25-5251

No. _____

ORIGINAL

In The Supreme Court of the United States

SHAHRIAR BEHNAMIAN,
Petitioner,

v.

COKE MORGAN STEWART, in her official capacity as Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office; UNITED STATES PATENT & TRADEMARK OFFICE,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a pro se plaintiff has properly served a defendant when the plaintiff serves the defendant himself at the advice of the court's clerk and then the court's clerk notifying the plaintiff that he has properly served the defendant at the time of submitting the executed summons to the court in person, and the District Court failing to meet its obligation under Fed. R. Civ. P. 4(i)(4)(A) to notify and grant the pro se plaintiff a reasonable extension of time to cure deficiencies in his service of process under Fed. R. Civ. P. 12(b)(5)?

2. Federal regulations under 37 C.F.R. § 11.7(h)(4)(iii) applies to "[a]n individual who has been disbarred or suspended from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding[.]" The Federal Circuit concluded that being a federal employee working as a primary patent examiner is not performing the duties of a profession and thereby the job of examining U.S. Patent applications is not a profession. On the other hand, the District Court concluded that defenses under C.F.R. § 11.7(h)(4)(iii) only apply to disbarment or suspension from the practice of law.

The question presented is:

> Whether the defenses available under 37 C.F.R. § 11.7(h)(4)(iii) apply to primary patent examiners and hence, would a person's employment as a primary patent examiner at the United States Patent and Trademark Office constitute a profession?

3. Whether an unintentional mistake on a timesheet always constitutes conduct involving dishonesty, fraud,

misrepresentation, deceit, or a violation of Federal or State laws or regulations?

4. Whether being explicitly advised by an employer that an employee has no right to file a discrimination claim effectively delays the 45 day reporting obligation until the employee becomes aware of his right to file a discrimination claim under Title VII of the Civil Rights Act of 1964?

5. Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual" with respect to "compensation, terms, conditions, or privileges of employment" on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1). It is understood from the Federal Circuit's ruling that retaliatory job suspensions and compensatory withholdings are lawful under Title VII when a retaliation is based on discriminatory action against a father of a child to be born in the immediate future. Furthermore, the Pregnancy Discrimination Act, 42 U.S.C.§ 2000e(k), provides that "[t]he terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions" and "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes * * * as other persons not so affected but similar in their ability or inability to work." *Id.* The question presented is:

The question presented is:

Does Title VII prohibit retaliation based on discrimination as to "compensation, terms, conditions, or privileges of employment," on the basis of all "sex",

or is its reach limited to retaliation based on discriminatory employer conduct against women affected by pregnancy, childbirth, or related medical conditions limited in their ability or inability to work, and whether, and in what circumstances, an employer that provides work accommodations to pregnant employees with work limitations, must provide work accommodations to an employee who is the father of a pregnant woman's child and additionally assuming the duties of the pregnant woman who is limited in her ability or inability to perform her normal duties at full capacity?

PARTIES TO THE PROCEEDINGS

The parties are petitioner Shahriar Behnamian and respondents Coke Morgan Stewart, in her official capacity as Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, and United States Patent & Trademark Office.

RELATED PROCEEDINGS

There are currently no related proceedings.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Shahriar Behnamian respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for Federal Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for Federal Circuit (App., *infra,* 1a-30a) is available at 2025 WL 845946. The opinion of the United States District Court for the Eastern District of Virginia (App., *infra,* 31a-60a), is available at 2022 WL 1227996. The Final Order of the United States Patent and Trademark (App., *infra,* 61a-90a) is not reported.

JURISDICTION

The court of appeals entered judgment on February 26, 2025. On May 21, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including July 26, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

35 U.S.C. § 2(b)(2)(D) governing registration to practice before the USPTO.

35 U.S.C. § 32 governs the suspension or exclusion from practice before the United States Patent & Trademark Office.

Section 701 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, provides:

> (k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical

conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title *[section 703(h)]* shall be interpreted to permit otherwise.

Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, provides:

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]

RELEVANT REGULATORY PROVISIONS

37 C.F.R. § 11.7, provides:

(h) *Good moral character and reputation.* Evidence showing lack of good moral character and reputation may include, but is not limited to, conviction of a felony or a misdemeanor identified in paragraph (h)(1) of this section, drug or alcohol abuse; lack of candor; suspension or disbarment on ethical grounds from a State bar; and resignation from a State bar while under investigation.

(4) *Moral character and reputation involving suspension, disbarment, or resignation from a profession.*

(i) An individual who has been disbarred or suspended from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding (excluded or disbarred on consent) shall be ineligible to apply for registration as follows: [...]

(ii) An individual who has been disbarred or suspended, or who resigned in lieu of a disciplinary proceeding shall file an application for registration and the fees required by § 1.21(a)(1)(ii) and (a)(10) of this subchapter; provide a full and complete copy of the proceedings that led to the disbarment, suspension, or resignation; and provide satisfactory proof that he or she possesses good moral character and reputation. [...]

(iii) The only defenses available with regard to an underlying disciplinary matter resulting in disbarment, suspension on ethical grounds, or resignation in lieu of a disciplinary proceeding are set out below, and must be shown to the satisfaction of the OED Director:

(A) The procedure in the disciplinary court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Office could not, consistently with its duty, accept as final the conclusion on that subject; or

(C) The finding of lack of good moral character and reputation by the Office would result in grave injustice.

INTRODUCTION

The Federal Circuit affirmed the District Court's decision to grant the Respondents' request for summary judgment under Rules Of Civil Procedure For The United States District Courts, Rule 12(b)(5), concerning insufficient service. However, the Federal Circuit did not review the lack of opportunity afforded to the Petitioner to correct such a minor insufficiency. The Petitioner requested a hearing to address outstanding issues, but District Court denied the Petitioner's request without reason. On multiple occasions, the District Court's Clerk assured the Petitioner that the summons were sufficiently serviced and advised that if the summons were not serviced sufficiently, then the Judge overseeing the case will notify the Petitioner. However, the only time the District Court addressed any issue was in their memorandum opinion and order granting the Respondents' summary judgement and dismissal of Petitioner's claims issued on April 26, 2022. The District Court judge denied a hearing request filed on November 9, 2021, by the Respondents, and denied two more hearing requests filed on April 4, 2022, and April 25, 2022, by the Petitioner. The District Court judge had the option of several occasions to give the *pro se* Petitioner to correct any insufficiency regarding the service of process, but he deliberately and discriminately decided not to grant even one of the three hearing requests.

