No._____

IN THE

Supreme Court of The United States

REGENA BRYANT,

Pro Se Petitioner

—v—

UNITEDHEALTH GROUP, INC. ET. AL,

Respondents

On Petition For Writ of Certiorari
To The United States Court of Appeals
For Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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January 27, 2019

QUESTIONS PRESENTED

This case is a Non-Mixed Motive and Non-Pretext Title VII employment discrimination suit. The exclusive focus in this case is the sort of showing a Title VII employer-defendant must make to rebut a *prima facie* case of discrimination in order to avoid an entry of judgment as a matter of law in plaintiff's favor. For nearly 46 years, the opinion of this Court in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), established an allocation of the burden of production and an order for the presentation of proof in Title VII discriminatory treatment cases.—under the *McDonnell Douglas* scheme, "[e]stablishment of the *prima facie* case in effect creates a presumption that the employer unlawfully discriminated against the employee." *Burdine*, *supra*, at 254—The *McDonnell Douglas* presumption places upon the defendant the burden of producing an explanation to rebut the prima facie case--*i.e.*, the burden of "producing evidence" that the adverse employment actions were taken "for a legitimate, nondiscriminatory reason." *Burdine*, 450 U. S., at 254. Here in this particular case, the District Court found that Respondents failed to rebut the presumption set forth in the Petitioner's *prima facie* case and she was entitled to judgment as a matter of law. Nevertheless, the District Court did not enter judgment for Petitioner and instead took her case to an illegal jury trial and dismissed the case. Below are the District Court's actual findings at summary judgment: (*verbatim*) **(Pet.App.C,7a-9a)**

> "Since Plaintiff has successfully made a prima facie case of race and of age discrimination, the burden shifts to the Defendants to "articulate some legitimate, nondiscriminatory reason" for the termination. Defendants fail to do so. Because Defendants have failed to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination, their motion for summary judgment on Plaintiff's age and race discrimination claims is DENIED."

Petitioner appealed the District Court's illegal decision to take her case to trial because there was no remaining 'questions of fact' for a jury to decide; nonetheless, the Court of Appeals for the Ninth Circuit: (a) repealed almost 46 years of Supreme Court's precedent that mandates finding in her favor as a matter of law; (b) ignored her 11 appealable issues raised: (c) did not perform any *De Nova* Legal Standard Review as required by law under FRCP 56 and 50(a); and (d) hid their repeal of *McDonnell-Douglas* burden of production and allocation of proof in an "Unpublished" Memorandum prepared by a panel of three Non-Active (Senior) judges. The Ninth Circuit's wrong opinion said: **(Pet.App.A,1a-5a)**

> "Contrary to Bryant's contentions, the district court's denial of defendants' motion for summary judgment determined only that there were questions of fact for the jury with respect to some of Bryant's claims, and

> not that Bryant had proved her claims as a matter of law. See *Simo v. Union of Needletrades, Indus. & Emps.*, 322 F.3d 602, 610 (9th Cir. 2003) ("Summary judgment is improper if there are any genuine factual issues that properly can be resolved only by a finder of fact. . . ."(internal quotation marks omitted))."

Here in this case, the Ninth Circuit's 'Unpublished' Opinion materially contradicts this Court's established precedents on Respondents' failure to rebut Petitioner's *prima facie case*. This Court says:

> "[I]f the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff." *Id.,* at 254; see *ante,* at 510, n. 3 (in these circumstances, the factfinder "*must* find the existence of the presumed fact of unlawful discrimination and *must,* therefore, render a verdict for the plaintiff") (emphasis in original). Thus, if the employer remains silent because it acted for a reason it is too embarrassed to reveal, or for a reason it fails to discover, see *ante,* at 513, the plaintiff is entitled to judgment under *Burdine."*

THE QUESTIONS PRESENTED IS:

1. Whether, in a non-pretext, non-mixed motive suit against an employer alleging intentional

racial discrimination in violation of § 703 (a)(1)(2) under Title VII of the Civil Rights Act of 1964, 78 Stat. 255, 42 U. S. C. § 2000e–2(a)(1), the trier of fact's determination that the employer is silent and failed to carry its burden of production to rebut plaintiff's *prima facie* case of unlawful discrimination under the allocation of proof established in *McDonnel Douglas v. Green,* 411 U.S. 792 (1973), mandates a finding for the plaintiff?

2. Whether, in a non-pretext, non-mixed motive suit against an employer alleging intentional age discrimination in violation of the Age Discrimination Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U.S.C. § 623 (a)(1)(2), upon establishing a rebuttable 'presumption' of unlawful discrimination, the trier of fact's determination that the employer is silent and failed to carry its burden of production under the allocation of proof established in *McDonnell Douglas v. Green,* 411 U.S. 792 (1973), mandates a finding for the plaintiff?

3. Whether, in a suit against an employer alleging employer unlawfully demoted plaintiff in violations of Title VII of the Civil Rights Act of 1964 and the ADEA of 1967 as amended, the trier of fact determined employer is silent and failed to legally argue or refute a claim at summary judgment, mandates a finding for plaintiff?

4. In a suit against an employer alleging violations of § 703 (a)(1)(2) under Title VII of the Civil Rights Act of 1964, Act of 1964, 78 Stat. 255,

42 U. S. C. § 2000e–2(a)(1)Title VII , and violations the Age Discrimination Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U.S.C. § 623 (a)(1)(2), do the courts below have the legal authority to repeal *McDonnel-Douglas* burden of production and allocation of proof framework, and acts of Congress as established under Title VII of the Civil Rights Act of 1964 and ADEA of 1967?

5. Whether, the refusal by the lower courts in this particular case, to observe the careful strictures of summary judgment and judgment as a matter of law as established by Supreme Court precedents in *Hicks, Burdine,* and *Aikens* and their myriad progeny, represents a particularly egregious abuse of judicial powers?

6. Can a panel comprised solely of three Non-Active Senior Circuit judges with no Active judge on the panel continue to participate in the determination of cases when they are non-eligible to vote for rehearing said case on an *En Banc*?

PARTIES TO THE PROCEEDING

Pro Se Plaintiff/Petitioner (Regena Bryant) was the plaintiff-appellant. Respondents UnitedHealth Group, Inc. *et.* al. was the defendants-appellees in the Court. See "List of Parties" noted directly below. These parties were the only parties in the Ninth Circuit.

