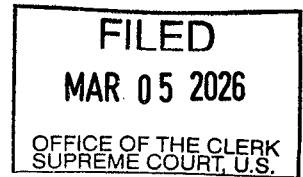


ORIGINAL



No. 25-1328

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

Tatyana Evgenievna Drevaleva

Petitioner,

vs.

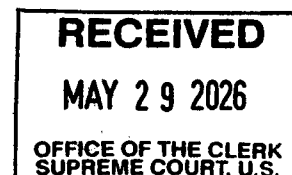
- 1) Mr. Doug A. Collins in his Official Capacity as
an Secretary of the U.S. Department of
Veterans Affairs
- 2) The United States of America
- 3) The U.S. Department of Veterans Affairs
- 4) The Merit Systems Protection Board

Respondents.

*On Petition for Writ of Certiorari to the U.S. Court of
Appeals for the District of Columbia Circuit*

PETITION FOR WRIT OF CERTIORARI

s/ Tatyana Drevaleva, Petitioner Pro Se
644 San Antonio Rd., Apt. 104, Palo Alto, CA, 94306
628-688-6167; tatyana.drevaleva@gmail.com



QUESTIONS PRESENTED

1. Whether, contrary to the decision of the D.C. Circuit in *Ashbourne v. Hansberry*, 894 F.3d 298, 302 (D.C. Cir. 2018), a decision of the U.S. Supreme Court in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955) remains good law insofar as it holds that, if the District Court dismissed Petitioner's lawsuit with prejudice without fully finding both the material facts of the case and the legal standards that were applicable to these material facts of the case, and if the Court of Appeals affirmed the decision of the District Court, the doctrine of Res Judicata or Claim Preclusion doesn't apply to Petitioner's subsequent litigation, and the Petitioner is entitled to proceed with all claims in a subsequent litigation.
2. Whether a definition of a "final" judgment that the U.S. Supreme Court described for the purpose for an Appeal in *Parr v. United States*, 351 U.S. 513 (1956) is the same for the purpose of the Res Judicata or Claim Preclusion doctrine. Deciding in *Parr v. United States*, 351 U.S. 513 (1956), the U.S. Supreme Court held that a Judgment is "final" only when the District Court fully evaluates both the material facts of the case and the legal arguments, so there is nothing to add.
3. If, after the end of the underlying litigation, the Petitioner discovered new material facts of the case and new legal arguments that were hidden

and not available during the underlying litigation, it means that the underlying judgment is not "final" within the meaning of *Parr v. United States*, 351 U.S. 513 (1956), and that the doctrine of Res Judicata or Claim Preclusion doesn't apply, and that the Petitioner is entitled to present the new material facts of the case and the new legal arguments to the attention of the Courts in a subsequent litigation.

4. If the District Court and the Court of Appeals want to dismiss Plaintiff's subsequent lawsuit on the Res Judicata or Claim Preclusion ground, should both the District Court and the Court of Appeals thoroughly evaluate:
 - a) the material facts and the legal standards that were available during the underlying litigation, and
 - b) the new material facts and the new legal standards that Plaintiff presents to the attention of the District Court and the Court of Appeals during the subsequent litigation?
5. Before evaluating whether or not the M.S.P.V. had jurisdiction over my Appeal No. DE-0752-19-0097-I-1, should the U.S. District Court for the District of Columbia and the D.C. Circuit evaluate:
 - a) the material facts of my April 03 – June 30, 2017 full-time permanent Excepted Service appointment as a Title 38 Hybrid Medical Instrument Technician Electrocardiograph in the New Mexico VA Health Care System

- b) the internal regulations of the U.S. Department of Veterans Affairs such as the VA HANDBOOK 5021/6, PART III, NOVEMBER 20, 2007, CHAPTER 2. TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES
 - c) the internal regulations of the New Mexico VA Health Care System such as Section D of the Disciplinary Actions Checklist of the New Mexico VA Health Care System
 - d) Federal statutes such as 5 U.S. Code § 7511(b)(10) and 5 CFR § 1207.170(b) and (c)?
6. Should the D.C. Circuit dismiss my Appeal No. 25-5056 on the Res Judicata ground and deny my Motion for Injunction Pending Appeal where I asked to mandatorily (the word "shall") reinstate me back to work at the VAMC after I returned from a pregnancy leave pursuant to 38 CFR § 23.530(d) and 29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978), Questions 7 and 9?
 7. Should the District Court mandatorily (the word "shall") review *de novo* the material facts of my April 03 – June 30, 2017 full-time permanent probationary Excepted Service appointment as a Title 38 Hybrid Medical Instrument Technician Electrocardiograph at the New Mexico VA Health Care System if I allege discrimination pursuant to 5 U.S. Code § 7703(c) and *Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017) regardless of whether or not the M.S.P.B.

had jurisdiction over my Appeal No. DE-0752-19-0097-1-1?

8. If the material facts of my case involve discrimination on the basis of disability, do I need to be an "employee" for the M.S.P.B. to obtain jurisdiction over my Appeal No. DE-0752-19-0097-1-1 pursuant to 5 CFR § 1207.170(b) and (c)?

PARTIES TO THE PROCEEDINGS

Petitioner Pro Se Tatyana Evgenievna Drevaleva.