The Court is also asked to evaluate if unintentional mistake on a timesheet always constitutes "conduct involving dishonesty, fraud, misrepresentation, deceit, or a violation of Federal or State laws or regulations[?]" See Pet. App. at 45a. In order for an action to be considered "conduct involving

dishonesty, fraud, misrepresentation, deceit, or a violation of Federal or State laws or regulations", id., the action must be intentional and deliberate.

Under 35 U.S.C. § 32, the Director of the USPTO may exclude from "practice before the Patent and Trademark Office, any person, agent, or attorney shown to be incompetent or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 2(b)(2)(D)[.]" *Id.*

37 C.F.R. § 11.7 establishes the rules governing the requirements for registration to practice before the United States Patent & Trademark Office ("the Office" or "USPTO"). Petitioner Shahriar Behnamian maintains that the USPTO wrongfully denied him an opportunity for defense in violation of 37 C.F.R. § 11.7(h)(4)(iii).

The Federal Circuit held that the Petitioner had no right to defense under 37 C.F.R. § 11.7(h), and that "this regulation applies to individuals who were "disbarred or suspended from practice of law or other profession, or [who] ha[ve] resigned in lieu of a disciplinary proceeding." 37 C.F.R. § 11.7(h)(4)(i). The district court correctly assessed that 37 C.F.R. § 11.7(h)(4) does not apply to Mr. Behnamian, who was neither disbarred nor suspended from the practice of any profession and who did not resign in lieu of a disciplinary proceeding." *See* Pet. App. 8a. The Federal Circuit does not even attempt to reason why a federal employee working as a primary patent examiner and working his way up to a General Schedule ("GS") Grade Level ("Level") 14 within the federal government wouldn't qualify as a employee practicing a profession.

This Court has not previously defined the realms of a profession in the context of employment. However, it has previously addressed in *Hishon v. King & Spalding*, 467 U.S. 69, 104 S. Ct. 2229, 81 L. Ed. 2d 59 (1984), involving professional status, that discrimination in professional settings (e.g., law firm partnerships) under Title VII, emphasizing that employment relationships, including those in professional contexts, are covered by anti-discrimination laws. The Court should now clarify what constitutes a profession and clarify that public-sector federal government employees working as primary patent examiners at a GS Level 14 possessing at least a Bachelor of Science degree, having "[r]eceived a certificate of legal competency and negotiation authority", *see* 37 C.F.R. § 11.7(d)(1), "rated at least fully successful in each quality performance element of his or her performance plan for the last two complete fiscal years", *id.*, and being "not under an oral or written warning regarding the quality performance elements", *id.*, are considered employees practicing a profession. The Court should thereby conclude that the rules under 37 C.F.R. § 11.7(h)(4)(iii), do in fact apply to the Petitioner, and reverse the Federal Circuit decision.

The Court is asked to clarify what action constitutes as notice of employee rights, and clarify that being explicitly advised by an employer that an employee has no right to file a discrimination claim, effectively does or does not delay the 45 day reporting obligation until the employee becomes aware of his right to file a discrimination claim under Title VII of the Civil Rights Act of 1964.

Title VII of the Civil Rights Act of 1964 forbids employers from discriminating on the basis of race,

color, religion, sex, or national origin with respect to their employees' "compensation, terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1). Petitioner Shahriar Behnamian maintains that respondents retaliated against his complaint of discrimination and suspended him from his profession for a period of 7 days and then denied him a pay for a period of 5 days because of his sex in violation of Title VII.

The Federal Circuit did not address the Title VII claims addressed by the District Court. Pet. App. 8a. The District Court held that the USPTO's retaliation was not based on complaining to the employer a discrimination that is protected by Title VII. Pet. App. 9a. This decision contributes to a longstanding, deepening circuit conflict over what kinds of discriminatory conduct are actionable under Title VII, or, to use the statutory parlance, as to who can be directly affected by "pregnancy" or "related medical conditions." The circuit is especially in need of attention because it emerges from a misunderstanding of this Court's precedent and because, among the circuits' divergent approaches, only one circuit has sought to apply the statutory text as written even though every regional circuit has weighed in.

In *Peggy Young v. United Parcel Service, Inc.*, No. 12-1226, this Court was presented with a question nearly identical to the question presented here. There, this Court called for the views of the United States. 135 S.Ct. 1338 (2015) (Mem.). This Court questioned "when the employer accommodated so many [physical restrictions], could it not accommodate pregnant women as well?", *id.*, when vacating the circuit court's judgement and remanding the case back to the circuit.

The Court should do now what it did not have the opportunity to do in *Young*: grant review, resolve the confusion among the circuits, and clarify and extend the protections offered under Title VII on the basis of sex to male parents directly affected by the pregnancy of their child's mother. In doing so, it should consider the Petitioner's Title VII claim and reverse the District Circuit's judgment that the Petitioner failed to state a Title VII discrimination claim and hold that "the right to equal protection is a well-established principle. It is also clear that gender discrimination violates the equal protection clause. Discriminatory application of a gender neutral state [or federal] law is patently illegal[.]" *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001).

STATEMENT OF THE CASE

I. Factual Background

For many years, petitioner Shahriar Behnamian was a Primary Patent Examiner at the United States Patent and Trademark Office. During his tenure at the USPTO from January 2009 until May 2020, he had an impeccable work record with a minimum of work rating of at least Outstanding in all aspects of his work, and the only stain on his record remains due to the discriminatory and retaliatory suspension that occurred in early 2020, leading to his constructive discharge a few months thereafter. Federal Circuit Supplemental Appendix ("FCSA") SAppx107-SAppx113.