LIST OF PARTIES

Regena Bryant (Pro Se) Plaintiff/Pro Se Plaintiff/Petitioner
UnitedHealth Group Inc. Defendant/Respondent
OptumRx Inc. Defendant/Respondent
United HealthCare Services, Inc. Defendant/Respondent
Optum Services Inc. Defendant/Respondent
Michael S. Kalt Attorney for Defendant/Respondent
Claudette G. Wilson Attorney for Defendant/Respondent
Christina Camille Kwoka Semmer Attorney for Defendant/Respondent

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PETITION FOR A WRIT

A petition for writ of certiorari must be granted. Judgment must be vacated and this case must be remanded to the United States Court of Appeals for the Ninth Circuit to enter judgment for Petitioner in light of this Court's holdings in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *U.S. Postal Service Board of Governors v. Aikens*, 453 U.S. 902 (1981); *St. Mary's Honors Center v. Hicks*, 509 U.S. 502 (1993); and *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).

The Ninth Circuit's decision creates a paradox: at summary judgment under the burden of production and allocation of proof set forth by *McDonnell Douglas v. Green*, 411 U.S. 792 (1973), a *Trier of Fact* can find that a private corporation who: (a) failed to produce a legitimate, nondiscriminatory reason for her termination; (b) failed to rebut her *prima facie* case; and (c) remained silent in light of a *prima facie* case of discrimination, cannot be found liable; and instead, must be permitted to go to trial on 'questions of fact' and be granted judgment as a matter of law. The Supreme Court precedents contradict the Ninth Circuit's illogical and illegal line of reasoning. In affirming the District Court's rulings on Petitioner's claims, the Court of Appeals for the Ninth Circuit concluded as follows—**(Pet.App.A,1a-5a)**

A. Title VII-Termination Claim for Race and Age Discrimination, and Punitive Damage

> "Contrary to Bryant's contentions, the district court's denial of defendants' motion for summary judgment determined only that there were questions of fact for the jury with respect to *some* of Bryant's *claims*, and not that Bryant had proved her claims as a matter of law. See *Simo v. Union of Needletrades, Indus. & Emps.*, 322 F.3d 602, 610 (9th Cir. 2003) ("Summary judgment is improper if there are any genuine factual issues that properly can be resolved only by a finder of fact. . . ."(internal quotation marks omitted))."

For starters, the District Court's rulings severely contradict the Ninth Circuit's decision to affirm. It says:

> "Since Plaintiff has successfully made a *prima facie case* of race and of age discrimination, the burden shifts to the Defendants to "articulate some legitimate, nondiscriminatory reason" for the termination. Defendants fail to do so. Because Defendants have failed to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination, their motion for summary judgment on Plaintiff's age and race discrimination claims is DENIED."

The Supreme Court has held as in this case that:

> "If the finder of fact answers affirmatively—if it finds that the prima facie case *is* supported by a preponderance of the evidence—it *must* find the existence of the presumed fact of unlawful discrimination and *must,* therefore, render a verdict for the plaintiff. See *Texas Dept. of Community Affairs* v. *Burdine,* 450 U. S. 248, 254, and n. 7 (1981); F. James & G. Hazard, Civil Procedure § 7.9, p. 327 (3d ed. 1985); 1 D. Louisell & C. Mueller, Federal Evidence § 70, pp. 568–569 (1977). Thus, the *effect* of failing to produce evidence to rebut the *McDonnell Douglas Corp.* v. *Green,* 411 U. S. 792 (1973), presumption is not felt until the prima facie case has been *established,* either as a matter of law (because the plaintiff's facts are uncontested) or by the factfinder's determination that the plaintiff's facts are supported by a preponderance of the evidence."

The Ninth Circuit is wrong and has materially misstated and misrepresented Supreme Court precedents. The Respondents did not succeed in carrying its burden of production; thus, the *McDonnell-Douglas* framework—with its presumptions and burdens—remains highly

relevant, as here, in this case. Furthermore, in its rulings, the Ninth Circuit misrepresented and misclassified her Title VII claims as "***some claims***" which they are not. Title VII has no such category or classification. Even the case law cited by the Ninth Circuit—*Simo v. Union of Needletrades, Indus. & Emps.*, 322 F.3d 602, 610 (9th Cir. 2003), refers to a *"non-Title VII, class-action suit" for infliction of emotional distress,* which has no relevance to a "private, non-class action suit as in this case. And to make matters worse, the Ninth Circuit did not perform a *De Nova* Legal Standard Review under FRCP 56 and 50(a) (*to consider all matters in the light most favorable to Petitioner*) as required in this particular situation; wherein, Petitioner had raised a challenge to the McDonnell-Douglas burden of production and allocation of proof framework at summary judgment: she contended that she was entitled to judgment as a matter of law after Respondents failed to rebut her *prima facie* case of discrimination and that there were no identifiable questions of fact remaining for a jury. The failure for the Ninth Circuit to even cite a relevant case law on this particular issue, which involves a question of law challenge or for them to even point to a single evidence in the record that contained over 1400 pieces of evidence provided by Petitioner, as to 'questions of fact,' severely undercuts its justification for affirming the District Court's judgment after a jury trial. A writ of certiorari is warranted.

B. Petitioner's Demotion Claim

> "The district court properly granted judgment as a matter of law on Bryant's demotion claim because Bryant failed to introduce evidence at trial from which a reasonable jury could believe that defendants discriminated against her on the basis of race or age when she was demoted, and because Bryant failed to timely file an EEOC charge. *See Shelley v. Geren*, 666 F.3d 599, 608 (9th Cir. 2012) (elements of ADEA claim); *Hawn*, 615 F.3d at 1156 (elements of prima facie Title VII claim); *Leong v. Potter*, 347 F.3d 1117, 1122 (9th Cir. 2003) (scope of an EEOC investigation)."

The Ninth Circuit's rulings on Petitioner's demotion claim is deeply troubling and frivolous since this claim, which is a Title VII claim, went unrebutted at summary judgment under FRCP 56, and was never analyzed as required under McDonnell-Douglas burden shifting framework when adjudicating such claim at summary judgment. The reason it went unrebutted is that the District Court concluded Respondents 'waived and forfeited' their rebuttal by placing their arguments against this claim in a footnote and margins of their summary judgment opening brief, and again in a single paragraph in their Reply brief wherein Petitioner had no legal chance to respond. A Title VII claim such as Petitioner's demotion claim that does not go through summary judgment under FRCP 56 is not eligible for a jury trial, and thus, without such claim

making its way to a jury trial, Petitioner did not have a legal chance to present her case in its entirety as part of her case in chief to a jury from which, a JMOL under FRCP 56(a) can be filed and granted to Respondents. The Ninth Circuit's failed to address Petitioner's arguments on appeal on these issues, and failed to perform a *De Nova* Legal Standard Review as required under FRCP 56 or FRCP 50(a) *(to consider all matters in the light most favorable to Petitioner*). According to the Ninth Circuit:

> "In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the non-moving party, and draw all justifiable inferences in its favor. *Id.*; *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630–31 (9th Cir. 1987). The court does not make credibility determinations, nor does it weigh conflicting evidence. *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 456 (1992)."

