

No. _____

IN THE
Supreme Court of the United States

ROBERT M. MILLER,
Petitioner,

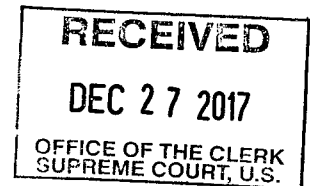
v.

MARTIN J. GRUENBERG,
Chairman, Federal Deposit Insurance Corporation,
Respondent.

On Application for Extension of Time to File a
Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit
in Case Number 17-1688

**PETITIONER'S APPLICATION TO EXTEND THE TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

ROBERT M. MILLER
Pro Se
4094 MAJESTIC LANE
#278
FAIRFAX, VA 22033
(415) 596-2444
ROBMILLER44@HOTMAIL.COM



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To the Honorable John G. Roberts, Jr., as Circuit Justice for the United States Court of Appeals for the Fourth Circuit (hereafter, Fourth Circuit):

Petitioner Robert M. Miller respectfully requests that the time to file a Petition for a Writ of Certiorari for Fourth Circuit Case number 17-1688 be extended for sixty (60) days to and including March 19, 2018.

The Fourth Circuit issued its unpublished Opinion on October 20, 2017. (see Add. A *infra*). Petitioner did not request rehearing. Absent an extension of time, the Petition for a Writ of Certiorari would be due on January 18, 2018. Petitioner is filing this Application at least ten days before that date. See S. Ct. R. 13.5. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1254(1).

FACTUAL BACKGROUND

Petitioner is an employee of the Federal Deposit Insurance Corporation (FDIC or Agency). On April 1, 2011, a former FDIC employee accused Petitioner of sexual harassment. These allegations were false, frivolous, and untimely. On April 12, 2011, a second employee raised several other false and frivolous allegations against Petitioner.

Just *minutes* after the second complaint and *two weeks prior* to questioning Petitioner, Defendant decided to not promote Petitioner and to remove him from performing presentations because of these allegations.

The allegations were so vague, Petitioner did not get adequate notice and opportunity to respond to them. Defendant made no effort to investigate the totality of the circumstances or the elements of sexual harassment.

Petitioner filed a grievance for Defendant's violation of his right to due process. The persons who violated Petitioner's rights appointed *themselves* to decide on the grievance. The Merit Systems Protection Board (MSPB) has held that this is an "abuse of authority." See *Loyd v. Department of the Treasury*, 68 M.S.P.R. 684. The Step officials lied about dozens of material facts in their responses, each a felony violation of 18 U.S.C. § 1001. Grievance officials abused their authority with self-serving misinterpretations of law. Petitioner notified Defendant of these felonies, and Defendant refused to investigate in violation of 18 U.S.C. § 4.

Defendant continued taking tangible employment actions against Petitioner for the next four (now six) years, including non-selection for more than 20 vacancies,

below-average performance evaluations, rejected research papers, and denial of key duties, details, training, and transfer requests.

Defendant's reasons for taking these tangible employment actions do not withstand scrutiny based on Petitioner's superior qualifications, exemplary duty performance, and veterans' preference. Defendant avoided promoting Petitioner by: (1) coercing his withdrawal with insufficient notice of an interview; (2) finding Petitioner unqualified for a position he previously held; (3) offering vacancies beneath Petitioner's pay grade; (4) wrongfully reducing Petitioner's examination scores; (5) cancelling vacancies; (6) leaving vacancies unfilled; (7) not promoting Petitioner under a Special Appointing Authority; (8) putting language in a performance evaluation to defeat a reclassification request; (9) below-average performance evaluations later considered by selecting officials; (10) selecting far less qualified candidates; (11) making selections without interviews; and (12) encouraging a selecting official to "Do not hire" Petitioner.

Several FDIC officials discussed Petitioner's complaints even though they were not parties to those actions, in violation of the Privacy Act and in obstruction of justice. Agency witnesses and attorneys committed perjury *dozens* of times in Petitioner's claims.

PROCEEDINGS BELOW

Petitioner's Second Amended Complaint (SAC) contained over 200 paragraphs of detailed facts demonstrating court jurisdiction and exhaustion of

administrative remedies, and stating claims upon which relief could be granted. See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Petitioner requested judicial review of two grievances. See *Whitman v. Department of Transportation*, 547 U.S. 512 (2006). These grievances alleged Defendant violated Petitioner's right to due process and unconstitutionally infringed his right to free speech. U.S. Const. amend. I and V. Petitioner properly pleaded that his labor union failed to proceed to arbitration in violation of its duty of fair representation. See *Vaca v. Sipes*, 386 U.S. 171 (1967).

Petitioner raised numerous age, sex, and reprisal claims of discrimination for four years of tangible employment actions arising from the false harassment allegations, Defendant's failure to investigate them, Defendant's violation of Petitioner's rights, and in retaliation for Petitioner's complaints.

