IN THE
US Supreme Court of Legal Clients

MADHURI TRIVEDI,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Madhuri Trivedi
Entrepreneur, Engineer, CTO, CEO, in Law field as I am dragged into this FIGHT.
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Petitioner **Madhuri Trivedi**, Toby Walsh & 137 founders worldwide **-nominated for 2017 person of the year award for releasing open letter to United Nations** for dangers posed by uncontrolled artificial intelligence lethal autonomous weapons. **–we are competing** with **Pope Francis.** https://www.armscontrol.org/acpoy

QUESTIONS PRESENTED

When (**under** *Spokeo, Inc.*,136 S. Ct.at1548, Massachusetts v. EPA, 549 U.S. 497 (2007) ,Warth v. Seldin, 422 US 490 Lujan v. Defenders of Wildlife, 504 U. S. 555, 560–561) (1)injury-in fact (2)Article III standing and(3)prudential standing; requirements are met, pleaded with evidence that plaintiff has "suffered recurrent" injury, been "wronged again in similar way" **Question is Whether** court can deny injunctive relief (dismiss with prejudice with no leave to amend)

In wake of growing influence of multinationals, selective prosecution (including but not limited to going after individuals, young kids for HARSH indictments under computer fraud abuse act); also women in tech face uphill battle;

Question is Whether Anti retaliatory provision – protection, Relief under one or more of the following federal laws:-(1)HIPPA (2)False claims act (as per FBI; petitioner's employer GE matter was quitam)(3)8 U.S.C. § 1324b (4) 42 U.S.C.§ 299b-22(5)DOD frank act SEC(when whistleblower has first done internal complaint about such practices)(6)10 U.S.C. 2409, "protection from reprisal for disclosure of certain information," Defense Federal Acquisition Regulation Supplement, Subpart 203.9, "Whistleblower Protections for Contractor Employees."(7)Civil rights Title VII (8)Tort (9)Biven action under supreme court(9) HITECH

apply to (a)H1B visa holder (when employer withdraws H1B visa importantly while employee is undergoing forced arbitration*?). to (b) DHS when it continue deny giving work permit/ability to stay in USA despite being eligible. Is this constitutional? **Weather DHS** has color of law, public office duty and implications for whistleblower.

(1)Lower courts' ongoing conflicts, considerable variations on applying Twomby-Iqbal pleading standards†.(2) are Divided in pleadings where court issues FRCP12(c) when material disputes existed, opposition to FRCP12(b)(6) motions ; **Question is Whether** Ninth circuit erred in dismissing claims, denying relief under one/more of APA 5USC.§ 704 , §706, §702,.§ 705, 706(2)(F), §551(13) ;also given that Kazarian internal memo(ninth circuit case led to DHS issuing memo) used by agency DHS to adjuncate petitions which didn't follow formal rulemaking under Administrative Procedure Act, Several Amicus briefs have been filled complaining memo.

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* H1 B whistleblower's ability to stay in USA is gone when employer withdraws H1B (reprisal for protected disclosures, activities.); hence Arbitrator or anyone has no incentive to do anything. (Also arbitration is designed for BENEFITS of big companies and not for employees; Given that in current term of Supreme Court there are three employment arbitration related merit cases- so there is ongoing conflict about it).

† When fighting against "System" ; no matter what anyone would have faced the same what I did.

Parties and RULE 29.6 statement

Petitioner Madhuri Trivedi was the plaintiff in the district court and the appellant in the court of appeals.

Respondents U.S. DEPARTMENT OF HOMELAND SECURITY, Kirstjen M. Nielsen, in her Official Capacity as Secretary of DHS, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, Lori Scialabba in her Official Capacity as Director- U.S. Citizenship and Immigration Services, Donald Neufeld -director USCIS service center in his individual capacity, Greggory Richardson- director TSC - in his individual capacity, Mark Hazuda- Director NSC - in his individual capacity, John Roth, OIG - in his individual capacity, Maria Odom-DHS- in her individual capacity;

Were defendants in the district court and the appellee in the court of appeals.

Madhuri Trivedi, Petitioner is a sole proprietary owner of her start up Employer Identification Number: 47-2175388 as per Form: SS-4 by IRS; and has not incorporated her startup. Her startup has no parent or subsidiary corporation. No publicly held company owns any of its stock.

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Cases

Supreme Court cases

‡ (if the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is"probably true" or "more likely than not," the applicant or petitioner has satisfied the
standard of proof)

§ ("[T]he jury is entitled to presume that a person intends the natural and probable consequences of his acts")

** (explaining court will not defer to agency interpretation if it raises "grave constitutional doubts");

18 U.S. Code § 1030 - Fraud and related activity in connection with computers
18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States
HIPAA. (45 C.F.R. § 164.530 (g).
FCA 31 U.S. Code § 3802 ,The Civil False Claims Act (31 U.S.C. §3729 et seq.) ...
These codes applies to GE and immigration officals.
18 U.S. Code § 1621 - Perjury generally.....
18 U.S. C § 1512 - Tampering with a witness, victim, or an informant .....

*18 U.S. C § **1513** - Retaliating against a witness, victim, or an informant*

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Petitioner, respectfully petitions for a writ of certiorari to review the judgement of US court of appeals for the Ninth Circuit.