The Ninth Circuit violated FRCP 56 and 50(a) when they failed to "examine all the evidence in the light most favorable to the non-moving party," which is the Petitioner in this case. By failing to perform *De Nova*, they in effect engaged in credibility determinations and weighed the evidence in light

most favorable to Respondents, which violates FRCP 50(a) and FRCP 56. A writ of certiorari is warranted.

C. Petitioner's Retaliation, Harassment, Wrongful Termination, Disparate Impact and Disparate Treatment Claims

> "To the extent that Bryant contends that the district court improperly granted judgment as a matter of law on any additional claims, her contention is inconsistent with the record as to what the district court actually did."

In regards to Petitioner's other Title VII claims (retaliation, harassment, wrongful termination in violation of public policy, disparate treatment and disparate impact) raised on appeal after they were dismissed at summary judgment for failure to establish a *prima facie* case of discrimination, the Ninth Circuit violated FRCP 56 and 50(a) when they failed to *"examine all the evidence in the light most favorable to the non-moving party,"* which happens to be Petitioner in this case. By failing to perform *De Nova*, they in effect engaged in credibility determinations and weighed the evidence in light most favorable to Respondents, which violates FRCP 50(a) and FRCP 56. A writ of certiorari is warranted.

D. Petitioner's JMOL

> "The district court properly denied Bryant's motion for judgment as a matter of law because significant factual issues remained for the jury. *See Peralta*, 744 F.3d at 1085."

According to the Ninth Circuit's own case laws and Supreme Court precedents followed governing FRCP 50(a)—

> "Where the movant will bear the burden of proof on an issue at trial, the movant "must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In contrast, where the nonmovant will have the burden of proof on an issue at trial, the moving party may discharge its burden of production by either (1) negating an essential element of the opposing party's claim or defense, *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158–60 (1970), or (2) showing that there is an absence of evidence to support the nonmoving party's case, *Celotex Corp.*, 477 U.S. at 325. Once this burden is met, the party resisting the motion must set forth, by affidavit, or as otherwise provided under Rule 56, "specific facts showing that there is a genuine issue for trial." *Anderson*, 477

> U.S. at 256. **A party opposing** summary judgment must support its assertion that a material fact is genuinely disputed by (i) citing to materials in the record, (ii) showing the moving party's materials are inadequate to establish an absence of genuine dispute, or (iii) showing that the moving party lacks admissible evidence to support its factual position. Fed. R. Civ. P. 56(c)(1)(A)–(B). The opposing party may also object to the material cited by the movant on the basis that it "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). **But the opposing party** must show more than the "mere existence of a scintilla of evidence"; rather, "there must be evidence on which the jury could reasonably find for the [opposing party]." *Anderson*, 477 U.S. at 252."

In ruling on Petitioner's JMOL, the Ninth Circuit did not perform any *De Nova* Legal Standard Review nor cite any relevant case law in support even though it had over 1400 pieces of admissible evidence from which to consider. As noted under FRCP 56 or 50(a) cited by the Ninth Circuit, Petitioner who was the "movant" in filing this motion under FRCP 50(a) and 50(b) challenged that: at summary judgment under FRCP 56, the District Court had ruled and found the following:

> "Since Plaintiff has successfully made a prima facie case of race and of age discrimination, the burden shifts to the Defendants to "articulate some legitimate, nondiscriminatory reason" for the termination. Defendants fail to do so. Because Defendants have failed to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination, their motion for summary judgment on Plaintiff's age and race discrimination claims is DENIED."

On appeal at the Ninth Circuit, Petitioner presented the above evidence (*conclusion of law and fact* by District Court) that there remained no 'questions of fact' for a jury and the enquiry ended at Step Two of the McDonnell-Douglas burden of production and allocation of proof framework. In this event, the court must award judgment to the plaintiff as a matter of law under Federal Rule of Civil Procedure 50(a)(1) (in the case of jury trials) or Federal Rule of Civil Procedure 52(c) (in the case of bench trials). See F. James & G. Hazard, Civil Procedure § 7.9, p. 327 (3d ed. 1985); 1 Louisell & Mueller, Federal Evidence § 70, at 568. Such powerful evidence was ignored by the Ninth Circuit when it failed to performed a *De Nova* Legal Standard Review, thus, denying Petitioner her rights to due process in the District Court's adjudication of her claims. In order for a 'question of fact' to remain as the Ninth Circuit puts it, Respondents must at least meet their burden of production under the

McDonnell-Douglas framework in order to proceed to a jury trial. Their failure to meet their burden of production translates into "silence" in rebutting Petitioner's *prima facie* case of unlawful discrimination. According to this Court's repeated precedents on this matter, Petitioner was entitled to judgment as a matter of law. By failing to perform *De Nova*, the Ninth Circuit in effect engaged in credibility determinations and weighed the evidence in light most favorable to Respondents, whom the District Court found—"failed to articulate a legitimate, nondiscriminatory reason for terminating Petitioner. The Ninth Circuit violations of FRCP 50(a) and FRCP 56, which governs summary judgment and judgment as a matter of law motions, materially violated Petitioner's constitutional rights to due process in the adjudication of her suit under the Civil Rights Act of 1964 including Title VII and ADEA Act of 1967 respectively. A writ of certiorari is warranted.

E. Petitioner's Appeals Regarding Pre-Trial Orders

> The Ninth Circuit ruled—"The district court did not abuse its discretion in orally issuing pretrial orders during a pretrial conference. *See C.F. v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011) (standard of review for pretrial orders)."

As previously stated, the District Court ruled at summary judgment concluding that: Respondents failed to articulate a legitimate, nondiscriminatory reason for Petitioner's termination and Respondents failed to legally challenge her demotion claim at summary judgment. This means that both claims were legally unrebutted after a *prima facie* case of discrimination were set forth by a preponderance of the evidence. No trial was legally warranted. Furthermore, unlike this case, which was filed and litigated by a Pro Se Petitioner in the Courts below, the case law cited by the Ninth Circuit is a case litigated by legal representations on both sides. Also, the case law cited by the Ninth Circuit has no relevance to this case, which seems to be a familiar pattern by the Ninth Circuit in this case. See below:

> "The panel agreed with the district court that the ADA and **§ 1983 claims** were frivolous, and affirmed the district court to the extent it awarded attorney's fees and costs for representation relating to those claims. The panel concluded that the claims lacked any legal foundation, and the result was obvious. The panel disagreed with the district court that the IDEA and Rehabilitation Act claims were frivolous and/or brought for an improper purpose, and it reversed the district court to the extent it awarded attorney's fees and costs related to the litigation of those claims under 20 U.S.C. § 1415(i)(3)(B).