A. Report of Discrimination against Petitioner

Shortly prior to 2019, the Petitioner had brought the actions of his immediate supervisor at the USPTO ("PTO Supervisor"), Charles Appiah, regarding the vacating of Petitioner's Office Actions, i.e. official USPTO actions issued to patent applicants, to the attention of USPTO's Technology Center 2600's Director ("TC 2600 Director"), Diego Gutierrez. After the Petitioner's complaint was made to the TC 2600 Director, then immediately thereafter the PTO Supervisor, Charles Appiah, never vacated another one of Behnamian's Office Actions again. However, after the Petitioner's complaint to the TC 2600 Director, the PTO Supervisor started issuing more unreasonable Quality Trackers alleging errors in Petitioner's Office Actions. However, after bringing the PTO Supervisor's unfair and wrong actions to the TC 2600 Director, the PTO Supervisor worsened his hostile behavior.

In 2017, the Petitioner relocated to Hawaii and started working from there remotely while still being obligated to fulfill his bi-weekly reporting duty to his primary work location in Alexandria, Virginia, at the headquarters of the USPTO. Per the USPTO's remote work rules, the Petitioner was allowed to request leave to avoid his reporting duty, as long as it wasn't done so on a regular basis.

Coincidently Plaintiff's second child was expected to be born in early April of 2019. And hence, the Plaintiff was planning not to fly to Virginia to fulfill his work reporting duties and instead request the required work-leave hours to avoid having to report to the USPTO headquarters in Virginia at the end of March of 2019. Reporting to the USPTO headquarters

from Hawaii would require the Plaintiff to be away from his family for at least close to a week, the Plaintiff might have missed his second child's birth during such a long work trip. The Plaintiff had communicated to the PTO supervisor the situation surrounding the birth of the Plaintiff's second child and why he needed to stay in Hawaii until at least the birth of his second child.

The PTO supervisor was well aware of Plaintiff's situation surrounding the birth of his second child, since Petitioner had previously emailed the PTO supervisor about the expected timing of Plaintiff's wife going into labor and giving birth. FCSA SAppx1347-SAppx1351. The PTO supervisor was therefore aware of Petitioner's wife's pregnancy and how far along she was with the pregnancy. In late March 2019, as permitted by his work agreement, Plaintiff requested work-leave to avoid his reporting duty and having to fly to Alexandria, Virginia from Hawaii and risk not being there for his wife and four-year-old son, while his wife might have to go into labor and give birth.

On March 29, 2019, the Plaintiff's supervisor at the time denied the Plaintiff's work-leave request and demanded for the Plaintiff to report to the USPTO headquarters in Virginia, ignoring the fact that Petitioner's wife was pregnant and was expected to give birth in the following days in early April 2019. FCSA SAppx1341-SAppx1342. Following the denial of the Plaintiff's work-leave request which was also protected by the Family and Medical Leave Act ("FMLA") of 1993, as amended, the Plaintiff contacted four (4) TC 2600 Directors asking for help so the Plaintiff would not have to immediately pack his bags

and fly to Virginia that night so he might have a chance to partially fulfill his reporting duties for the preceding two weeks of work. One of the Technology Center 2600 Directors, Mr. Diego Gutierrez, who was also the TC 2600 Director overseeing and supervising the Plaintiff's PTO supervisor, granted the Petitioner the work-leave request and hence allowed him to avoid his reporting duty for the preceding bi-week of work. FCSA SAppx1340-SAppx1351.

At the time of overturning the PTO Supervisor's denial of leave request, the TC 2600 Director, Diego Gutierrez, included the PTO Supervisor in his emailed response, which showed Behnamian's original complaint to the USPTO's Technology Center 2600 Directors where Behnamian had explicitly pointed to the PTO Supervisor's discrimination against the Petitioner during the Petitioner's wife's pregnancy and period of time where she was going to give birth, and claiming that the PTO supervisor was willfully and deliberately trying to create a hostile work environment for the Petitioner. Therefore, the TC 2600 Director, Diego Gutierrez, gave explicit notice to the PTO Supervisor about Petitioner's complaint and exactly what was contained in Behnamian's complaint about the PTO Supervisor. FCSA SAppx1340-SAppx1341. From that point on, the PTO Supervisor knew of the Petitioner's discrimination complaint against the PTO Supervisor, where the Petitioner had stated to the TC 2600 Directors that he had "previously told [PTO Supervisor] that [his] wife is due early April and she could go into labor technically on Monday and I cannot afford to be away from my family for a whole week during this very important medical situation. I think he's being ignorant of the situation and trying

to cause trouble for me without any legitimate reason." *Id.*

B. Retaliation After Notice Of Discrimination against Petitioner

On April 23, 2019, Plaintiff's second child was born two weeks overdue.

Following the Plaintiff's complaint to the TC 2600 Directors, the PTO Supervisor increased his retaliation efforts and cut off the Plaintiff's access to the Record Sharing Platform ("RSP"), i.e. a USPTO system for tracking time spent working, and started monitoring the Plaintiff's timesheets right after the Plaintiff's second child's birth. The RSP used to enable the Plaintiff to monitor his times and durations worked during a bi-week. Plaintiff has reasonable suspicion to believe that his access to RSP was cut off by or through a request by the PTO Supervisor, Charles Appiah. The US Government and its agencies including the USPTO did not grant any paid time off for Parental Leave in 2019 or at the time of the birth of Plaintiff's second child. The Plaintiff's supervisor at the time was aware that the Plaintiff was expecting a baby before Plaintiff's second child was born and knew after the birth of Plaintiff's second child that Plaintiff recently had a newborn baby and would not be entitled to any paid work-leave under any paid parental leave in place at the time and that the Plaintiff was required to work through this challenging time as a new father or take holiday leave, sick leave or unpaid time-off claiming leave under FMLA.

On April 30, 2019, and only 7 days after the Plaintiff's second child was born, the first workday with hours worked and hours absent without leave (AWOL) was alleged. FCSA SAppx182. The last day on which partial AWOL was alleged was June 5, 2019. *Id.* All the workdays for which AWOL was alleged included hours of worked time within them, and they were only within one and a half months from the date on which the Plaintiff's second child was born.

