Manhattan, New York. Ms. Veras

was an "employee" of the defendant(s). She has been so employed since 1992 by defendant "CITY OF NEW YORK DEPARTMENT OF EDCATION." Ms. Veras was hired as a "Student Aide" from (1992-1995). She was then promoted to "School Aide" from (1995-2000). In 2000 Ms. Veras was again promoted to a "Health Aide" until 2019. Ms. Veras worked at the Board of Education for 29 years at George Washington High School Educational Campus, "GW," because it was accessible for her physical disability and medical condition.

Defendant "CITY OF NEW YORK DEPARTMENT OF EDUCATION," the "employer," is a department of the City of New York Municipality. At all times relevant to this complaint defendant was an "employer," of plaintiff.

*Plaintiff Sues Defendant Parties (Trejo, Ramirez, Fortunato and Abbott) In Both Their Official and Individual Capacities:

13. Defendant TREJO, herein the principal of "GW" was an appointed and acting officer, servant, and agent of the "New York Department of Education." He was principal around the forced transfer of Ms. Veras in July of 2019 and authorized it. Mr. Trejo was appointed ahead of council man Ydanis Rodriguez's wife, Ms. Jaritsa Rodriguez (not a teacher) under circumstances which

suggest that Ms. Veras had to intervene as Union representative to assist Mr. Trejo.

Defendant "Manuel Ramirez," herein the superintendent of "GW" appointed and acting officer, servant, and agent of the "New York Department of Education." He was superintendent of GW in July-Nov of 2019 at the time Ms. Veras was employed by NY Dept of Education. During the time of his tenure, Mr. Ramirez retaliated towards Ms. Veras for her intervening in the selection of Mr. Trejo as principal. He was motivated by paying Ms. Veras back for denying Ms. Rodriguez the position and withheld disability accommodations, in addition to encouraging other hostilities by Salvador Fortunato.

Defendant "Yvette Abbot," appointed and acting officer, servant, and agent of the "New York Department of Education," was human resources manager responsible for job placement and the various employment contracts for the City of New York Department of education. She was responsible for job placements and appointments based on fairness and the law regarding protected persons with disabilities. But ignored Ms. Veras' protected status (disability); placing Ms. Veras in a school (PEH) with no disability accommodations, which guaranteed early

retirement because it did not have disability accommodations to assist Ms. Veras in doing her job.

16. Parties, Trejo, Ramirez, Fortunato and Abbott conspired to remove Ms. Veras from her position as a Health aide at GW through retaliatory means which targeted and limited her employment to four hours, at the time she was excised. Furthermore, parties working together used the power of their positions to discriminate, dehumanize and demean Ms. Veras based on her sex, disability, and religion; eventually forcing her to retire early without all the benefits she was entitled to if she had remained at the job until 55. Ms. Veras retired at 44. This was accomplished by making sure the work environment was hostile (through sexual harassment) or impossible (no disability accommodations) for Ms. Veras.

Furthermore, the Union agreement between Ms. Veras and the employer states that:

"The Board agrees to continue its policy of not discriminating against any employee on the basis or race, creed. Color, national origin, sex. marital status or membership or participation in. Or association with the activities of, any employee organization." (Emphasis added).

Ms. Veras is a now a Dominican American woman who practices the Yoruba religion. As a result of her religious practice and being a woman, she was subject to scorn, ridicule, and disparate treatment. At one time a co-worker told her to "change her perfume because it was associated with witchcraft."

At all times defendant employer violated these prohibited practices; not in a singular instance, but in repeated actions directed towards Ms. Veras.

Disability:

Title I of the Americans with Disabilities Act (ADA) of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. (Emphasis added).

ADA further defines disability as:

"Has a physical or mental impairment that substantially limits one or more major life activities; Has a record of such an impairment; or is regarded as having such an impairment." Id.

Under the Rehabilitation Action of 1973 Section 504:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or

be subjected to discrimination under any program or activity receiving Federal financial assistance… (emphasis added).

Ms. Veras has a range of disabilities which have bothered her throughout her life. She suffers from the following illnesses: arthritis, epilepsy, hard of hearing, Brain tumours, leg brace, asthma, Type 2 diabetes, HTN, Bipolar, and MS. Ms. Veras walks with a cane or walker depending on the distance. Defendants were always aware of Ms. Veras disability and the need for accommodation. In addition, Ms. Veras takes no less than fifteen prescriptions.