> The panel referred the case to the Appellate Commissioner for a determination of which fees were attributable solely to litigating the frivolous ADA and § 1983 claims."

There aren't any references anywhere in the above published opinion to a "Pretrial" Order. This is a made-up fraudulent citation by the Ninth Circuit. Other than this case, the Ninth Circuit has no case that went to a jury trial without a final pretrial order. Why the different treatment in this case? It is because Petitioner is Pro Se. No represented litigant will be treated in such discriminatory fashion by the Ninth Circuit. This is indeed a violation of Petitioner's constitutional rights to due process, and equal treatment under the law. The Ninth Circuit also did not perform a *De Nova* legal standard review and instead, use discretionary review to invade the District Court's obvious violations of its local rules on this matter. According to the local rules, a final pretrial order was to be prepared by Magistrate Judge Douglas F McCormick but he didn't. He presided over a jury trial without a written final pretrial order. This is indeed further evidence of *fraud upon the court* that targeted the judicial machinery at the disadvantage of a Pro Se Petitioner. The Ninth Circuit had to dig way back into its own archive to find a time when they said it happened, except, the case law they cited said it never happened. A writ of certiorari is warranted.

F. Petitioner's Appeal Regarding Motions *in Limine*

> "The district court did not abuse its discretion in ruling on the motions in limine. *See Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 759 (9th Cir. 2017) (standard of review)."

First of all, the District Court findings at summary judgment concluded that Respondents (a) failed to articulate a legitimate nondiscriminatory reason for Petitioner's termination, and (b) denied in limine motions 2 and 6, because Respondents legally waived and forfeited any rebuttal to Petitioner's demotion claim. Thus, neither the termination nor the demotion claims were trial eligible based on District Court's findings as a matter of law. The Ninth Circuit failure to perform *De Nova* Legal Standard Review on this matter violated FRCP 56 and 50(a) and violated Petitioner's Due Process rights under the 14th amendment. The Ninth Circuit failure to correct this wrong permitted an act that was impermissible under the circumstances of this case. A writ of certiorari is warranted.

This case presents the Court with a perfect opportunity to reaffirm the fundamental canons of statutory interpretation and repair unprecedented ruptures caused by the Ninth Circuit to this landmark framework of federal antidiscrimination law.

OPINIONS BELOW

The Ninth Circuit's unpublished memorandum **(Pet.App.A,1a-5a)**. The District court's opinion granting partial summary judgment to Respondents. **(Pet. App.C,7a-9a)** The District court's opinion denying summary judgment to Petitioner. **(Pet.App.H,23a-24a)** An earlier opinion of the District Court, denying Respondents motion to dismiss and motion to strike. **(Pet.App.J,27a-30a)**

JURISDICTION

The Court of Appeals for the Ninth Circuit unpublished memorandum in this case was issued on December 4, 2018. Petitioner filed petitions for the entire court rehearing en banc on December 5, 2018. The court denied the petition on January 2, 2019 **(Pet.App.B,6a)**. This petition is thus timely. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title VII of Civil Rights Act of 1967: [Section 703 (a)(1)(2)] of Title VII of the Civil Rights Act of 1964; 78 Stat. 255, 42 U.S.C. § 2000e-2(a)(1)(2) states as follows: 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; or 2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment

opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

ADEA of 1967: 29 U.S. Code § 623 (a)(1)(2) of the Age Discrimination Act of 1967 (ADEA) states as follows: Employer practices—It shall be unlawful for an employer—1) To fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age; 2) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age;

Section 2000e-5 [Section 706] of Title VII of the Civil Rights Act of 1964 provides: (a)The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704]; (e)(1). A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted

proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

Section 46 of Title 28- Dictates the composition of appellate panels. It provides: Cases and controversies shall be heard and de-termined by a court or panel of not more than three judges ..., unless a hearing or rehearing before the court in banc is ordered by a majori-ty of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Pub-lic Law 95-486 (92 Stat. 1633).

Amendment XIV—United States Constitution- Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Legal Background

In Burdine, the Supreme Court elaborated on the model of shifting burdens of production set forth in *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). The burden of establishing the elements of a *prima facie* case by a preponderance of the evidence belongs to the plaintiff. Burdine, 450 U.S. at 252-53, 101 S.Ct. at 1093-94. "By establishing a *prima facie* case, the plaintiff in a Title VII action creates a rebuttable `presumption that the employer unlawfully discriminated against' [her]. To rebut this presumption, `the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection.' In other words, the defendant must `produc[e] evidence that the plaintiff was rejected, or someone was preferred, for a legitimate, nondiscriminatory reason.'" Aikens, 460 U.S. at 714, 103 S.Ct. at 1481 (quoting Burdine, 450 U.S. at 253-56, 101 S.Ct. at 1093-95). As a practical matter, however, and in the real-life sequence of a trial, the defendant *feels* the "burden" not when the plaintiff's *prima facie* case is *proved,* but as soon as evidence of it is *introduced.* The defendant then knows that its failure to introduce evidence of a nondiscriminatory reason will cause judgment to go

against it *unless* the plaintiff's *prima facie* case is held to be inadequate in law or fails to convince the factfinder. It is this practical coercion which causes the *McDonnell Douglas* presumption to function as a means of "arranging the presentation of evidence," *Watson* v. *Fort Worth Bank & Trust,* 487 U. S. 977, 986 (1988).

Prior to this litigation, every court of appeals to confront whether: failure by employers to introduce evidence of a nondiscriminatory reason will cause judgment to go against it—the third and DC Circuits—reached the same answer: If the plaintiff offers sufficient proof of these elements to meet the burden of production in establishing a *prima facie* case of unlawful discrimination (*paraphrased*), "step two is reached. The burden of production (but not the burden of persuasion) shifts to the defendant, who must then offer evidence that is sufficient, if believed, to support a finding that it had a *legitimate, nondiscriminatory reason* for the discharge." *Hicks*, 509 U.S. at 506-07, 113 S.Ct. at 2746-47. If the defendant cannot satisfy this burden, judgment must be entered for the plaintiff. *Id.* at 509, 113 S.Ct. at 2748.

