NO. _____

In The Supreme Court of the United States

VLADIMIR MATSIBORCHUK,

Petitioner,

v.

FOUGERE HOLCOMBE

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a deprivation of legal fees earned by an attorney during 7 years of work for the former client violates said attorney's due process rights where the District Court prejudged its decision on the pending discharge hearing and legal fee dispute between the attorney and his former client by secretly approving settlement between said client and the Defendants in the underlying litigation without considering the former attorney's fees in the settlement agreement, by excluding said attorney's renewed motion to withdraw and request for compensation from the scope of the hearing, by completely precluding the attorney from testifying at the end of the discharge hearing, by precluding the attorney from presenting his case, and by completely terminating the discharge hearing on the presiding Judge's "perception" that the attorney was "laughing" during the former client's cross examination?

2. Whether an attorney was deprived of his legal fees for his seven (7) years of services with violation of due-process standards of fairness and justice for said attorney's uncovering and reporting multiple violations in the underlying matter by the presiding judges in the underlying matter in the District Court and by the Judges of the Second Circuit Peter W. Hall and Raymond J. Lohier, who were directly involved in the unlawful and unconstitutional ten (10) ear delaying scheme to kill the underlying litigation in Title VII matter and, following the discharge, delayed during two and a half years the determination the discharge for cause and related

legal fee issues, which directly resulted from the aforesaid delaying scheme?

3. Whether the Second Circuit's abuse of discretion standard of review is incorrect, where the appeal among others was brought from a denial of attorney's request for a quantum meruit award by the District Court?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioner Vladimir Matsiborchuk, is an individual.

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PETITION FOR A WRIT OF CERTIORARI

Vladimir Matsiborchuk, Esq. (attorney Matsiborchuk) respectfully petitions this Court to issue a writ of certiorari to the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United State Court of Appeals for the Second Circuit (Summary Order) (Appendix A., App.1 – 7), reported at 2018 WL 4146623 (2d Cir. 2018)

The district's court unpublished Order (Appendix B, App. 8 – 41), which upheld the ruling of the magistrate judge, reported at 2017 WL 1184104, (E.D.N.Y. Mar. 29, 2017) (Appendix C., App. 42 – 62)

The Second Circuit's October 17, 2018 order denying rehearing en banc (Appendix D, App. 63) – has yet to appear in any official or unofficial reports

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on August 29, 2018. A timely petition for rehearing en banc was subsequently filed on September 12, 2018, which was then denied on October 17, 2018 (Appendix D, App. …). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution provides in relevant part: "No person shall . . .be deprived of life, liberty, or property, without due process of law." U.S. CONST., AMEND. V.

§ 2000e-5 (f) mandates that "it shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

STATEMENT OF THE CASE

From early 2007 until late 2013 for a period of six years and eight months, attorney Matsiborchuk represented his former client Ms. Fougere Q. Holcombe ("Holcombe") in two civil cases Case No. 03-cv-4785 (SLT) (JMA) ("the 2003 case") and Case No. 08-cv-1593 (SLT) (JMA) ("the 2008 case") (together Cases").

In order to keep these cases in the pre-discovery phase for a period of ten (10) years, the District Court for the Eastern District of New York ("the District Court") used delay as stalling technique to halt discovery and prosecution of Title VII claims filed in said Cases by Plaintiff Holcombe against US Airways, Inc. ("US Airways") and the International Association of Machinists and Airspace Workers ("the Union") together ("defendants"). Attorney Matsiborchuk persistently complained that said delay was designed to prevent investigation of facts, disclosure of documents and imposition of liability upon aforesaid defendants, and to ultimately ruin attorney Matsiborchuk's near seven (7) work in said matter. Said illicit delay amounts to an obstruction of justice, abuse, fraud and tortuous interference with contract, resulting in significant and irreparable harm to attorney Matsiborchuk.

In December 2013, Holcombe, through her so-called "new" counsel, directed a notice of discharge to attorney Matsiborchuk. Attorney Matsiborchuk

objected to Holcombe's December 2013 cause for discharge. Despite the fact that the issues related to the cause and attorney Matsiborchuk's legal fees were fully briefed, the District Court and the Court of Appeals delayed the hearing for another two and a half years. This delay was necessary to further defraud attorney Matsiborchuk, secretly settle the matter between Defendants and Holcombe, fabricate new "cause" for discharge and falsify the record. After abetting and provoking Plaintiff Holcombe into breach her retainer agreement with attorney Matsiborchuk, the defendants settled the Cases with Plaintiff Holcombe, and the District Court readily dismissed the Cases, while concealing from attorney Matsiborchuk all settlement records, including the settlement agreement itself.

During his representation of Holcombe in the above cases, attorney Matsiborchuk expended thousands of hours of legal work time. Attorney Matsiborchuk's work yielded numerous positive results for Holcombe, including the restoration of her employee flight benefits and a settlement with the defendants, the terms of which have been withheld from attorney Matsiborchuk. The terms of this settlement constitute key evidence to rebut the rationale of the District Court and the Second Circuit underpinning the denial of Matsiborchuk's claims. The District Court and the Second Circuit found that Holcombe is legally permitted, after almost seven years of intense legal work yielding the aforesaid positive results for Holcombe, to terminate her attorney "for cause" and not pay said attorney for his work. Neither the District Court nor the Second Circuit cite, nor could they find, any prior cases in their jurisdiction, or in any other jurisdiction, with

such an egregious result. In addition to the objections based on the facts and the law contained below, this Court is also urged to consider the public policy implications of its decision – that an attorney could expend thousands of hours of attorney work time in a successful representation of a client, and then not get paid for said work based on the rationale contained in the Orders below. The successful nature of the representation is emphasized here, because Holcombe has not asserted that she suffered any damages resulting from attorney Matsiborchuk's alleged "misconduct."

Despite the fact that the attorney's dispute with his former client and subsequent fabrication directly resulted from the illicit delaying scheme, Judges involved in said delaying scheme had firmly intended to resolve the Dispute between attorney Matsiborchuk and his former client. Neither the District Court nor the Second Circuit have ever responded to attorney Matsiborchuk's specific claim that the Orders below were prejudged by the secret settlement between Holcombe and Defendants and, for this reason, attorney Matsiborchuk was precluded from testifying and presenting his case at the discharge hearing and, as a result, he was unlawfully deprived of his legal fees by the District Court and the Second Circuit.