Respondent Mr. Doug A. Collins who is being sued in his official capacity as a Secretary of the U.S. Department of Veterans Affairs.

Respondent the United States of America.

Respondent the U.S. Department of Veterans Affairs.

Respondent the Merit Systems Protection Board.

**A CORPORATE DISCLOSURE STATEMENT,
RULES OF THE U.S. SUPREME COURT, RULE
29.6.**

Petitioner Ms. Tatyana Evgenievna Drevaleva is a Pro Se litigant, and I am not filing this Petition by or on behalf of any nongovernmental corporation. There is no parent or publicly held company owning 10% or more of the corporation's stock.

RELATED PROCEEDINGS.

- *Drevaleva v. McDonough et al.*, No. 1:21-cv-00761-WJ-JFR, U.S. District Court for the District of New Mexico. Judgment is entered November 02, 2021.
- *Drevaleva v. McDonough et al.*, No. 1:22-cv-00887-HSG, U.S. District Court for the Northern District of California. Judgment is entered October 26, 2022.
- *Drevaleva v. McDonough et al.*, No. 1:22-cv-04995-HSG, U.S. District Court for the Northern District of California. Judgment is entered February 17, 2023.
- *Drevaleva v. McDonough et al.*, No. 5:24-mc-80089-BLF, U.S. District Court for the Northern District of California. Order denying leave to file a Petition was entered April 16, 2024.
- *Drevaleva v. Collins et al.*, No. 24-1656, U.S. Court of Appeals for the Federal Circuit, Mandate was entered October 21, 2024.
- *Drevaleva v. McDonough et al.*, No. 1:22-cv-03453-DLF, Order dismissing Complaint was entered November 18, 2022.

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PETITION FOR A WRIT OF CERTIORARI.

Petitioner Pro Se Tatyana Drevaleva respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in No. 25-5056.

OPINIONS BELOW.

The D.C. Circuit's opinion dated October 01, 2025 (Pet.App.1a) is unpublished. The D.C. Circuit's denial of Petitioner's Petition for Rehearing En Banc dated December 05, 2025 (Pet.App.11a) is unpublished. The D.C. Circuit's denial of Petitioner's Petition for Panel Rehearing dated December 05, 2025 (Pet.App.9a) is unpublished. The District Court's opinion dated February 10, 2025 that dismissed Petitioner's Petition for a Judicial Review of the February 01, 2024 Final Decision of the Merit Systems Protection Board No. 1:24-cv-01023-DLF on the Res Judicata ground (Pet.App.5a) is unpublished.

JURISDICTION.

The judgment dismissing Petitioner's Appeal on the Res Judicata ground was entered on October 01, 2025 (Pet.App.1a). The D.C. Circuit issued an Order denying Petitioner's Petition for Panel Rehearing and for Rehearing En Banc on December 05, 2025 (Pet.App.9a and 11a). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS.**

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

5 U.S. Code § 7703 - Judicial review of decisions of the Merit Systems Protection Board.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for

leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

38 CFR § 23.530 - Marital or parental status.

7. Q. Can an employer have a rule which prohibits an employee from returning to work for a predetermined length of time after childbirth? A. No.

9. Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions? A. Unless the employee on leave has informed the employer that she does not intend to return to work, her job must be held open for her return on the same basis as jobs are held open for employees on sick or disability leave for other reasons.

29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978.)

(a) For the purpose of this subchapter—

(1) “employee” means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

(i) in an Executive agency; or

(ii) in the United States Postal Service or Postal Regulatory Commission; and

(C) an individual in the excepted service (other than a preference eligible)—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

(b) This subchapter does not apply to an employee—

(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

5 U.S. Code § 7511 - Definitions; application

(b) Allegations of discrimination in the adjudication of a Board case.

(1) When a party to a case pending before any of the Board's judges believes he or she has been subjected to discrimination on the basis of disability in the adjudication of the case, the party may raise the allegation in a pleading filed with the judge and served on all other parties in accordance with 5 CFR 1201.26(b)(2).

(2) An allegation of discrimination in the adjudication of a Board case must be raised within 10 days of the alleged act of discrimination or within 10 days from the date the complainant should reasonably have known of the alleged discrimination. If the complainant does not submit a complaint within that time period, it will be dismissed as untimely filed unless a good reason for the delay is shown. The pleading must be clearly marked "5 CFR part 1207 allegation of discrimination in the adjudication of a Board case."

(3) The judge to whom the case is assigned shall decide the merits of any timely allegation that is raised at this stage of adjudication, and shall make findings and conclusions regarding the allegation either in an interim order or in the initial decision, recommended decision, or recommendation. Any request for reconsideration of the administrative judge's decision on the disability discrimination claim must be filed in accordance with the requirements of 5 CFR 1201.114 and 1201.115.

(4) If the judge to whom the case was assigned has issued the initial decision, recommended decision, or recommendation by the time the party learns of the alleged discrimination, the party may raise the allegation in a petition for review, cross petition for review, or response to the petition or cross petition. The petition for review, cross petition for review or response to the petition or cross petition must be clearly marked "5 CFR part 1207 allegation of discrimination in the adjudication of a Board case."

