

No.

25-5966

ORIGINAL

FILED

OCT 14 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

---

MALLY GAGE

*Petitioner,*

v.

MAYO CLINIC et al.,

*Respondents.*

---

On Petition For A Writ Of Certiorari

To The United States Court Of Appeals

For The Ninth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

---

Mally Gage

4110 West Eva Street

Phoenix, AZ, 85051

(520) 979-4566

## **QUESTIONS PRESENTED FOR REVIEW**

- 1) Under Title VII of the Civil Rights Act of 1964, can employers demand statements of apostasy as well as set restrictions on how an employee can communicate their religious beliefs or accommodation needs as a condition of employment?
- 2) Under the Due Process Clause and this Court's precedents, what magic words are needed to overcome a motion to dismiss for a *pro se* litigant?

## **PARTIES TO THE PROCEEDING**

1. Respondent Mayo Clinic
2. Respondent Mayo Clinic-Arizona
3. *Pro se Petitioner* Mally Gage

## **CORPORATE DISCLOSURE STATEMENT**

Respondent has previously filed a corporate disclosure statement per Rule 7.1 of the Federal Rules of Civil Procedure stating no such corporation applies.

## **RELATED CASES**

*Gage v. EEOC*, U.S. Court of Appeals for the Ninth Circuit. Case No. 23-4232

*Gage v. Banner Health*, U.S. District Court for District of Arizona. Case No.: 2:24-CV-01133-SHD

## TABLE OF CONTENTS

Opinions Below.....	1
Statement of Jurisdiction.....	1
Constitutional Provisions and Statutes .....	2
Statement of the Case .....	4
Reasons for Granting the Petition .....	9
Conclusion .....	11

## INDEX TO APPENDICES

Appendix A: Order Granting Defendant's Motion to Dismiss from United States District Court of Arizona (December 18, 2023) .....	[1]
Appendix B: Memorandum from United States Court of Appeals for the Ninth Circuit (June 18, 2025).....	[21]
Appendix C: Request for Panel Rehearing to the United States Court of Appeals for the Ninth Circuit (July 2, 2025).....	[27]
Appendix D: Denial of Panel Rehearing from the United States Court of Appeals for the Ninth Circuit (July 15, 2025).....	[39]

## TABLE OF AUTHORITIES

### CASES

<i>McKeever v. Block</i> .....	6
<i>EEOC v. Abercrombie &amp; Fitch Stores, Inc.</i> (575 U.S.) .....	6
<i>Thomas v. Review Bd. of Ind. Emp't Sec. Div.</i> , 450 U.S. 707 (1981) .....	7
<i>Skilstaf, Inc. v. CVS Caremark Corp.</i> , 669 F.3d 1005, 1014 (9th Cir. 2012) .....	8
<i>Bazinet v. Beth Israel Lahey Health, Inc.</i> , No. 24-1148 (1st Cir. 2024) .....	8
<i>Lopez v. Smith</i> .....	8
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 802 (1973).....	9

### CONSTITUTIONAL PROVISIONS

U.S. Constitution, Fifth Amendment .....	2, 3, 9
U.S. Constitution, Fourteenth Amendment .....	3, 9

### FEDERAL RULES OF CIVIL PROCEDURES

Rule 8(a)(2) .....	6
Rule 12(b)(6) .....	8, 9

### STATUTES

28 USC § 1254 .....	1
29 C.F.R. § 1601.28 .....	2,3
29 C.F.R. § 1605 .....	3, 4

## TABLE OF AUTHORITIES – Continued

### SUPREME COURT RULES

Rule 13.3 .....	1
-----------------	---

### UNITED STATES ACTS

Civil Rights Act of 1964 Title VII .....	1, 2, 4, 6, 8, 9, 10, 11
--	--------------------------

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

1. U.S. District of Arizona; Case No. CV-22-02091-PHX-SMM, *Mally Gage v. Mayo Clinic, et al.* appearing at Appendix A: District Court orders that Plaintiff has not stated plausible claims under Title VII, grants Defendant's Motion to Dismiss, and dismisses Plaintiff's First Amended Complaint without further leave to amend.
2. U.S. Court of Appeals for the Ninth Circuit; Case No. 23-4410, *Mally Gage v. Mayo Clinic; Mayo Clinic-Arizona*. appearing at Appendix B: Ninth Circuit rulings include FAC fails to state a claim of religious discrimination under Title VII, fails to state a claim of retaliation, and declined to review other claims raised in the opening brief. The Ninth Circuit denied Gage's appeal.