RELATED PROCEDURES

The underlying Title VII Cases were pending from their respective inception from September 2003 until January 2016. For unexplained reasons, the District Court rejected Holcombe's repeated attempts to consolidate the Cases despite the fact that the Cases involved the same parties, set of facts, legal

issues, and legal claims. Since September 2004, Hon. Sandra L. Townes was assigned to the Cases as a supervising District Judge. Magistrate Judge Hon. Joan M. Azrack was assigned to the Cases from September 2003 to September 2014. Magistrate Judge Hon. James Orenstein ("Magistrate Judge") is assigned to the Cases from October 2014. The District Court dismissed the Cases in January 2016. Matsiborchuk represented Holcombe in both Cases, assisted and represented Holcombe in the related US Airways' bankruptcy proceedings and related arbitration between US Airways and the IAMAW from April 6, 2007 until December 24, 2013.

On December 24, 2013, Holcombe, through her incoming counsel Raymond Nardo (Mr. Nardo), notified Matsiborchuk that he is discharged for cause. On February 25, 2014, Matsiborchuk filed a motion to withdraw and a request for compensation, also asserting a retaining lien in the amount of $4,398.58 and a charging lien of $184,128.70. The District Court delayed any hearing on Holcombe's discharge for cause and related motion for compensation.

On September 30, 2014, the District Court denied Matsiborchuk's retaining lien and motion for quantum meruit compensation, with right to renew, and granted a charging lien. Attorney Matsiborchuk appealed to the Court of Appeals for the Second Circuit protesting against another delay. The panel of the Second Circuit, which included Peter W. Hall and Raymond J. Lohier, dismissed the attorney Matsiborchuk's appeal in February 2015. At the end of 2015, Holcombe and Defendants secretly from attorney Matsiborchuk settled both Cases. The District Court approved the settlement and

dismissed the cases afterwards. In May 2016, Holcombe through her current counsel filed a motion to extinguish attorney Matsiborchuk's lien. In May 2016, Holcombe completely changed the discharge allegations stated in December 2013 discharge notice. After attorney Matsiborchuk demanded to renew his motion for compensation and objected to the Holcombe's May 2016 motion to extinguish, Judge Orenstein held an evidentiary hearing in January/February 2017, excluded from the scope of the discharge hearing the issues related to the attorney Matsiborchuk's motion for compensation and promptly issued an Order dated March 29, 2017 ("Magistrate Judge's Order") extinguishing the charging lien and denying Matsiborchuk's request for quantum meruit compensation. Matsiborchuk objected to the Magistrate Judge's Order, and after full briefing, the District Court issued an Order dated August 4, 2017 ("Order") denying Matsiborchuk's objections and upholding the Magistrate Judge's Order. The appeal to the Second Circuit followed. On August 23, 2018, the Second Circuit held oral arguments on the appeal. Again, right before the hearing, same judges Peter W. Hall and Raymond J. Lohier were included in the Panel. Six days later, on August 29, 2018, said Panel issued an Order denying the appeal and affirming the depravation of legal fees earned by attorney Matsiborchuk during near seven years of work for his client.

STATEMENT OF FACTS

Holcombe's dispute with US Airways and the IAMAW arose in January 2002. Holcombe was deprived of a reasonable accommodation by US Airways, and the IAMAW refused to represent her in

the dispute with US Airways. Holcombe's current counsel, Mr. Raymond Nardo ("Mr. Nardo"), represented Holcombe at the initial stage of the dispute in 2002, App. H. It is not clear from the record when and for what reason Mr. Nardo ceased representing Holcombe. Mr. Nardo was fully aware of Holcombe's status as a member of the IAMAW and the facts of her discrimination by US Airways and the IAMAW's failure to represent her. Mr. Nardo did not warn Holcombe or otherwise preserve Holcombe's claims against the IAMAW in light of the short time-period of the relevant statute of limitations. In September 2013, the District Court dismissed said claims finding that the relevant statute of limitations expired in 2006 (App. I).

Holcombe commenced the 2003 Case against Defendants on September 19, 2003. In the 2003 Case, Holcombe's was initially represented by the law firm Tuckner, Sipser, Weinstock & Sipser, LLP. Holcombe rejected her first counsel's attempt to settle the 2003 Case at an early stage.

In the 2003 Case, the IAMAW was served with Holcombe's initial complaint on January 6, 2004, case #03-cv-4785, Doc. 3. The IAMAW did not respond to the service with the initial papers, did not appear in the 2003 case and ignored all of the notifications sent from the District Court. In 2002 and 2004, US Airways filed two petitions seeking bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Virginia ("Bankruptcy Court") See cases #02-83984-SSM and #04-13819-SSM. Unlike US Airways, the IAMAW had never filed for bankruptcy protection. Holcombe's initial complaint in the 2003 Case contained allegations of relevant facts concerning the

IAMAW's violation of Holcombe's rights as a union member and the IAMAW'S failure to represent its member. The District Court's file in the 2003 Case contained the name of the IAMAW's counsel, Mr. Ira Gottlieb, to whom the Court directed notifications in 2003 and 2004. Following the initial service of the IAMAW in January 2004, the 2003 Case was active for a period of ten (10) months. The District Court failed to enter a scheduling order in the 2003 Case. The IAMAW's appearance and the disclosure of relevant records pertaining to Holcombe's claims were not ordered either. Magistrate Judge Azrack, by an endorsed Order dated May 2004, relieved Holcombe's first law firm from representation upon the firm's request. The District Court did not attempt to verify the reasons for the attorneys' withdrawal in May 2004. The District Court closed the 2003 Case in November 2004, case #03-cv-4785, Doc. 13.

Under Local Rule 16.1, the 2003 Case was not exempted from the issuance of a mandatory scheduling order. Under Local Rules 16.2 and 72.1(c), a magistrate judge is authorized to file entry and modification of mandatory scheduling orders, and issue subpoenas "or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings." The District Court file contains no inquiries concerning Holcombe's representation at the time of closure of the 2003 Case.