Ms. Veras is thus categorically a member of a protected class, "disabled", under *Valtchev v. City of N.Y.*, 400 F. App'x 586, 591 (2d Cir. 2010) or any other category because of physical anatomical sickness and has been so classified all her life.

Human Rights Violations

Protects the discrimination against the following during employment: treatment based on disability, sex, religion. New York City Human Rights Law (NYCL) and New York State Human Rights Law. (NYHL)

Adverse Employment Circumstances:

"Title VII," protects against discrimination of a "protected class," here disabled from an adverse work environment free from

discrimination. The Court's dentition of adverse discrimination is factual not merely legal and must be asserted by plaintiff ipso facto in their complaint:

Veras has been for the past 29 years employed by the defendant, "New York Department of Education," a remarkable accomplishment on her part. During this employment, and towards the later part of 2019 she experienced discriminatory practices designed to hinder her career and subsequently to force her to resign.

On Thursday August 22nd, 2019, Ms. Veras saw furniture being removed from the school at GW and suspected that it was being stolen. She texted congressman Adriano Espaillat about the removal of furniture; but he never responded. This occurred after Ms. Veras was walking her dog behind GW and provided further motive for discrimination towards her and her disability weaponized against her by defendants.

In addition, in retaliation for reporting sexual harassment at "GW", plaintiff was denied a promotion which she was qualified for - summer aide and an adjustment to school aide in the fall of 2019. Instead, defendant "Trejo," decided to give the job to a parent with far less qualifications and credentials. Plaintiff was then reassigned to a school, PEH, on short notice. PEH had no

disability accommodation, and Ms. Veras' hours were reduced to 4 hours a day and finally plaintiff was forced to retire at a level that does not reflect her contribution and professional record but is more disciplinary and retaliatory in nature; if not punitive.

Furthermore, because of Ms. Veras' religion and disability "defendants" discriminated against plaintiff by making her work in a hostile and uncooperative environment, designed to deprive, frustrate and humiliate her as an employee. This was essentially by allowing Ms. Veras to be treated with hostility, especially by fellow GW employee, Salvador Fortunato, a school aide with lesser credentials and whose depth of depravity is recited in the statement of facts, infra. This form of discrimination targeted Ms. Veras because of her religion and disability, and took the form of sexual harassment; done in a manner which humiliated Ms. Veras by defendants. This humiliation went to the core of Ms. Veras' dignity as a human being, with an inalienable right to dignity, and treatment free of discrimination, as protected by both NYHL and NYCL, notwithstanding the federal statutes on disability, religious and sexual harassment for New York Department of Education (Title VII, ADA and Rehabilitation Act of 1973, 29 U.S.C. §§ 701 to 796).

Accordingly, Ms. Veras alleges and satisfies a prima facie case for discrimination under Littlejohn v. City of New York, 795 F.3d 297, 311 (2d Cir. 2015); because there is a credible and documented factual basis for this lawsuit. Furthermore, this satisfies the narrow "facts," requirements in *Askin v. Dep't of Educ. Of the City of N.Y.*, 110 A.D.3d 621, 622 (1st Dep't 2013) and *Ortiz v. City of New York,* 105 A.D.3d 674 (1st Dep't 2013).

Retaliation:

A prima facie claim of retaliation requires a plaintiff to demonstrate that (1) [plaintiff] engaged in protected activity; (2) the employer was aware of that activity; (3) the employee suffered a materially adverse action or something that "could well dissuade a reasonable worker from making or supporting a charge of discrimination; and (4) there was a causal connection between the protected activity and that adverse action. *Hicks v. Baines*, 593 F.3d 159, 165 (2d Cir. 2010) (citing *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 57 (2006); *Petty v. City of New York*, 10 Civ. 8581 (KPF), 2014 U.S. Dist. LEXIS 164649 (S.D.N.Y. Nov. 25, 2014). Here, Ms. Veras was denied various employment positions of which she was qualified; "summer school aide"; "fall school aide" and in the past "family assistant" positions. By denying Ms. Veras the position of School

Aide for the Fall 2019 semester and forcing her to be transferred to PEH Ms. Veras suffered an income loss and was unable to pay for her health requirements, this was a detriment. Finally, the denial of fall 2019 employment at GW was directly related to the PEH transfer and Ms. Veras eventual retirement because PEH did not have disability accommodation. Ms. Veras retired out of humiliation and frustration because her disability had been weaponized against her, so that she fails.

