

20-5581

Case No. _____

**IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA**

ORIGINAL

Tatyana Evgenievna Drevaleva

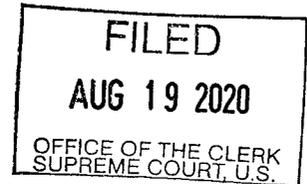
Petitioner Pro Se

v.

1) The United States of America

2) The U.S. Department of Veterans Affairs

Defendants



The U.S. Court of Appeals for the Federal Circuit, Appeal No. 2020-1671

The U.S. Court of Federal Claims,

case No.1:20-cv-00153, Hon. Judge Thomas Wheeler

PETITION FOR WRIT OF CERTIORARI

Tatyana E. Drevaleva, Petitioner Pro Se
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I. Questions to this Court.

- 1) Can the U.S. Court of Federal Claims compel an indigent Title VII Plaintiff to pay a filing fee at the time when the Plaintiff doesn't have money at all, and the Plaintiff is financially ineligible to pay a filing fee?
- 2) Can the U.S. Court of Federal Claims compel the indigent Plaintiff to pay a filing fee "within 10 days" without identifying from what date the calculation of the time starts – from the date when the Court issues an Order or from the date when the Plaintiff received this Order in mail?
- 3) Can the U.S. Court of Federal Claims dismiss Plaintiff's Complaint on the basis that the Plaintiff failed to pay a filing fee **within 10 days from the issuance of the Order** if the Plaintiff filed a statement **within seven days from the receiving of the Order in mail** explaining that the Plaintiff didn't have money to pay a filing fee at that moment, and the Plaintiff asked the Court to wait until I receive my salary?

II. A list of all parties to the proceeding in the court whose judgment is sought to be reviewed

a) Petitioner Tatyana Evgenievna Drevaleva – Plaintiff, Appellant

Pro Se

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415-806-9864; tdrevaleva@gmail.com

b) Ms. Antonia Soares, Esq.- Defendant-Appellee

Trial Attorney

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III. A corporate disclosure statement as required by Rule 29.6.

Not Applicable.

IV. The Orders of the lower Courts that are challenged in this Petition:

- a) The May 20, 2020 Order of the U.S. Court of Appeals for the Federal Circuit that affirmed the Order of the U.S. Court of Federal Claims that dismissed my Complaint No. 1:2020-cv-00153-TW for my failure to pay a filing fee
- b) The March 06, 2020 Order of the U.S. Court of Federal Claims that dismissed my Complaint No. 1:2020-cv-00153-TW for my failure to pay a filing fee.

V. A list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related to the case in this Court.

1) 3:18-cv-03748-WHA – *Drevaleva v. The U.S. Department of Veterans Affairs et al.*

a) Appeal No. 18-17343, Preliminary Injunction, denied, Petition for Rehearing denied

(i) Certiorari No. 18-8315 denied, Petition for Rehearing denied

(ii) Certiorari No. 18-9249 denied

b) Appeal No. 18-17241, Appointment of a Counsel in a Title VII case, denied, Petition for Rehearing denied

(i) Certiorari No. 18-8764 denied, Petition for Rehearing denied

c) Appeal No. 18-17307, A statutory right of a Title VII Plaintiff for an interlocutory Appeal

(i) Certiorari No. 18-8764 denied, Petition for Rehearing denied

(ii) Mandate and Prohibition No. 18-8919, Constitutional violations, denied

- d) Appeal No. 19-16395 – 9th Circuit, pending.
- 2) 3:19-cv-01454-WHA – *Drevaleva v. The U.S.A. et. al.*, the Minneapolis VAMC, Administrative Procedure Act (APA), dismissed, Motion to Vacate the Judgment is denied
- a) 19-17286 – 9th Circuit, Appeal pending
- 3) 19-72796 – Albuquerque VAMC, Petition for an Extraordinary Writ (Constitutional and Tort causes of action) - denied
- 4) 3:19-cv-02665-WHA – *Drevaleva v. The U.S. Department of Veterans Affairs et al.*, Complaint for Employment Discrimination, Los Angeles VAMC, dismissed, Motion to Vacate the Judgment is denied
- a) Appeal No. 20-15109 – pending, Hon. Judge William Alsup revoked my IFP status on that Appeal, the 9th Circuit is determining whether this Appeal is frivolous
- 5) 0:2019-ag-01912, the U.S. Court of Appeals for the Federal Circuit – Constitutional violations, transferred to the District Court of Northern California
- 6) 3:19-cv-05927-WHA – dismissed, Motion to Vacate the Judgment is denied