The Collective Bargaining Agreement ("CBA") between the IAMAW and US Airways remained in effect in accordance with the confirmed Plans in the US Airways' bankruptcy proceedings. In 2002 and 2003, Holcombe, a member of the IAMAW, attempted to arbitrate her rights within the CBA arbitral

process. The IAMAW refused to prosecute Holcombe's grievances. US Airways and the IAMAW suspended the arbitral process regarding Holcombe's grievances in 2002.

In the beginning of 2005, Holcombe filed her proof of claim in the US Airways' second bankruptcy case. Holcombe was represented by several attorneys in the Bankruptcy Court. Attorney Kenneth Rosenau of Rosenau & Rosenau withdrew from representing Holcombe in March 2007. On April 2, 2007, the Bankruptcy Court disallowed Holcombe's claim and dismissed her case.

Holcombe reached out to attorney Matsiborchuk on April 6, 2007 asking if he would be able to assist her in light of a fast approaching deadline to file an appeal to the disallowance of her proof of claim. Attorney Matsiborchuk agreed to review Holcombe's prior court records and suggested that she reach out to bar associations to look for representation. Holcombe replied that she was in desperate need of immediate assistance in light of the short deadlines of the Bankruptcy Court. Since April 2007, attorney Matsiborchuk, on Holcombe's behalf, filed a motion to reopen the 2003 Case, motion for a default judgment regarding the IAMAW, commenced the 2008 Case (case #03-cv-04785, Doc. 15), motion to consolidate the Cases (case #03-cv-04785, Doc. 30), successfully opposed two rounds of motions to dismiss filed by Defendants in 2009 and 2011 in both Cases. At the same time, Holcombe's repeated requests for disclosures and discovery in 2003 and 2008 Case (case # 03-cv-4785, Doc. 69, case # 03-cv-1593, Doc. 36). Requests were denied by the District Court. With attorney Matsiborchuk's assistance, Holcombe successfully perfected three

appeals from the Bankruptcy Court to the United States District Court for the Eastern District of Virginia and to the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") Case (#08-1506, #11-1986, #11-2154). Holcombe directly controlled, managed, reviewed briefs, and records on appeal, as well as negotiated, organized and paid the printing expenses as to all the briefs and records. After the Fourth Circuit reversed in part the dismissal of her case in the Bankruptcy Court, with attorney Matsiborchuk's assistance, Holcombe successfully resisted US Airways' motion to dismiss the remainder of her claim in the Bankruptcy Court. Attorney Matsiborchuk was not admitted in the Bankruptcy Court and could not appear on Holcombe's behalf. In May 2010, Holcombe stated that all local counsel appearances in the Virginia federal courts must be limited, due to Holcombe's lack of resources. Therefore, attorney Matsiborchuk was unable to hire local counsel in the Virginia federal courts to assure Holcombe's representation. Holcombe refused to participate in the discovery proceedings scheduled in the Bankruptcy Court in May 2011, citing health reasons. Holcombe disregarded attorney Matsiborchuk's timely advice in March 2011 to appoint a guardian or attorney-in-fact. Despite all attempts to reinstate her case following dismissal in the Bankruptcy Court, Holcombe's subsequent appeals to the Fourth Circuit were denied. Holcombe and attorney Matsiborchuk maintained a mostly courteous and productive attorney-client relationship from April 2007 through September 2012. In August-October 2012, while Defendants' second motions to dismiss were pending in the Cases, with deadlines to respond looming, Holcombe refused to speak with attorney

Matsiborchuk over the phone or meet with him, again citing health reasons. Attorney Matsiborchuk was forced to prepare and file the papers on Holcombe's behalf to preserve her rights during the appellate process in the Fourth Circuit. Holcombe was listed on the ECF filings in the Fourth Circuit and therefore had timely received all copies of the documents. From September 25, 2012 to October 10, 2012, attorney Matsiborchuk attempted to schedule a phone conversation or personal meeting with Holcombe. Holcombe firmly refused to communicate with attorney Matsiborchuk alleging that she would determine another time for the meeting. When attorney Matsiborchuk reminded Holcombe that her continued communication with her attorney is part of her responsibilities as a client, Holcombe immediately accused attorney Matsiborchuk of being "belligerent" and "unprofessional." Holcombe further accused attorney Matsiborchuk of his intent to abandon her case "for fictitious reasons." Attorney Matsiborchuk replied that Holcombe's practice not to respond to an attorney's request to speak and at the same time accuse the attorney of abandoning her case was unacceptable. Holcombe became aggressive after attorney Matsiborchuk repeated his March 2011 advice that she could appoint a law guardian or attorney-in-fact to handle her meetings with her attorney. Under these circumstances, attorney Matsiborchuk notified Holcombe that he was forced to withdraw from her representation. Attorney Matsiborchuk directed a disengagement letter to Holcombe and advised her to immediately seek legal assistance (App. J). From October 10, 2012 to November 8, 2013, Attorney Matsiborchuk had not received any emails received from Holcombe. On November 8, 2013, using Holcombe's e-mail account,

Holcombe's husband contacted attorney Matsiborchuk and expressed gratitude for attorney Matsiborchuk's work on the Cases. (App. K) As admitted by Holcombe at the evidentiary hearing in February 2017, Holcombe contacted Mr. Nardo in October 2012. For a period of fourteen (14) months following the disengagement letter, Holcombe and her new counsel had observed attorney Matsiborchuk's work on the Cases, allowed it to take place, and accepted and benefitted from attorney Matsiborchuk's services. Following the District Court's decision and Order on September 30, 2013 as to Defendants' motions to dismiss and following attorney Matsiborchuk's full briefing of the motion for reconsideration of said District Court's decision, Holcombe and her new counsel decided to declare that attorney Matsiborchuk was discharged "for cause on December 24, 2013." (App. L) Attorney Matsiborchuk disagreed that he was discharged for cause and requested immediate compensation on the basis of quantum meruit. The related to the discharge and fee issues were fully briefed in 2014. Holcombe and attorney Matsiborchuk conducted a settlement negotiation in 2014. The settlement was not successful for the reasons stated in attorney Matsiborchuk's July 2, 2014 objections to the scheduling Order dated June 18, 2014. During the settlement negotiations and during the parties' briefing on the discharge for cause issue in 2014, Holcombe and Mr. Nardo did not allege any discharge for cause claims which would be differ from their December 24, 2013 discharge notice. From December 24, 2013 and until May 2016, Holcombe and her new counsel had never asserted any claims related to alleged "name calling" of Holcombe by attorney Matsiborchuk, interference to settle