"To prevail on a retaliation, claim under the NYCHRL, the plaintiff must show that she took an action opposing her employer's discrimination, and that, as a result, the employer engaged in conduct that was reasonably likely to deter a person from engaging in such action." Id. As stated, here Ms. Veras reported to the new job at PEH on September 4th, 2019; in addition, Ms. Veras was refused entry to GW to pick up her belongings. The response at PEH was to reduce Ms. Veras' hours to four hours a day, so that she is reduced to a state of poverty.

STATEMENT OF FACTS:

A. UNION REPRESENTATIVE POSITION

Ms. Veras has been a Union Representative since 1998. In part, as a union representative, she was crucial n making sure the selection of the principal position at GEW, was given to the

most qualified person. In the instance of Trejo's ascension, she did this by making sure that the current principal Trejo was given access to the selection process format like everyone else. This set Ms. Veras on a collision course with the superintendent, Ramirez who preferred the council man's wife to take the position.

B. **Summer School Aide Position (Summer, 2019)**

In the summer of 2019, Ms. Veras applied for the summer aide position and was denied the position. This is despite the position being available, her seniority and being appointed to the position in previous years.

In return, on August 27th, 2019, Ms. Veras received an excising letter, dated August 3rd, 2019, that her current position for health aide was excised. However, Trejo later hired three junior people for the position, despite Ms. Veras being next in line for the summer aide position. This hiring practice which ignored Ms. Veras was discriminatory and violated DC 37 contract on promotions and seniority. This was done because Ms. Veras is a disabled woman with a different religion, and was intended to humiliate, frustrate, and publicly shame her into retirement. Id. Even though Ms. Veras was number two in seniority after Ms. Geura. The number one in seniority was Marlane Guera, who did not want the job when asked by Ms. Veras, but only worked for

one week in that summer, to prevent Ms. Veras getting the job. After a week in the summer job Ms. Geura resigned and Ms. Veras was prevented from entering the building at GW.

C. "Family Assistant position," (Fall 2019)

Ms. Veras also applied for the family assistant position for the fall 2019 in the summer of 2019. This was denied and given to Ylonka Diaz, who had less qualifications than Ms. Veras.

Mr. Trejo sent Ms. Diaz to the first floor– media communications.

To this day the position of "family assistant," at the GEW, third floor, is vacant and is run by catholic charities. This employment practices violated DC 37 contract on promotions and seniority. This was done because Ms. Veras is a disabled woman with a different religion, and was intended to humiliate, frustrate, and publicly shame. Id

D. "School Aide position," (2018-2019)

43. In 2018-2019, Ms. Veras asked to change title, from "Health Aide to School Aide" because this would have been a better fit with her disability. A position she was qualified to do. Mr. Trejo did not respond to the request. He initially gave it to Ylonka Diaz but when Ms. Veras put her application in, Mr. Trejo left the position vacant. Ms. Diaz was given another position of

"family para," in the first floor. Diaz is a parent and volunteers with students while Ms. Veras had job seniority over Diaz. This violated DC 37 contract on promotions and seniority. And was done because Ms. Veras is a disabled woman with a different religion, and was intended to humiliate, frustrate and publicly shame. In addition to being retaliatory to Ms. Veras's role as a Union Rep in matters such as the Andres Ortiz case. *Id*

Mr. Trejo then hired two school aides just before transferring Ms. Vera and four school aides after transferring Ms. Veras to PEH. Ms. Veras could have remained at GEW as a school aide, but she was targeted for transfer because of her disability. Ms. Veras could have continued working as school aide at GW until she was 55. She had to retire at 44. This action violated DC 37 contract on promotions and seniority.

E. Transfer to PEH, Manner and Discrimination

As stated, on August 27th, 2019, the principal at High School for Health, Careers and Science at George Washington Educational Campus School "GW," Mr. Trejo, mailed an excessing letter to Ms. Veras for her health aide position. The letter stated that her position had been excised.

Ms. Veras was essentially transferred to a school outside district 6 to district 4. And given less than a week to be at the new

school – Park East High School "PEH". The school, PEH is not accessible for Ms. Veras to perform her duties due to her medical condition(s). Park East High School does not have an elevator rump or tunnel for example.