OPINIONS BELOW

The unpublished memorandum opinion of the United States Court of Appeals for the Ninth Circuit as Appendix 1.District court order (Appendix 2) (Appendix 3)

JURISDICTION

On October 3rd, 2017, the US court of appeals entered Judgement. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

Article III standing, 28 USC §1331 because the complaint also alleged torts, Biven actions and lower court denied any relief where injury-in fact requirements met.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. Constitution. Art. 3, § 2, cl. 1.
Civil Rights Act
Administrative Procedures Act
Title 10, U.S.C. 2409, "Contractor employees: protection from reprisal for disclosure of certain information," implemented by Defense Federal Acquisition Regulation Supplement, Subpart 203.9, "Whistleblower Protections for Contractor Employees."
28 U.S.S. § 1391(b) Biven venue personal injury actions
INA §§ 203(b)(3), 245(a); 8 U.S.C. §§ 1153(b)(3), 1255(a).
Intentional infliction of emotional distress (IIED) Biven action
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8 U.S. Code § 1153 (b)(1) (A)Extra-ordinary ability
8 U.S.C. Code § 1153 (b)(2) (B)(i) -National interest waiver.....
(8 CFR 204.5(h)(3)(v)) ,(8 CFR 204.5(h)(3)(viii))
(8 CFR 204.5(h)(4))
8 USC 1101 et seq
Act 8 U.S.C. § 1152(a)(1)(A)

42 U.S.C. § 1983, color of law
28 USC § 1361 mandamus
5 USC. § 704
5 USC § 706
5 USC §702. 5 USC §702(2)(a)
5 U.S.C. § 705.....
U.S.C. 706 (2)(F) jurisdiction–to have a trial de novo.....
U.S.C. § 1331,.....
28 U.S.C. Section(s) 1367 &§ 1367 (a).....
18 U.S. Code § 1030
18 U.S. Code § 371
HIPAA. (45 C.F.R. § 164.530 (g).
FCA 31 U.S. Code § 3802, (31 U.S.C. §3729 et seq.)
Equal protection clause,
Federal Arbitration Act
Due process cause

INTRODUCTION

Petitioner Madhuri Trivedi is capable to receive **Nobel prize. Now after this fight I-Madhuri am not obsessed/crazy to "Make world better, medicine, healthcare, World PEACE"** I have paid price for being and doing that.

My employer General Electric knowingly released 100,000+ medical devices with 600 critical defects including but not limited to violation of HIPAA, HITEC regulations, security vulnerabilities**(failed security tests from day 1)** for several years. This highly defective, non-compliant FIRMWARE (medical device)was installed on 98% of the medical devices GE healthcare manufactures & sells. **Petitioner worked as a Lead Engineer at GE .** (a charter corporation of military industry complex).

Trivedi was first handful of engineers who worked on GE's Internet of Things-IoT platform for connecting/controlling assets on INTERNET which is marketed for multi billion. By connecting all kind of assets on internet; with CYBER SECURITY not addressed & advanced. Footprint of hacking, vulnerabilities has been expanded at global level.

For not participating in fraud scheme, in reprisal for making protected disclosures, activities; GE Trivedi's wrongfully terminated, withdrawn work authorization, H1B visa, immigration process (.I140 filing) & H1B extension so she could stay/work in USA. After investing 15 years; contributing in Exceptional ability-Extra ordinary ability, in National interest, DHS RESPONDENTS has stalled& denied my work permits for 3 years, despite

Harvard Medical job offer for artificial protein/DNA development for cancer vaccine, and founding innovative startup. (Appendix 9 page 29a)

After my fight several GE executives who had private jet has left GE such as Jeff Immelt-CEO GE left on June 12,2017; John Dineen-CEO GEHC; Dee Mellor-chief quality officer; Mike Harsh-CTO GEHC; Mike Swinford-CEO GEHC services &more.

BlogPost

(https://medium.com/@madrtrivedi/after-investing-15-years-in-this-country-and-contributing-to-us-healthcare-and-economy-including-9c91ef93beac)

My start up press release (Appendix 4 page 14a of petition for writ here); Yahoo Finance, Market Street, hundreds reputed outlets who published it.

President Donald Trump have appointed Indra Nooyi Pepsi CEO as advisor; my startup was for diabetics/hypertension prevention/management; so I got the message; due to various reasons I left my healthcare startup.

STATEMENT OF THE CASE

The questions presented are of substantial legal and practical importance. "Madhuri Trivedi did submit credible, preponderance of evidence and met burden of proof to USCIS and in lower court pleadings"

On March 4, 2015, USCIS denied Ms. Trivedi's I-140 petition.

On March 2016, Trivedi filed a lawsuit in district court of California. Trivedi's claim for denial of I 140 were well pleaded, meet standard.

On May 2016, DHS denied second I 140 while district court lawsuit was in process.

Because District judge Donato (1) he didn't rule for more than 120 days on pending motions (2)he didn't give me Electronic case filing permission(3)he Cancelled hearing Three times, also cancelled Case management conference twice; we never had hearing nor case management conference.

> (a)Ombuds judge Fren Smith had to send a NOTICE to Judge Donato that he was in violation of Local rule for not ruling beyond time allowed(b)Chief Judge had my emails & advised me to file motion to recuse; chief judge also sent email to judge Donato.

Judge Donato in his Nov.21 order stated that current version of my complaint needs to be rewritten. ;he cited one of his OWN ruling ·77 F.Supp.3d 997 (N.D. Cal. 2015) SODIPO V. ROSENBERG. Circuit Judges have dismissed important claims citing couple of Trivial ruling mainly in same circuit.

False Claims Act , HIPPA, Patient Safety & Quality Improvement Act, Unfair immigration-related employment practices claims in Trivedi's complaint were there to allege whole whistleblower protection. Petitioner Trivedi can read, understand

this VERY BASIC ENGLISH about whom these laws apply to.