Holcombe's underlying matter, improper threat to withdraw, nor did they claim other similar abuse as a part of their discharge for cause. In January-February 2017, the Magistrate Judge held an evidentiary hearing where Holcombe testified about her reasons for discharging attorney Matsiborchuk for cause, and was partially cross-examined by attorney Matsiborchuk. At the evidentiary hearing, attorney Matsiborchuk asked Holcombe to explain the reasons for not alleging the "name calling" or other abuse in her discharge notice in December 2013. Holcombe immediately responded with: "I can't answer for Mr. Nardo." The Magistrate Judge abruptly terminated the evidentiary hearing, thereby preventing the completion of Holcombe's testimony and preventing attorney Matsiborchuk from testifying in rebuttal. At the same time, in its March 29, 2017 Order, Judge Orenstein falsely stated that, at the end of the hearing, Parties "rested" their respective cases Appendix C, App. 47.

REASONS FOR GRANTING THE WRIT

I. THE SECOND CIRCUIT DISREGARDED THAT THE DISTRICT COURT VIOLATED AN ATTORNEY'S DUE PROCESS RIGHTS BY PREJUDGING ITS DECISION AND BY PRECLUDING THE ATTORNEY FROM PRESENTING EVIDENCE IN SUPPORT OF THE ATTORNEY'S POSITION

District Court and the Second Circuit improperly rejected attorney Matsiborchuk's objections to the due process violations caused by the Magistrate Judge during the determination of whether Matsiborchuk was discharged for cause.

A. Any finding that attorney Matsiborchuk refused to testify on his own behalf is not true

The Second Circuit disregarded that attorney Matsiborchuk was unlawfully and unconstitutionally precluded from giving any testimony at the evidentiary hearing and thereby deprived attorney of fundamental due process rights, which in turn resulted in attorney Matsiborchuk being deprived of his property (i.e. a retaining lien in the amount of $4,398.58 and a charging lien of $184,128.70). At the end of the first day of the evidentiary hearing, in responding to the Magistrate Judge's question whether they have any other witnesses, both counsel responded as follows: "Mr. Nardo: I don't believe so, Your Honor", "Mr. Matsiborchuk: No, Your Honor". Matsiborchuk's answer as to whether he had any witnesses at the end of the first day of the evidentiary hearing bears no relevance to attorney Matsiborchuk's alleged unwillingness to testify on his own behalf. First, the evidentiary hearing and Holcombe's testimony were not concluded at the time of the Magistrate Judge's inquiry regarding the other witnesses. Second, attorney Matsiborchuk fully intended to provide testimony as to his years of representation of Holcombe and to rebut the false statements that she made under oath. Attorney Matsiborchuk is a party to the retainer agreement with Holcombe. Attorney Matsiborchuk is a party to the thousands of email communications with Holcombe. The record of the evidentiary hearing did not provide any support for the Magistrate Judge's finding that attorney Matsiborchuk rested his case. Likewise, contrary to the District Court's finding, the record clearly establish that the Magistrate Court's not only ceased Holcombe's cross-examination but

also abruptly concluded the hearing at all and prevented Matsiborchuk from presenting additional evidence and testifying to address Holcombe's false accusations. In this respect, ceasing cross-examination and ceasing the entire evidentiary hearing are not the same. The Magistrate Judge's decision to end the hearing on its third day prior to the conclusion of Holcombe's testimony and without inquiring as to whether attorney Matsiborchuk intended to testify constituted an abuse of his authority and a flagrant violation of due process.

B. Attorney Matsiborchuk did not "laugh" at the witness at the evidentiary hearing and the Second Circuit disregarded that the Magistrate Judge's Order falsely stated that the parties "rested" their cases and that, in any event, the Magistrate Judge's perception of "laughter" would not be a sufficient reason to deprive any person of his fundamental right to testify and present evidence

The Second Circuit's decision disregarded the record that even Magistrate Judge, in its Order, attempted to conceal its violation of attorney Matsiborchuk's due process rights by falsely indicating that attorney Matsiborchuk "rested" his case at the end of the hearing.

The record revealed that the Magistrate Judge interrupted Holcombe's cross-examination and concluded the hearing, justifying this action on the allegation that attorney Matsiborchuk was "laughing." Attorney Matsiborchuk did not rest his case. Attorney Matsiborchuk rejects the allegation that he was laughing during Holcombe's cross-examination. The record of the hearing did not independently reflect any "laughter" at the hearing.

The Magistrate Judge believed that he noticed Matsiborchuk **smiling** and erroneously declared that attorney Matsiborchuk "laughing." On the third day of the hearing, Holcombe (rather than the Magistrate Judge) believe that she noticed that attorney Matsiborchuk smiled. Holcombe brought the Magistrate Judge's attention to attorney Matsiborchuk's alleged "laughter." Without giving attorney Matsiborchuk an opportunity to finish his response, the Magistrate Judge readily concluded the hearing. Again, the record reflects no court reporter's indication of "laughter." The record reflects no inquiry concerning the parties' alleged intent to rest their respective cases.

In any event, attorney Matsiborchuk intended to testify at the end of hearing and present additional evidence. Furthermore, the Magistrate Judge's perception of laughter would not be a sufficient reason to terminate the hearing and thereby deprive attorney Matsiborchuk of his fundamental right to due process.

C. The Second Circuit disregarded that the Magistrate Judge deliberately refused to include attorney Matsiborchuk's 2014 motion to withdraw and request for compensation into the scope of the evidentiary hearing

In order to prevent the elicitation of relevant evidence concerning Holcombe's actions with respect to her previous attorneys in the underlying matter and with respect to her own behavior toward her former attorney, the Magistrate Judge excluded attorney Matsiborchuk February 2014 motion to withdraw and request for compensation. The Second Circuit and the District Court upheld this decision of

the Magistrate Judge despite the fact that the respective issues concerning the disengagement and discharge were fully briefed by Holcombe and attorney Matsiborchuk in 2014. Nevertheless Magistrate Judge denied motion for compensation (Appendix C). In August 2016, attorney Matsiborchuk demanded to renew his February 2014 motion, and the Magistrate Judge failed to address it prior to the hearing or to include for consideration within the scope of the hearing. As a result, the Magistrate Judge refused to consider Holcombe's prior actions and her own actions toward attorney Matsiborchuk in violation of her former attorney's due process rights.