B. Factual Background

Petitioner is African American female, and was 53 at the time of her discharge. With over 20 years of experience coming in, Petitioner was hired by Respondents in August 2008 as Audit Manager, grade level 28 in their Irvine, CA location—at

OptumRX, Inc. In 2011, she was promoted to Associated Audit Director grade level 29. In January 2013, Respondents secretly and unlawfully changed Petitioner's employment status to a Fresh Start Consultant without her knowledge. Mr. Joshua T Van Ginkel (white male, 36) was hired in 2010 by Mr. Tucker as a Fresh Start Consultant grade level 28. He reported to Mr. Tucker. His contract and contract funding was set to expire January 31, 2014. He was not a full time exempt employee as Petitioner. In June 2013, Respondents unlawfully demanded Petitioner be demoted from grade level 29 to 28 in order to approve her telework under the company's neutral telework policy that did not prohibit telework as an Associate Audit Director. The demotion placed her at grade level 28, same as Mr. Van Ginkel's. In November 2013, Mr. Tucker used a disparate impact policy called SGA (Sales, General, and Administrative) to unlawfully terminate Petitioner. He secretly switched Mr. Van Ginkel's position with Petitioner's without her knowledge and set her termination date to January 31, 2014, the exact date Mr. Van Ginkel's contract was due to expired. He used her annual salary budget to fund Mr. Van Ginkel's full time hiring on February 1, 2014. On January 31, 2014, Petitioner filed internal discrimination complaints with Human Resources (HR) against Mr. Kim her Supervisor for his favorable treatment towards non-African American auditors, reassigning her workloads, excluding her from department meetings, and for harassing her while on approved disability. HR assigned Mr. Tucker to conduct the investigation

instead of them conducting an independent investigation. On February 3, 2014, she filed an EEOC charge (for unlawful demotion and retaliation and harassment, and for favorable treatment towards non-African Americans. On February 4th, 2014, Mr. Tucker concluded there were no findings of discrimination. On February 6th, 2014, Mr. Tucker and Mr. Kim prepared their own RIF *(Reduction-In-Force)* analysis worksheet without HR and ranked Petitioner as "lowest skilled" auditor which was inconsistent with her annual reviews that led to her prior promotion to Associate Director. All of the subordinates were ranked higher even though none were ever promoted to Associate Director and some had zero annual evaluations done in previous years. On February 14th, 2014, Mr. Tucker terminated Petitioner and cited RIF as his sole reason and explanation for her termination. He made the effective date of termination March 4, 2014. Petitioner had no corrective or disciplinary action in her career with Respondents. She also met and exceeded their annual job evaluations requirements. Mr. Van Ginkel and all others remained on payroll, was never terminated for RIF and got promoted within 6 months to Petitioner's previous position—Associate Director under Mr. Tucker.

C. Proceedings Below

On or about February 2016, Petitioner filed a 2 claims (demotion and termination) of employment discrimination and 9 causes of actions under Title VII against Respondents in the Superior Court of

CA. Respondents moved the case to California Central District Court. Respondents filed a motion 12(b)(6), which was denied in part. Petitioner filed summary judgment motion, and District Court denied it without performing legal standard review under FRCP 56. **(Pet.App.H,23a-24a)** Petitioner filed 2 recusal motions which were denied. (Pet. App. Respondents filed summary judgement motion, and District Court denied motions on both Petitioner's termination claim and demotion claims for race and age, and punitive damages. Respondents filed 11 motions in limine. **(Pet.App.K,31a-42a)** Respondents' motions *in limine* 2 and 6 targeting Petitioner's demotion claim, were denied. District Court took the case to trial without preparing a final pretrial order that specified 'questions of fact' that remain for a jury. Petitioner file FRCP 50(a) motion prior to jury special verdict, which was denied after jury issued their verdict for Respondents without a Legal Standard Review. Respondents filed FRCP 50(a) motion which was granted on Petitioner's termination and demotion claims. **(Pet.App.E,12a-17a)** Petitioner filed FRCP 50(b) motion which was also denied. Petitioner filed 11 appealable issues with the Ninth Circuit, but the Ninth Circuit affirmed District Court's judgment after jury trial, opinion at summary judgment, and JMOL granted to Respondents without performing a *De Nova* Legal Standard Review. Petitioner filed Rehearing *En Banc*, which was denied. **(Pet.App.B,6a)** This petition for certiorari followed.

REASONS FOR GRANTING THE PETITION

After 46 years since this Court established the *McDonnell Douglas* burden of production and allocation of proof framework, there should not be any disagreement on this important question of federal law. Neither this Court nor any other circuits that have addressed the questions in this writ have sided with the Ninth Circuit's outlier view. The Ninth Circuit's decisions in this case have judicially: (a) repealed McDonnell-Douglas burden of production and allocation of proof; (b) repealed Title VII of the Civil Rights Act of 1964;(c) repealed ADEA of 1967; (d) repealed FRCP 56; (e) FRCP 50(a) and 50(b); and (f) violated Petitioner's constitutional rights to due process, and equal justice under the laws.

I. Under shifting burdens of production set forth in *McDonnell Douglas v. Green*, and Its Allocation of Proof, No Fact Question for a Jury Remains if *Prima Facie* case of Presumption Goes Unrebutted

This case before this Court completely turns on the legal interpretation and application of the 46 year old *McDonnell-Douglas* Burden of Production and Allocation of Proof as prescribed by this Court and what it MANDATES. This Court has repeatedly said that if on the evidence presented, (1) any rational person would have to find the existence of facts constituting a *prima facie* case, and (2) the defendant has failed to meet its burden of production—*i. e.,* has failed to introduce evidence which, *taken as true,* would *permit* the conclusion that there was a nondiscriminatory reason for the

adverse action, mandates finding for plaintiff. In this case, the District's Court's Opinion as illustrated below, mandates a finding for Petitioner:

> "Since Plaintiff has successfully made a prima facie case of race and of age discrimination, the burden shifts to the Defendants to "articulate some legitimate, nondiscriminatory reason" for the termination. Defendants fail to do so. Because Defendants have failed to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination, their motion for summary judgment on Plaintiff's age and race discrimination claims is DENIED."

The Ninth Circuit's view is highly contradictory to this Court's own views. In this particular case, at summary judgment, Respondents were silent and they failed to rebut the presumption of Petitioner's *prima facie case*. As a result, she was entitled to judgment as a matter of law. No 'questions of fact' remained. The enquiry ended.

A. Ninth Circuit is wrong, and there is no conflict with this Court and no split among the circuits on this issue.

For the circuits that addressed similar question, there is no split. The Ninth Circuit is wrong. Like this Court, the 3rd Circuit, and the DC

Circuit all say Petitioner is entitled to judgment in her favor.

