No. 18-5180

IN THE

SUPREME COURT OF THE UNITED STATES

WEN LIU, *Petitioner*,

v.

UNIVERSITY OF MIAMI, *Respondent.*

On Writ of Certiorari
To the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR REHARING

WEN LIU, MD., PhD., MS
Pro Se
7682 SW 169th St.
Miami, FL 33157
December 10, 2018

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To the Honorable Chief Justice John G. Roberts Jr., and to the Honorable Associate Justices Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia Sotomayor, Elena Kagan, Neil Gorsuch, and Brett Kavanaugh of the United States, and to the Honorable Circuit Justice For The United States Court Of Appeals for the Eleventh Circuit:

I, Dr. Wen Liu, *Pro Se*, respectfully petition for rehearing for the writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

I, Dr. Wen Liu, *Pro Se*, respectfully petition to our Supreme Court Justices of the United States to grant full debate and arguments for rehearing at this Supreme Court before the Nine Justices. The supreme court of the United States should not resolve the substantial, significant and important factual issues in this case without full briefing and argument before a full court member of the Nine Justices.

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, I, Dr. Wen Liu, Petitioner, respectfully petition for rehearing of the Court's decision issued on October 1, 2018 after the conference scheduled on September 24, 2018, Wen Liu v. University of Miami, No. 18-5180, 2018. I follow this Court's guidance and instruction issued on November 26, 2018 to present the petition for rehearing accompanied by a certificate in compliance with Supreme Court Rule 44, which states that grounds for a petition for rehearing "shall be limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented."

I move this Court to grant this petition for rehearing and consider this case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44, this petition for rehearing is filed within 25 days of this Court's decision in this case, and within 15 days of this Court's guidance and instruction issued on November 26, 2018.

I, Petitioner, present twenty intervening grounds of substantial, controlling effect and substantial grounds not previously presented to this Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

I. Termination Date by Defendant University of Miami Was October 12, 2012 or April 9, 2013? No Courts Face the Factual Termination Letter Dated March 7, 2013, and No Courts Issue an Answer on This One Simple, Straightforward and Key Question that is Critical to Determine and Rule Whether the Five Claims Filed Timely at the Courts of the United States Should or Should Not Be Barred

October 12, 2012 was a failed announcement of termination dated October 7, 201. April 9, 2013 was the date of termination dated March 7, 2013 when I was an employee of University of Miami receiving salaries and taking medical leave from October 11, 2012 to April 11, 2013 (see App. A., and App. H., *infra*).

The termination letter from defendant University of Miami Keitz to terminate me on April 9, 2013 was dated March 7, 2013 during my medical leave (see App. B., *infra*).

Defendant stated in the March 7, 2013 termination letter: "between January 10, 2013 and April 9, 2013", "your health benefits will be continued and you will continue to be

responsible for the employee portion of the health insurance premiums." to concede that I continued to be an employee after "*October 12, 2012*".

Defendant University of Miami concede that I was an employee of University of Miami from October 11, 2012 through April 11, 2013 taking medical leave as an employee of University of Miami. I was not terminated on October 12, 2012.

In defendant's own words in the March 7, 2013 termination letter, defendant stated:

"Your faculty appointment will terminate at close of business on April 9, 2013" to concede that I was an employee after October 12, 2012, and I was not terminated at "close of business on *October 12, 2012*" in the attempted but reversed announcement in a letter dated October 7, 2011; and I took the approved medical leave from October 11, 2012 to April 11, 2013 as an employee of University of Miami.

The explicit facts and defendant's own statements confirm and establish the termination date was "April 9, 2013" in the termination letter dated March 7, 2013. The defendant's adverse action date to be used to file the EEOC charges within 300 days is March 7, 2013. Thus, filing of the EEOC charges on March 21, 2013 is within the statute of 300 days for discrimination and retaliation claims, and within two year and three year statues of FMLA claims (see App. C., *infra*).

The explicit fact that I was receiving salaries after October 12, 2012 from University of Miami reveals that I was an employee of University of Miami after October 12, 2012 and I was not terminated on October 12, 2012.

The explicit fact that I was taking medical leave of treating cancer from October 11, 2012 to April 11, 2013 initiated and approved by University of Miami reveals that I was an employee of University of Miami after October 12, 2012 and I was not terminated on October 12, 2012.

In conclusion, the termination date was "April 9, 2013" conceded and stated in defendant's own words in the termination letter dated March 7, 2013 (see Appendix A, B, C, and H, *infra*).