(5) The Board shall decide the merits of any timely allegation that is raised at this stage of adjudication in a final decision.

(c) All complaints of discrimination on the basis of disability in programs and activities conducted by the agency, except for those described in paragraphs (a) and (b) of this section, shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part, or authorized representative of such person, may file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of a person or member of a class of persons claiming to be aggrieved may be made by any person, agency or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal

Employment Opportunity (EEO Director), Merit Systems Protection Board, 1615 M Street, NW., Washington DC 20419, or e-mailed to equalopportunity@mspb.gov, within thirty-five (35) calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by facsimile or e-mail is the date the facsimile or e-mail is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The agency shall extend the time period for filing a complaint upon a showing of good cause. For example, the agency shall extend this time limit if a complainant shows that he or she was prevented by circumstances beyond his or her control from

submitting the matter within the time limits.

(3) *Acceptance of complaint.*

(i) The agency shall accept a complete complaint that is filed in accordance with paragraph (c) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If the EEO Director receives a complaint that is not complete, he or she shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of his or her receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall so inform the complainant.

(4) Within 60 days of the receipt of a complete complaint for which it has jurisdiction, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) Any appeal of the EEO Director's initial decision must be filed with the Chairman of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 by the complainant within 35 days of the date the EEO Director issues the decision required by § 1207.170(c)(4). The agency may extend this time for good cause when a complainant shows that circumstances beyond his or her control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the

date it is received by the Chairman. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the Board is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked "Appeal of Section 504 Decision" and must contain specific objections explaining why the person believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) A timely appeal shall be decided by the Chairman unless the Chairman determines, in his or her discretion, that the appeal raises policy issues and that the nature of those policy issues warrants a decision by the full Board. The full Board shall then decide such appeals.

(7) The Chairman shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Chairman determines that he or she needs additional information from the complainant, he or she shall have sixty (60) days from the date he or she receives the additional information to make his or her determination on the appeal.

(8) The time limit stated in paragraph (c)(2) may be extended by the EEO Director to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General. The time limit stated in paragraph (c)(5) may be extended by the Chairman to a period of up to 180 days, and may be extended further with the permission of the Assistant Attorney General.

(9) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

5 CFR § 1207.170 - Compliance procedures.

1. **SCOPE.** This chapter contains the policy and procedure needed for taking actions against title 5 employees serving on a probationary [or trial] period under title 5 Code of Federal Regulations (CFR) Parts 315 or 307 in the Department of Veterans Affairs (VA). This includes employees appointed under 38 U.S.C. 7401(3), i.e., permanent full-time hybrids, and employees appointed under 38 U.S.C. 7405(a)(1)(B), i.e. part-time hybrids and part-time or full-time temporary hybrids serving on an appointment not limited to one year less, who have not completed a probationary period.

5. **[APPEAL RIGHTS TO THE MERIT SYSTEMS PROTECTION BOARD.** Probationary employees may appeal to the Merit Systems Protection Board in writing the decision to terminate them for unsatisfactory performance or conduct based upon the following]:

a. **[Discrimination.** An employee may appeal to the Board under this chapter a termination not required by statute which the employee alleges was based on partisan political reasons or marital status.]

b. **[Improper Procedure.** A probationer may appeal on the grounds that the termination was not effected in accordance with the procedural requirements of 5 CFR 315.805.]

The VA HANDBOOK 5021/6, PART III, NOVEMBER 20, 2007, CHAPTER 2. TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES.

Section D of the Disciplinary Actions Checklist of the New Mexico VA Health Care System.

	Removal
Title 5/Hybrid 38 Probationary (FT or PT)	No right to grieve and limited MSPB appeal rights

38 U.S. Code § 7401 - Appointments in Veterans Health Administration, "There may be appointed by the Secretary such personnel as the Secretary may find necessary for the health care of veterans (in addition to those in the Office of the Under Secretary for Health appointed under section 7306 of this title), as follows:

(3) ... medical instrument technicians..."

STATEMENT OF THE CASE.

On June 25, 2018, I filed my underlying lawsuit No. cv-03748-SVK in the U.S. District Court for the Northern District of California. In my Complaint for Employment Discrimination, I described my full-time appointment as a Title 38 Hybrid Medical Instrument Technician Electrocardiograph in the New Mexico VA Health Care System that started on April 03, 2017. I explained that I had contacted Management of the 5D Telemetry Unit of the New Mexico VA Health Care System regarding two separate issues:

- 1) I needed a time off to go to Russia to perform an In-Vitro Fertilization (IVF) procedure free of charge for me and at the expense of the Russian Government, and
- 2) I needed a time off to go to Russia to renew a prescription of my hormonal pills Jeanine that were in aid of the IVF procedure, that were prescribed by my Russian OB/GYN, that I brought to the U.S.A. from Russia in 2016, that were in aid of my IVF procedure, that I was taking one pill a day every day since July or August 2016, that I couldn't miss because otherwise I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health, and that I couldn't obtain in the United States of America because these pills were not FDA approved.