The district court dismissed Petitioner's complaint in its entirety, violating numerous laws, rules, and procedures. The district court:

1. Wrongfully construed the request for grievance reviews as an Unfair Labor Practice (ULP);
2. Ignored *hundreds* of well-pleaded factual allegations;
3. Reached conclusions, *ipse dixit*, that were contradicted by well-pleaded facts;
4. Drew inferences in favor of the party moving to dismiss;
5. Gave dispositive weight to rebuttable presumptions prior to discovery;
6. Misapplied well-established law;

7. Did not give Petitioner an opportunity to respond at a hearing on the motion to dismiss;
8. Alleged rule violations by Petitioner that were not actually violations;
9. Relied on precedential decisions in conflict with this Court's precedents;
10. Refused to allow Petitioner to amend his complaint.

These errors are so obvious, numerous, and egregious that they could only be the result of deep-seated bias against Petitioner, plaintiffs accused of sexual harassment, or pro se litigants.

The Fourth Circuit affirmed the district court's decision in a one-paragraph affirmance that did not attempt to analyze the facts and legal arguments.

REASONS FOR GRANTING AN EXTENSION OF TIME

1. This case presents extraordinarily important issues warranting a carefully prepared Petition.

In the avalanche of recent sexual harassment allegations, it is imperative that this Court act immediately and decisively to preserve due process rights for the accused and to forestall frivolous complaints. Existing "remedies" for violations of these rights are inadequate and ill-fitting for the harm caused to the careers and reputations of the accused. The enormity of the issues in this case cannot be overstated. Petitioner's SAC demonstrates severe and pervasive:

- A. Violation of the right to due process of employees accused of sexual harassment;
- B. Deficient antiharassment policies and procedures imposing unconstitutionally vague and overbroad restrictions on free speech;

- C. Felonies and abuses of authority by agency officials;
- D. Dereliction of duty by agencies charged with enforcing the law and CSRA;
- E. Violations of due process by courts with “rocket dockets”;
- F. Bias against pro se litigants.

2. There is a high likelihood Petitioner will prevail on the merits.

Petitioner’s SAC pleaded detailed facts that would prove Defendant violated his rights, and discovery is likely to reveal more evidence. The lower courts were on a mission to dismiss this case in spite of facts, laws, and rules. Every sentence in the Memorandum Opinion’s following paragraph is factually incorrect, *ipse dixit*, and contrary to well-established law:

Plaintiff’s charge that he was subjected to a hostile work environment by the accusations made against him in the sexual harassment investigation is a perversion of the hostile work environment standard. Defendant investigated reports that Plaintiff had placed other employees in unwelcome situations because of sex. The fact that Defendant thoroughly investigated those claims and brought them to Plaintiff’s attention, while protecting the identities of the accusers, does not afford Plaintiff a claim for a hostile work environment. To find otherwise would hamstring an employer’s ability to investigate harassment claims in the workplace in a fashion which balances the interests of due process and protecting victims.

Petitioner’s SAC *precisely* alleged that Defendant *did not* thoroughly investigate sexual harassment. Defendant *did not* bring the allegations “to Plaintiff’s attention” because the allegations were too vague to recognize. Petitioner *did not* place employees in unwelcome situations, and Defendant did not even *seek* any evidence for this conclusion. The complainants *do not* have an absolute guarantee of confidentiality under the law. Petitioner’s claim *does not* “hamstring” an employer’s

duty to investigate; Defendant is being sued because he *did not* conduct a thorough investigation and protect Petitioner's rights. There was absolutely no "balance" of due process interests.

This Court should exercise its supervisory authority to rectify a manifest injustice.

3. Petitioner is a disabled veteran, suffering from insomnia, severe back pain, depression, high blood pressure, Type II diabetes, and several other medical conditions inhibiting timely production of this Petition.
4. Petitioner is a full-time employee of the Agency and will prepare this Petition during evenings, weekends, and holidays.
5. Petitioner's access to law libraries is limited.
6. Petitioner is involved in several other cases against this Agency. While the press of business is not ordinarily considered good cause for an extension of time, the totality of the circumstances necessitates an extension in the interest of fairness and justice.
7. No meaningful prejudice to Defendant would arise from the extension.

CONCLUSION

For the foregoing reasons, the time to file a Petition for Writ of Certiorari on appeal from the U.S. Court of Appeals for the Fourth Circuit in case 17-1688 should be extended sixty days to and including March 19, 2018.

By execution of this Application below, Petitioner swears under penalty of perjury that the foregoing facts are true.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Miller". The signature is fluid and cursive, with the first name "Robert" being more legible than the last name "Miller".

Executed on December 19, 2017

Robert M. Miller
Petitioner, pro se
4094 Majestic Lane
#278
Fairfax, VA 22033
(415) 596-2444