Those dismissed claims –were not direct claims against DHS but were alleged in reference to prove (1) to allege/prove what /why/how I was a whistleblower, (2) that my employer GE was engaged in wrongdoing ,fraud, violations of laws (3)forced arbitration with GE (Appendix 9 page 29a) (4)and a legal theory that given all that happened - DHS denied immigration petitions, and I suffered Biven action, intentional infliction of emotional distress, damage, Color of law and more. I suffered immigration denials as a result of GE influence, cover up, retaliation

I alleged some novel issues in my complaint such as private prosecution and holding DHS official accountable under 8 U.S. Code § 1621 - Perjury generally; DHS Defendant conduct performing government duties considered as nonfeasance, misfeasance, malfeasance which falls under perjury umbrella. These acts are also Public corruption...I was alleging HOW SERIOUS THIS ISSUE IS. I understand that private prosecution is not allowed. But we can ONLY hope that by shedding light on this issue- may be things will change. "holding powerful accountable " is good because "with more power comes more responsibility" .

Federal Judge Andrew Hanen in Texas wrote to DOJ attorney Rick Lara in Brownsville, Texas to do GRAND jury criminal investigation about GE and

DHS. He read my entire file himself. But Rick lara didn't do anything.

Act 8 U.S.C. § 1152(a)(1)(A) forbids discrimination based on a person's race, nationality, place of birth, or place of residence.

U.S. v. Cardozo-Fonseca, 480 U.S. 421 (1987) (if the petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof).

Lower court has this information about Trump cabinet HHS secretary Tom Price, Senator Chuck Grassley.

Senator Chuck Grassley- judiciary committee chair's staff /directors has my information since Nov.1 2016 .I emailed Karen summar ,
Chief of Staff jill kozeny , Staff Director, Senate Committee on the Judiciary kolan davis (Appendix 14 page 84a)

On March 2017, I spoke on phone with Health and Human Service secretary Dr. Tom Price and emailed him. Tom Price (Appendix 15 page 84a) referred my matter to Assistant Secretary for Legislative Affairs for the Department of Homeland Security' staff Ben.cassidy ; Corbin, Susan. But DHS didn't do anything. (Appendix 15 page 84a)

Department of defense closed its criminal investigation (Appendix 5 page 17a)on October 17th

2017 of GE fraud two days after Petitioner sent email to GE **CEO John Flanery (Appendix 6) ,GE board of directors, FBI, & others on October 15th 2017. In** this email petitioner mentioned retaliation & 7, issues, fraud. This recent incident shows influence of GE over **government (off course** including Defendants-DHS in this case.)"

Gisela-Defendant attorney/DHS who declined to consider National Interest waiver (Appendix 13 page 82a) [Eligible for EB1,EB2 NIW backdated to 2009 , EB2 perm certified but company denies to file next step. EB1 was the only way to get work authorization.]

During Arbitration GE manager did perjury; so not to prove discrimination.

History, background of case

Additional at Appendix 16(page 87a)

Madhuri Trivedi is a citizen and national of India who entered the United States in 2003 on an "H4"spouse nonimmigrant visa. Compl., Over the next few years, she transitioned to F student visa and then an H-1B highly skilled worker
visa.. At all times, her status remained that of a nonimmigrant authorized toremain in the United States on a temporary basis. Ms. Trivedi sought to adjust her status to that of an alien lawfully admitted for permanent residence in the United
States ("LPR"), through her employer General Electric Healthcare

Trivedi was on sixth year of H1B work visa (my H1 visa started on 2007), when I had just few months left on H1B (Total six year of H1 are allowed ; after that ONE must have valid I 140 approved in order to get EXTENSTION beyond six year) my employer GE wrongfully terminated me. GE withdrew H1 B. I had forced mandatory mediation and arbitration pending .

One day before my termination, Department of Labor approved my PERM labor certificate under EB2 category. But GE didn't file next step I-140 and **most importantly** H1B extension; so I can continue stay and work in USA. GE discontinued permanent resident process as well.

Given only few months left on H11 –even though I had job offer from reputed company Thermo Fisher Scientific –there was no way for them to get my PERM labor certificate approved so they can file I 140 and so I can extend H1b (after I 140 gets approved)..GE won't file I 140 no matter what.
With Harvard Medical job offer for artificial protein/DNA development for cancer vaccine, and founding innovative startup; I filed my own immigration petition under EB1, an filed I 140 (also mentioned in I 140 that I am eligible for EB2 national interest waiver backdated to 2009).

With a preplanned calculated conspiracy not to file PERM labor cert with DOL 365 days before H1 expiring; because if PERM filed 365 before H1 expire then she can extend H1 even when not working with GE company and after termination can continue stay in USA /work elsewhere (so that she can also pursue

fraud claims, was a witness to employer's fraud crime)—by doing so cutting her financial source a way to tamper witness, obstruct justice and deprive from statutory & constitutional rights.
[GE who with criminal culpable knowingly released medical devices firmware for several years (security vulnerabilities, failed security tests non-complaint, highly defective] [GE who committed fraud, conspiracy, discrimination, retaliation ,Employment Tort, Witness tampering, obstruction of justice walk away seamlessly]

After terminate while waiting for decision on I140 I started my startup. "Prevention better than cure" was theme. When I pitched in bay area –people said it is what we need Obama care hasn't addressed and solved this big problem which I am solving
Despite my pending victim of crime visa- DHS/DOJ and court has failed to give work authorization

Peter Davis- a chief arbitrator/legal counsel at Wisconsin Employment relations commission. peterg.davis@wisconsin.gov .He mentioned that if he is selected as an arbitrator for my case with GE, he will make sure I stay in US and he will rule in my favor. he said GE has outsourced everything from Wisconsin and US. GE wants you to Go back....GE attorney declined to have him as arbitrator (then arbitration documents would have become public documents)..Instead they selected private attorney and paid him $40,000 fees.