- a) Appeal No. 20-15374 – pending, the Court of Appeal is determining whether this Appeal is frivolous
- 7) 3:19-cv-06127-WHA –It is a duplicate case
- 8) 3:20-cv-00820-WHA – Hon. Judge William Alsup named this case duplicative and frivolous, denied my Application to Proceed IFP, dismissed this case, and denied two Motions for Reconsideration
 - a) Appeal No. 20-15596 – pending, the 9th Circuit is determining whether this Appeal is frivolous
- 9) 1:20-cv-00153-TW – at the U.S. Court of Federal Claims – dismissed without prejudice for failure to pay a filing fee – current case.
 - a) Appeal No. 2020-1671 at the U.S. Court of Appeals for the Federal Circuit – the Judgment of the U.S. Court of Federal Claims is affirmed, a Petition for Panel Rehearing and for Rehearing En Banc is denied.

VI. The Constitutional provisions that are involved in this case.

VII. Jurisdictional Statement.

I am filing this Petition pursuant to the Rules of the U.S. Supreme Court Rule 10

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important

federal question in a way that conflicts with relevant decisions of this Court.

Read Rule 29 of the Rules of the U.S. Supreme Court,

4. (a) If the United States or any federal department, office, agency, officer, or employee is a party to be served, service shall be made on the Solicitor General of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001. When an agency of the United States that is a party is authorized by law to appear before this Court on its own behalf, or when an officer or employee of the United States is a party, the agency, officer, or employee shall be served in addition to the Solicitor General.

VIII. A concise statement of the case setting out the facts material to consideration of the questions presented.

On February 12, 2020, the U.S. Court of Federal Claims filed my Complaint for Damages, Doc. No. 1:2020-cv-00153 Thomas Wheeler. The Court also filed my Application to Proceed *in forma pauperis*. I submitted this application because, despite I was working as a Caregiver taking care of elderly people, I hadn't received my salary for October, November, December 2019, and for January 2020.

On February 24, 2020, Hon. Judge Wheeler issued an Order with the following plain text, "Currently pending before the Court is Plaintiff Tatyana E. Drevalova's application to proceed *in forma pauperis*. Pursuant to 28 U.S.C. § 1915(a), the Court may authorize the commencement and prosecution of a civil action without prepayment of fees and costs by a person who, by affidavit, demonstrates that she is unable to pay such costs.

Ms. Drevalova, however, has brought strikingly similar claims in other federal courts, a majority of which were found to be frivolous and dismissed. In at least one appeal, Ms. Drevalova had her *in forma pauperis* status revoked. See Drevalova v. U.S. Dep't of Vet. Affairs, et al., No. C 18-03748 WHA (N.D. Cal. Filed Nov. 26, 2018). Ms. Drevalova's repeated filings of frivolous complaints leads the Court to find that she is not entitled to a waiver of the filing fee.

Accordingly, Plaintiffs IFP Application is DENIED, and Plaintiff shall submit her filing fee within ten days of this order, or her complaint will be subject to dismissal.”

I actually received this letter approximately on February 29, 2020. The letter was mailed to my former home postal address on Baker St. in San Francisco, CA by the certified mail. I signed for the actual receiving of the letter. The plain language of the letter said that I should submit a payment “within ten days” but didn’t identify from what date I should start the calculation.

I understood that, because I signed for actually receiving the letter, the calculation should start on the day when I actually received the letter. However, at that time I didn’t have money to pay a filing fee because, by the end of February 2020, I still hadn’t received my salary for five months.

On March 07, 2020 which was within the 10 day period from the moment when I actually received the letter, I mailed my Response to the Order to Show Cause to the Court of Federal Claims, and I served the Opposing Party. In this Response, I wrote that, first of all, my lawsuits at the District Court were not frivolous. I wrote that all problems with my lawsuits were caused by just one person who is Hon. Judge William Alsup. He is a very famous and Nationally recognized Judge. However, judging my case No. 3:18-cv-03748-WHA, Mr. Alsup