II. My Receiving Salaries after October 12, 2012 Presents the Facts to This Supreme Court that the Termination Date Was April 9, 2013

Defendant manufactured lies and used a **false** termination date of "*October 12, 2012*" to deceive the District Court, and to deceive the Court of Appeals of the United States.

The termination date is critical for this Court to Rule.

Defendant announced to terminate me dated in letter October 7, 2011 to announce to terminate me on "*October 12, 2012*".

However, my receiving salaries as an employee (see App. A., *infra*) after defendant's failed announcement of termination on "*October 12, 2012*" reveals to this Supreme Court that I was NOT terminated on "*October 12, 2012*" but terminated on April 9, 2013 during my Medical Leave of Cancer. Wherefore, my claims filed at EEOC on March 21, 2013, and my five claims filed to the Court of the United States on June 18, 2013 are timely filed and should NOT be Barred by the District Court of Southern Florida (see Appendix A, *infra*).

III. Termination Date of April 9, 2013 Revealed I, Petitioner Filed EEOC Charges on March 21, 2013 within 300 Days after University of Miami's Use of the Discriminatory Practice Dated on March 7, 2013

In the case Lewis v. City of Chicago, the Honorable Justice Scalia at the Supreme Court delivered the opinion for a unanimous Court to rule that Lewis' EEOC charges were filed timely within 300 days after the employer's **use** of the discriminatory practice; the 300 days were not counting from the employer's announcement of the discriminatory practice.

The Supreme Court reversed the decision of the lower court and remanded the case for further proceedings.

According to the fact that the termination date was "April 9, 2013" conceded in defendant's termination letter dated March 7, 2013, the defendant's adverse action date to be used to file the EEOC charges within the statues is March 7, 2013.

In conclusion, the EEOC charges filed on March 21, 2013, fourteen (14) days after the adverse action date of March 7, 2013 were filed within the statutes of 300 days (see Appendix B and C, *infra).*

IV. Termination Date of April 9, 2013 Presented to This Court Reveals the Charges of Defendant's Discriminations, Retaliations and Violation of FMLA Filed at EEOC on March 21, 2013, and Lawsuit Against University of Miami Filed at the District Court of the United States on June 18, 2013 Were Filed Timely

Defendant Sheri Keitz' termination letter was dated March 7, 2013 to admit and concede the termination date was April 9, 2013. I filed the EEOC charges on March 21, 2013.

This Court should grant this petition for the Writ of Certiorari to resolve the difference in the judgement of two termination dates October 12, 2012, and April 9, 2013 contradicting to each other; and in the judgement of whether EEOC charges filed on March 21, 2013 timely; and in the judgement whether not checking the box of "retaliation" at EEOC charges should bar the claim; and to resolve the split opinions between the District Court and the Eleventh Circuit to establish uniformity among the lower courts on these important questions affecting millions of employees and employers nationwide, and specifically affecting faculty on the tenure track in over 5000 universities and colleges nationwide (see Appendix B, C, D and E, *infra*).

V. District Court of Southern Florida Erred to Bar the Claims of Discriminations, Retaliation, Violation of Family Medical Leave Act (FMLA) by Adopting Defendant's False Termination Date of *"October 12, 2012"* Rather Than Using the Termination Date of April 9, 2013 Showed by the Factual Payroll Direct Deposit after *October 12, 2012*, and Admitted and Conceded of Termination Date of April 9, 2103 by Defendant's Termination Letter Dated March 7, 2013

I filed the discriminations, retaliation and violations of Family and Medical Leave Act (FMLA) charges at the U.S. Equal Employment Opportunity Commission (EEOC) on March 21, 2013, fourteen (14) days after the termination letter dated March 7, 2013.

Where an employer adopts an employment practice that discriminates against Asian Americans in violation of Title VII's disparate impact provision, must a petitioner file an EEOC charge within 300 days after the attempted but reversed *announcement* of the adverse practice on October 7, 2011, or may a petitioner file a charge within 300 days after the employer's **use** of the unlawful employment practice dated on March 7, 2013?

The resolve of termination date April 9, 2013 is critical for this Court to grant rehearing to allow full arguments and presentations of evidences to establish the ground for this Supreme Court to rule the five claims timely filed (see Appendix A, B and C, *infra*).

VI. There is an Acknowledged Division Between the District Court and the Court of Appeals Regarding Retaliation Claim Should or Should Not Be Barred

Whether accidently not checking the box of "retaliation" by the EEOC officer makes the claim of retaliation barred or not barred?