Given Attorney general then senator Jeff Sessions' staff was involved in all the emails sent to Obama

admin, defendants and other including Fox News anchor Bret. Bret read all emails. Trump ONLY watches FOX news. Rick Dearborn who serves as deputy chief at Trump white house had my emails since those emails where sent to Obama admin people and DHS(Rick was copied)... David Johnson-FBI SAC who was reporting to James Comey-FBI director had read all my emails and said sorry it is not me.

Donald Trump spoke publicly in Howard Stern Radio about Doing a THREE WAY SEX. And had sex with three women at the same time weighting together 375 pounds This is pathetic.

GE invested $40 million in my 20 people startup Raindance after terminating me. While I am screaming; Jonathan Rothberg- Raindance founder (who knows all)went to Sweden in September 2017 in his $40 million yacht. Jonathan Rothberg was awarded national medal by former president Obama in 2016..and Dr Rothberg sold start up for 700 million. After I was making noise; Obama started "precision medicine initiative"

REASONS FOR GRANTING THE PETITION

1. LOWER COURT'S DECISION IS IN TENSION WITH DECISIONS OF THE SUPREME COURT

INJURY-IN FACT, RECCURENT HARM, ARTICLE III

Under (Spokeo, Inc.,136 S. Ct.at1548, Massachusetts v. EPA, 549 U.S. 497 (2007) ,Warth v. Seldin, 422 US 490 Lujan v. Defenders of Wildlife, 504 U. S. 555, 560–561) (1)injury-in fact (2)Article III standing(3)prudential standing; requirements met pleaded, alleged (4)including with evidence that plaintiff has been "wronged again in similar way" "suffered recurrent"; (Legal argument at lower courts by Madhuri Trivedi See Appendix 10(page 32a, 33a,34a, 35a, 36a,37-38a), Appendix 11 (45a, 46a) Appendix 12 (page 77a) **Appendix 17 (page 91a)**attached here in Writ Here Trivedi has properly alleged, pleaded) Below are Legal arguments made at pleadings:

Appendix 10 (page 32a, 33a,34a, 35a)

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2)
11. Constitutional standing -Three factors used to assess whether or not a plaintiff has
constitutional standing: "(1) an injury-in-fact; (2) that is fairly traceable to the challenged conduct of the defendant; and (3) can likely be addressed with a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992).
MADHURI has suffered an injury-in-fact from USCIS's withdrawal of H1B, withdrawal of work authorization since June 2013, denials of I 140, I 485 and I 765 in March 2015–which is irrational, arbitrary, capricious, exercising abuse of discretion , NOT BEING able to work in USA legally, pay her bills through her savings, emotional distress, mental trauma, financial distress and tons of hardship the deprivation of an opportunity get **PERMANENT RESIDENCY after 13 years in USA, which is**

also fairly traceable to USCIS. The situation would be redressable by a favorable decision because if the district court were to conclude that the I-140 visa petition was unlawfully denied. because USCIS failed to comply with the regulations .PLAINTIFF MADHURI TRIVEDI has constitutional standing, as she suffered an injury in fact that is fairly traceable to DHS/USCIS's conduct and redressable by a favorable decision. *See Lujan,* 504 U.S. at 560-61, 112 S.Ct. 2130. MADHURI has suffered an injury that is fairly traceable to CIS: **the loss of an opportunity to become a permanent resident andability to stay in this country and work legally and pay bills to support herself. And that severe injury is redressable in this lawsuit.** Ms. Trivedi has suffered damages including past and future wage and benefits loss, humiliation, emotional distress, imminent endangerment to her immigration status, and other damages. Since her termination, Ms. Trivedi ; Her lack of new employment has not only resulted in continued lost wages and benefits, a harmful black mark on her career, but has jeopardized her 13 year effort to normalize her U.S. immigration status.

12. Furthermore, the Court reasoned that the regulatory definition of "affected party" only

related to the ability of plaintiffs to challenge administrative denials of petitions, and therefore did not preclude the beneficiary from having standing in the district court. In *Kurapati v. U.S. Bureau of Citizenship*, No. 13-13554 (Sept. 22, 2014), the Eleventh Circuit and an earlier Sixth Circuit case, *Patel v. U.S. Citizenship and Immigration Services*, 732 F.3d 633 (6th Cir. 2013), that determined the

immigrant beneficiary of an I-140 visa petition had constitutional standing for similar reasons. (http://georgialawreview.org/eleventh-circuit-decides-kurapati-v-u-s-bureau-of-citizenship/)

13. The Court also concluded that Kurapati had prudential standing. It clarified the analysis

by citing *Lexmark International, Inc. v. Static Control Components, Inc.*, and focusing on the Supreme Court's guidance to ask whether plaintiffs "fall[] within the class of plaintiffs whom Congress has authorized to sue." 134 S. Ct. 1377, 1387 n.3 (2014). In order to determine if a party may sue, the Court looked to the Administrative Procedure Act which allows a party to sue if "the interest sought to be protected by the complainant is arguably within the zone of interests

to be protected or regulated by the statute in question." *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1268 (11th Cir. 2011). **This case hence also meets prudential standing requirements.**

14. that immigrant beneficiary is within the zone of interests the law protected INA §§ 203(b)(3), 245(a); 8 U.S.C. §§ 1153(b)(3), 1255(a).