intentionally didn't consider the facts of the case. For example, I said many times that on May 17, 2017 Assistant Manager Mr. Phil Johnson had verbally allowed me to go to Russia to refill a prescription of the hormonal pills and to perform an IVF procedure. Mr. Johnson's exact words were, "If you need to go – go!? I have a witness who is my Russian speaking co-worker Ms. Nadya Das. After obtaining a verbal permission of Mr. Johnson to go to Russia, I shared this information with Ms. Das. I wrote in my Briefs many times that Mr. Johnson had verbally allowed me to go to Russia. However, Mr. Alsup accused me leaving my job at the Raymond G. Murphy VAMC without a permission, and Mr. Alsup entered a Judgment in favor of the Defendants on the assertion that I had left my job without a permission, and it was the reason why I was fired. Mr. Alsup recklessly disregarded Mr. Johnson's statement that he had verbally allowed me to go to Russia. Mr. Alsup wrote in his Orders that, in fact, Mr. Johnson had explained to me the VAMC's leave policies and procedures, and he said, "If you need to go – go!", and I accepted it as a true permission to go. Mr. Alsup accused me in violation of the VAMC's leave policies and procedures even though I hadn't violated anything. I notified my Supervisors about my urgent need to go to Russia because I was running out of my hormonal pills, and I was at the risk of bleeding if I didn't have these pills, On May 17, 2017, I had just three hormonal pills left. I was taking one pill a day, and I couldn't afford to miss a pill. I brought these pills

from Russia in 2016, and these pills were not available in the United States. I needed to take the pills during my trip, and I needed approximately 48 hours to travel from Albuquerque, NM to Novosibirsk, Russia. On May 17, 2017, following Mr. Johnson's instructions, I submitted an OPM 71 form, and I requested a Leave Without Pay. I provided both Ms. Dunkelberger and Mr. Johnson with my medical documentation on Russian language on May 18, 2017 at 9.02 AM via the email. I provided both Ms. Dunkelberger and Mr. Johnson with my medical documentation on English language on May 30, 2017 from Russia via the email. However, both Ms. Dunkelberger and Mr. Johnson refused to accept my medical documentation, fraudulently withheld from Director of Nursing Dr. Tina Prince that the reason of my trip to Russia was my desire to have a child, fraudulently obtained Dr. Prince's denial of my Request for LWOP, never notified me that I was eligible for a Sick Leave, never informed me that my Request for LWOP had been denied, placed me on the AWOL, hired a young male employee Mr. David Williams to substitute my employment at the time I was in Russia, and fired me not giving me a Notice and an opportunity to be heard. Also, on June 12, 2017, on the date when Ms. Dunkelberger hired Mr. Williams, she mailed a letter to my home postal address in Albuquerque, NM. In this letter, Ms. Dunkelberger claimed that I hadn't provided my medical documentation even though I provided this documentation on both May 18, 2017 and May 30, 2017. In this letter, Ms. Dunkelberger demanded me to

immediately return back to work. Ms. Dunkelberger knew that I would not receive this letter because at that time I was in Russia. The letter was unclaimed and was returned back to the VAMC. Regardless, Ms. Dunkelberger claimed that I hadn't responded to the letter, that I didn't return back to work, and she fired me.

I explained everything to Mr. Alsup but he didn't pay attention. He was obviously biased and prejudiced against me because I am a penniless Pro Se litigant, and I am Russian. Mr. Alsup has always impartially ruled in favor of the Federal Government because he belongs to the Federal Government himself.

Subsequently, Mr. Alsup dismissed all my other lawsuits without having any valid legal reasons.

I explained to Hon. Judge Thomas Wheeler that, in fact, my lawsuits were valid. The only person who caused all problems was Hon. Judge William Alsup. I tried to get rid of this Judge many times. I filed numerous Affidavits of bias and prejudice and impartial ruling in favor of the Opposing party. Mr. Alsup denied all Affidavits and cheated me. He promised me to conduct "fair hearings and proceedings for a Pro Se Plaintiff." It was not more than a dirty Libel. He has always defended the Federal Government, and he will defend the Government in the future. He is never going to ever rule in my favor. I've been honest in all my lawsuits. Also, during the litigation of my lawsuit No. 3:18-cv-03748-WHA, I said

to Mr. Alsup many times that I was eligible for a paid Sick Leave. The Federal Government never notified me that I was eligible for a paid Sick Leave because I was a Title 38 employee. The Federal Government said to me that I was not eligible for a LWOP pursuant to the FMLA because I hadn't worked at the VAMC for 12 months. During the litigation at the District Court, I said many times that, pursuant to Article 35 of the AFGE Master Agreement, I was eligible for a Sick Leave. Mr. Alsup didn't listen to me and didn't care. In his December 03, 201 Order, Mr. Alsup ruled that it was my own decision to request a LWOP which is unpaid, and it was not my own decision to request a Sick Leave which is paid. In his July 11, 2019 Order, Mr. Alsup ruled that I was not eligible for a Sick Leave because I worked at the VAMC for six weeks before my trip to Russia, and I didn't have enough time to accrue the Sick Leave. In my post-judgment filings, I demonstrated that, pursuant to Article 35 of the AFGE Master Agreement, the Agency had a mandatory obligation to provide me with a Sick Leave for the purpose of pregnancy because I was a Title 38 employee. If I didn't have enough time to accrue a Sick Leave, the Agency had a mandatory obligation to provide me with an Advanced Sick Leave.