On October 8, 2019, the Plaintiff's supervisor at the time, Mr. Appiah, charged the Plaintiff with AWOL with a basis on the Telework Enhancement Act Pilot Program ("TEAPP") Work Agreement that was signed on June 11, 2019. FCSA SAppx182-SAppx187, SAppx828. The basis of the AWOL charge was only effective starting June 11, 2019, which falls after the last day on which AWOL was alleged, namely June 5, 2019. FCSA SAppx828. The Petitioner was under the Patents Hoteling Program ("PHP") Work Agreement during the alleged AWOL under TEAPP. FCSA SAppx182. It is evident that Petitioner's time spent working was erroneously analyzed under the wrong rules, where the wrong set of rules were applied to calculating gaps between different times worked during a workday. Hence, this is further evidence that Petitioner was wrongfully suspended. FCSA SAppx862-865.

In October 2019, in further retaliation the PTO Supervisor erroneously held an Office Action error against the Petitioner and deliberately and unjustifiably reduced the Petitioner's Quality score in the Petitioner's End of Fiscal Year 2019 ("EOFY-19") review and ratings from a maximum of five (5) to a lower score of four (4). FCSA SAppx111-SAppx113.

After appealing the EOFY-19 Quality rating to the TC 2600 Director, Diego Gutierrez, the TC 2600 Director reversed the PTO Supervisor's unjust and wrongful EOFY-19 Quality rating back to the maximum score of five (5), resulting in the Petitioner receiving a yearly rating of Commendable instead of a lower Fully Successful rating. FCSA SAppx872-SAppx875.

The PTO Supervisor's discrete act retaliation against the Petitioner started within just one month from the date of his complaint against the PTO Supervisor's sex discrimination against Petitioner's pregnancy-related responsibilities, and lead to the Petitioner being wrongfully suspended under "5 U.S.C. § 7513 for Improper Conduct" for at least five days. FCSA SAppx862-SAppx865. Furthermore, the PTO Supervisor's constant harassment and retaliation created a hostile work environment for the Petitioner, which made it unbearable for his mental health to continue enduring such hostile work environment, and ultimately resigned from his position as a Primary Patent Examiner at the USPTO on May 21, 2020, after leading a very successful career for eleven years and four months, starting from January 21, 2009.

The USPTO had never before suspended an employee where the employee had worked for at least a portion of the work-time claimed for any full given day where AWOL was alleged, and had at least a Fully Successful rating of record. Behnamian's suspension was the first case where an employee was not accused of AWOL for any one entire day for which he had claimed time worked, and had a quarterly or yearly rating of at least Fully Successful. The USPTO never even bothered to show how they arrived at the

calculated AWOL. Behnamian's case is a prime application of discrimination and retaliation.

C. Application For Registration to Practice Before the USPTO

After separating from the USPTO, the Plaintiff-Appellant submitted his Application for Registration to Practice Before the United States Patent and Trademark Office and a request for waiver of examination pursuant to 37 C.F.R. § 11.7(d). FCSA SAppx99-SAppx118. On June 10, 2020, the USPTO's Office of Enrollment and Discipline ("OED") granted the Petitioner's Application. FCSA SAppx119-SAppx120. However, on July 1, 2020, the OED remanded the granted Application and sought answers to why the Plaintiff-Appellant had answered in the negative regarding the Application's question number 17. Ultimately, the OED disregarded the Petitioner's arguments brought pursuant to 37 C.F.R. § 11.7(h)(4)(iii) and rejected Behnamian's Application. FCSA SAppx418-SAppx427.

After appealing the OED's denial of Behnamian's Application, the USPTO Director ultimately denied the Petitioner's appeal on August 11, 2021, and alleged that Behnamian is not entitled to a defense under 37 C.F.R. § 11.7(h)(4) and thereby did not address any of his arguments under 37 C.F.R. § 11.7(h)(4)(iii), and also falsely dismissed his letters of recommendation without any proper reasoning or explanation presented. FCSA SAppx138-SAppx154.

II. Procedural Background

A. On September 10, 2021, and within 30 days from the USPTO's Final Order, the Petitioner filed his

Complaint under Titel VII of the Civil Rights Act of 1964, as amended, and his Petition for Review under 35 U.S.C. § 32, with the U.S. District Court for the Eastern District of Virginia ("District Court"), where he appealed the USPTO Director's decision denying the Petitioner a registration to practice before the USPTO. FCSA SAppx28. The District Court had jurisdiction under 28 U.S.C. § 1295(a)(1).

Section 703(a)(1) of Title VII prohibits an employer from discriminating against its employees on the basis of various characteristics, including sex, with respect to "compensation, terms, conditions, or privileges of employment." 42 U.S.C. § 2000e-2(a)(1). Behnamian claimed that the Respondents violated Section 703(a)(1) by denying his leave request, where his leave request was based on his pregnancy related obligations, because of his sex. Behnamian then engaged in the protected activity of reporting this discrimination in violation of Section 703(a)(1) of Title VII to his PTO Supervisor's superiors. Shortly thereafter, in retaliation to Behnamian's engagement in his protected activity, the PTO Supervisor wrongfully accused the Petitioner of AWOL and later suspended him in violation of Section 703(a)(1) of Title VII. Pet. App. 2a-3a.

The District Court granted the Respondents' motion to dismiss Mr. Behnamian's complaint under Federal Rule of Civil Procedure 12(b)(5), due to insufficient service of process, and granted the Respondents' motion for summary judgment. Pet. App. 5a, 10a, 15a, 21a. The Circuit Court also blindly sided with the Respondents once again and deemed the Petitioner's unlawful retaliation claim and constructive retaliatory discharge claim under Title

VII untimely by reasoning that the Petitioner failed to initiate contact with an EEO counselor within 45 days of the effective date of the applicable personnel action to begin the EEO counseling process. Pet. App. 22a. The District Court failed to consider the fact that the TC 2600 Director had officially advised the Petitioner at the time of his notice of suspension that he had no right to file a claim under Title VII.

The District Court also dismissed Mr. Behnamian's petition for review by wrongfully alleging that the Petitioner "**did not receive a disbarment or suspension from** the practice of law or **patent examination before the USPTO.**" Pet. App. 28a. The District Court also gave the Respondents blind and overwhelming preferential deference. Pet. App. 17a, 18a, 31a. This raises the concern of the uselessness of a law suit and complaint at the District Court level where a plaintiff's material facts would never be considered, if such degree of preferential deference were to always be afforded to a government defendant.