In *Frederick F. Keller v. Orix Credit Alliance, Inc.*, 3rd. Circuit, 1997, then Circuit Court Justice Samuel Alito (*now* Supreme Court Justice) authored the majority opinion for the *En Banc* Court stating that:

> "If the plaintiff offers sufficient proof of these elements to meet the burden of production in establishing a *prima facie* case of unlawful discrimination (*paraphrased*), "step two is reached. The burden of production (but not the burden of persuasion) shifts to the defendant, who must then offer evidence that is sufficient, if believed, to support a finding that it had a *legitimate, nondiscriminatory reason* for the discharge." *Hicks*, 509 U.S. at 506-07, 113 S.Ct. at 2746-47. If the defendant cannot satisfy this burden, judgment must be entered for the plaintiff. *Id.* at 509, 113 S.Ct. at 2748."

In *King v. Palmer*, 778 F. 2d 878 - Court of Appeals, Dist. of Columbia Circuit 1985, "In this case, the District Court explicitly found that the defendants had not carried their minimal burden of producing an explanation for the allegedly discriminatory conduct. Ms. King had made out a *prima facie* case of intentional discrimination and had shown that the "evidence presented on the

plaintiff's direct case was sufficient for an inference to be drawn that some kind of sexual relationship between Dr. Smith and Grant was a substantial factor in Grant's promotion." 598 F.Supp. at 67. Having determined that Ms. King had discredited the defendants' explanation, the trial court was required to grant judgment in her favor.

In *Bates v. U.S. Postal Service*, slip op. No. 97-3090 (3d Cir. 1997), the employer, in the face of a *prima facie* case of discrimination, merely pointed to regulations giving the discretion to take the action it took. The 3rd Circuit held the employer's evidence was insufficient to meet even its light burden of articulating a legitimate nondiscriminatory reason. Indeed, if an employer were to rely on such reasons throughout litigation, the employee would be entitled to judgment as a matter of law at trial or even on summary judgment if the *prima facie* case is undisputed.

In *Iadimarco v. Runyon*, 190 F.3d 151 (3d Cir. 1999), the employer, in the face of a *prima facie* case of discrimination merely stated that it failed to hire the plaintiff because it "did not believe that plaintiff was the right person for the job." The court stated that when an employer offers such a reason, summary judgment is not appropriate.

In *Johnson v. Women's Christian Alliance* 76 F. Supp. 2d 582 (E.D. Pa. 1999), the employer claimed it reassigned the plaintiff simply because of "a desire

to reorganize and restructure its personnel." The employer offered no details or
explanation concerning the need or rationale for the reorganization, and details of its implementation or its effect on other employees. The court first observed that an inquiry into the adequacy of the defendant's reason is very much a part of the *McDonnell-Douglas* framework. The 3rd Circuit held that the defendant-employer's reasons must be presented with sufficient clarity and detail to afford the plaintiff a fair opportunity to pierce the proffered reasons with facts of record. Because the Johnson employer offered merely a broad reorganization reason, it precluded the plaintiff from pointing to "weakness, implausibilities, inconsistencies, incoherences, or contradictions" in the employer proffered legitimate reasons, which would render them "unworthy of belief." Therefore, the court held the reason was not sufficiently clear and reasonably specific, and it failed to meet the employer's burden under *McDonnell-Douglas*. The court concluded summary judgment was improper.

In *Smith v. Davis*, 248 F.3d 249 (3d Cir. 2001), a race and disability discrimination action, the 3rd Circuit reversed a grant of summary judgment against Smith, an alcoholic probation officer, because the employer failed to sufficiently explain the reason for his discharge. Although Smith was informed he was discharged for violating the employer's drug-and-alcohol policy, there was no indication of what aspect of the policy he had violated. The employer contended, and the district court agreed, Smith was

fired for absenteeism, but the supervisor's explanation to Smith did not mention absenteeism, and the drug-and-alcohol policy contained no provision about absenteeism or sick leave. The 3rd Circuit held, "because the explanation provided by the defendants did not tell Smith what he did to bring about his termination, it is not legally sufficient.

II. Court Should Decide Whether Failures To Observe The Careful Strictures Of Summary Judgment And Judgment As A Matter Of Law Established By Supreme Court Precedents In *Hicks, Burdine,* And *Aikens* And Their Myriad Progeny, Represents A Particularly Egregious Abuse Of Judicial Powers.

The Ninth Circuit and the District Court engaged in a massive abuse of judicial powers governing FRCP 56, 50(a); violated its own local ADR rules, violated FRCP governing motions *in Limine*, violated FRCP governing Recusals, and violated FRCP governing Final Pretrial Orders. These violations occurred time and again and denied Petitioner of her constitutional rights to due process and equal justice under the law.

A. The Decisions Below Warrants Supervisory Review Under This Court Rule 10.

The WHAT-the courts below unconstitutional opinions judicially: a) Repealed Supreme Court precedents established by *McDonnell Douglas v.*

Green, 411 U.S. 792 (1973) burden of production and allocation of proof framework to benefit Respondents; b) Repealed Title VII of the Civil Rights Act of 1964 to benefit Respondents; and c) Repealed the Age Discrimination in Employment Act (ADEA) of 1964 to benefit Respondents; d) Violated Petitioner's constitutional rights to due process, equal justice under the law, and judicial fairness, which is afforded her under the 14th Amendment to the U.S. Constitution to benefit Respondents; and e) Violated Petitioner's Civil Rights that prohibits unlawful discrimination in federal courts itself in adjudicating federal laws under the Civil Rights Act of 1964 to benefit Respondents.

The WHO—the above constitutional violations came by the hands of several officers of the courts working closely together. They includes: (1) Chief District Court Judge Virginia Phillips; (2) District Judge Josephine L Staton; (3) District Judge Cormac J Carney (reassigned to Western Division); (4) District Judge John F Walters; (5) Magistrate Judge Jay C Gandhi (retired, and now works for JAMS ADR); (6) Magistrate Judge Douglas F McCormick; (7) Chief Circuit Judge Sidney Thomas; (8) Senior Circuit Judge Richard Tallman; (9) Senior Circuit Judge Barry G. Silverman; (10) Senior Circuit Judge Stephen S. Trott; (11) Attorneys for Respondents listed in this Writ: and (12) Associate General Counsel of Record for Respondents—Paul Yechout who made live appearances in pretrial and jury trial.

The WHEN- The constitutional violations begun in August 2016 and continued through the eventual denial of Petitioner's request for rehearing En Banc (January 2, 2019).

The WHERE-it took place both at the Central District Court of California Southern, Santa Ana, CA; and Western Divisions, Los Angeles, CA; and at the Ninth Circuit Court of Appeals in San Francisco.