Hon. Judge William Alsup has 45 years of experience working as an Attorney at Law and as a District Judge. His experience includes clerking for Hon. Justice William O. Douglas at the U.S. Supreme Court, working as an Assistant

Solicitor General, working as an Attorney at Law in San Francisco, and working as a District Judge for 20 years. It was difficult for me to believe that Mr. Alsup didn't know about an Advanced Sick Leave.

However, because Hon. Judge Alsup didn't listen to anything I said during the litigation at the District Court, and because he always ruled in favor of the Opposing Party the Federal Government, all other Judges and Justices listened to him and didn't listen to me. As a Title VII Plaintiff, I requested a Counsel because I was unable to pay for the Counsel. Mr. Alsup denied my request on the ground that I hadn't demonstrated that I made any effort to find a Counsel. I filed a Notice of Appeal. Mr. Alsup immediately named my Appeal frivolous and withdrew my *in forma pauperis* status in that Appeal. I moved for reconsideration, and I said that I didn't look for a Counsel because I didn't know in what State I should be looking. I was discriminated and fired in the State of New Mexico, and I filed a lawsuit in the State of California. I didn't find any case law that would describe this situation when a Title VII Plaintiff was fired in one State and filed a lawsuit in another State. The Counsel who is licensed to practice law in the State of New Mexico may not be licensed to practice law in California, and vice versa. I asked Mr. Alsup to reconsider his decision and to reinstate my *in forma pauperis* status on my Appeal. Mr. Alsup refused. The 9th Circuit affirmed Mr. Alsup's ruling that my Appeal was frivolous. The 9th Circuit didn't explain why this decision had been

reached and denied my Petition for Rehearing. Subsequently, the U.S. Supreme Court denied my Petition for Writ of Certiorari and my Petition for Rehearing. All of this happened only because Mr. Alsuo didn't listen to anything I said. All other Justices listened to Mr. Alsup and didn't listen to me.

Therefore, Hon. Judge Thomas Wheeler concluded that I have a history of filing frivolous lawsuits and Appeals, and the District Court already dismissed all my lawsuits as malicious and meritless and dismissed at least one IFP status on an Appeal. Hon. Judge Thomas Wheeler offered me to pay a filing fee in the lawsuit No. 1:2020-cv-00153. At that time, I didn't have money. Mr. Alsup didn't listen to anything I said, and he denied my Motion for Preliminary Injunction where I demanded to immediately reinstate me back to work at any VAMC. Mr. Alsup denied my Motion for Reconsideration. The 9th Circuit listened to Mr. Alsup and didn't listen to me, The 9th Circuit denied my Preliminary Injunction Appeal and denied my Petition for Rehearing. The U.S. Supreme Court denied my Petition for Writ of Certiorari and denied my Petition for Rehearing. I was left with nothing. It was a result of Mr. Alsup's bias, prejudice towards me, and his impartial ruling in favor of the Opposing Party.

I explained everything to Hon. Judge Thomas Wheeler in my March 07, 2020 Response to the Order to Show Cause. I said that I didn't have money to pay

a filing fee. I asked Hon. Judge Wheeler to wait until I receive my salary and I will be able to pay a filing fee.

I understood that the 10 day deadline starts running from the day I received Mr. Wheeler's letter. I actually received the letter on February 29, 2020 (to the best of my knowledge.) I mailed my Response to the Order to Show Cause on March 07, 2020 which was within the 10 day limit. However, Judge Wheeler even didn't docket this Response in case No. 1:2020-cv-00153. On March 06, 2020, Judge Wheeler issued an Order dismissing my lawsuit for my failure to pay a filing fee. The plain language of the Order said that the deadline to pay a filing fee was March 05, 2020. However, in the February 24, 2020 Order, there was no such a date March 05. 2020. The plain language of the February 24, 2020 Order said "within 10 days" and didn't identify from what date I should have started the calculation.