D. The Second Circuit disregarded that The Magistrate Judge violated due process by answering for Holcombe at the hearing and demonstrated personal bias against attorney Matsiborchuk, an attorney with a sight disability

In his opening brief on appeal, attorney Matsiborchuk reported to the Second Circuit that, During Holcombe's cross-examination, attorney Matsiborchuk asked Holcombe to specify the exact time and means of communication (emails, meetings, or conversations), when the alleged "name calling abuse" took place. Holcombe was unable to provide any specificity. The Magistrate Judge then answered for the witness: "The Court: Yes, for example, Plaintiff's Exhibit 5, where you call her 'pervert' and Corrupt." Furthermore, the Magistrate Judge intentionally misstated the substance of the underlying email, in which terms were used to describe Holcombe's practices, not her person. This behavior of the Magistrate Judge is highly prejudicial. The Second Circuit disregarded this fact.

The Magistrate Judge demonstrated his personal bias toward Attorney Matsiborchuk, an attorney with a visual disability. The Magistrate Judge made improper statements in relation to Attorney Matsiborchuk's use of sighted assistance during the hearing. The Magistrate Judge, in open court, spoke to Attorney Matsiborchuk and his assistant in an extremely aggressive and abusive manner and tone. The District Court characterized the mentioned above improper statements of the Magistrate Judge as a "testy exchange," Appendix B. The Magistrate Judge's improper demeanor is unacceptable, prejudicial, and constitutes grounds for disqualification. Despite the timely objections to the District Court the District Court refused to address the Magistrate Judge's conduct, in violation of Matsiborchuk's due process rights. The Second Circuit disregarded said due process violations as well.

E. The Second Circuit's decision disregarded that the District Court permitted Holcombe to secretly settle the underlying matter with Defendants in 2015 without considering the attorney Matsiborchuk's fees in the settlement agreement

A settlement in the underlying litigation without considering a former attorney's fees is against the law. "The outgoing attorney's fees will be considered a charge to be included within the fees of the incoming counsel." People v. Keeffe, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015, 428 N.Y.S.2d 446, 449 (1980). "[C]ounsel discharged without cause prior to the conclusion of a case is entitled to recover a quantum meruit attorney's fee award." Universal Acupuncture Pain Services v Quadrino & Schwartz,

P.C., 370 F.3d 259 (2d Cir. 2004). This is true "even if counsel was retained on a contingent-fee basis, and even if the client ultimately fails to obtain a monetary recovery." Id. "[A]lthough a hearing generally is required to determine whether an attorney was discharged with or without cause before completion of services, where it is apparent on the record that the attorney zealously contested the relevant matter in motion papers and during oral argument, the issue may be resolved without a hearing." Hawkins by Hawkins v. Lenox Hill Hosp., 138 A.D.2d 572, 526 N.Y.S.2d 153 (2d Dep't 1988). "An attorney who is discharged without fault has an immediate right to recover the fair and reasonable value of the services rendered, determined at the time of the discharge and computed on the basis of quantum meruit." Cohen v. Grainger, Tesoriero & Bell, 81 N.Y.2d 655, 602 N.Y.S.2d 788, 622 N.E.2d 288 (1993) (emphasis added).

Attorney Matsiborchuk timely demanded his fees computed on the basis of quantum meruit. The District Court refused to schedule a hearing or to make a final determination as to attorney Matsiborchuk's charging lien. Instead, the District Court permitted Holcombe to settle the underlying matter in 2015 without explicitly providing for attorney Matsiborchuk's fees, thereby prejudging the determination as to whether attorney Matsiborchuk was discharged for cause. The Second Circuit disregarded that the District Court's prejudgment of the issue of discharge for cause issue explains the multiple violations of due process described above, and itself constitutes a violation of the applicable law and a violation of attorney Matsiborchuk's due process rights.

II. USING PERJURY AND FABRICATION, THE DISTRICT COURT AND THE SECOND CIRCUIT DEPRIVED ATTORNEY MATSIBORCHUK OF HIS FEE, WHICH HE EARNED DURING NEAR SEVEN YEARS OF WORK FOR HIS FORMER CLIENT, IN RETALIATION FOLLOWING THE ATTORNEY MATSIBORCHUK'S MULTIPLE COMPLAINTS CONCERNING THE UNLAWFUL DELAY TACTIC UTILIZED IN THE DISTRICT COURT.

A. The District Court delayed the Title VII cases improperly holding them in the pre-discovery phase for ten (10) consecutive years and forcing attorney Matsiborchuk to expend his work on the Holcombe's cases

The District Court, in its August 4, 2017 Order, described Plaintiff Holcombe as a "difficult client with unrealistic expectations of the value of her case." Appendix B. Giving this characteristic of Holcombe, the District Court's purpose of delaying the underlying cases is obvious. According to the District Court, attorney Matsiborchuk could not have handled his "difficult client and her unrealistic expectations" at some point and the cases would have been closed without any decisions on the merits. In November 2007, attorney Matsiborchuk uncovered and reported that Defendant the IAMAW failed to respond to Holcombe's initial complaint in the 2003 case since January 2004. The District Court allowed the IAMAW to file its answer in April 2009 and disregarded the IAMAW'S flagrant violation of the Federal Rules of Civil Procedure. The District Court further precluded Attorney Matsiborchuk from obtaining any disclosure and discovery in the underlying cases, repeatedly denying Attorney

Matsiborchuk's motions for disclosure and discovery, which again resulted in additional work on Holcombe's matter. The District Court permitted two rounds of Defendants' Rule 11 motions to dismiss and delayed its rulings on the motions for over four (4) consecutive years. During those years, attorney Matsiborchuk continued to work on the Holcombe's cases and Holcombe constantly praised attorney Matsiborchuk. The Second Circuit's decision disregarded these facts raised in the Appellant's brief.