B. Behnamian appealed the District Court's decisions to the U.S. Court of Appeals for the Fourth Circuit ("Fourth Circuit"). Upon the Respondents' motion to transfer appeal to the Federal Circuit, the Fourth Circuit removed the case to the Federal Circuit.

C. The Federal Circuit held that they need not address the Title VII issues alleging that Behnamian failed to meet the requirement of service of process under Federal Rule of Civil Procedure 12(b)(5).

In view of Petitioner's petition for review of the USPTO's decision to deny registration before the

USPTO, the Federal Circuit concluded that "37 C.F.R. § 11.7(h)(4) does not apply to Mr. Behnamian, who was neither disbarred nor suspended from the practice of any profession and who did not resign in lieu of a disciplinary proceeding." Pet. App. 8a. The Federal Circuit did not reason what it believed it was that Behnamian was suspended from.

REASONS FOR GRANTING THE WRIT

I. There is a heavy disadvantage to the public for defending themselves against oppressors and illegal violations of their federal and constitutional rights when District Court's Clerks give *pro se* plaintiffs wrong advise and the District Courts fail to give *pro se* plaintiffs an opportunity to correct procedural errors, including ignoring their obligations under Federal Rules of Civil Procedure Rule 4(i)(4)(A).

Federal Rules of Civil Procedure Rule 4(i) governs the service of process for serving the United States and its agencies, corporations, officers, or employees. *Id.* Rule 4(i) requires the following:

> (1) United States. To serve the United States, a party must:
>
> (A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(4) Extending Time. The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

In similar suits against a government agency, such as in a taxpayer's suit seeking to enjoin IRS from its collection action for unpaid income and employment taxes, although taxpayer had not properly served the federal government, complaint was not dismissed on this basis because taxpayer could still timely effectuate service as 120-day limitation period of Fed. R. Civ. P. 4(m) had not yet expired. 96 A.F.T.R.2d

(RIA) 5480, 2005-2 U.S. Tax Cas. (CCH) 50516. See *USCS Fed Rules Civ Proc R 4, Part 1 of 2.*

However, the District Court failed to notify the Petitioner that he had not properly served the Respondents and did not extend time to allow the Petitioner a reasonable time to cure its failure to serve the USPTO or USPTO Director under Rule 4(i)(2), since the Petitioner had served the United States attorney and the Attorney General of the United States. *See* Federal Rules of Civil Procedure Rule 4(i)(4)(A). Fed. R. Civ. P. 4(i)(4)(A) requires the court to allow a party a reasonable time to cure its failure of service of process. Additionally, Fed. R. Civ. P. 6(b)(1) states that "[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time[.]"

The Petitioner was in belief that his service of process under Rule 12(b)(5) was sufficient and he had also complied with the service requirements of Local Civil Rule 83.5, as advised by the District Court's own Clerk. Petitioner filed his complaint with the District Court as a pro se litigant who was advised by the District Court's own Clerk that he was not allowed to mail the Complaint and Summons to the Defendants, U.S. Attorney, and U.S. Attorney General, and that a pro se plaintiff was required to either personally serve the complaint and the summons or have an appropriate person serve the complaint and summons. Therefore, the Petitioner followed the District Court Clerk's advice and attempted to personally service the complaint and summons.

The Petitioner returned the personally served summons forms to the District Court, and yet another District Court's Clerk reviewed the serviced summons

and advised the Petitioner that he had properly served the Defendants and the U.S. Attorney. Acting upon the District Court Clerk's advice, the Petitioner tried to personally serve the U.S. Attorney General at the U.S. Department of Justice's headquarters in Washington, D.C., but was stopped by security officers and eventually told to mail in the complaint and summons. Therefore, the Petitioner served the U.S. Attorney General through U.S. Postal Service.

In comparison, when it comes to the courts' clerks' negligence or errors, the courts have ruled that a court clerk's mistakes should be taken into account when evaluating service of process. For example, in one case it was decided that when a "Law firm's Fed. R. Civ. P. 12(b)(5) motion to dismiss individual's claims that law firm violated Fair Debt Collection Practices Act, 15 USCS §§ 1692a et seq., and state law by attempting to collect attorney fees from foreclosure proceedings, i.e., as condition of reinstatement of mortgage, was denied because there was undisputed evidence that individual's failure to perfect service in timely manner under Fed. R. Civ. P. 4(m) was due to failure of clerk's office to keep copy of properly delivered summons." *Davidson v. Weltman, Weinberg & Reis*, 285 F. Supp. 2d 1093, 2003 U.S. Dist. (S.D. Ohio 2003). If anything, it would be the District Court Clerk's advice to the Petitioner to have him personally serve the Respondents. The District Court Clerk then took receipt of and stamped the served summons and indicated to the Petitioner that he had indeed properly served the Respondents.

The Petitioner furthermore followed up with the District Court Clerk to make sure that the service of process was sufficient. The District Court Clerk confirmed that it was and she also indicated that the

judge would let the Petitioner know if there are any issues with his complaint and petition.

Courts have also ruled that "[w]here plaintiff taxpayers filed suit against defendant U.S. under Taxpayers Bill of Rights, I.R.C. § 7433, because taxpayer husband mailed complaint, service was insufficient and dismissal without prejudice could be granted under Fed. R. Civ. P. 4(c)(2), (m), but because taxpayers were proceeding pro se, they were allowed more latitude to correct defects in service of process and pleadings and court declined to dismiss complaint under Fed. R. Civ. P. 12(b)(5)." 461 F. Supp. 2d 71, 98 A.F.T.R.2d (RIA) 7810. Hence, it would be consistent with federal rulings to notify and grant the Petitioner an extension of time to correct defects in his service of process. However, the District Court did not schedule a hearing at the pleading stage and failed to advise Behnamian of any shortcomings in his service of process, but on the other hand the District Court Clerk explicitly advised Behnamian that his service of process was sufficient after the summons were hand delivered to the District Court.