The split opinion between the District Court and the Eleventh Circuit, and the split opinion between the precedents of Eleventh Circuit and the current opinion of the Eleventh Circuit regarding the retaliation claim are established.

This Court should grant rehearing for the petition for a writ of certiorari to resolve an important question that has long divided the courts of appeals. The division of authority on the question presented - Whether accidently not checking the box of "retaliation" by the EEOC officer makes the claim of retaliation barred or not barred?

VII. Explicit Fact Presented to This Supreme Court Shows The FMLA Claim Filed on March 21, 2013 at EEOC for The FMLA Violations That University of Miami Denied My Request to Take A Family And Medical Leave on March 22, 2011 Is Filed Within The Two Year Statute of FMLA Claims, And Within The Three Year Statute of Willful Violations

I requested to take a family and medical leave on March 21, 2011. Defendant denied my request the next day on March 22, 2011. I filed the EEOC charges on March 21, 2013 (see Appendix C, D and E, *infra*).

VIII. The Rehearing is Necessary on the Facts That The Threats of Defendant's Foreclosure on Our Only Home, and the Fate of Lawsuit at the State Court Are Connected with the Ruling of this Supreme Court against Defendant University of Miami

Defendant University of Miami filed motion to request me to pay University of Miami over $200,000, otherwise defendant threat to foreclose our only home to force my family to be homeless.

Defendant have been attacking me, one motion after another motion to threaten me, to force me, to push me to the edge to **destroy me** because I filed the Appeals to the Courts of

the United States; because I filed the Appeals to the Court of State Florida to fight for my constitutional rights as a human being for justice to be served.

This Supreme Court of the United States should grant the rehearing to send a clear and firm message to the defendant that what defendant had done to me should be reviewed and questioned by this Supreme Court and should be open to the Public Review as a precedent applying to the faculty over 5000 universities and colleges nationwide.

I believe and have good faith that the Nine Justices of this Supreme Court are not bystanders of defendant University of Miami's bully behaviors to threaten, to force me in the darkness (see Appendix F, and The Florida State Circuit Court of The 11th Judicial Circuit Case Number: **17-17025-CA-01** , *infra*).

IX. The Rehearing Is Warranted by The Facts That in This Year 2018, Defendant University of Miami Plot Calculated Conspiracy to Attempt to Kill The State Court Lawsuit of Independent And Distinct 27 Claims by Pressing The Court Using Summary Judgement Missing The Demanded Discovery, Missing The Demanded Jury Trial Enforced by The Laws

Defendant deceive the court to take the defendant's own drafted summary judgment prior to obtaining the discovery, prior to the depositions of eight defendants, prior to the affidavits, prior to testimonies of the 49 witnesses, prior to the demanded Jury Trial, prior to the demanded hearings before the Jury, before the Honorable Judges (see The Florida State Circuit Court of The 11th Judicial Circuit Case Number: **2018-06518-CA-32, 2018-06518-CA-58;** Defendant Filed 05/08/2018 with Filing #: 71859772).

X. The Rehearing Is Warranted by The Facts That Defendant University of Miami Deliberately Plotted to Kill The Federal Lawsuit with Five Claims in Infancy before The Granted And Ruled Pre-Trial Scheduled on October 9, 2015 without The Demanded Discovery, without The Demanded Jury Trial Enforced by The Laws

The Honorable Judge Zloch ordered and granted the Pre-trial date as October 9, 2015. However, defendant deceived the District Court to rule the summary judgment without a trial, without any testimonies of the 49 witnesses prior to the ruled pre-trial date of October 9, 2015.

Indeed, the District Court and the Eleventh Circuit's ruling the defendant's summary judgment based on only two defendants Sheri Keitz and Jose Szapocznik's affidavits, without the key discovery of the witnesses, resulted in substantial harm to the case, and departed from the Federal rules to allow adequate debates, presentations of the testimonies, and evidences to the courts.

All junior faculty on the tenure track, including me, need this Supreme Court to rule this case – could be an unprecedent one, for this Court to provide a precedent and guidelines for the practice of laws at higher educational institutes affecting us faculty in over 5000 universities and colleges nationwide (see the following docketed documents).