B. After Holcombe discharged attorney Matsiborchuk in December 2013, the district court utilized the same elicit delay, holding the discharge hearing and determination of the former attorney's request for compensation in quantum meruit for another two and a half years and The Second Circuit's Judges Hall and Lohier are directly involved in said delay (Appendix E).

The District Court's and the Second Circuit's joint efforts to delay the discharge hearing were necessary. In 2014, attorney Matsiborchuk stated that Plaintiff Holcombe and her new counsel evidenced improper collusion and bad-faith dealing during the course of the underlying litigation, and that another delay of the determination of the "cause" issue for over two and a half years would result in another set of false allegations set forth by Plaintiff Holcombe and attorney Nardo. Attorney Matsiborchuk's concern expressed in 2014 had come to fruition in 2016. In May 2016, Plaintiff Holcombe and attorney Nardo changed their initial December 24, 2013 notice of discharge, adding an entirely different set of bogus "causes" for discharge. Plaintiff Holcombe's December 24, 2013 notice of discharge

and her May and August 2016 declarations, in which she changed the alleged "causes" for discharge, are baseless and false. In an attempt to cause further injury and to deprive attorney Matsiborchuk of his earned fees, Plaintiff Holcombe and her counsel falsified documents and submitted said fabrication into the Court record. In addition, the post-discharge delay was necessary to settle the cases and the District Court approved the settlement in 2015 concealing the settlement record from attorney Matsiborchuk. Attorney Matsiborchuk's fee was not "considered a charge to be included within the fees of the incoming counsel." People v. Keeffe, 50 N.Y.2d 149, 156, 405 N.E.2d 1012, 1015, 428 N.Y.S.2d 446, 449 (1980). Thus, the District Court's Orders and the Second Circuit's decision were prejudged by the 2015 settlement agreement between Holcombe and Defendants. For this reason, the Second Circuit readily affirmed the District Court ruling depriving Attorney Matsiborchuk of the fees, which he earned during near seven years of work for his client.

C. The District Court and the Second Circuit readily utilized in their decisions methods of perjury and fabrication utilized by Holcombe and her new counsel in their smearing campaign against attorney Matsiborchuk launched in May 2016.

Depriving attorney Matsiborchuk of his compensation, the District Court and the Second Circuit applied the following methods of fabrication: (a) chose excerpts of six (6) emails out of approximately 2,500 emails exchanged between Holcombe and attorney Matsiborchuk, which Holcombe and her former attorney directed to each other; (b) tore portions of these 6 emails out of their context; (c) accepted, despite overwhelming evidence

in the record, Holcombe's false after-the-fact interpretation of these excerpts; (d) disregarded all events surrounding those emails, including Holcombe's own behavior; and (e) supported said false interpretations by Holcombe's self-serving, irrelevant, and perjuriously false allegations at an evidentiary hearing held 2.5 years after Holcombe formally discharge attorney Matsiborchuk.

III. THE SECOND CIRCUIT'S DECISION DISREGARDS AND CONFLICTS WITH THE EXISTING NEW YORK LAW ON THE DISCHARGE FOR CAUSE ISSUES.

A. Depriving attorney of any fees for 7 years of his services for the client, the District Court and the Second Circuit's decision disregarded the Court's record establishing attorney's work for the client during those years.

The District Court and the Second Circuit were not interested in any objective showing of whether or not Attorney Matsiborchuk zealously contested the relevant matters. As a result, the Second Circuit conflicted with the existing law of New York, which states that the Court's record establishing attorney's work for the client is relevant and should be considered on the issue whether said attorney was discharged with or without cause. "Although a hearing generally is required to determine whether an attorney was discharged with or without cause before completion of services, where it is apparent on the record that the attorney zealously contested the relevant matter in motion papers and during oral argument, the issue may be resolved without a hearing." Hawkins by Hawkins v.

Lenox Hill Hosp., 138 A.D.2d 572, 526 N.Y.S.2d 153 (2d Dep't 1988).

B. The Second Circuit's decision conflicts with the New York law, which precludes Holcombe from using the after-acquired evidence in the discharge proceeding held in 2017.

Holcombe, in writing, discharged attorney Matsiborchuk on December 24, 2013, The record establishes that 2.5 years after the December 2013 discharge, Holcombe changed her discharge allegations. Holcombe used her own after-the-fact and post-discharge interpretations of certain e-mail communications with her former attorney. Holcombe did not explain the change in her allegations after December 2013. Neither Holcombe's delayed interpretations nor her newly-acquired "evidence" played any role in discharging her former attorney in December 2013. D'Jamoos v. Griffith at *14-15. The District Court and Judges Hall and Lohier were aware that, in December 2013, 2014, 2015 and until May 2016, Holcombe did not claim any alleged "verbal abuse," or her attorney's "threats to withdraw," or violation of her right to "control settlement." Holcombe or her new counsel did not explain the delay in presenting said allegations or "evidence." Attorney Matsiborchuk proved that Holcombe's after-acquired allegations constitute perjury and fabrication. The Second Circuit's decision, however, utilized said perjury and disregarded attorney Matsiborchuk's detailed explanation.

C. The Second Circuit's decision disregarded that, under the existing New York law, in resolving the discharge for cause issues, "the underlying

behavior of an attorney must be either a form of malpractice or strongly suggestive of it and that this behavior amounts to a significant breach of legal duty sufficient to justify a discharge for cause." D'Jamoos v. Griffith.

Considering that the Court's record establishing attorney Matsiborchuk's work for Holcombe in the underlying cases was completely disregarded, whether or not Attorney underlying behavior was either in a form of malpractice or strongly suggestive of it, in the Second Circuit's view, was irrelevant. Instead, the Second Circuit adopted a new precedent to be followed in the state of New York, under which Holcombe's subjective interpretations is enough to establish the nonexistent serious ethical violations and that these alleged violations, in the Second Circuit's view, amount to a significant breach of legal duty sufficient to justify a discharge for cause.

D. The Second Circuit disregarded that, under the existing New York law, Holcombe's subjective perception and interpretation contained in the portions of a few e-mails exchanged between Holcombe and her former Attorney are not sufficient to find a discharge for cause.