The way Ms. Veras received notice was as follows and shows the insidious discrimination intent against. Ms. Veras: a day before school was supposed to start, September 3rd, 2019, Ms. Veras got a text from the Union rep that she should report to PEH. Not a latter but a text. Letter form Trejo written August 3rd, mailed August 27th letter said you no longer work at GW. (This was the first time this happened.) DOE then sent you a letter later that week assigning you to GW. But the Union rep, sent a text PEH, a day before school started. Union rep (Julien Amy) don't even show your face at GW. When Ms. Veras reported to the school she opened her email and found a letter from Ms Abbot.

This lack of timely notice of the transfer to PEH and consideration was retaliatory and designed to cause Ms. Veras to quit because of her disability. It was intended to frustrate and humiliate based on disability, and is an illegal employment practice under title VII, ADA and under the NYCL and NYSL. Furthermore, Ms. Veras was supposed to remain at GEW as a

school aide and not transferred to a location which forced her into retired because PEH did not have disability accommodations, and the school aide position was still available at GEW. Mr. Trejo would later hire more school aides as already stated. This was all planned and coordinated by defendants and is not innocuous but discriminatory. Regardless of how passive-aggressive it appears. Ms. Veras was not even allowed to pick up her personal belongs at GW, and to this day the defendants have her personal belongs hostage. These include professional mementos with reminders of her hard work and dedication. Holding these things hostage was also done with the intent to humiliate Ms. Veras and violates the Title VII, ADA, NYCHL and NYSHL.

F. Events at PEH

In addition, at PEH, Ms. Veras hours were reduced from 8 to 4 hours. This caused financial hardship, stress, anxiety, and mental illness and exacerbated a second brain tumour. Traveling was physically challenging for Ms. Veras to report to Park East High School. The lack of accommodations caused stress, anxiety, and hardship on Ms. Veras to continue to work for the Board of Education and was intended indirectly to get rid of Ms. Veras.

Ms. Vera took the action to report to work at the new school, Park East High, which had no “disability accommodations”

despite the perceived retaliation. She was unable to continue her job at PEH because of the lack of disability accommodations, the distance from her home, stress, and mental anguish; all caused by the defendants' discrimination in violation to Title VII, ADA, NYSHL and NYCHL. This was a direct act of discrimination by defendants designed to fruste Ms. Veras into retirement or being fired for non-attendance at PEH. It was also retaliation for previous complaints where Ms. Veras had made regarding disability accommodations at GW, religious practice, as well as sexual harassment at GW (Salvador Fortunato).

G. Sexual harassment (Salvador Fortunato)

During Ms. Veras employment at GW she was the subject of sexual harassment, innuendo, and sexual jokes, by Salvador Fortunato specifically. Including one incident in which a Mr. Fortunato humped in her presence and another in which he stuck this tongue out. When defendant Trejo was made aware of such incidents, he did nothing. This condoning the behaviour through silence.

52. Furthermore, Mr Fortunato was awarded employee of the year for 2019. Thus, the sexual harassment targeting Ms. Veras by Mr. Fortunato was not only encouraged but condoned by defendants. This is an illegal employment practice. This was done

because she is a disabled woman with a different religion, and was intended to humiliate, frustrate and publicly shame; all illegal employment practices. *Id.*

PROCEDURAL HISTORY OF CASE

Ms. Veras seeks a reversal of the "ORDER," AA[3]-041-067 ,dated April 28th, 2023, in Case *Veras v. New York City Depart of Education, et al* 1:22-CV-00056 (JLR)(SN)[4], in the Southern District of New York and remand to proceed for discovery. Ms. Veras asks that the matter be remanded to a different judge consistent with the allegations of bias she is making in this brief.

A troubling concern with the Order issued by Judge Rochon is that it refers to a "Martinez," as one of the defendants[5]. For the record, Ms. Veras has not sued a Martinez, this is proof that the lower court cut-and-paste, a previous Order without seriously considering the facts surrounding Ms. Veras's allegations. The court hurriedly dismissed Ms. Veras's case as pay-back for seeking equal treatment after she filed a *writ of mandamus* against Judge Rochon. See *Veras v. New York Department of Educatio*n *et al* – 24-1463 (2nd Cir). Gen. Order dated September 6th, 2024 (denied as moot).