I explained to the U.S. District Court for the Northern District of California that, while undergoing my new employee orientation at the New Mexico VA Health Care System, as of May 17, 2017,

I'd had three hormonal pills of Jeanine left that were for three calendar days. I explained that I couldn't miss the pill because otherwise I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health. I also explained that I couldn't obtain my pills Jeanine in the United States because they were not FDA approved. I also explained that on May 17, 2017 Assistant Manager of the 5D Telemetry Unit of the New Mexico VA Health Care System Mr. Phil Johnson verbally allowed me to go to Russia for two reasons:

- 1) To perform another free of charge IVF procedure, and
- 2) To obtain my hormonal pills Jeanine that were not available in the United States because they were not FDA approved and thus to prevent heavy withdrawal gynecological bleeding that was not good for my health.

During the litigation of my lawsuit No. 3:18-cv-03748-WHA in the U.S. District Court for the Northern District of California before District Judge Mr. William Alsup, Assistant U.S. Attorneys Ms. Cormier and Ms. Robinson lied to the Court that I had only one reason to go to Russia, and that reason was my IVF procedure. Assistant U.S. Attorneys Ms. Cormier and Ms. Robinson criminally concealed from the attention of the Court that as of May 17, 2017 I'd had another medical emergency reason to go to Russia, and that reason was running out of my hormonal pills Jeanine, that on May 17, 2018 I had three pills of Jeanine left that were for three calendar days, that I was unable to obtain my pills Jeanine in the U.S.A. because they were not FDA

approved, that, absent my pills Jeanine, I was at risk of heavy withdrawal gynecological bleeding that was not good for my health, and that on May 18, 2017 I had no choice other than to urgently go to Russia to obtain my pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not good for my health. Assistant U.S. Attorneys Ms. Cormier and Ms. Robinson lied to the Court that on June 30, 2017 I was fired from the New Mexico VA Health care System for taking leave without permission. Assistant U.S. Attorneys Ms. Cormier and Ms. Robinson criminally concealed from Judge Alsup that on May 17, 2017 Assistant Manager of the 5D telemetry Unit of the New Mexico VA Health care System Mr. Phil Johnson verbally allowed me to go to Russia for two reasons – to perform an IVF procedure and to obtain my hormonal pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not goods for my health.

Being cheated and misled by Assistant U.S. Attorneys Ms. Cormier and Ms. Robinson, Judge Alsup dismissed my lawsuit No. 3:18-cv-03748-WHA at a pleading stage without allowing me to conduct discovery and without processing to the Summary Judgment stage. In his December 03, 2018 and July 11, 2019 Orders, Judge Alsup erroneously held that I had legitimately been fired from the New Mexico VA Health Care System for taking leave without permission for only one purpose that was going to Russia for an IVF procedure. In his December 03, 2018 and July 11, 2019 Orders, Judge Alsup completely failed to acknowledge that on May 18, 2017 I had a medical emergency that was running

out of my hormonal pills Jeanine, that on May 17, 2017 I had three pills of Jeanine left that were for three calendar days, that I was unable to obtain the pills in the United States because they were not FDA approved, that I was at risk of heavy withdrawal gynecological bleeding that was not good for my health, and that on May 18, 2017 I had a medical emergency that resulted in an urgent trip to Russia to obtain my hormonal pills Jeanine and to prevent heavy withdrawal gynecological bleeding that was not good for my health. In his December 03, 2018 and July 11, 2019 Orders, Judge Alsup failed to acknowledge that on May 17, 2017 Assistant Manager of the 5D telemetry Unit of the New Mexico VA Health care System Mr. Phil Johnson verbally allowed me to go to Russia for two reasons – to perform an IVF procedure and to obtain my hormonal pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not goods for my health.

After Judge Alsup dismissed my lawsuit No. 3:18-cv-03748-WHA on July 11, 2019, I Appealed to the U.S. Court of Appeals for the 9th Circuit in Appeal No. 19-16395. The U.S. Court of Appeals for the 9th Circuit reversed Judge Alsup's decision holding that I had been fired despite I had obtained a permission of my Supervisor to go to Russia for an IVF procedure. The U.S. Court of Appeals for the 8th Circuit erroneously omitted the material fact of the case that on May 17, 2017 I had a medical emergency that was 3 pills of Jeanine left that were for three calendar days, that I was unable to obtain Jeanine in the U.S.A. because it was not FDA approved, that,

absent Jeanine, I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health, and that on May 18, 2017 I needed to take a medical emergency trip to Russia to obtain my pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not good for my health.

After remand to the U.S. District Court for the Northern District of California, Judge Alsup recused himself from judging my lawsuit No. 3:18-cv-03748-WHA, and my lawsuit eventually got into the hands of District Judge Gilliam, Jr., and my lawsuit got a number 4:18-cv-03748-HSG. On August 21, 2022, just one day prior to scheduled Motions for Summary Judgment, Judge Gilliam, Jr. transferred my lawsuit No. 4:18-cv-03748-HSG to the U.S. District Court for the District of New Mexico. There, my lawsuit got into the hands of the former Chief District Judge Mr. William P. Johnson, and my lawsuit got a number 1:21-cv-00761-WJ-JFR. Judge Johnson never allowed any discovery in my lawsuit No. 1:21-cv-00761-WJ-JFR, and the Parties never filed Motions for Summary Judgments. In his September 14, 2022 Order, without conducting discovery and without proceeding to the Summary Judgment stage, and contrary to the decision of the U.S. Court of Appeals for the 9th Circuit in Appeal No. 19-16395, Judge Johnson erroneously held that I had been properly fired from my full-time job for taking a leave without permission only for the purpose of the IVF procedure. Judge Johnson completely failed to acknowledge the material fact of the case that on May 17, 2017 I had a medical emergency that was 3 pills of Jeanine left

that were for three calendar days, that I was unable to obtain Jeanine in the U.S.A. because it was not FDA approved, that, absent Jeanine, I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health, and that on May 18, 2017 I needed to take a medical emergency trip to Russia to obtain my pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not good for my health.