The second Circuit, in its decision, clearly adopted Holcombe's subjective perception and interpretation contained in the portions of a few e-mails exchanged between Holcombe and attorney Matsiborchuk. The Second Circuit's decision further conflicts with D'Jamoos v. Griffith, at *13 ("Spatola does not stand for the proposition, as plaintiff would need it to, that a subjective feeling of lack of trust constitutes a "for cause" basis for

termination. To be certain, a client may fire an attorney at any time, for whatever reason, including an otherwise unfounded belief that the attorney has acted against the client's interests. But such a subjective feeling does not permit a client to avoid paying the fair value of services previously rendered.").

E. Depriving Attorney Matsiborchuk of his fees, the Second Circuit accepted Holcombe's ridiculous and completely unfounded fear regarding Attorney Matsiborchuk's advice concerning an appointment of a guardian.

An appointment of a guardian is a legitimate proceeding in the District Court. Such a proceeding is conducted and controlled by the court. Under New York law, the court, on its own motion or on the motion of a friend of the respondent, a relative, or other interested person, may appoint a guardian ad litem to make litigation decisions for the incapable party under Article 12 of the CPLR. The strict court oversight of this process precludes any improvident appointment. Holcombe's fears and concerns regarding her former Attorney proper advice of considering appointing a guardian (such as Holcombe's husband Michael), where Holcombe is professing to being unable to participate in legal proceedings, cannot justify depriving Attorney Matsiborchuk of his earned fees. This is a prime example of Holcombe's subjective perception being used by the Second Circuit, in violation of the applicable law, to find a discharge for cause. D'Jamoos v. Griffith, at *13.

In light of the history of Holcombe's refusal to participate in the Court's proceedings alleging the

health reasons, the Second Circuit's decision constitutes an abuse. In May 2011, citing health reasons, Holcombe refused to participate in the discovery ordered by the Virginia Bankruptcy Court resulting in the loss of her rights in that proceeding.

In August 2012, citing again health reasons, Holcombe refused to communicate with Attorney Matsiborchuk. Advising a client as to the availability of a guardianship ad litem to prevent the loss of the client's legal rights is not a "significant breach of legal duty," which would justify depriving Attorney Matsiborchuk of his fees.

Furthermore, Holcombe's refusal to communicate with Attorney Matsiborchuk due to her health reasons prevented Attorney Matsiborchuk from fulfilling his duty. In this respect, the Second Circuit's acceptance of Holcombe's subjective perception that Attorney Matsiborchuk's October 2012 emails were a "tactic" designed to make Holcombe compliant is sufficient to deprive attorney of his fees for 7 years of services for Holcombe is unconstitutional, constitutes an abuse and must be reversed.

F. Depriving attorney Matsiborchuk of his fees, the Second Circuit further utilized in 2018 another post-discharge false interpretation of the e-mail between Holcombe and her former attorney dated March 15, 2011.

The Court's record and the Second Circuit's decision provide no facts regarding the availability of any formal settlement offer during attorney Matsiborchuk's work for Holcombe. No formal settlement offer had ever been made by the Defendants during the course of Attorney

Matsiborchuk's representation of Holcombe. Since no actual settlement decision was even contemplated, Attorney Matsiborchuk could not possibly interfere with or control Holcombe's "right to settle." The conclusions contained in the Second Circuit's decision as to the alleged "control" or "interference" are plainly false and completely unfounded. In light of the violation of attorney Matsiborchuk's due process rights, the Second Circuit deliberately distorted the substance of Holcombe's and her former attorney's communications in March 2011. Contrary to the Second Circuit's unfounded inferences, attorney Matsiborchuk dutifully fulfilled his obligation to discuss with Holcombe a possible settlement range in her case. The reasonableness of Attorney Matsiborchuk's assessment of the likelihood of success of Holcombe's proposed $60 million, and later $3 million, demands is not disputed by Holcombe and is admitted by the District Court, which, as stated above, labeled Holcombe as a client with "unrealistic expectations of the value of her case." Appendix B. Further, when Attorney-Matsiborchuk communicated such demands to the Defendants US Airways, the Defendants responded that such demands constitute a "nonstarter" for any possible settlement negotiations. The Second Circuit affirmed depravation of Attorney's fees for seven years of legal work on the basis of completely false and unsubstantiated "imagination." The Second Circuit's decision provided no information what was the basis for the Circuit's conclusion. The Second Circuit disregarded that, after the March 15, 2011 email in which Attorney Matsiborchuk allegedly "usurped or "control" Holcombe's right to settle", Holcombe responded that she understood Attorney Matsiborchuk's position and continued to retain him

without questioning the correctness or appropriateness of his assessment of the possibility of settling this case for $3,000,000. In order to find Attorney Matsiborchuk's nonexistent "serious ethical violation" such as the alleged "control" of Holcombe's right to settle, The Second Circuit further disregarded Holcombe's subsequent email exchange with Attorney Matsiborchuk on March 24, 2011. In the email dated March 24, 2011, Subject: "Settlement offer", Attorney Matsiborchuk wrote:

We can talk tomorrow. I tried to address your concerns and ideas. I would like to avoid any brackets with numbers at this point.

Holcombe replied:

I will try my best sometime in the afternoon... letter is fine, thanks, you did address concerns and ideas.

Nothing in Holcombe's reply suggests that Holcombe misunderstood or objected to Attorney Matsiborchuk's advice regarding her proposed demand in March 2011. The Second Circuit inferences conflict even with the District Court's August 4, 2017 Order, which faulted Attorney Matsiborchuk's email for lacking "tact". A lack of tact is not a "significant breach of legal duty" sufficient to deprive an attorney of compensation for legal services rendered. Furthermore, in order to clarify Holcombe's understanding of the reasonableness of her proposal to offer a $3,000,000 settlement to Defendants, Holcombe and the Second Circuit should disclose the terms of Holcombe's 2015' settlement with Defendants. The Second Circuit's unfounded holding that Attorney Matsiborchuk "interfered with" or "controlled" Holcombe's right to settle in

March 2011 could never be possible if attorney Matsiborchuk had an opportunity to testify and present his case at the hearing.