15. The "zone of interest" test does not require a plaintiff to establish that Congress

specifically intended to benefit the plaintiff. Rather, there is a two-step inquiry. "First, the court must determine what interests the statute arguably was intended to protect, and second, the court must determine whether the 'plaintiff's interests affected

by the agency action in question are among them.'" Bangura v. Hansen, 434 F.3d 487, 499 (6th Cir. 2006) (quoting NCUA v. First National Bank & Trust Co., 522 U.S. 479, 492 (1998)). Applying this test in the immigration context, numerous courts have held that a **noncitizen beneficiary of an employment-based visa petition is within the "zone of interest" of the statute and thus has standing to sue over the denial or revocation of a visa petition.** See, e.g., Bangura, 434 F.3d at 499-500; Abboud v. INS, 140 F.3d 843, 847 (9th Cir. 1998); Ghaley v. INS, 48 F.3d 1426, 1434 n.6 (7th Cir. 1995); Taneja v. Smith, 795 F.2d 355, 358 n.7 (4th Cir. 1986).

16. "An abuse of discretion is a failure to take into proper consideration the facts and law

relating to a particular matter; an arbitrary or unreasonable departure from precedent and settled judicial custom. Including but not limited to: a decision made without a rational explanation; **failure to consider all relevant factors; consideration of irrelevant factors;** and, **a failure to exercise discretion.**

In *Khan*, Justice Pooler of the United States Court of Appeals had before him an application to reconsider the decision of an immigration tribunal. On the issue of an abuse of discretion, he

wrote: "An abuse of discretion may be found in those circumstances where the Board's decision provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary or capricious manner.

Appendix page 45a

For injunction relief: In addition to alleging injury in fact, **the plaintiff must demonstrate that the injury is fairly traceable to the defendant's unlawful conduct. In cases in which the government acts against the plaintiff, causation is simple.**
Madhuri's current and future injury are traceable to USCIS's unlawful conduct and hence declaratory judgement to set aside UCIS illegal action and injuctive relief as I requested in appropriate.

LOWER COURTS in Madhuri Trivedi's case denied injunctive relief (& dismissing with prejudice with no leave to amend). *Judge Donato cited City of Los Angeles v. Lyons, 461 U.S. 95 (1983).*

I 140 EB1 can be filed with USCIS as many times as a Petitioner want.
Pleading submitted in opposition to motion to dismiss, related pleading **(Appendix 17 page 91a of this petition of Writ)** ...where Plaintiff Trivedi alleged that "On May 18th 2016, DHS denied second I 140 while district court lawsuit was in process"

This already proved that She was again wronged in a similar way by defendants. DHS further acts"

causing her "emotional distress. This SECOND denial is enough to prove /allege that plaintiffs who have suffered recurrent application of the practice or policy at issue; the risk of recurrence REAL , Imminent ,more than speculative.
DHS continuing refusal to approve I 140 presented risk of harm that is both "actual" "imminent: Lujan, 504 U. S., at 560, there is a "substantial likelihood that the judicial relief requested" will prompt DHS to take steps to reduce that risk, Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U. S. 59, 79. Pp. 12–17. By denying I 140 second time in may 2016 while lawsuit was pending ,Trivedi properly alleged District court Dkt 32 **where Trivedi pleaded second I 140 denial —and Trivedi met (a) To satisfy the "case or controversy" requirement of Art.** III, a plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct, and the injury or threat of injury must be "real immediate," not "conjectural" or "hypothetical." "Past exposure to illegal conduct Page 461 U. S. 96
to stop that HARM; Trivedi suffered actual injury, not able to fund her startup , financial loss, emotional distress.

This cleared pleaded and alleged that Trivedi was **wronged again. Massachusetts v. EPA,** 549 U.S. 497 (2007)*
standing doctrine presents no insuperable jurisdictional obstacle here. See Lujan v. Defenders of Wildlife, 504 U. S. 555, 560–561.

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* http://federalpracticemanual.org/chapter3/section1

As the Court recently put it, "Congress [can] define new legal rights, which in turn will confer standing to vindicate an injury caused to the claimant."

Lexmark International, Inc. v. Static Control Components, Inc., 134 S. Ct. 1377, 1387 n.3 (2014).

Warth v. Seldin, 422 US 490 - Supreme Court 1975. Id 502 One further preliminary matter requires discussion. For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party. E. g., Jenkins v. McKeithen, 395 U. S. 411, 421-422 (1969). At the same time, it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing.

Id 505minimum requirement of Art. III: to establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm.

At 526 True, this Court has held that to maintain standing, a plaintiff must not only allege an injury but must also assert a " `direct' relationship between the alleged injury 526*526 the claim sought to be adjudicated," Linda R. S. v. Richard D., 410 U. S. 614, 618 (1973)—that is, "[t]he party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's]

enforcement." Massachusetts v. Mellon, 262 U. S. 447, 488 (1923) (emphasis supplied); Linda R. S., supra, at 618.

SPOKEO, INC. V. ROBINS 13-1339 which held that, in order to have standing under Article III, a plaintiff must show that he has suffered an injury in fact that is fairly traceable to the defendant's challenged conduct and is likely to be redressed by a favorable decision in court. The injury-in-fact element is met when the plaintiff shows that he suffered an invasion of a legally protected interest and that the injury was concrete and particularized as well as actual or imminent.

List v. Driehaus • 134 S.Ct. 2334, 2335 (2014) "An allegation of future injury may suffice if the threatened injury is "certainly impending," or there is a " 'substantial risk' that the harm will occur." Clapper, 568 U.S., 5, 133 S.Ct., at 1147, 1150, n. 5

2. THERE ARE DEEP CONFLICTS AT LOWER COURTS; AND IT IS RECURRING.

Trivedi have offered sufficient factual allegations to show her claims are plausible on face, which is all that is required under Iqbal Twombly. Defendants' Motion to Dismiss –retaliation for arbitration with GE, and without affording Plaintiffs the opportunity to have TRIAL necessary to formulate a factual record, get justice.