[3] AA - refers to Appellant's Appendix. SAC, refers to Second Amended Complaint.
[4] All ECF, Electronic Case filings, refers to 1:22-cv-00056 (JLR)(SN).
[5] Close to over ten months and the Lower court could not get over the simple hurdle of naming the parties in the matter.

The gest of the Order is that Ms. Veras *did not plead sufficient facts and that while, the court empathizes with her health they wish her well*. A-55. This sarcasm is not lost on Ms. Veras, the same Lower court while granting her a *de bene esse* deposition, refused to allow any of the deposition to be used to plead more plausible facts – *the first instance of bias against Ms. Veras*. ECF: 99-101. Where then was the empathy during adjudication, when the court could have allowed Ms. Veras's *de bene esse*; in any event Ms. Veras has plead a *prima facie* case under any of the prevailing case law:

Ms. Veras alleges and satisfies a prima facie case for discrimination under *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015); because there is a **credible and documented factual basis for this lawsuit**. Furthermore, this satisfies the narrow "facts," requirements in *Askin v. Dep't of Educ. Of the City of N.Y.*, 110 A.D.3d 621, 622 (1st Dep't 2013) and *Ortiz v. City of New York*, 105 A.D.3d 674 (1st Dep't 2013). SAC ¶ 42. (Emphasis added)

As this brief will show, Ms. Veras's pleaded facts are sufficient under Federal Rule of Civil Procedure Rule 8.a., for any trial court to authorize and allow discovery, especially - considering Ms. Veras stated disabilities and the underlying aims of the American

with Disabilities Act, which advocates for reasonable accommodations, even in court proceedings[6]. The Order appealed, does not cite to any caselaw, that a disabled person with documented disabilities should be subject to the same pleading standard as an able-bodied person and should not get any accommodation from the court to extract facts hidden due to that illness (Ms. Veras suffers from memory loss because of her two brain tumors). Instead, The Lower Court sarcastically stated, 'The Court sympathizes with Plaintiff's reported condition and wishes her good health. AA-52[7].'

The suggestion that, facts still in defendants' custody, showing similar situated treatment, records of attendance, employment disciplinary conduct – supporting Ms. Veras's case for disparate treatment, and adverse work environment, should all have been disclosed by Ms. Veras is an error by the lower court because such a standard applies to summary judgment, after discovery, not at the initial pleading stage under Rule 8.

Notice pleading states the *plausibility* of a cause of action, not the complete litigation from its inception. *Trujillo*. Facts, even

[6] This is commonsense, a court of law, cannot deny a disabled person **reasonable accommodation**, when it adjudicates the same failures for *reasonable accommodation outside the court room*. Courts regularly use translators, sign language and zoom conferencing (incarcerated prisoners) to even out the playing field between litigants and to accommodate litigants 'disabilities and liabilities.' Courts have disability access, as well as elevators, entrances and exits for disabled people. The directive by the Lower Court to refuse any facts in the *de bene esse*, uttered by Ms. Veras to support her pleading and for that purpose was abuse of discretion.

[7] The Lower Court appears to be blaming Ms. Veras for failure to plead those facts instead!

when sporadic are deemed sufficient – as this is not summary judgment. *Id*. The articulation that sporadic facts, are conclusory due to quantity, has no realistic foundation in the law – a singular firing, could be the basis of a plausible employment discrimination claim. *Id*. Here, we have singularity and the confluence of disability. Stated differently, the Lower court's issue is with *the pleading standard*, not Ms. Veras.

Stated differently, the balance of justice requires that given Ms. Veras's documented disability she be treated under black letter law - when, sporadic facts are found to state a plausible action. " '[A] plaintiff alleging employment discrimination or retaliation **is not required to plead facts sufficient to establish a prima facie case**.' " *Trujillo*, 2016 WL 10703308, at *4 (quoting *Krasner v. HSH Nordbank AG*, 680 F. Supp. 2d 502, 512 (S.D.N.Y. 2010)). (Emphasis added).

The record shows that when Ms. Veras, through her counsel notified the trial court of her admission to hospital. The Lower Court ignored it. *Id*. When Ms. Veras asked to transfer her litigation right to her sister. ECF: 142. The court ignored it[8]. The court ignored any inquiry based on those health concerns. ECF: 148-150.