G. To deprive Attorney Matsiborchuk of his legal fees, the Panel accepted another Holcombe's post-discharge "fear" and misinterpretation as to the alleged "threat" to withdraw. In violation of attorney Matsiborchuk's due process rights, the issues related to Holcombe's improper behavior were excluded from the scope of the hearing and attorney Matsiborchuk was precluded from testifying and presenting his case. Depriving attorney of his fees, the Second Circuit disregarded Attorney Matsiborchuk's explanations and the written communications with Holcombe on the withdrawal issue. During Attorney Matsiborchuk's representation of Holcombe, Holcombe intended to force Attorney Matsiborchuk to work on all of Holcombe's unrelated legal matters. By October 21, 2009, Holcombe sent 1280 emails to Attorney Matsiborchuk in violation of her obligations as a client and acting beyond reason. See Statement of Client's Responsibilities, NYSBA. Holcombe demanded that attorney Matsiborchuk prepare legal documents in Holcombe's unrelated matters, such as in her dispute with another attorney and in her dispute with the Social Security Administration, another employer etc. Under these circumstances, Attorney Matsiborchuk was well within his rights and even duty-bound to inform Holcombe that he is not her attorney for all purposes. The Second Circuit's holding that attorney may be deprived of his legal fees for seven years of his services in violation of due process on the basis of his client's post-discharge allegation that she was allegedly

"threatened" by her attorney's warning to withdraw is unlawful and unconstitutional.

IV. DEPRIVING ATTORNEY MATSIBORCHUK OF HIS FEES, THE SECOND CIRCUIT DISREGARDED THAT ATTORNEY HAD NO FAIR OPPORTUNITY TO BE HEARD AND PRESENT EVIDENCE ON HOLCOMBE'S POST-DISCHARGE FALSE AND SMEARING ALLEGATIONS REGARDING THE ALLEGED "VERBAL ABUSE."

The Second Circuit's decision concerning the alleged verbal abuse is completely false and outrageous. In addition to the depravation of any compensation for near seven years of services to Holcombe, attorney Matsiborchuk was deprived of an opportunity to defend his reputation in open court against Holcombe's ridiculous post-discharge accusations.

Attorney Matsiborchuk is a member of the Bar with 33 years of irreproachable law practice. Attorney Matsiborchuk had hundreds of clients. Attorney Matsiborchuk had not ever heard such ridiculous allegations from his clients. Attorney Matsiborchuk demands that the circumstances related to the production of the Second Circuit's decision containing Holcombe's false and smearing allegations must be investigated. Attorney Matsiborchuk must be given a fair opportunity to have a hearing on the issues related to Holcombe's post-discharge allegations of the alleged "verbal abuse." The District Court and the Second Circuit disregarded attorney Matsiborchuk's and his legal assistant Larisa Matsiborchuk's explanations on this issue. Judge Orenstein prevented attorney Matsiborchuk from testifying at the hearing and

presenting additional evidence, and found that said "verbal abuse" was "constant." The District Court disagreed and stated that said alleged "abuse" was "at times." Appendix B. The Second Circuit did not address the discrepancies and adopted Judge Orenstein's false "finding." Holcombe's false and contradictory statements were not addressed. Attorney Matsiborchuk repeats that, during his representation of Holcombe, he met with Holcombe in his home office, or at her request, in Holcombe's apartment, or in the court room. Attorney Matsiborchuk is legally blind. He conducted his all meetings with Holcombe with help and in the presence of his legal assistant Larisa Matsiborchuk. Holcombe brought to said meetings her husband. All telephone conversations with Holcombe were conducted with assistance of Attorney Matsiborchuk secretary, where notes of every phone conferences were taken during the conferences. Attorney Matsiborchuk released all 2,500 e-mails, which Attorney Matsiborchuk and Holcombe exchanged during seven consecutive years. None of the multitude of said e-mails sent by attorney Matsiborchuk to Holcombe contains the abusive language alleged by Holcombe. In her thousands e-mails directed to attorney Matsiborchuk, Holcombe did not mention that attorney Matsiborchuk called Holcombe "names" in his communications with Holcombe. Holcombe had never mentioned such "name calling" at any point of her former attorney's representation. Those words are limited only to Holcombe's May 2016 declaration and her testimony at the hearing, Feb. 24, 2017:

Q. In communication I received from your counsel, December 13, there was no indication that I

call you stupid, senseless, and other names. How you explain that this notice of discharge did not indicate such serious misconduct?

A. I can't answer for Mr. Nardo.

Holcombe also could not recall when or what prompted the changes in the tone of her interactions with attorney Matsiborchuk.

The issues of when, under what circumstances, in whose presence the alleged "verbal abuse" took place must be fully investigated. Under these extraordinary circumstances, attorney Matsiborchuk has the right to be heard on this issue.

V. IN LIGHT OF DENYING ATTORNEY MATSIBORCHUK'S REQUEST FOR A QUANTUM MERUIT AWARD IN THE DISTRICT COURT AND APPEAL TAKEN OUT OF SAID DENIAL, THE SECOND CIRCUIT'S ABUSE OF DISCRETION STANDARD OF REVIEW IS INCORRECT.

De novo standard of review is applicable in this case. This appeal, among others, includes the issue related to determination of whether an attorney who was discharged is entitled to a quantum meruit award at all. See Raghavendra v. Trustees of Columbia University, 434 Fed. Appx. 31, 32 (2d Cir. 2011). The standard of review governing the instant dispute was set out by the Second Circuit in Simon v. Sack: "We generally review an award of attorney's fees for an abuse of discretion, but review a district court's legal conclusions, such as whether a recovery in quantum meruit is appropriate, de novo." 451 Fed. Appx. 14, 16 (2d Cir. 2011) (internal citations omitted) (emphasis added). In this situation, the correct, de novo, standard should be

applied to reviewing the legal conclusions of the District Court.

The Second Circuit's decision amounts to multiple violations of due process, the multiple violations of the existing laws of the state of New York and incorrect standard of review applied by the Second Circuit in this case. U.S. CONST., AMEND. V.

Under these circumstances, an exercise of this Court's supervisory power is necessary.

Thus, compelling reasons exist for a writ of certiorari, because the Second Circuit's decision violates U.S Constitution, Amendment V.

CONCLUSION

Accordingly, the judgment below must be reversed. The application of the new standards and holdings contained in the Second Circuit decision may have an extremely negative effect on the judicial system nationwide.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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