AND THE HOW—the courts below orchestrated a massive FRAUD UPON THE COURT that targeted the judicial machinery itself. It involved various forms of abuse of judicial powers that included: (1) Repealed of *McDonnell Douglas v. Green* Burden of Production and Allocation of Proof Methodology; (2) Massive waste of federal resources to stage and carry out a "Bogus" pretrial and jury trial which was impermissible in this case as a matter of law but only came about because of the courts' intent to exonerate UnitedHealth Group, Inc. from unlawful discrimination; (3) Assignment of the case on appeal to three non-active Senior Judges who did not perform Standard Legal Reviews as required under FRCP 56, 50(a) and whose decision repealed Title VII and ADEA in an "Unpublished" memorandum so that the legal community and the public do not read their decision and detect their crime. An unpublished memorandum is not law within the circuit or out of the circuit that litigants can refer to. It has zero significance, and lack transparency under the rule of law.

III. **This Court could also clarify the additional Question whether it is constitutional that an all Non-Active Senior Circuit Judge Panel can decide cases in which they cannot vote for an *En Banc*.**

This case was strategically and manually assigned to a panel of three senior judges that are non-active judges, and who cannot be held accountable under Article 3 of the U.S. Constitution because they are retired. Their seats are already filled by someone else, and they are non-eligible to vote on *En Banc*. As in this case, being ineligible to vote on *En Banc* incentivizes and encourages issuing opinions in 'unpublished' memorandums that avoids accountability under Article 3 of the U.S. Constitution. If a panel of senior judges cannot vote on *En Banc*, why would they call for a vote if their decision, as in this case, is rather unconstitutional? A Circuit that has 22 Active Judges, and 23 Non-Active Judges, constitutes a circuit court size of 4 circuits combined, but operating unconstitutionally because only 11 active judges can sit on an *En Banc* as required by Article 3 of the U.S. Constitution. This means, there are 34 other judges, including 11 active judges that do not sit on *En Banc* but are allowed to issue unpublished memorandums consisting of outliers' decisions like in this case that illegally disposes of litigants' cases. How is this constitutional and why should this be permitted to continue?

IV. The Ninth Circuit's Practice is Impermissible and Evil

In this case before this Court, the Court of Appeals for the Ninth Circuit and California Central District Court has indeed intentionally violated and materially breached their constitutional duties under Article 3 of the United States Constitution. They failed to uphold the oath that they swore to keep when they were confirmed by U.S. Senate—to faithfully and judiciously apply the law equally to the poor and the rich alike as well as the unrepresented (Pro Se) Petitioner and represented Respondents. The prohibitions against discrimination contained in the Civil Rights Act of 1964 and the Age Discrimination in Employment Act (ADEA) of 1967 passed by Congress reflect an important national policy. This particular case is of national significance because the courts below secretly abused its powers and exceeded its authority under Article 3 of the Constitution to engage in acts deemed unconstitutional that are subject to impeachment, and an eventual removal from the bench.

The MOTIVE for their illegal actions:

A. To exonerate UnitedHealth Group, Inc., et, al, from financial liability for unlawful discrimination; and

B. To also exonerate the judges named below from judicial misconduct and judicial fraud upon the court:

1. Judge Josephine L Staton (formerly Tucker, ex-wife of the accused). Judge Staton failed to self-recuse and stayed silent in the background while orchestrating and presiding over the case IN THE DARK without announcing and disclosing her direct financial interests and personal connections to UnitedHealth Group, Inc. through her ex-husband Mr. Tucker, the decision maker that unlawfully terminated Pro Se Petitioner. Judge Staton's Court Reporter Deborah Parker also transcribed 550 pages of the bogus jury trial. Ms. Parker did not publish the official edited transcripts in the records below. Judge Staton had unsupervised and unlimited access to the case without any oversight. Recusal motions were filed against her but Chief Judge Virginia Phillips ignored the 17 pieces of evidence **(Pet. App.K,31a-42a)** and did nothing to her. Her office is next door to Judge Cormac who presided over the case. She also worked with Magistrate Judge Gandhi who was also assigned to this case. Judge Gandhi was the co-chair of the ADR program and Judge Staton was the chair. They both hosted ADR training services together for the court. She had massive and multiple conflicts of interests with the following individuals assigned to this case and others that were direct witnesses with personal relations. Judge Staton self-recuses on UnitedHealth Group, Inc.'s cases and cases involving their affiliated companies; Mr. Van Ginkel the key witness is a family friend dating back to 2010 when he got hired by Mr.

Tucker while she and Mr. Tucker were married and before she became a federal judge; As ADR chair, she permitted Magistrate Judge Gandhi who was Co-Chair and Judge Carney to break ADR local rules to compel Pro Se Petitioner into ADR-1 Settlement with Judge Gandhi after the parties had jointly stipulated through court order to ADR-2; In mid-2013, Joshua Van Ginkel who reported directly to Judge Josephine Tucker's (before name change) husband SVP Steven Tucker at UHG/OptumRx was accused of fraud in a lawsuit case (#Case No. Sacv10-1853 Doc (Rnb)) filed by the Oracle Company against him and his business partners (Oracle America Inc. Vs. Quin Rudin). Mr. Van Ginkel's case was assigned to Judge David O. Carter who sits one floor below Judge Tucker. Mr. Van Ginkel was cleared of all charges, but, his partners were found guilty.

2. Judge Cormac J. Carney violated FRCP 56 in ruling on Pro Se Plaintiff's motion for summary judgement. He refused to: (1) perform Legal Standard Review as required by law before denying Petitioner's summary judgment; **(Pet. App.H,23a-24a)** (2) omitted 25 pieces of key *prima facie* evidence submitted by Petitioner in her motion for summary judgment, and also in her opposition to Respondents' summary judgment; (3) permitted Respondents to file a fraudulent termination letter for Joshua Van Ginkel even though he ruled Van Ginkel remained employed; (4) failed to self-recused after recusal motions were filed; (5) concluded that UnitedHealth

Group, Inc. failed to rebut a *prima facie* case of race and age discrimination and yet took the case to a jury trial against Supreme Court precedents; (6) permitted and denied without prejudice 11 illegal motions *in limine* from Respondents; (7) only self-recused right after Respondents' filed 11 motions in limine; (8) violated local ADR rules to compel Petitioner in ADR-1 after he issued court order on a Joint Stipulation by the parties to ADR-2; (9) he was suspiciously transferred to CA Central District-Western Division.

3. **Chief Judge Virginia Phillips** who: (1) ignored local ADR rules violations against Pro Se Petitioner that was brought to her attention; (2) ignored 17 pieces of recusal evidence **(Pet. App.K,31a-42a)** against Judge Staton, Cormac and Gandhi and permitted the fraud, waste, and abuse committed by judges under her jurisdiction who presided over this case; (3) illegally permitted judges to take a non-eligible jury trial case to a bogus jury trial; (4) issued no sanctions against judicial officers involved in this case that broke several local and federal rules; but (5) sits on the Ninth Circuit Judicial Council responsible for judges misconduct.