[8] *This is the second example of bias against Ms. Veras – refusal to respond to updates regarding her health vis-à-vis her litigation rights*.

Ms. Veras had to fight to get her *de bene esse* deposition; the Lower Court did not sanction or make any comment on defendants' refusal to cooperate regarding the *de bene esse* deposition. ECF: 99-101. But now, the Lower Court states – "wish per well," that is after dismissing the entirety of her case and refusing Ms. Veras, a disabled person, the opportunity to use her *de bene esse* deposition to add facts to her second amended complaint, before it was written. This was abuse of discretion (by both the magistrate and federal judge) because more facts, from the deposition, would have allowed Ms. Veras to show the causal connection between her dismissal and discriminatory intent for all her claims; moreover, an error – given that discriminatory intent, in any of the claims alleges by Ms. Veras can be shown in through circumstantial evidence[9].

The Lower court was equally wrong that the "sporadic," facts given due to Ms. Veras's disabilities do not meet the dictum of *Trujillo*[10]. *Id*. Those do point towards discriminatory intent, *circumstantially* – that is transfer to another school with no disability accommodation, refusal to renew work contract or reappoint and ignoring sexual harassment complaints. The

[9] During the deposition Ms. Vera alleged that she saw stolen furniture leaving her school, GWHS. She then reported this to Adiano Espaillat, a Congressman. She also reported it to the principal, Trego. Soon after the events leading to Ms. Veras transfer to a school with no reasonable accommodation was taken by Trego.

[10] Ms. Veras context is distinguishable from the case the bench bases its entire decision, *Alfano*.

Lower court however argued that these are conclusory facts. Not so. The very definition of *conclusory is that no fact is stated*, but a statement is made circular[11]. Transfer from one school to another is not a conclusory statement because discriminatory intent can be inferred circumstantially – this will be reiterated during argument of this brief. The causal connection between one fact and one outcome, does not make it conclusory. An employer does not need to fire an employee more than once, for discrimination to be plausibly plead. *Trujillo*. The Lower court confused singularity with the dictates of *Alfano (which is case specific)*.

Moving Ms. Veras from GW to PE, in retaliation to the complaints she made regarding sexual harassment, the employment complaints – is not conclusory, a jury may find a causal link. This is the nature of employment law. Furthermore, Rule 8, does not allow a lower court to treat the adjudication as if it is a Rule 56, adjudication. This is what the Court argued, sarcastically dismissing her disabilities and asking her to present as much facts as possible in her initial pleading. This was a legal error in interpreting the law in this area, specifically *Trujillo*. A curious point in the Order, is that Ms. Veras has not compared herself to others – this is not true, the whole basis of her plea was

[11] E.g. *An apple is an apple* (conclusory). As oppose to a statement of fact – *an apple is a fruit*.

that "others," were treated differently under the same conditions of employment: not sexually harassed; not called names; not called witches; not transferred to schools with no accommodation; *see*, SAC ¶ 17-33.

DEEP ISSUES

Appellant (Ms. Veras) seeks reversal of Order and Opinion dated July 17th, 2024, AA[12](47-61), from the lower court, the Southern District of New York based on misapplication of the law under Federal Rule of Procedure Rule 12 (b). The court adjudicated the matter as if it were a summary judgment under Rule 56.

REASONS FOR GRANTING THE WRIT

This writ of certiorari should be granted because this issue goes to this matter - equal protection and equal justice in the courts for those before the circuit courts with a combination of invisible disability and pauper status. A disabled litigant, here Ms. Veras, with a meritorious claim, should be afforded the assistance of a court in addressing dispositive pleadings, as much as possible under *Gonzalez v. Carlin*, 907 F.2d 573, 580 (5th Cir. 1990).

Legal Standard When Determining Rule 12.b.6:

[12] (A -) refers to the Appellant's Appendix.

A motion to dismiss under Rule 12(b)(6) should be granted only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. *Conley v. Gibson*, 335 U.S. 41, 48 (1957) (emphasis added); see also Fed. R. Civ. P.12(b)(6); *Bell Atlantic Corp v. Twombly*, 550 U.S. 540, 570 (2007). A motion under Rule 12(b)(6) merely tests the legal sufficiency of a complaint, requiring a court to construe the complaint liberally, assume all facts as true, and draw all reasonable inferences in favor of the plaintiff. *Twombly*, 550 U.S. at 556-57. A complaint should never be dismissed because the court is doubtful that the plaintiff will not be able to prove all of the factual allegations contained therein. Id.