The District Court decided that since the Respondents had accused the Petitioner of insufficient service of process, then that was enough notice for the Petitioner to correct his service of process. Pet. App. 20a. The District Court hereby is establishing the wrong precedent to force plaintiffs to take advice from defendants and effectively opening the door to legal malpractice and allowing plaintiffs to fall for possible traps set up by defendants. The pro se Petitioner was never notified of his insufficient service of process by the District Court and was under the belief that his service of process was sufficient, even though the Federal Rules of Civil Procedure Rule

4(i)(4) mandates for the courts to allow for an extension of time to cure an insufficient service of process. Therefore, the District Court's dismissal should be overturned.

II. Petitioner's employment as a primary patent examiner at the USPTO must be considered a profession as defined under 37 C.F.R. § 11.7(h)(4)(iii).

Federal regulations under 37 C.F.R. § 11.7(h)(4)(iii) applies to "[a]n individual who has been disbarred or suspended from practice of law or other profession, or has resigned in lieu of a disciplinary proceeding[.]" The Federal Circuit concluded that being a federal employee working as a primary patent examiner is not performing the duties of a profession and thereby the occupation of examining U.S. Patent applications is not a profession. On the other hand, the District Court concluded that defenses under C.F.R. § 11.7(h)(4)(iii) only apply to disbarment or suspension from the practice of law.

Courts have decided in a case involving a kindergarten teacher with New York City Department of Education "that statements that "denigrate the employee's competence as a professional and impugn the employee's professional reputation in such a fashion as to effectively put a significant roadblock in that employee's continued ability to practice his or her profession" will satisfy the stigma requirement" citing *Donato v. Plainview–Old Bethpage Cent. Sch. Dist.*, 96 F.3d 623, 630–31 (2d Cir.1996). Segal v. City of New York, 459 F.3d 207, 212 (2d Cir. 2006). It is evident that if an employment as a kindergarten teacher is considered a profession,

then an employment as a primary patent examiner with a minimum degree of a bachelor of science degree, who has been trained with the legal knowledge to examine patent applications from a legal standpoint applying U.S. laws governing patent eligibility to his daily work of examining patents, and having passed a legal examination and obtained Legal Competency and Negotiation Authority, *see* FCSA SAppx104-SAppx105, must be considered a profession, as well.

The District Court initially decided that the Petitioner "**did not receive a disbarment or suspension from** the practice of law or **patent examination before the USPTO.**" Pet. App. 28a. The undisputed fact remains that Petitioner was suspended from patent examination before the USPTO. However, instead of overturning this erroneous dismissal, the Federal Circuit changed the District Court's decision and falsely stated that the "district court correctly assessed that 37 C.F.R. § 11.7(h)(4) does not apply to Mr. Behnamian, who was neither disbarred nor suspended from the practice of any profession and who did not resign in lieu of a disciplinary proceeding." Pet. App. 8a. The Federal Circuit failed to overturn the District Court's wrongful determination of Petitioner allegedly not receiving a suspension from patent examination before the USPTO. Pet. App. 28a, 8a. They removed this utterly false statement and instead accused that patent examination by a primary patent examiner is not a profession. *Id.* Therefore, this Court should overturn the Federal Circuit's decision that being a primary patent examiner with the USPTO is a profession and Petitioner is entitled to a defense under 37 C.F.R. § 11.7(h)(4)(iii).

III. An unintentional mistake on a timesheet cannot always constitute conduct involving dishonesty, fraud, misrepresentation, deceit, or a violation of Federal or State laws or regulations.

Petitioner answered "No" to Question 17 in his application for registration before the USPTO ("application for registration"), which inquired, "[h]ave you ever been disciplined, reprimanded, or suspended in any job for conduct involving dishonesty, fraud, misrepresentation, deceit, or for any violation of Federal or State laws or regulations?" FCSA SAppx478-SA479. The Petitioner had no doubt that his suspension as a Primary Patent Examiner did not relate in any way to being "disciplined, reprimanded, or suspended in any job for conduct involving dishonesty, fraud, misrepresentation, deceit, or for any violation of Federal or State laws or regulations". *Id.* In fact, the Petitioner was sure that the Plaintiff's suspension which was the result of a charge under "5 U.S.C. § 7513 for Improper Conduct", *see* FCSA SAppx215-SA218, could not reasonably be interpreted to being "disciplined, reprimanded, or suspended in any job for conduct involving dishonesty, fraud, misrepresentation, deceit, or for any violation of Federal or State laws or regulations". FCSA SAppx478-SA479.

The Petitioner acknowledges that the charge stemmed from an accusation of an AWOL. However, AWOL simply means being absent from work without having been granted leave. AWOL might involve dishonesty, fraud, misrepresentation, or deceit, but there are many instances where it does not. There are many reasons why AWOL could happen, such as

mistakenly not having secured leave from work, mistakenly recording times worked, getting lost (as in the military context), mental illness, and more. The situation surrounding Plaintiff's AWOL did not involve dishonesty, fraud, misrepresentation, deceit or for any violation of Federal or State laws or regulations. For the sake of argument, if Petitioner was actually AWOL for any period of time, then that would have been due to out-of-service technology, a personal situation that led to increased work computer logins and logoouts, and more complicated accounting for time that otherwise would not have happened had the Petitioner's access to USPTO's Record Sharing Platform ("RSP") had not been cut off by the PTO supervisor. The Petitioner has presented evidence and proof that he had been working during the times AWOL was alleged, however, the USPTO's Office of Enrollment and Discipline ("OED") has completely ignored and did not address any of the evidence presented, because that could possibly have serious implications for the USPTO itself. In the Petitioner's case against USPTO's OED, the USPTO was the judge and the defendant, since the Petitioner's suspension from his time of employment at the USPTO. The District Court and the Federal Circuit have also chosen to ignore all the evidence and not consider or address any of the proof.

Furthermore, the Petitioner answered "No" to Question 17 of the application for registration, because he was not aware of any Federal or State laws or regulations that would identify an alleged misassignment of times worked to different days due to lack of access to a system, namely the RSP, that was provided in aiding the employee to do just that, could be possibly be considered as a violation of those

Federal or State laws or regulations, or reasonably beyond doubt to be considered "conduct involving dishonesty, fraud, misrepresentation, [or] deceit[.]" FCSA SAppx478-SA479. The Plaintiff firmly believed that his conduct had nothing to do with "conduct involving dishonesty, fraud, misrepresentation, deceit, or for any violation of Federal or State laws or regulations", *id.*, and therefore the Plaintiff did not include any information regarding suspension and left it out believing it would have been completely irrelevant, since the charge was under 5 U.S.C. § 7513 for Improper Conduct. FCSA SAppx215-SA218.