4. **Judge John F Walters** who: (1) ignored 17 pieces of recusal evidence **(Pet.App.K,31a-42a)** and denied recusals of Judge Carney and Magistrate Judge Gandhi while he himself was also assigned to another UnitedHealth Group, Inc.'s case involving the federal government

(*poehling's case*) where he ruled in UnitedHealth Group, Inc.'s favor;

5. Magistrate Judge Douglas F McCormick (1) reinserted 11 illegal motions *in limine* by Respondents; (2) Ignored Petitioner's oppositions to the Respondents' *motion-in-limine* plus one of her own seeking FRCP 50(a), before case went to trial; (3) violated local rules by permitting Respondents to file separate Proposed Pre-Trial Orders when the local rules says otherwise, and failing to issue a court Final Pre-Trial Order; (4) presided over a bogus jury trial regarding claims that was not eligible for a jury trial as a matter of law; (5) illegally offered legal advice to Respondents when he ruled on their motions *in limine* 2 and 6 **(Pet.App.G,20a-22a)** that targeted Petitioner's demotion claim; (6) illegally entered judgment on the bogus jury trial after 13 days had elapsed for Respondents and denied JMOL 50(a) and 50(b) to Petitioner **(Pet.App.D,10a-11a)** even though she was entitled to judgment as a matter of law; (8) illegally granted Respondents' JMOL without performing Legal Standard Review under FRCP 56 or 50(a) **(Pet.App.E,12a-17a)**. (9) committed fraud, waste, and abuse of federal government resources by taking this case to a bogus jury trial for 5 days; (10) illegally granted tax costs based on the bogus jury trial; (11) violated Petitioner's constitutional rights to due process, judicial fairness, and equal justice under the law; and the signature (official initial, ***"Mba"***) used to sign off on his grant of motion for

JMOL to Respondents, DOES NOT MATCH the official initials of any Judicial officer (Judges or Magistrates) or clerks affiliated with the CA Central District Court. It is neither his initial nor his clerk's. That signature/initial on the JMOL is fraudulent, and warrants full-investigation.

6. Magistrate Judge Jay C Gandhi (retired): (1) violated FRCP 56 by not performing Legal Standard Review on Petitioner's motion for summary judgment before denying it; (2) violated ADR settlement local rules by compelling Pro Se Petitioner to ADR-1 settlement conference before himself **(Pet.App.I,25a-26a)** at the request of UnitedHealth Group, Inc., et, al, after the court had issued an order affirming the joint stipulation to ADR-2; (3) shared material conflict of interest with Judge Staton. He worked together with Judge Staton on ADR training services; (4) he was the ADR co-chair and she was the ADR chair; (5) he worked on other employment discrimination cases for Judge Staton while presiding over this case; (6) threatened to grant summary judgment to Respondents if Petitioner did not take their offer of $60,000, the first offer was $13,000. Magistrate Judge Gandhi suspiciously retired at 46 years old, and now works for JAMS ADR Services, while Magistrate Judge Autumn D. Spaeth, who sat on the Ninth Circuit Judicial Council responsible for Judges Misconduct, was chosen to replace Judge Gandhi.

two small kids and a husband, are financially devastated by the unjust actions of the Courts below. Her husband has been retaliated against by Respondents, their Attorneys, and unknown members of the judiciary who do not take kind to whistleblowers. As a result, her husband who is also African American has been black balled nation-wide from finding employment anywhere in the country despite the great economy. She waited for justice for nearly three years, and what she has gotten from the Ninth Circuit is injustice. The Defendants lead Attorney Michael S. Kalt sits on the SHRM (A National Human Resources Company) Board as a Director of Governmental Affairs that lends him access to nation-wide governmental human resource databases. Her husband is a professional government auditor and a Certified Fraud Examiner with over 20 years of experience. He mysteriously lost jobs and has been unemployed for over two years. He has submitted over 700 job applications and has been blackballed. Petitioner and her family are homeless and penny less as a result of the Court's corruption, and retaliation. This Court must intervene because the courts below are counting on their connections within the judiciary to ensure this case is not heard. Justices of the Supreme Court of the United States, please ensure JUSTICE for the unrepresented; for the poor; for the forgotten; and for every minority in the nation that has been disenfranchised by the judiciary. This is a case of merit. What Petitioner has personally experienced with her family is pure evil and horrifying. Her joy for living and working has died and her faith in the

7. Senior Circuit Judges: **Richard Tallman; Stephen S. Trott; and Barry G. Silverman**: (1) issued an unpublished memorandum that failed to address the 11 appealable issues; (2) affirmed lower court's opinion without performing any *De Nova* Legal Standard Review as required by law on Title VII claims dismissed under FRCP 56 and FRCP 50(a), and also on claims that went to an illegal trial; (3) cited non-relevant case laws (*class action labor union case centered on infliction of emotional distress*) to decide Title VII claims of race and age discrimination; (4) classifying Title VII race and age discrimination claim as *"other claims,"* which doesn't exist under Title VII of the Civil Rights Act of 1964, and the ADEA of 1967; (5) citing references to a jury trial evidence but the records on appeals did not include a Certified Court Reporter transcripts, as the Termination and Demotion claims for race and age discrimination were never triable to jury because there existed no question of facts after Respondents failed to carry their burden of production.

V. CONCLUSION

This Court should grant the petition for a writ, to correct the horrific wrong against Pro Se Petitioner and her family that has lasted since February 2014. Petitioner's career of 25 years was ruined by UnitedHealth Group, Inc., et, al. unlawful demotion and termination. Petitioner's family, which includes

judiciary is shattered beyond repair. All that she and her family have left is what they always had, their eternal FAITH in the Lord Jesus Christ who gave them the strength to keep fighting this righteous fight, and to whom they have looked to see them through in this life.

She hereby close with this: ***Psalm 121***—(Old KJV):

> "I will lift up mine eyes unto the hills, from whence *cometh* my help. My help cometh from the LORD, which made heaven and earth. He will not suffer thy foot to be moved: he that keepeth thee will not slumber. Behold, he that keepeth Israel shall neither slumber nor sleep. The LORD is thy keeper: the LORD is thy shade upon thy right hand. The sun shall not smite thee by day, nor the moon by night. The LORD shall preserve thee from all evil: he shall preserve thy soul. The LORD shall preserve thy going out and thy coming in from this time forth, and even for evermore."

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Respectfully submitted,

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