On November 02, 2022, Judge Johnson falsely accused me in violating of Court's Orders and the Local Rules of the U.S. District Court for the District of New Mexico. In fact, I never violated any Court's Order, and I didn't violate the Local Rules of the U.S. District Court for the District of New Mexico. However, on November 02, 2022, without conducting Discovery and without proceeding to the Summary Judgment stage, Judge Johnson dismissed my lawsuit No. 1:21-cv-00761-WJ-JFR with prejudice for the non-existing violations of the Court's Orders and the Local Rules of the U.S. District Court for the District of New Mexico. Subsequently, Judge Johnson denied all my post-Judgment Motions and imposed filing restrictions prohibiting me filing electronically and prohibiting the Clerk to accept any paper filings from me.

I appealed Judge Johnson's decisions to the U.S. Court of Appeals for the 10th Circuit in Appeal No. 21-2139 after case No. 1:21-cv-00761-WJ-JFR. On July 11, 2022, without evaluating the material facts of the case and the legal arguments that were applicable to these material facts, the U.S. Court of

Appeals for the 10th Circuit affirmed Judge Johnson's decisions, Contrary to the holding of the 9th Circuit in Appeal No. 19-16395, the 10th Circuit held in Appeal No. 21-2139 that I had been properly fired from my full-time job for taking leave without permission only for the purpose of going to Russia to perform an IVF procedure. The 10th Circuit completely failed to acknowledge the material fact of the case that on May 17, 2017 I had a medical emergency that was 3 pills of Jeanine left that were for three calendar days, that I was unable to obtain Jeanine in the U.S.A. because it was not FDA approved, that, absent Jeanine, I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health, and that on May 18, 2017 I needed to take a medical emergency trip to Russia to obtain my pills Jeanine and thus to prevent heavy withdrawal gynecological bleeding that was not good for my health.

On April 08, 2024, I filed my lawsuit No. 1:24-cv-01023-DLF in the U.S. District Court for the District of Columbia that was a Petition for Review of the February 01, 2024 Final Decision of the Merit Systems Protection Board in my case No. DE-0752-19-0097-1-1. In that Petition, I explained again that in 2017 I had two separate reasons to go to Russia:

- 1) I needed a time off to go to Russia to perform an In-Vitro Fertilization (IVF) procedure free of charge for me and at the expense of the Russian Government, and
- 2) I needed a time off to go to Russia to renew a prescription of my hormonal pills Jeanine that were in aid of the IVF procedure, that were

prescribed by my Russian OB/GYN, that I brought to the U.S.A. from Russia in 2016, that were in aid of my IVF procedure, that I was taking one pill a day every day since July or August 2016, that I couldn't miss because otherwise I would be subjected to heavy withdrawal gynecological bleeding that was not good for my health, and that I couldn't obtain in the United States of America because these pills were not FDA approved.

I explained again that on May 17, 2017 Assistant Manager of the 5D Telemetry Unit of the New Mexico VA Health Care System Mr. Phil Johnson verbally allowed me to go to Russia for two separate reasons – to perform an IVF procedure and to obtain hormonal pills Jeanine that were not available in the United States because they were not FDA approved, and thus to present heavy withdrawal gynecological bleeding that was not good for my health. Additionally, I presented to the attention of the Court newly discovered both material facts of the case and legal arguments that were hidden and not available during the litigation of my underlying lawsuit from No. cv-03748-SVK through No. 1:21-cv-00761-WJ-JFR.

On February 10, 2025, the U.S. District Court for the District of Columbia dismissed my lawsuit No. 1:24-cv-01023-DLF on the Res Judicata ground at a pleading stage, without allowing me to conduct Discovery, and without proceeding to a Summary Judgment stage. I appealed that decision to the U.S. Court of Appeals for the D.C. Circuit in Appeal No.

25-5056. On October 01, 2025, without evaluating the material facts of the case and the legal arguments, the U.S. Court of Appeals for the D.C. Circuit affirmed the decision of the District Court dismissing my lawsuit No. 1:24-cv-01023-DLF on the Res Judicata ground. On December 05, 2025, the U.S. Court of Appeals for the D.C. Circuit denied my timely Petition for panel Rehearing and for Rehearing En Banc. Dismissing my Appeal No. 25-5056 and denying my Petition for Panel Rehearing and for Rehearing En Banc, the U.S. Court of Appeals for the D.C. Circuit failed to fully evaluate:

- 1) The material facts and the legal standards that the Parties discussed during the litigations of my underlying lawsuit from No. cv-03748-SVK through No. 1:21-cv-00761-WJ-JFR and my Appeal No. 21-2139, and
- 2) The material facts and the legal standards that I presented to the attention of both the U.S. District Court for the District of Columbia in my case No. 1:24-cv-01023-DLF and my Appeal No. 25-5056.