U.S. District Court Southern District of Florida
Case Number: **1:13-cv-22187-WJZ**
U.S. Court of Appeals for the Eleventh Circuit
Case Number: **15-14351EE**

XI. The Rehearing is Warranted by New Evidence that Defendant University of Miami Request to Dismiss the Case, to Ask to Sanction Me, to Ask Me to Pay Defendant Attorney Fees and Costs No Fewer Than 20 Times Knowing Me Having No Income and No Health Insurance during Treatments of Cancer Urgently

This Supreme Court scheduled and conducted a conference of this case on September 24, 2018. Once defendant learned that this court initially denied the petition for writ of certiorari at the conference on September 24, 2018, defendant University of Miami immediately jumped upon to utilize the occasion and asked the District Court of Southern Florida to issue an order to request me to pay defendant $97,998.86 attorney fees and costs on September 26, 2018, only two days after the conference of this Supreme Court.

Defendant repeatedly requested me to pay defendant's attorney fees for no fewer than 20 times as defendant dark strategies to threaten me, to force me from continuing the strive to appeal for Facts to be presented to the Jury, and to appeal justice to be served.

Defendant University of Miami shamelessly attempt to block my pursuit the justice at this Supreme Court by using threat of attorney fees to attempt to stop me to continue the lawsuits to reveal the Truth, and Facts to the Jury, and to the World (DE 4, 26, 27, 28, 29, 37, 39, 42, 44, 45, 48, 56, 60, 62, 127, 128, 135, 139, and 141) together with filing the motion for fees at the State Court of Florida repeatedly.

The defendant's repeated patterns of behaviors reveal to the court that the defendant seize every chance to attack me, to use the attorney fees to threaten me to attempt to block my pursuit for receiving full, fair, impartial hearings in a trial and for justice to be administered and served (see Appendix G, *infra*).

XII. Village of Palmetto Bay Manufactured A So Called $5000 Lien on Our Home Illegitimately without Following the Required Laws, Rules and Procedures for Defendant's Dark Purpose to File Foreclosure to Threaten and Force Our Family to be Homeless

It was found an illegal lien manufactured by Village of Palmetto Bay employee Vanessa Bencomo, warranting for further investigations of such **$5000 lien** created without following the required rules and procedures in violation of laws. The connection of this manufacture of unlawful $5000 lien with defendant University of Miami's dark attempt to foreclose our home to force my family to be homeless warrants investigations by law enforcements (see Appendix I, *infra*).

XIII. The Rehearing is Warranted by the Facts That Defendant University of Miami Failed to Obey And Follow Court Order That Copies of All Motions,

Orders, Correspondences And Other Papers Be Served To Me Through Emails And Mails

Defendant University of Miami failed to obey and follow the court order to serve documents including copies of motions, orders, correspondences and other papers to me through emails and mails exhibited in Appendix G as one of demonstrations presented to this Court revealing defendant's calculated and staged threat to ask me to pay defendant's $97,998.86 fees (see Appendix G, *infra*).

XIV. The Rehearing is Warranted by The Facts of Burglaries of Illegal Invasions into My Vehicle and Our Home to Threaten Our Lives and Properties During the Time I File Lawsuits against Defendant University of Miami to Pursue Justice to be Served

The window of my vehicle was smashed and broken into on the parking lot of defendant University of Miami, with the building of the University of Miami Police Station located just next to the parking lot at the site the crime occurred.

The window of our home was smashed and broken into our home located at the Village of Palmetto Bay. The criminal burglaries caused the loss and damages of our properties; and the crimes threatens our lives during the time I file lawsuits against defendant University of Miami.

The dark purposes of these crimes threatening our lives and properties during the time I file lawsuits against defendant University of Miami warrant investigations by law enforcements.

XV. The Rehearing is Warranted by the Facts that Defendant University of Miami Filed Twice of "Waiver" to Repudiate to Address and Reply to the "Petition for a Writ of Certiorari" Presented to This Supreme Court Because Defendant Have the Knowledge That Defendant Have No Ground And Have No Merit Denying My Family and Medical Leave, Retaliating Me, Discriminating Me, And Terminating Me Wrongfully During My Medical Leave of Cancer

Defendant failed to respond to the Petition for Writ of Certiorari before the Nine Justices at the Supreme Court of The United States because defendant have the knowledge that defendant have no ground and have no merit denying my family and medical leave, retaliating me, discriminating me, and terminating me wrongfully during my medical leave of cancer (see Appendix J and K, *infra*).

XVI. The Rehearing Is Warranted On The Facts That This Supreme Court <u>Should Not Allow Defendant's</u> Violating Laws, Bullying Faculty Who Are Dedicated To Contribute To Our Students And to Our Society

I believe and have good faith that this Supreme Court leads to provides the guidance and precedents, to be relied upon by all faculty of more than 5000 universities and colleges

nationwide to seek justice to be administered of this great country to protect our fundamental constitutional rights.