The burden of this motion lies with the moving party, *Ragan v. NY Times*.

Motion to Dismiss, Rule 12(b) does not raise the pleading standard to the level required to survive a motion for summary judgment. See *In re Initial Public Offering Sec. Litig*., 241 F. Supp. 2d 281, 333 (S.D.N.Y. 2003).

The Supreme Court articulated the appropriate standard a court must follow in deciding a motion to dismiss an action under the Private Securities Litigation Reform Act of1995 ("PSLRA"). First, a court must accept all factual allegations set forth in the

complaint as true. *Tellabs, Inc. v. Makor Issues and Rights, Ltd*, 551 U.S. 308, 322 (2007). Second, the court must consider the complaint in its entirety; "the inquiry . . . is whether all of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." *Id*.

Finally, the court must conduct a comparative inquiry: "[a] complaint will survive if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id*. at 324. The facts here, and as alleged by Dr. Sibanda more than adequately survive such a comparison.

"[T]he [Supreme] Court is not requiring a universal standard of heightened fact pleading, but is instead requiring a flexible `plausibility standard,' which obliges a pleader to amplify a claim with some factual allegation in those contexts where such amplification is needed to render the claim plausible." *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir.2007).

As stated, on a motion to dismiss, the Court must assume that all of the facts alleged in the Amended Complaint are true, construe those facts in the light most favorable to Plaintiffs, and draw all reasonable inferences in favor of Plaintiff.

See *Abdullahi v. Pfizer, Inc.,* 562 F.3d 163, 169 (2d Cir. 2009); Vietnam Ass'n for Victims of Agent Orange v. Dow Chem. Co., 517 F.3d 104, 115 (2d Cir.2008); *U.S. Bank Nat. Ass'n v. Ables & Hall Builders*, 582 F. Supp. 2d 605, 606 (S.D.N.Y. 2008) (Chin, J.).

Furthermore, the decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) expanded *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) from antitrust cases to Federal Rule of Civil Procedure Rule 8.a pleading per se.

More relevant here, on a motion to dismiss, Court does not make credibility determinations and evaluates agreements based solely on their terms (rather than through statements made about them) *McKenzie-Morris v. V.P. Recs. Retail Outlet, Inc.,* 638 F. Supp. 3d 333, 337 (S.D.N.Y. 2022), reconsideration denied, No. 22-CV-1138 (JGLC), 2023 WL 8440860 (S.D.N.Y. Oct. 16, 2023). Plaintiff adopts the legal inference from the ***Tw****ombly* and ***Iqbal*** cases, supra, jointly as **Twiqbal**.

Not since *Twiqbal* has the Supreme court given concise direction on legal direction in ruling on a Rule 12.b.6, consequently, the instant matter (Veras) offers the proper case facts to give direction to the lower courts, on what is plausibile when disability sits at the very center of a dispositive Rule 12.b.6

motion. Thus, Veras is timely, regarding the evolution of the civil rules of litigation standard, and an audience at the apex court would be appropriate in petitioner's view.

I. **The Circuits Are Divided On Whether a Circuit Court Should Allow A Case To Proceed When Plaintiff Has Limiting Disabilities, Limiting Her/His Pleading Capacity Under Rule 12.b.6 Standard:**

The Circuit split arises from competing principles of finality and accuracy underlying the jurisprudence for electing to give an appellant, such as a Ms. Yhanka Veras, further assistance in her pleadings due to her disabilities, including memory loss, when a Rule 12.b.6 motion seduces disability: *Twiqbal* is unclear what is plausible when a litigant has Veras type disability i.e. memory loss.

Do Circuit courts operate within the law when they refuse to allow a matter to go to discover when plaintiff suffers from documented invisible disability affecting memory, of which a *de bene esse* deposition was granted by the trial court? Stated differently, should courts use factor in plaintiff's memory loss, offensively against plaintiffs or consider it as mitigating factor in plaintiff's pleading for Rule 12.b.6 opposition?