LEGAL STANDARD.

Dismissing my Appeal No. 25-5056 on the Res Judicata ground, the U.S. Court of Appeals for the D.C. Circuit erroneously applied the case law *Ashbourne v. Hansberry*, 894 F.3d 298, 302 (D.C. Cir. 2018.) However, the cited above case law explained that there were only two situations when the doctrine of the Res Judicata or Claim Preclusion applies:

- 1) When the underlying lawsuit was dismissed on a summary Judgment stage, and therefore there are no any material facts of the case that would prove that Defendants acted wrongfully, and
- 2) When the underlying lawsuit was dismissed for failure to state a claim upon which relief could be granted.

Neither applies to my situation. I am repeating again that my underlying lawsuit No. 1:21-cv-00761-WJ-JFR was not dismissed on a Summary Judgment stage and was not dismissed for failure to state a claim upon which relief could be granted.

Deciding in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955), the U.S. Supreme Court reversed the decision of the Court of Appeals that erroneously applied the Res Judicata doctrine to a situation when during the litigation of the underlying lawsuit the District Court didn't find both the material facts of the case and the legal arguments that were applicable to these material facts, and the District Court dismissed the underlying lawsuit with prejudice. It is exactly my situation. During the litigations of my underlying lawsuit No. 1:21-cv-00761-WJ-JFR and my Appeal No. 21-2139, both the U.S. District Court for the District of New Mexico and the U.S. Court of Appeals for the 10th Circuit didn't find the truthful material facts of the case and the legal arguments that were applicable to these material facts despite the U.S. District Court for the District of New Mexico dismissed my underlying lawsuit No. 1:21-cv-00761-

WJ-JFR with prejudice as a sanction for my non-existing misconduct. Therefore, the doctrine of the Res Judicata is not applicable to my lawsuit No. 1:24-cv-01023-DLF and to my Appeal No. 25-5056.

Deciding in *Parr v. United States*, 351 U.S. 513 (1956), the U.S. Supreme Court held that a Judgment is "final" only when the District Court fully evaluates both the material facts of the case and the legal arguments, so there is nothing to add. Because the U.S. District Court for the District of New Mexico never evaluated the truthful material facts of the case and the legal standards that were applicable to these material facts, it means that there is no any "final" Judgment in my underlying case No. 1:21-cv-00761-WJ-JFR and in my Appeal No. 21-2139. Moreover, during the litigation of my lawsuit No. 1:24-cv-01023-DLF I presented to the attention of the U.S. District Court for the District of Columbia new material facts of the case and new legal arguments that were hidden and not available during the litigations of my underlying lawsuit No. 1:21-cv-00761-WJ-JFR and my Appeal No. 21-2139. Therefore, the Res Judicata doctrine is inapplicable to my lawsuit No. 1:24-cv-01023-DLF and to my Appeal No. 25-5056.

REASONS FOR GRANTING THE WRIT.

The doctrine of the Res Judicata or Claim Preclusion requires an underlying Judgment that is "final." However, the decisions of the Circuits only invoke the word "final" and don't explain what the "final" judgment means:

- 1) Whether a dismissal of the underlying lawsuit as a sanction with prejudice without finding both the material facts of the case and the legal standards that are applicable to those material facts of the case constitutes a "final" judgment on the merits, or
- 2) If the District Court dismissed the underlying lawsuit with prejudice as a sanction for Petitioner's non-existing misconduct without evaluation the material facts of the case and the legal standards that were applicable to those material facts of the case, and the United States Court of Appeals erroneously affirmed the decision of the District Court also without finding the truthful material facts of the case and the legal standards that were applicable to those material facts of the case, does it mean that the doctrine of the Res Judicata will bar Petitioner's subsequent lawsuit not regarding both the material facts of the case and the legal standards that were known during the underlying litigation but also to all material facts of the case and all legal standards that COULD BE RAISED in the subsequent litigation, or
- 3) If, after the end of the underlying litigation, a Petitioner discovered new material facts of the case and new legal standards that are applicable to these newly discovered material facts of the case, does it mean that the Petitioner can't present these newly discovered material facts of the case and new legal standards to the attention of the District Court because the doctrine of the Res Judicata bars

not only both the material facts of the case and the legal standards that were known during the underlying litigation but the newly discovered material facts of the case and legal standards that the Petitioner wants to present to the attention of the District Court in a subsequent litigation?

A. The Petition Should Be Granted Because the D.C. Circuit's Decision Openly Conflicts with *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955.)

Lawlor clearly indicated that, despite the underlying lawsuit was dismissed with prejudice without finding both the material facts of the case and the legal standards, Petitioners could proceed with all their claims in the subsequent litigation, and the subsequent litigation will not be barred by the Res Judicata doctrine.

B. The Petition Should Be Granted Because the D.C. Circuit's Decision Openly Conflicts with *Parr v. United States*, 351 U.S. 513 (1956.)