---

**STATEMENT OF JURISDICTION**

The Judgement of the Court of Appeals was entered on 6/23/2025. A petition for rehearing was denied on 7/15/2025. This Court's jurisdiction rests on 28 USC § 1254 and Rule 13.3 of the Supreme Court of the United States.

There is an unprecedeted issue of jurisdictional law regarding this case in which the United States' EEOC has been caught in statutory/regulatory non-

compliance when they issued a 29 C.F.R. § 1601.28 NRTS without completing a proper notification of Charge, investigation, and case completion for Gage's Charge of Discrimination forcing Gage to file this suit within 90 days or forgo all rights to sue Mayo Clinic. Gage has already received a partial FOIA release (with the full request still being pursued in court (Gage v. EEOC, No. 23-4232)) which appears to show that the EEOC never opened, never investigated, and deprived Gage of the rights she had to an EEOC investigation (and associated linked material/Answers) before having to file in court. It also shows that the NRTS was illegally issued as the case needed to be legally opened and investigated as a prerequisite of the NRTS per 29 CFR § 1601.28 – a matter which may require action of this court to remand and issue back to the EEOC to handle the Charge properly, so Gage can present to court in **equal measure to others that file under Title VII of the Civil Rights Act.**

---

## CONSTITUTIONAL PROVISIONS AND STATUTES

### U.S. Constitution, Fifth Amendment

Under the Due Process Clause, “no person” shall be deprived of “life, liberty, or property, without due process of law”. Gage argues defendants’ motion to dismiss without answering for their actions in the complaint, overlooking material evidence, and bypassing standard discovery and trial procedures violates her due process rights.

## U.S. Constitution, Fourteenth Amendment

While written for states, Gage believes the Fourteenth amendment expands and elaborates on the Fifth Amendment federal government's role of due process related to this case. Specifically, that the district court and Ninth Circuit of Appeal did act without due process of law and denial of equal protections of Gage in their rulings in overlooking the NRTS issue with the EEOC, denying Gage an Answer by defendant by approving the Motion to Dismiss (twice), and arguing *sua sponte* for the defense despite their lack of response.

## 29 C.F.R. § 1601.28

The EEOC is held to strict rules of compliance before issuing a Notice of Right to Sue (NRTS). Gage argues there is an unprecedented issue of jurisdictional law regarding this case in which the United States' EEOC has been caught in statutory/regulatory non-compliance in their issuance of a NRTS without completing a proper notification of Charge, investigation, and case completion for Gage's Charge of Discrimination.

## 29 C.F.R. § 1605

Gage's submitted religious beliefs fall under these guidelines for discrimination protections because of religion and tie directly with an employer's duty to accommodate, reasonable accommodations, and undue

hardship. The defendse argues they have a direct right to demand statements of apostacy and also demand a waiver of religious rights before engaging with Ms. Gage in an interactive process.

---

### STATEMENT OF THE CASE

Ms. Gage was a former newly starting employee of defendant who completed all qualifications and onboarding requirements with a set first day to work. After submitting her religious beliefs and requests for accommodations from the COVID-19 vaccine and an explanation of deviation from Mayo Clinic's online exemption form template **due to its inappropriate demands and limitations**, defendant stated they wouldn't accept it and instead, harassed and demanded Gage to fill out an Online Form Template that limited her ability to convey her religious beliefs and maliciously demanded a waiver of rights, admittances, interrogatories and information to disprove rather than seek to understand her religious beliefs. Mayo Clinic's Online Form infringed on Ms. Gage's religious rights as displayed through gross and intentional malice against 29 C.F.R. § 1605 and Title VII of the Civil Rights Act. Gage agreed to fill out their form in good faith but stated she would not be filling out the illegal portions such as the waiver of rights or statements of apostasy. Mayo Clinic refused and specifically demanded the waiver of rights terms be completed with a justification that they were entitled to it including the questionable statements such as "admit your beliefs are insincere" as a "matter of law" which they would not cite (the District Court later agreed their citation was

inaccurate and action improper to EEOC guidance). After successfully completing all of the pre-hire qualifications (including medical evaluation), submitting her Religious Exemption and Requests for Accommodations, and submitted an EEOC Complaint the employer was aware of related to their actions towards Gage's religious beliefs and requests for accommodations, Mayo Clinic terminated Gage's employment because of her religious beliefs (and not succumbing to apostasy & waiver of rights) and EEOC Complaint.