Moreover, Judge Wheeler didn't take into his consideration the California Code of Civil Procedure Section 1013(a), "(a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail;

otherwise at that party's place of residence. Service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.”

Therefore, pursuant to the Cal. C.C.P. §1013(a), I had ten statutory days from the date when the Court of Federal Claims mailed me the February 24, 2020 Order additionally to 10 days that Judge Wheeler provided me in his Order. Therefore, pursuant to C.C.P. §1013(a), I had a right to respond to Judge Wheeler's Order within 20 days from February 24, 2020. I actually responded on March 07, 2020 that was within the 20 day time limit.

Read the March 06, 2020 Order of Hon. Judge Wheeler, “On February 24, 2020, this Court ordered Ms. Drevaleva to pay the filing fee associated with this case **by March 5, 2020**, because Ms. Drevaleva previously filed strikingly similar claims in other federal courts that were dismissed as frivolous, malicious, or for failure to state a claim. Dkt. No. 5. Further, this Court informed Ms. Drevaleva that failure to comply with the order would result in the dismissal of her complaint for failure to prosecute under Rule 41 (b) of this Court. As of this date, Ms. Drevaleva has not paid her filing fee. Therefore, the Clerk is directed to dismiss Ms. Drevaleva's complaint without prejudice for failure to prosecute.”

Judge Wheeler expected me to pay a filing fee at the time when I didn't have money to pay and without considering the fact that I live in California and not in Washington, D.C. Judge Wheeler refused to accept my March 07, 2020 document and refused to file it. In his February 24, 2020 Order, Judge Wheeler didn't indicate that the deadline for paying a filing fee is March 05, 2020. However, in his March 06, 2020 Order, he accused me in not paying a filing fee by March 05, 2020, dismissed my lawsuit No. 1:2020-cv-00153, and refused to docket my March 07, 2020 document with the Exhibits. It was a clear abuse of discretion.

The U.S. Court of Appeals for the Federal Circuit sided with Mr. Alsup and Mr. Wheeler, affirmed Mr. Wheeler's March 06, 2020 Order and Judgment, denied

my Petition for Rehearing, and issued a Mandate. I think it was an abuse of discretion. Therefore, I am petitioning to the U.S. Supreme Court with a request to grant my Petition for Writ of Certiorari, to vacate the rulings of both the Court of Federal Claims and the U.S. Court of Appeals for the Federal Circuit, to allow me to pay a filing fee in my lawsuit No. 1:2020-cv-00153-TW, and to compel the U.S. Court of Federal Claims to rule on the merits of this lawsuit.

IX. Why this Petition shall be granted.

Courts don't have a power to abuse penniless Pro Se indigent litigants who were discriminated and thrown out of job by the Federal Government. A Court doesn't have a power to compel an indigent Title VII Plaintiff to pay a filing fee at the time when the Plaintiff is financially ineligible to pay this fee. The Court can't harass and torture the Plaintiff by initially failing to identify the deadline to pay a filing fee, later by refusing to accept Plaintiff's explanations that the Plaintiff doesn't have money and therefore the Plaintiff can't pay a filing fee at that time, and later by dismissing the lawsuit for Plaintiff's failure to pay a filing fee.

X. Conclusion.

Therefore, I am respectfully asking the U.S. Supreme Court to grant my Petition for Writ of Certiorari, to reverse the decisions of both the U.S. Court of Appeals for the Federal Circuit and the U.S. Court of Federal Claims, to remand my lawsuit No.1:2020-cv-00153-TW, to allow me to pay a filing fee, and to compel the U.S. Court of Federal Claims to rule on the merits of my lawsuit.

XI. Verification.

I, a Pro Se Petitioner Tatyana Drevaleva, am a Party to this action. I have read the foregoing Petition and know its contents. The facts alleged in the Petition are within my own knowledge and I know these facts to be true.

I declare under penalty of perjury and under the Federal laws and under the laws of the State of California that the foregoing is true and correct and that this verification was executed on August 18, 2020 at San Francisco, California.

s/ Tatyana Drevaleva



Petitioner Pro Se

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415-806-9864; tdrevaleva@gmail.com

Date: August 18, 2020.

XII. Certificate of Compliance.

Writing this Petition, I used 3,191 words (a concise Statement; why this Petition shall be granted; Conclusion) and 25 pages.

s/ Tatyana Drevaleva



Petitioner Pro Se

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Date: August 18, 2020.