

No. 24-6251

IN THE
SUPREME COURT OF THE UNITED STATES

Daryl Kiddey — PETITIONER
(Your Name)

vs.

Transport Security Administration — RESPONDENT(S)

ON PETITION FOR A REHEARING FOR WRIT OF CERTIORARI TO

Federal 8th District of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

Daryl Kiddey

(Your Name)

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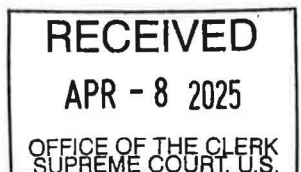
(Address)

Canton, OH 44710

(City, State, Zip Code)

339-224-9452

(Phone Number)



QUESTION(S) PRESENTED

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Does Holding the Courts as having lack of Jurisdiction violate my 1st Amendment right to petition the government for redress of grievances, as is there is no other venue?

Is the requirement of 45 days after termination to file EEC appropriate and not an undue burden, esp when the TSA helpdesk was down the entire 45 days, and then shut down and moved due to covid? Is the existence and/or requirement of an Administrative remedy an undue burden when the TSA is claiming they can't be sued anyway under 49 USC 44935 ?

Given the case Stadther v. Dept. of Homeland Sec., is it a violation of the 5th Amendment of compelling one to testify against themselves to force one (via the filling form, case will not be filed without EEC form attached) to follow directions and file a EEOC claims, to be dismissed for such for being late, when not filing at all and not stating whether is NOT grounds for dismissal?

Given the possible existence of a statute of limitations defense is not ordinarily a ground for Rule 12(b)(6) dismissal unless the complaint itself establishes the defense, is dismissal even allowed?

When several cases including Stewart v. Iancu, No. 17-1815 (4th Cir. 2019), indicate that failure to meet time guidelines EEOC is not an automatic dismissal, but only that if the situation is it reasonably feasible to file timely, is a blanket dismissal is appropriate in this case?

Can, having notified the TSA consul general in timely manner, and following his directions and receiving a right to sue, the United States reinvoke it's sovereign authority after giving it up by issuing a right to sue?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1st Amendment:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

REASONS FOR GRANTING THE PETITION

The Constitutionality of

49 USC 44935

Is under question as eliminating the primary sole means of petition for redress of grievances under the 1st Amendment. The first Amendment should not be a right without a remedy, and this court has a responsibility to uphold the Constitution, not ignore it.

And the Theft of Insurance premiums is not to be ignored, I'm going with a Ninth Amendment now on this one, as for the right to be secure in my person and property and the right to earned compensation to be properly paid by as dictated by Congress since the three is seemingly a lack of understanding about deprivation of property under the 4 & 5th. (of which I would respectfully admonish all three levels of the court as negligent for ignoring.) I do not give up when stolen from. This is not the last of this.

Furthermore, The TSA's imploration that "We must think about keeping planes in the Sky" is an abuse of power, and the founding fathers clearly warned against this. "He who sacrifices freedom for security deserves neither."

The TSA can either do their job within the confines of the Constitution and the law AS our rights dictate, or they can be petitioned to Congress to be replaced with someone who can, period.

The entire Process has shown a CLEAR disregard for the right of Redress of grievances. and should not, and will not, be tolerated.

Potential alternative dismissal via failure to exhaust administrative options.

A. Plaintiff did not reference EEOC in complaint

TSA EEO number was not publicly accessible, and help desk was closed. TSA general consul was contacted

TSA general consul advised calling EEOC, but did not give number

Finally, TSA General consul gave EEOC number. Plaintiff once FINALLY getting correct information, filed EEOC complaint immediately.

It is noted in *Stadther v. Dept. of Homeland Sec.*, that not filing and not stating whether or not you filed is not a cause for dismissal, as the court cannot determine whether or not a EEOC complaint was filed as is they are only allowed to use stated facts of the original complaint. it seems a violation of the 5th Amendment (This protection against self-incriminating has been consistently held to apply to civil cases as well, due to the property protection.) and a case of undue burden that the district court now requires an EEOC filing to file.

See *Jessie v. Potter*, 516 F.3d 709, 712-13 (8th Cir. 2008) (citing *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982)). In assessing Plaintiff's Title VII claim under Rule 12(b)(6), the claim fails only if Plaintiff pled facts demonstrating non-exhaustion. See *id.* at 713 n.2 (on a motion to dismiss a Title VII claim, stating that "the possible existence of a statute of limitations defense is not ordinarily a ground for Rule 12(b)(6) dismissal unless the complaint itself establishes the defense.").

B. The entire notion of requiring an administrative option while claiming 49 USC 44935 makes the TSA immune to lawsuit, is undue burden in and off itself, as 49 USC 44935 overrides and provides the same given purpose, to more effectively and cheaply handle such issues then involving the courts.

The TSA as Defendant essentially used this very same argument themselves. In Section II-A-6 of *Stadther v. Dept. of Homeland Sec.*, Civ. No. 11-1297, 2012 WL 4372570

"Defendants concede that Plaintiff exhausted her administrative remedies with respect to her Rehabilitation Act claim. (Defs.' Suppl. Reply Mem. at 2-3.) Defendants argue, however, that the claim is preempted by the Aviation and Transportation Security Act

Field v. Napolitano, 663 F.3d 505, 25 A.D. Cas. 673, 44 NDLR P 54 (1st Cir. 2011) The opinion extensively wrote in this same case that the EEOC commission has NOP authority or business in TSA matters as long as 49 USC 44935 was in effect.

"Nor does the EEOC have any particular expertise in airport security needs. See Metzger, *Federalism and Federal Agency Reform*, 111 Colum. L.Rev. 1, 26 (2011) (describing the Supreme Court's growing wariness of agency interpretations that are "not grounded in agency expertise and therefore [do] not merit deference"). Additionally, the EEOC interpretation is contrary to the statute in that it requires engaging in a case-by-case analysis of whether TSA's decisions are correct under the Rehabilitation Act. Congress did not intend such a result."

Therefore I respectfully submit this, per by my assertion, and the assertion of Field v. Napolitano, and the defendant's own interpretation, is frankly a superfluous and given they themselves basically stated as it was, also malfeasance argument with no valid force in this particular case as 49 USC 44935 was still in effect at this time of the offense, and that there was a time limit. It would be potentially reasonable to assume such a filing could potentially be required in 45 days AFTER 49 USC 44935 would be declared unConstitutional,(but that has already been accomplished and so the point is moot.)

INDEX TO APPENDICES

APPENDIX A - already on file for case NO. 24 - 6251
8th District Court of Appeals decision and filing

APPENDIX B already on file for case NO. 24 - 6251

8th District Court southern Iowa Opinions

APPENDIX C already on file for case NO. 24 - 6251

6th District Court Northern Ohio 0 complaint and disposition

APPENDIX D Service receipt, second service receipt for rehearing previously sent.

APPENDIX E

APPENDIX F

* in forma pauperis Filed on original Petition for Writ of CERTIORARI

CONCLUSION

The petition for a writ of certiorari should be granted, and just because you're busy with Trump's plethora of gross indiscretions and insubordinations doesn't give you the right to ignore my Petition.

Respectfully submitted,

Daryl Kidney

A handwritten signature in blue ink that reads "Daryl Kidney". The signature is written in a cursive, flowing style with a large initial "D" and a long, sweeping underline.