The First Prong: Separating Facts from ConclusionsThe Second Prong: Facts Plausibly Suggest an Entitlement to Relief -Which Trivedi met.

A) THERE REMAIN CONSIDERABLE VARIATION AMONG THE LOWER COURTS

majority and dissenting opinions in *McCleary-Evans v. Maryland Dep't of Transportation,* 780 F.3d 582 (4th Cir. 2015), which disagree about **how to reconcile *Swierkiewicz v. Sorema N.A.,*** 534 U.S. 506, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002), with *Twombly* and *Iqbal.*

B) SECOND, THIRD, FOURTH, SEVENTH, EIGHTH, ELEVENTH CIRCUIT & ALL CIRCUITS WIDE CONFLICT

Fourth Circuit:

Coleman v. Md. Court of Appeals, 626 F.3d 187 (4th Cir. 2010).

"[T]o survive a motion to dismiss, the complaint must 'state[ ] a plausible claim for relief' that 'permit[s] the court to infer more than the mere possibility of misconduct' based upon 'its judicial experience and common sense.' In this regard, while a plaintiff is not required to plead facts that constitute a prima facie case in order to survive a motion to dismiss, see Swierkiewicz v. Sorema N.A., 534 U.S. 506, 510-15, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002), '[f]actual allegations must be enough to raise a right to relief above the speculative level,'. See also Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009)."

Seventh Circuit:

' The question now is whether Iqbal Twombly narrowed the pleading standard such that this after-the-fact hypothesis of facts is no longer permissible.

We conclude -did not eliminate the plaintiff's opportunity to suggest facts outside the pleading, including on appeal, showing that a complaint should not be dismissed. See Twombly, 550 U.S. at 563 ('[O]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.'); McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1356 n.4 (Fed. Cir. 2007).–nothing in Iqbal or Twombly precludes the plaintiff from later suggesting to the court a set of facts, consistent with the well-pleaded complaint, that shows that the complaint should not be dismissed."

Reynolds v. CB Sports Bar, Inc., 623 F.3d 1143, 1146–47 (7th Cir. 2010). "Although Bell .,,Ashcroft .., require that a complaint in federal court allege facts sufficient to show that the case is plausible, they do not undermine the principle that plaintiffs in federal courts are not required to plead legal theories. See Aaron v. Mahl, 550 F.3d 659, 665-66 (7th Cir. 2008); O'Grady v. Village of Libertyville, 304 F.3d 719, 723 (7th Cir. 2002). **Even citing the wrong statute needn't be a fatal mistake, provided the error is corrected in response to the defendant's motion for summary** judgment **and the de**fendant is not harmed by the delay in correction. Ryan v. Illinois Dept. of Children & Family Services, 185 F.3d 751, 764 (7th Cir. 1999)."

Third Circuit

Recently held in In re Ins. Brokerage Antitrust Litig., 618 F.3d 300, 314 (3d Cir. 2010) and **later applied to all cases**, including complex cases, in W. Penn Allegheny Health Sys. v. UPMC, No. 09-4468, (3d Cir. November 29, 2010)(precedential).

Eighth Circuit

rejected this strategy in Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009): (holding the district court erred in dismissing plaintiff's claim by failing to draw reasonable inferences in favor of the nonmoving party as is required). As **the Eighth Circuit** explained, ***"Rule 8 does not [ ] require*** *a plaintiff to plead 'specific facts' explaining precisely how the defendant's conduct was unlawful.* ***Rather, it is sufficient for a plaintiff to plead facts indirectly showing unlawful behavior,***
Hamilton v. Palm, 621 F.3d 816, 817–18 (8th Cir. 2010).

Eleventh Circuit:

Speaker v. U.S. HHS CDC, 623 F.3d 1371, 1380 (11th Cir. 2010).Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009)

Second Circuit

Starr et al v. Sony BMG et al., slip op., 08-5637 (2d Cir., January 13, 2010), pp. 15-16. Under Twombly Iqbal, the issue isn't whether or not the plaintiff has uncovered enough evidence to make a prima facie case on the face of their complaint —but rather whether the plaintiff has alleged "enough fact to raise a reasonable expectation that discovery/TRIAL will reveal evidence of illegality."**Second Circuit's** opinion Even after Twombly Iqbal, all plaintiff needs to allege, even in a complex antitrust case, is

"enough factual matter (taken as true) to suggest" the elements of the claim.

Circuit Courts have taken hard look at Twombly Iqbal and have rejected numerous attempts by BIG defendants like Respondent/DHS in this case to slam the courthouse doors shut on meritorious cases, **and the Supreme Court hasn't stopped those Courts from setting record straight.**

3. IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT

(a) Supreme Court: 10-263 Sony Music Entertainment, Et Al. V. Starr, Kevin, Et Al. The Petition For A Writ Of Certiorari Is Denied where petitioner argued that the Second Circuit failed to follow Twombly Iqbal.**(b)Tellabs V. Makor** Issues Rights 551 U.S. 308 (2007)courts must consider the **complaint in its entirety,** as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. "Holding that a court "must consider the complaint in its entirety" when ruling on a Rule 12(b)(6)"Sherlock v. Apex Sys., Inc., Civil Action No. 3:12-CV-226 (E.D. Va. Jul. 26, 2012). "Holding that courts should determine whether all of the factual allegations "taken collectively" give rise to a "strong inference of scienter," not whether any individual allegation, scrutinized in isolation, meets that standard"Blue v. Doral Fin. Corp., 123 F.Supp.3d 236 (D.P.R. 2015). See 5B Wright Miller § 1357 (3d ed. 2004 Supp. 2007).**Holding:** it must consider, not

only inferences urged by the plaintiff, as the Seventh Circuit did, but also competing inferences rationally drawn from the facts alleged