II. **Exceptional Circumstances (Disability) Should Not Be Summarily Dismissed**

That Ms. Veras is disabled, was never disputed at the lower court or by the defendants. This is uncontroverted. *See*, *SAC ¶1-11*, supra.

III. Role of Supreme Court In Giving Direction and Leadership in Civil Rights Litigation, Including Title VII.

The Supreme Court has held that under *Brown v. Western R. Co. of Alabama*, 338 U. S. 294, 296 (1949), "federal right cannot be defeated by the forms of local practice."

"First, it ignores our prior assessment of "the dominant characteristic of civil rights actions: *they belong in court." Burnett,* 468 U. S., at 50 (emphasis added.)

"The central objective of the Reconstruction-Era civil rights statutes...is to ensure that individuals whose federal constitutional or statutory rights are abridged may recover damages or secure injunctive relief." *Burnett*, 468 U.S., at 55.

The Supreme Court has been at the heart and soul of civil rights litigation from its onset. Title VII claims are essentially civil rights within the context of employment. Those civil rights require serious direction and uniformity

from the Supreme Court to create one "federal" law[13]. Court appointment of an attorney where vesture of rights, previously given to the appellant, in the District Court, later withdrawn by the Circuit court is a question of national importance because it goes to the root of what federal law is – one legal system, with no avenues for forum shopping.

Thus, asking the Supreme Court to give further direction is within its province of powers. The lower courts should have direction on what path to take when Veras type of invisible disability reappears.

IV. This Case is a Vehicle to Clarify Both the Main Circuit Split (Rule 12.b.6) and Disability.

The Supreme Court has held that:

"The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Public Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-467 (1952).

With Ms. Yhanka Veras' case, this Court can resolve the Circuit split regarding how disabled plaintiff are treated when Rule 12.b.6 is applied to them, and evidenced by such pleadings

[13] Not a disparate federal Law for New York.

as warranting the need for a *de bene esse* pleading; Ms. Veras was approached by the District Court, and allowed to take a de bene esse deposition to preserve her testimony due to memory loss – this ruling by the court, acknowledging her continued memory loss, should have been a factor in addressing the current state of Ms. Veras's factual recall for the Rule 12.b.6 opposition for her second amended complaint. The Lower Court made the mistake to accept Ms. Veras's disability (memory loss) only for purposes of *de bene esse*, notwithstanding that the two tumors were already operative, at the time the Rule 12.b.6 motion, and second amended complaint were filed.

Discovery would have allowed the court to address more facts, under a different Federal Rule of Civil Procedure Rule 56 standard, *thus* the court put the horse before the cart in stating in their Order, that Ms. Veras's 'complaint was conclusory.' Givern Ms. Veras' memory loss, it was not conclusory but plausible, taking her peculiar condition. The Supreme Court should restate its, plausibility pleading requirement, when disabled plaintiffs are opposing Rule 12.b.6 motions – *surely*, it cannot be expected that the same plausibility standard for a fully capable functional litigant, referred to in the seminal *Twiqbal*

jurisprudence, is the same for a degenerative plaintiff subject to memory loss and brain tumors, such as Veras?

The Supreme court should be firm, that our disabled brothers and assistances, need help, approaching the bench, when facts suggest such a path: and that their plausibility is different from able bodied citizens, even in Olympic able bodied and disabled do no compete together, but in separated events testing their strengths with other disabled people. Period.

V. Role of Court In Addressing Disability In Civil Litigation

The role of the Supreme Court is to address what the Rules and the Law mean, at the apex level. This is beyond debate. Petitioner asks that the court consider this concern – disability regrading Rule 12.b.6 opposition in degenerative condition – as an issue of first impression, requiring further briefing. This matter is timely, as the pendulum continues to swing in the direction of accommodation for both invisibility and visible disability. In Ms. Veras' case, she had the fortunate aid of an attorney, with a doctorate (SJD), to document and argue her disability in the lower court winning a *de bene esse* deposition[14]

[14] While defendants tried to oppose the taking of a *de bene esse* deposition, the court ruled in Ms. Veras's favor.

under Federal Rule of Cvil Procedure Rule 34, however, many more cases have been concluded by disabled litigants pro se, whose invisibility disability was unnoticed by the courts, rendering viable claims dismissed.

If this court wishes to exclude lower trial courts from the full spirit and measure of the American With Disabilities Act, when determining Rule 12.b.6 motions, it should say so.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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