Deciding in *Parr v. United States*, 351 U.S. 513 (1956), the U.S. Supreme Court established a definition of a "final" judgment for the purpose of an Appeal in the U.S. Court of Appeals. However, the existing Opinions of the Circuits have used the word "final" for the purposes of the Res Judicata doctrine without explaining what the "final" Judgment means. In my situation, the District Court

erroneously concluded that, because my underlying lawsuit No. 1:21-cv-00761-WJ-JFR was dismissed with prejudice, the word "prejudice" was equal with the definition of a "final judgment on the merits." Therefore, the intervention of the United States Supreme Court is necessary to secure the uniformity of the decisions of the lower Courts.

C. The Petition Should Be Granted Because Both the District Court And the D.C. Circuit Failed to Establish the M.S.P.B.'s Multiple Sources of Jurisdiction Over my Appeal No. DE-0752-19-0097-1-1.

The District Court dismissed my lawsuit No. 1:24-cv-01023-DLF on the Res Judicata ground without evaluating:

- 1) The material facts of the case and the legal standards that I attempted to present to the attention of the U.S. District Court for the District of New Mexico in case No. 1:21-cv-00761-WJ-JFR and the U.S. Court of Appeals for the 10th Circuit in Appeal No. 21-2139
- 2) The newly discovered material facts of the case and the newly discovered legal standards that I attempted to present to the attention of the U.S. District Court for the District of Columbia in my lawsuits No. 1:22-cv-03453-DLF and 1:24-cv-01023-DLF.

The District Court erroneously concluded that I was not an "employee" within the meaning of 5 U.S.C. § 7511(a)(1)(C), and therefore the M.S.P.B. didn't have jurisdiction over my Appeal No. DE-0752-

19-0097-1-1 (Pet.App.6a.) The District Court also erroneously concluded that, because I was a probationary employee, the M.S.P.B. didn't have jurisdiction over my Appeal No. DE-0752-19-0097-1-1 citing *Castle v. Rubin*, 78 F.3d 654, 658 (D.C. Cir. 1996) (Pet.App.7a.) Additionally, the District Court concluded that, "discrimination claims like Drevalava's do not independently give the Board jurisdiction" citing an outdated decision En Banc of the Federal Circuit in *Cruz v. Dep't of Navy*, 934 F.2d 1240, 1245-46 (Fed. Cir. 1991) (Pet.App.7a.) The District Court disregarded my explanations that, after the Federal Circuit decided En Banc in *Cruz* in 1991, the Legislature enacted 5 CFR § 1207.170 in 2005, and the Legislature allowed "a party" and "any person" as opposed to an "employee" who alleges discrimination on the basis of disability to present the allegations of the discrimination before the Merit Systems Protection Board.

The District Court also disregarded my explanation that, as a full-time permanent Excepted Service Title 38 Hybrid Medical Instrument Technician Electrocardiograph, I was not an "employee", and I was an "appointee" pursuant to 38 U.S. Code § 7401(3.)

Because the District Court never evaluated both the newly discovered material facts of the case and new legal arguments that I attempted to present in my lawsuit No. 1:24-cv-01023-DLF, and because the District Court dismissed my lawsuit No. 1:24-cv-01023-DLF on the Res Judicata ground, the District Court disregarded my explanations that the M.S.P.B.

had multiple sources of the jurisdiction over my Appeal No. DE-0752-19-0097-1-1 such as:

- a) Section D of the Disciplinary Actions Checklist of the New Mexico VA Health Care System because I was removed from the New Mexico VA Health Care System, and I was a full-time Title 38 Hybrid Probationary appointee
- b) the VA HANDBOOK 5021/6, PART III, NOVEMBER 20, 2007, CHAPTER 2. TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES because I was discriminated against my marital status (I am a twice divorced woman who attempted to get pregnant using donor's sperm) and because I was fired without giving me a Notice and an opportunity to be heard (improper procedure)
- c) 5 U.S. Code § 7511(b)(10) because I held an Excepted Service appointed as a Title 38 Technician in the Veterans Health Administration of the U.S. Department of Veterans Affairs pursuant to 38 U.S.C. § 7401(3)
- d) 5 CFR § 1207.170(b) and (c) because I alleged the intentional discrimination against my disability.

However, there is a discrepancy between the Federal statutes that are 38 U.S. Code § 7401(3) and 5 U.S. Code § 7511(b)(10.)

Pursuant to 38 U.S. Code § 7401(3), I am not an "employee" and I am an "appointee."

However, as an Excepted Service Title 38 Medical Instrument Technician who holds a position in the Veterans Health Administration of the U.S. Department of Veterans Affairs pursuant to 38 U.S. Code § 7401(3), I am a subject to 5 U.S. Code § 7511(b)(10), and that statute uses a word "employee." Therefore, I am respectfully asking the U.S. Supreme Court to grant my Petition for a Writ of Certiorari and to clarify whether I am an "appointee" pursuant to 38 U.S. Code § 7401(3) or I am an "employee" pursuant to 5 U.S. Code § 7511(b)(10.)