IV. The 45-day reporting requirement of discrimination with USPTO's Office of Equal Employment, Opportunity and Diversity ("OEEOD") must be delayed since Petitioner was explicitly advised by the USPTO that he had no right to file a discrimination claim?

As Courts have decided, "[u]nder Title VII, a complainant must bring his charge of discrimination to the attention of an Equal Employment Opportunity counselor within 45 days of the alleged discriminatory personnel action, or **the date that the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action**." 29 C.F.R. § 1614.105(a)(1). *King v. Slater*, Civil No. 98-639-KI (Lead Case), Civil No. 98-1292-KI, 1999 U.S. Dist., at *1 (D. Or. Oct. 26, 1999) (emphasis added). Therefore, dismissal for failure to state a claim was improper, because Behnamian's Title VII claims were filed with OEEOD within 45 days of the

date the Petitioner had a reasonable belief of the occurrence and came to know of the claimed discriminatory event and personnel action being in violation of his rights under Title VII. Furthermore, regarding the time limit for filing a Civil Complaint stemming from violations against Title VII protections, Federal laws require under 29 CFR § 1614.105(a)(2) that "[t]he agency or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have been known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission."

Behnamian was told by the USPTO TC 2800 Director, Joseph Thomas, the Deciding Official of his suspension, that his retaliation claims cannot be taken to USPTO's EEO office, i.e. USPTO's OEEOD, and that the USPTO's EEO office deals with discriminations against "protected classes, such as gender, race, religion, things of that nature."[1] The Deciding Official never suggested a retaliation claim may be made even though the Plaintiff explicitly disclosed the pregnancy related and FMLA based

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[1] Petitioner submitted to the Federal Circuit a transcript of his conversation with the USPTO TC 2800 Director, Joseph Thomas, where the Petitioner was explicitly advised that he had no right to a discrimination claim that could be filed with OEEOD. Petitioner made this submission in response to Respondents' challenge of the validity of Petitioner's claim, suggesting that Petitioner did not have any proof of this false advice by Joseph Thomas. However, the Federal Circuit did not enter nor consider this evidence.

discrimination and reprisal by the PTO supervisor. At that moment and during the Suspension Decision meeting regarding Behnamian's suspension, it was made to seem that Behnamian had absolutely no options available to him to escape the hostile and intolerable work environment, but to resign. Which the Plaintiff did and effectively resigned on May 21, 2020. Following the Suspension Decision, Behnamian additionally discussed the sex and FMLA based retaliation claim with the first Patent Office Professional Association ("POPA") official and the second POPA official, but again Behnamian was advised not to file a grievance or an EEO violation against the USPTO, since POPA explicitly suggested that the filing of a grievance or EEO violation may make the Plaintiff more susceptible to future disclinations and retaliation by the USPTO. Also, POPA officials, Joseph Woitach and David, did not notify the Plaintiff regarding the possibility of filing a retaliation claim with the OEEOD and did not notify the Plaintiff that he had 45 days to do so, either. It was then even more evident that the Plaintiff had absolutely no other options left as to escape the hostile and intolerable work environment but to resign.

As Behnamian was preparing his Petition for Review against the USPTO Director's denial of Behnamian's Application for Registration to Practice before the USPTO, the Plaintiff came across Civil Actions that involved retaliation claims, it was then when Behnamian realized that he was deliberately discriminated and retaliated against based on his involvement in protected activities ***and*** there were federal laws that protect employees from discrimination and retaliation, even though he was told by the Deciding Official at the USPTO that the

Petitioner had no right to claim an EEO complaint. Therefore, the Petitioner only realized that he was deliberately retaliated against based on his involvement in the protected activity, i.e. reporting his PTO supervisor's unlawful denial of Behnamian's leave request due to sex related discrimination based on his pregnancy related circumstances and his FMLA protected leave request, a few days prior to filing this Complaint. As soon as the Petitioner made this realization, he followed suit and contacted the USPTO's OEEOD on September 7, 2021, and three days prior to filing his lawsuit on September 10, 2021. *See* FCSA SAppx28.

The Appellees choose to ignore their own guidance and training informing employees that "Federal EEO laws prohibit retaliation for making a complaint, participating in the complaint process, or opposing unlawful discrimination", *see* FCSA SAppx1222, and Document 11-2, Page 93 further stating that "Complaints based on use of FMLA must be filed with the DOL's Wage and Hour Division or employees may file a civil action in federal court", *see* FCSA SAppx1267. Also, it has been separately regulated that "[a]n employee may also be able to bring a private civil action against an employer for violations. In general, any allegation must be raised within two years from the date of violation." *See* "Fact Sheet # 77B: Protection for Individuals under the FMLA" of the U.S. Department of Labor, Wage and Hour Division. The unlawful denial of the Plaintiff's FMLA protected leave request based on discrimination against Petitioner's pregnancy related circumstance and the retaliation that ensued based on Petitioner's reporting of the discrimination to the PTO supervisor's superiors form the basis for the

Petitioner's claims under Title VII of the Civil Rights Act of 1964, as amended. When researching case laws for his petition for review of the USPTO Director's Final Order, the Petitioner found out during this time that he was in fact discriminated and retaliated against in a manner that was in violation of Title VII of the Civil Rights Act of 1964, as amended. Prior to that time, Petitioner was under the impression that TC 2800 Director, Joseph Thomas, had correctly advised him that he had right to file a discrimination or retaliation claim. Hence, Behnamian's complaint was timely filed with the OEEOD within 45 days of finding out about the fact that his discrimination and retaliation claims were protected under Title VII of the Civil Rights Act of 1964, as amended, and additionally the lawsuit was filed within 30 days of USPTO Director's Final Order, which was dated August 11, 2021, and within 2 years of the FMLA based discrete act retaliation, where the Suspension Decision was delivered on February 27, 2020. FCSA SAppx862.