Upon filing her Complaint in Federal Court for infringements on the Civil Rights Act of 1964 with the statutory and regulatory codifications, and material and tangible facts, Mayo Clinic bypassed answering the Complaint and asserted a Motion for Dismissal under Failure to State a Claim, but in that Motion, elicited a positional defense in which they recognized every legal claim but disputed the material facts supporting them. Justice McNamee sided with the defense's position on material disputes and dismissed the case before an Answer was made. Gage refiled her suit per allowance (at that time) and added more direct and repeated legal claims, advanced legal theory doctrine (that was being demanded of her as a *pro se* litigant), and tangible evidence to substantiate her side of the material facts that were being ruled against. The court acknowledged that Gage presented all of the required legal notices and facts and that Mayo Clinic's exemption form was "wholly dissimilar" from EEOC guidance, but did not agree with Gage's side of the disputed material facts and threw out the case again without allowance to amend - a display that shows no matter what requirement Gage met, or magic words stated,

the court would not allow an answer by defendant or justice pursued. As seen in FRCP 8(a)(2) and the District Court's ruling, pleading standards must only contain a "short and plain statement of the claim showing that the pleader is entitled to relief" and is only meant to "put the defendants fairly on notice of the claims against them" *McKeever v. Block* – two points Gage not only did but far surpassed due to the continual push back for further detailed support and legal theories by the District Court in the initial filings. Additionally, the court and defense argue the Title VII religious knowledge standards such as in the 2015 landmark Supreme Court case of *EEOC v. Abercrombie & Fitch Stores, Inc.* (575 U.S.). Here, the lower courts disagreed on knowledge standards regarding an employer's duty to accommodate for an employee who did not file beliefs or need for accommodation (which Gage clearly did notify in this matter). Relevant to the case, defense happily asserts their discriminatory policy was specially tailored for a Title VII religious protected group which contradicts the Supreme Court's decision that employers cannot make an applicant's religious practice confirmed or otherwise a factor in employment decisions; however, in this case, it is clear and the defense affirms they would not hire Gage/subsequently fired Gage exactly due to her religious beliefs and unwillingness to sign away her rights, falsely defame her beliefs, etc. Additionally, the court listed requirements of advanced legal theory and demanded *pro se* litigant to argue in these in her opening claims/motion for dismissal responses. Gage proceeded and showed how she met the elements listed (pre-discovery); however, the court proceeded to overlook these matters and evidence presented. Despite the

submitted advanced legal theories, clearly stated claims, and supporting evidence, the court dismissed the case while clearly acknowledging there was a dispute in which relief could be granted, defendant's policy/form did not align with EEOC standards, and defendant argued there was "no obligation to engage in the interactive process" despite Gage's requests and ties to her claims.

Upon appeal to the Ninth Circuit, the panel dismissed Gage's appeal and request for reconsideration without citing standing law (in comparison to Gage's cited law) while *sua sponte* arguing for the defense, despite defense's lack of answer to the original complaint. In their analysis, the panel asserts that Gage did not plausibly allege a failure to accommodate her religious beliefs and erroneously held and compared directly against Gage's asserted facts – labeling and comparing Gage's group as "Christians", contrary to long-settled law such as *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707 (1981). Gage's brief well-stated she submitted multiple specific accommodation requests, which Mayo categorically rejected and refused to engage in the interactive process unless she first signed a waiver of rights to the very accommodations she was requesting. Critically, the panel *sua sponte* argued that Mayo Clinic attempted to accommodate Plaintiff in good faith—**an assertion not only absent from Mayo's defense, but directly contrary to the record**. Mayo Clinic explicitly stated that no accommodations would be considered unless Plaintiff first signed a waiver of her rights and make the statements of apostasy while refusing inquiry into Gage's religious beliefs or concerns of their form/form's formatting. This shifts the burden impermissibly and

deprives Plaintiff of the Rule 12(b)(6) presumption. The panel concluded Plaintiff failed to plausibly allege religious discrimination under Title VII, despite explicit and repeated allegations to the contrary. The standard under Rule 12(b)(6) requires the court to accept all pleaded facts as true and draw all reasonable inferences in Plaintiff's favor, *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1014 (9th Cir. 2012). This is especially true for *pro se* litigants whose filings are to be construed liberally and allowed to be amended, if at all possible (*Lopez v. Smith*), yet the panel discounted nearly every material factual allegation and instead relied on Mayo Clinic's disputed narrative—**despite the absence of an answer to the original Complaint**. The Ninth Circuit additionally inserted argument on behalf of Mayo Clinic who factually did not engage in good faith during the interactive process and did not answer Gage's religious exemption and accommodation requests with any claim of undue hardship, rather only stating they didn't have to engage because they were entitled to make her sign a waiver of rights as a matter of law – a law yet to be substantiated. Most recently, the First Circuit in *Bazinet v. Beth Israel Lahey Health, Inc.*, No. 24-1148 (1st Cir. 2024), reversed a 12(b)(6) dismissal where a hospital denied a religious exemption without engaging in the interactive process, holding that claims such as undue hardship cannot be resolved without factual development. As seen in the First Circuit in *Bazinet v. Beth Israel Lahey Health, Inc.*, No. 24-1148 (1st Cir. 2024) and in this case, for the court to assert finding on disparate treatment or any of the alleged actions in this complaint requires the court to allow factual development past the complaint filing alone. The Ninth

Circuit and the district court well-recognize that Gage asserted the facts relevant to all the Rule 12(b)(6) claims, they just subjectively disagreed with them and did not allow the complaint to proceed past filing and due process to occur.