The U.S. Court of Appeals for the D.C. Circuit affirmed the decision of the District Court dismissing my Appeal No. 25-5056 on the Res Judicata ground without evaluating the newly discovered material facts of the case and new legal arguments that I attempted to present in my lawsuit No. 1:24-cv-01023-DLF and in my Appeal No. 25-5056. The D.C. Circuit held that I had failed to demonstrate any source of the M.S.P.B.'s jurisdiction over my Appeal No. DE-0752-19-0097-1-1 (Pet.App.2a.) It is clearly erroneous. I am respectfully asking the U.S. Supreme Court to grant my Petition for a Writ of Certiorari and to hold that, before evaluating whether or not the M.S.P.B. had jurisdiction over my Appeal No. DE-0752-19-0097-1-1, the M.S.P.B. was supposed to:

- 1) Evaluate the material facts of my April 03 – June 30, 2017 full-time probationary appointment in the Veterans Health Administration of the U.S. Department of Veterans Affairs as an Excepted Service Title 38 Hybrid Medical Instrument Technician

Electrocardiograph pursuant to 38 U.S.C. § 7401(3)

- 2) Take into the M.S.P.B.'s consideration the internal regulations of the U.S. Department of Veterans Affairs such as the VA HANDBOOK 5021/6, PART III, NOVEMBER 20, 2007, CHAPTER 2. TITLE 5 PROBATIONARY/TRIAL PERIOD EMPLOYEES
- 3) Take into the M.S.P.B.'s consideration the internal regulations of the New Mexico VA Health Care System such as Section D of the Disciplinary Actions Checklist of the New Mexico VA Health Care System that clearly states that the M.S.P.B. has jurisdiction over certain types the removals of the full-time probationary Title 38 Hybrids.

Additionally, pursuant to 5 CFR § 1207.170(b) and (c), I don't need to be an "employee" to obtain the jurisdiction of the M.S.P.B. over my Appeal No. DE-0752-19-0097-1-1 if the material facts of my case involve discrimination on the basis of disability. Pursuant to 5 CFR § 1207.170(b)(1), I need to be "a party to a case pending before any of the Board's judges", and pursuant to 5 CFR § 1207.170(c)(1), I need to be "any person who believes that he or she has been subjected to discrimination prohibited by this part, or authorized representative of such person." Up to today, I haven't found any Judicial Opinion that would explain the jurisdiction of the M.S.P.B. pursuant to 5 CFR § 1207.170(b) and (c) in cases that involve discrimination on the basis of disability. Therefore, the intervention of the U.S.

Supreme Court is necessary to secure the uniformity of the decisions of the lower Courts.

Because both the U.S. District Court for the District of New Mexico and the D.C. Circuit failed to establish multiple sources of the jurisdiction of the M.S.P.B. over my Appeal No. DE-0752-19-0097-1-1, I am respectfully asking the U.S. Supreme Court to grant my Petition for a Writ of Certiorari.

e) The Petition Should Be Granted Because the D.C. Circuit's Opinion Conflicts With 5 U.S. Code § 7703(c.)

The plain language of the Federal statute that is 5 U.S. Code § 7703(c) imposes a mandatory obligation (the word "shall") on the District Court to review *de novo* the facts of the case that involves discrimination regardless of whether or not the M.S.P.B. had jurisdiction over Petitioner's case. The U.S. Supreme Court reiterated this principle in its Opinion in *Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017.)

As the U.S. Supreme Court held in *Lopez v. Davis*, 531 U.S. 230, 241, 121 S. Ct. 714, 148 L. Ed. 2d 635 (2001), the word "shall" imposes a mandatory obligation that is impervious to any discretion.

Because the Opinion of the D.C. Circuit in my Appeal No. 25-5056 conflicts with 5 U.S. Code § 7703(c), with *Perry v. Merit Systems Protection Board*, 582 U.S. 420 (2017), and with *Lopez v. Davis*, 531 U.S. 230, 241, 121 S. Ct. 714, 148 L. Ed. 2d 635

(2001), I am respectfully asking the U.S. Supreme Court to grant my Petition for a Writ of Certiorari.

f) The Petition Should Be Granted Because the D.C. Circuit's Opinion Conflicts With 38 CFR § 23.530(d) And 29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978), Questions 7 and 9.

The plain language of 38 CFR § 23.530(d) imposes a mandatory obligation (the word "shall") on Secretary of the U.S. Department of Veterans Affairs to reinstate me back to work at the VAMC after I returned from a pregnancy leave. However, the D.C. Circuit dismissed my Appeal No. 25-5056 on the Res Judicata ground without mandatorily following 38 CFR § 23.530(d.) Therefore, I am respectfully asking the U.S. Supreme Court to intervene, to grant my Petition for a Writ of Certiorari, and to mandatorily (the word "shall") reinstate me back to work at the VAMC pursuant to 38 CFR § 23.530(d) after I returned from my pregnancy leave.

Also, because the Opinion of the D.C. Circuit conflicts with 29 CFR Appendix to Part 1604, Questions and Answers on the Pregnancy Discrimination Act, Public Law 95-555, 92 Stat. 2076 (1978), Questions 7 and 9, I am respectfully asking the U.S. Supreme Court to grant my Petition for a Writ of Certiorari.

CONCLUSION.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: May 04, 2026.

APPENDIX