V. Discrimination and Retaliation in violation of Title VI of the Civil Rights Act of 1964, as amended, due to Petitioner's sex and the reporting of the discrimination.

Title VII of the Civil Rights Act of 1964, as amended, makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual" with respect to "compensation, terms, conditions, or privileges of employment" on the basis of race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-

2(a)(1). Furthermore, the Pregnancy Discrimination Act, 42 U.S.C.§ 2000e(k), provides that "[t]he terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions" and "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes * * * as other persons not so affected but similar in their ability or inability to work." *Id.*

In *Schafer v. Board of Public Education*, 903 F.2d 243 (3d Cir. 1990), a male teacher was denied unpaid childcare leave to care for his newborn, while female employees were granted similar leave. The employer argued that only mothers were entitled to such leave due to physical recovery needs. The circuit court found this violated Title VII, as the denial was based on gender stereotypes about caregiving roles, not legitimate business reasons. This case establishes that denying fathers leave or accommodations for newborn care, when granted to mothers, can constitute sex discrimination.

In *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001), a male state trooper was denied extended leave under the FMLA to care for his newborn, while female employees were offered more generous leave under a state policy. The employer cited stereotypes that mothers are primary caregivers. The circuit court ruled this was sex discrimination under Title VII and a violation of the FMLA, awarding damages. The

policy's reliance on gender stereotypes about caregiving was deemed unlawful. This landmark case shows that fathers have equal rights to caregiving leave and that stereotyping fathers as non-caregivers is actionable.

The Supreme Court has previously found in *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971), a woman was denied employment because she had young children, while men with young children were hired. The Supreme Court found this violated Title VII, as employment decisions based on parental status applied differently to men and women constituted sex discrimination. This precedent supports claims by fathers who face adverse actions (e.g., suspension, denial of leave) for newborn care when mothers are treated more favorably.

In Behnamian's case, it is understood from the Federal Circuit's ruling that retaliatory job suspensions and compensatory withholdings are lawful under Title VII when a retaliation is based on discriminatory action against a father of a child to be born in the immediate future. It is now unclear and has become a question if Title VII prohibits discrimination and retaliation based on the reporting of the discrimination in regards to "compensation, terms, conditions, or privileges of employment," *id.*, on the basis of all "sex", *id.*, or is its reach limited to retaliation based on discriminatory employer conduct against women affected by pregnancy, childbirth, or related medical conditions limited in their ability or

inability to work, and whether, and in what circumstances, an employer that provides work accommodations to pregnant employees with work limitations, must provide work accommodations to an employee who is the father of a pregnant woman's child and additionally assuming the duties of the pregnant woman who is limited in her ability or inability to work or perform her normal duties at full capacity?

The Petitioner informed the PTO supervisor, Charles Appiah, on March 21, 2019, of his situation surrounding his wife's pregnancy and expected birth of his second child to be born early April 2019. FCSA SAppx1349-SAppx1350. The Petitioner also notified the PTO supervisor of the FMLA documents that were signed by his pregnant wife's doctor on March 29, 2019. FCSA SAppx1347. The Petitioner requested leave for March 29, 2019, and March 30, 2019, to watch and take care of his first born child while his pregnant wife could not fully do so. However, the PTO supervisor, Charles Appiah, denied the leave request on March 29, 2019, and requested for the Petitioner to travel from Hawaii to the USPTO headquarters in Virginia, knowing very well that he could miss his second child's birth and that the Petitioner would then not be able to care for his first born child, nor for his wife and neither for his newborn child, while his wife was not able to fully do so either when being 9 months pregnant and about to go into labor.

the PTO supervisor's clearly documented discrete act retaliation took place on March 29, 2019, when the PTO supervisor unlawfully denied the Petitioner's leave request. FCSA SAppx1341-SAppx1342. Petitioner then engaged in the protected activity of reporting the PTO supervisor's actions to his superiors, the TC 2600 Director, Diego Guttierez, and three other TC 2600 Directors. FCSA SAppx1340-SAppx1342. As a result, the PTO supervisor's unlawful denial was overturned by the TC Director, Diego Gutierrez. *Id.* Immediately after the Petitioner's engagement in this protected activity and directly as a result thereof, within only one (1) month thereof, on April 30th of 2019, the PTO supervisor alleged AWOL against the Petitioner. Petitioner provided evidence that the PTO supervisor's alleged "careful consideration of all the evidence and facts" was meritless and there was absolutely no evidence remotely suggesting that the Petitioner had been AWOL for 30 hours and 15 minutes. TC 2800 Director, Joseph Thomas, completely ignored all the facts presented in Petitioner's rebuttal and did not even address them once. The USPTO clearly discriminated and retaliated against the Petitioner deliberately and gave him no opportunity to a real defense where none of the evidence was considered.

There's a clear violation of Title VII rights and FMLA protections, when not awarding leave to a father with a dependent child, who's merely 3 years old, and a pregnant wife, where otherwise the employer would have granted leave to a pregnant

employed mother with a young child, and being days away from giving birth to a second child, regardless if there was a father involved or not. *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001); *see Schafer v. Board of Public Education*, 903 F.2d 243 (3d Cir. 1990).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 25, 2025

No. _-__

IN THE SUPREME COURT OF THE UNITED STATES

SHAHRIAR BEHNAMIAN,
Petitioner,

v.

COKE MORGAN STEWART, in her official capacity as Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office; UNITED STATES PATENT & TRADEMARK OFFICE,
Respondents.

CERTIFICATE OF SERVICE

I, Shahriar Behnamian, here by certify that on this 25th day of July, 2025, I caused to be served by overnight carrier 1 copy of the Petition for a Writ of Certiorari of Shahriar Behnamian on each of the following Respondents or their respective counsel:

Solicitor General D. John Sauer
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D 20530-0001
supremectbriefs@usdoj.gov
Party name: Stewart, Coke, et al.

I further certify that all parties required to be served have been served.

Respectfully submitted,

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WORD-COUNT CERTIFICATE

As required by this Court's Rule 33.1(h), I certify that the accompanying Petition for a Writ of Certiorari contains 8,954 words, as calculated by the word-processing software Microsoft 365 Word, excluding the parts of the document that are exempted by Rule 33.1(d).

Respectfully submitted,

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