Petitioner Trivedi has **already alleged scienter with evidence ,ca**usal connection-Respondent DHS to conspire, act in mal**ice and had intent to get rid of petitioner from this country.**

4. LOWER COURTS ARE DIVIDED ON JUDGMENT ON THE PLEADINGS WHERE MATERIAL FACTS ARE DISPUTED

Trivedi established prima facie case as well

Sheppard V. Beerman CITING CASES (660) (https://casetext.com) But "[u]nless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which could entitle the plaintiff to relief, the court cannot grant a defendant's motion for a judgment on the pleadings." Mennella, 938 F. Supp. at 131 (citing Sheppard, 18 **F.3d at 150).**14-Cv-5668 (Rrm) (Rer) (E.D.N.Y. Sep. 29, 2016)Muchmore's Cafe, Llc V. City Of N.Y.at 8Judgment on the pleadings is appropriate only where all material facts are undisputed ;"a judgment on the merits is possible merely by considering the contents of the pleadings." **Mennella v. Office of Court Admin., 938 F. Supp. 128, 131 (E.D.N.Y. 1996), aff'd, 164 F.3d 618**

Runnion V. Girl Scouts Of Greater Chicago No. 14-1729.Under the modern regime of the Federal Rules, the complaint need contain only factual allegations that give the defendant fair notice of the claim for relief and show the claim has "substantive plausibility." *Johnson v. City of Shelby,* ___ U.S.

___, 135 S.Ct. 346, 190 L.Ed.2d 309 (2014) (per curiam). As explained in *Johnson*

ISSUING JUDGMENT ON THE PLEADINGS FOR MOTON TO DISMISS; COURTS ARE DIVIDED

(A)A grant of judgment on the pleadings is reviewed *de novo;* we affirm only if plaintiff would not be entitled to relief under any set of alleged facts. *Sheppard v. Beerman,* 18 F.3d 147, 150 (2d Cir. 1994) the district court made certain factual determinations that were not appropriate on a motion for judgment on the pleadings. Accordingly, we vacate the district court's dismissal of

(B) Accordingly, to the extent that the district court took judicial notice of the truth of the document's content, this was an abuse
See Frank v. Relin, 1 F.3d at 1328-29. Because this question is in dispute, it was improper for the district court to answer it on a motion for dismissal on the pleadings.

(C)Ashley County, Ark. v. Pfizer, Inc., 552 F.3d 659, 665 (8th Cir. 2009). "'Judgment on the pleadings is appropriate only when there is no dispute as to any material facts and the moving party is entitled to judgment as a matter of law.'"
District court took no judicial noice of plaintiff's answer defendant motion to dismiss under 12 (b) which biased judged on his own coverted to 12(c)==== Because the fact is therefore in dispute, it is not a proper basis on which to dismiss claims.

(**D)** Lyman V. City Of Albany, 536 F. Supp.2d 242 (N.D.N.Y. 2008) In deciding a Rule 12(c) motion, we apply the same standard as that applicable to a motion under Rule 12(b)(6). See Ad-Hoc Comm. of Baruch Black and Hispanic Alumni Ass'n v. Bernard M. (E)Baruch College, 835 F.2d 980, 982 (2d Cir. 1987). "On a 12(c) motion, the court considers the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case." L-7 Designs, Inc. v. Old Navy, LLC, 647 F.3d 419, 422 (2d Cir. 2011). In addition, the Court may review any document incorporated by reference in one of the pleadings. Sira v. Morton, 380 F.3d 57, 67 (2d Cir. 2004). The Court may also consider a document not specifically incorporated by reference but on which the complaint heavily relies and which is integral to the complaint. See Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002).Thus, it does not appear "beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which could entitle the plaintiff to relief." Mennella, 938 F. Supp. at 131 (citing Sheppard, 18 F.3d at 150). As such, Muchmore's vagueness challenge survives this motion at 37

5. IN CONFLICT WITH OTHER CIRCUITS; COURT FAILED TO LOOK AT LEGAL ARGUMENTS IN OPPOSITION TO 12(B)(6) MOTION

Judge did not even consider my opposition to defendants motion to dismiss **Appendix 11 page 39a**; in which petitioner clarified and opposed dismissal of intentional infliction of emotional

distress with Biven. District judge hasn't even mentioned those claims in his dismissal order –(**no amendment to complaint was allowed)** .judge threatened in his dismissal that if I tried to amend those he will dismiss my complaint.
Trivedi also in opposition to defendants motion to dismiss **Appendix 11 page43a that** In considering a motion to dismiss for lack of subject matter jurisdiction, a court may consider evidence outside the pleadings to resolve factual issues related to jurisdiction. *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009); *Drier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996).
> "The purpose of statutory construction is to discern the intent of Congress in enacting a particular statute." *United States v. Daas,* 198_F.3d 1167, 1174 (9th Cir.1999). "The first step in ascertaining congressional intent is to look to the plain language of the statute." *687 *Id.* "The plain meaning of the statute controls, and courts will look no further, unless its application leads to unreasonable or impracticable results." *Id.* "[I]n ascertaining the plain meaning of the statute, the court must [also] look to . . . the language and design of the statute as a whole." *Nadarajah v. Gonzales,* 443__F.3d__1069, 1076 (9th Cir.2006) (internal quotation marks and alterations omitted). Finally, "[i]f the statute is ambiguous . . . [,] courts may look to its legislative history for evidence of congressional intent." *Daas,* 198 F.3d at 1174.
>"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
draw the reasonable inference that the defendant is liable for the misconduct alleged."