---

### **REASONS FOR GRANTING THE PETITION**

Two of the most fundamental rights in America are the Fifth and Fourteenth amendments of the Constitution giving citizens' rights to fair and equal due process. Without this, the Constitution and laws are meaningless. As seen in Gage's case, she was denied standard due process and the opportunity to be heard as a disadvantaged *pro se* plaintiff who could not find the magic words for her case to proceed despite stating apparent claims of which relief could be granted, material evidence gathered, and proof of meeting the four McDonnell Douglas Factors (*McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)) as demanded by the court for her claim to proceed. The disputed material facts remain and require an answer by defendant to proceed. Gage's rights under Title VII of the Civil Rights Act of 1964 remain in violation by defendant in their demands of waiver of rights and agreement to statements of apostasy and subsequent firing of Gage for her religious beliefs. The actions asserted by defendant and affirmed/ignored by both the federal court and Ninth Circuit brings to light a concern for current/future employers' actions and their ability to bypass fundamental protections under Title VII by creating systems as terms of employment that require waiving an individual's rights and/or signature to claims of apostasy (opposite of their religious

beliefs) in light of manipulative, intentionally malice, and dangerous form structure(s) for religious exemptions.

The right to represent oneself in the US judicial system as a *pro se* plaintiff also remains in question as to what magic words are needed to proceed in court when a defensive party refuses to answer and motions for dismissal despite meeting the criteria for a claim of which relief can be provided. The Supreme Court's precedent on interpretation of *pro se* pleadings continues to need to be addressed.

Finally, there is a nationwide issue on religious rights and persecutions, especially regarding religious rights or beliefs held by Christians in America. This case holds one of the simplest remedies: allow Ms. Gage, one of the top leading pharmacists with noted high proficiencies, to be able to work in clinical pharmacy while having her religious beliefs. Mayo Clinic, along with Banner Health, are still refusing to allow her in this field strictly because of her religious beliefs. If this court does not interject in these issues and overturn them, Mayo Clinic, et al. and other large companies will continue their practices in restricting how an employee can inform them of their religious beliefs and they will continue to demand a waiver of rights (which also occurred with Arizona's largest employer-Banner Health (Gage v. Banner Health, No.: 2:24-CV-01133-SHD)). The justice system should rule with a heavy gavel that such conduct is not allowed and is in violation of Title VII rights and turn these injustices around.

---

## CONCLUSION

Ms. Gage, as a *pro se* litigant, has worked diligently to comply with all formatting requirements, deadlines, and multi-court processes to bring forth these two important questions that will impact *pro se* litigation as well as US employment practices. As a pharmacist, she has worked diligently to build her career into a highly recommended and excelling performer and is being denied career opportunity as she has continued to seek work in the clinical healthcare setting while maintaining her deeply held religious beliefs (Gage v. Mayo Clinic, Mayo Clinic-Arizona; Gage v. Banner Health, No.: 2:24-CV-01133-SHD).

Additionally, maintaining the rights and due process protections of *pro se* litigants remains important as a Constitutional right of Americans. The freedom to practice a religion and submit religious exemptions and accommodations to an employer as well as the interactive process have been at the forefront of discussions and legislative controversy that need an answer from the highest legislative authority and relate directly to this case. Ms. Gage was not allowed her Constitutional rights to due process and respectfully requests these rights be upheld with remand with orders for proper completion back to the EEOC for full investigation as well as remand to the District Court with an order to stay until the EEOC investigation is formally completed. These precedents are central to continued fair and equal protections under Title VII of employees as well as proper due process for *pro se* litigants. This court should grant the petition for a Writ of

Certiorari and at minimum, remand the issue back to the District Court to allow due process to occur.

Respectfully submitted,

Signed this 13<sup>th</sup> day of October, 2025



Mally Gage  
*Pro Se Petitioner*  
4110 West Eva Street  
Phoenix, AZ 85051  
(520) 979-4556  
mallygage@gmail.com