7th Circuit Holds that Plaintiff May Present Facts Outside Complaint in Opposition to 12(b)(6) **Motion Madhuri presented in her opposition** Runnion V. Girl Scouts Of Greater Chicago 786 F.3d 510 (7th Cir.2015).It does not pose a problem for plaintiff that she attached these exhibits to her complaint. In evaluating the sufficiency of a complaint, "the court may also consider documents attached to the pleading without converting the motion into one for summary judgment." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 556 (7th Cir.2012), citing Fed.R.Civ.P. 10(c). Further, and contrary to the district court's suggestion in its opinion dismissing the first complaint, plaintiff also would have been permitted to use these exhibits for the first time in opposition to a Rule 12(b)(6) motion in the district court. *Geinosky v. City of Chicago,* 675 F.3d 743, 745 n. 1 (7th Cir. 2012) ("a party opposing a Rule 12(b)(6) motion may submit materials outside the pleadings to illustrate the facts the party expects to be able to prove").

7th Circuit issued a decision in *Reynolds v. CB Sports Bar, Inc.*, 623 F.3d 1143 (7th Cir. 2010), 09-3753, arguments a plaintiff may make in opposition to a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The Court's opinion addressed whether a plaintiff may supplement her complaint with facts that she did not include in her complaint when opposing such motion.

The Court noted that its decision over whether to allow the plaintiff to argue these facts "is crucial to the outcome of her appeal" and concluded that it

could look to these facts. The Court went on to reverse the district court's decision.

HATMAKER V. MEMORIAL MEDICAL CENTER•619 F.3d 741 743 (7th Cir. 2010) Even citing the wrong statute needn't be a fatal mistake, provided the error is corrected in response to the defendant's motion for summary judgment and the defendant is not harmed by the delay in correction. Ryan v. Illinois Dept. of Children Family Services, 185 F.3d 751, 764 (7th Cir. 1999).In federal court, plaintiff can argue facts that are consistent with well-pleaded complaint, even if they are not in the complaint, in order to argue that she has stated a claim.

(E)NINTH CIRCUIT CONTINUING ABUSE

Despite having it in Opening brief at 9th circuit ignored, abused arbitrarily; denial of intentional infliction of distress, injunctive relief, Biven- Tort claims have monetary rewards. Ninth circuit Court of appeal in Oct 3 memorandum; in my case failed to do De Novo review of Article III standing decision of District court; and how City of Los Angeles v. Lyons, 461 U.S. 95 (1983) was misapplied by district judge donato.

6. IN TERMS OF APA REVIEW

Dismissing under h3(6) lack of subject matter for APA -I 140 wrongful denial... >Subject matter jurisdiction under 8 USC 1101 et seq

Skidmore deference because kazarian memo was never a rule.

Memo Exercise abuse of discretion, subjective inconsistency, amorphous- structure less, indeterminate, depends on how adjunction officer uses his/her discretion in evaluation analysis.

I. Legal arguments done at Lower court by Madhuri Trivedi at **Appendix 12** (page 57a, 58a, 59a ,72a, 73a) **Appendix 11**(page 31a, 42a, 56a, 57a)

see also 5 U.S.C. § 705 ("On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court ... may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.").
Judge Donato could have issues relief such as work authorization while case was pending.

7. NINTH CIRCUIT DECISION IS IN CONFLICT WITH EIGHT CIRCUIT ON PLEADINGS

Topchian v. JPMorgan Chase Bank, N.A.•760 F.3d 843 (8th Cir. 2014)

("The failure in a complaint to cite a statute, or to cite the correct one, in no way affects the merits of the claim. Factual allegations alone are what matters." (quoting Albert v. Carovano, 851 F.2d 561, 571 n. 3 (2d Cir.1988))). "Accordingly, a complaint should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory he advances, for the court is under a duty to examine the complaint to determine if the allegations provide

for relief on any possible theory." Bramlet v. Wilson,495 F.2d 714, 716 (8th Cir.1974).

" pro se litigants are held to a lesser pleading standard than other parties[,]" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402, 128 S.Ct. 1147, 170 L.Ed.2d 10 (2008).

When we say that a pro se complaint should be given liberal construction, we mean that if the essence of an allegation is discernible, even though it is not pleaded with legal nicety, then the district court should construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework. Stone v. Harry, 364 F.3d 912, 915 (8th Cir.2004).

there is a difference "between adding claims on appeal and fleshing out claims that were initially inartfully pled[,]" Jackson v. Nixon, 747 F.3d 537, 544 (8th Cir.2014). Rather, a complaint should be found to raise a claim only "if the essence of an allegation is discernable, even though it is not pleaded with legal nicety[.]" Stone, 364 F.3d at 915.

8. THIS CASE PRESENTS ISSUES OF NATIONAL, NOBLE, SOCIETY LEVEL IMPORTANCE

Female engineers like ME MUST not be illegally terminated for doing their job, despite getting Excellent performance rating in TECHNICAL skills but rated in soft skils performance as "Trivedi has communication problem" in male dominated tech world. DHS-respondents has totally ignored these reality.

My coworker at GE; Greg Stratton who regularly surfed internet from workplace for GUNS, gun

related information; who at time of savage of murder of innocent people at SIKH temple in Milwaukee, pretend to shoot Petitioner Trivedi (an Indian national) by shaping his hand&fingers into the shape of a gun.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that this Court grant the Petition for Writ of Certiorari, reverse the judgement ;REVERSING agency decision of denial of I 140,I 485, I 765 petitions; grant the RELIEF, monetary damages, back pay, Make me whole again as soon as possible. People like me look up to the Supreme Court which is the highest court in country for justice, relief.

Respectfully submitted,

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Date: December 31, 2017

APPENDIX