This Supreme Court **Should Not Allow Defendant** to attack me, to silence me to appeal for justice to be served.

This Supreme Court **Should Not Allow Defendant** to manipulate laws, to violate the laws, to openly, boldly challenge the confidence of the public, to challenge the intellects of courts by terminating a faculty during a medical leave, by denying a faculty's request of family and medical leave, by violating the enforced faculty manual, by discriminating a female, minority faculty on the tenure track with different standards in publications, grants in violation of the Faculty Manual, and in violation of my constitutional rights.

Rehearing is an important feature of our judiciary, to guarantee sound interpretation of the law—can come under criticism when it is forced into public view. Court's deliberations for rehearing would help perpetuate the widespread trust and esteem for the Court as an essential institution of our government.

This Supreme Court should issue its opinion regarding the Key and Clear question of the termination date which the courts below erred to adopt defendant's deliberately used false date of *"October 12, 2012"* which demonstrated to be wrong when I was receiving salaries as an employee after *"October 12, 2012"*. Further evidence presented to this Court that defendant issued a termination letter dated March 7, 2013 after *"October 12, 2012"* during my medical leave of cancer to admit and to concede the termination date as April 9, 2013 NOT defendant's so called *"October 12, 2012"*.

The termination date of April 9, 2013 is simply and clearly presented to this Court by defendant's termination letter dated March 7, 2013, and by the Payroll direct deposit to me after defendant's failed announcement of termination on *"October 12, 2012"*. The Facts reveal to this Supreme Court that I was NOT terminated on *October 12, 2012* but terminated on April 9, 2013 during my medical leave of cancer (see Appendix A, *infra*).

It is disappointing and shocking that District Court of Southern Florida issued an order on September 26, 2018, only two days after this Supreme Court's conference on September 24, 2018 to ask me to pay defendant's $97,998.86 attorney fees which is contradicted to its own previous court's orders.

Questions Presented to this Supreme Court:

A. **The Reason** the District Court issued an order on September 26, 2018 contradicted to its previous orders is because of Defendant's desperation to block me to continue the appeals?

B. **The Reason** the District Court issued an order on September 26, 2018 contradicted to its previous orders is because of Defendant's retaliation for my pursuit to present Facts to this Court to have Justice to be administered?

C. **The Reason** the District Court issued an order on September 26, 2018 contradicted to its previous orders is because District Court was deceived by defendant's persuasion, and the District Court's Order is used by defendant as a tool to attack me to block the appeals?

D. **The Reason** the District Court issued an order on September 26, 2018 contradicted to its previous orders is because District Court is attempting to avoid facing the discomfort when this Supreme Court remands this case to the District Court for full hearings as results of the District Court's being ignored the basic and fundamental termination date and ruled to bar all the five claims using the incorrect termination date and using the incorrect date of filing EEOC charges in errors?

This case provides just such an example that rehearing is necessary and advantageous that this Supreme Court amends its original decision by providing an opinion; This case provides just such an example that rehearing is necessary and advantageous that this Supreme Court issues a statement and opinion explaining this Court's deliberation of the fundamental and key question of the **termination date**, and grants for full rehearing before the Nine Justices of this Supreme Court of the United States.

The faculty of more than 5000 universities and colleges nationwide would support me and inspire me to fight for our constitutional rights protected by the laws.

Seeking Justice is my sole choice facing defendant University of Miami's slandering my reputations, ruining my career, destroying my health, lying and deceiving the courts.

XVII. There is An Acknowledged Division among The Courts of Appeals Regarding The Questions Presented Where The Courts Below Erred Barring The Claims

The District Court and the Eleventh Circuit had split opinions on the date of filing the FMLA claims. The fact is I filed the charges with EEOC on March 21, 2013.

The District Court adopted defendant's false date of "March 23, 2013", which making it two years and 1 day from the adverse action date of March 22, 2011 of denial my request to take a family and medical leave; by contrast, the Eleventh Circuit found and confirmed that FMLA claims were filed on March 21, 2013 at EEOC, making it one year, 364 days, within the two year statute of filing FMLA claims, and within the three year statute of filing willful violations.

Based on this false date, the District Court concluded that "Court need not address the merits of this claim since it is barred by the applicable two year statute of limitations".

As presented to this Court, and already to the lower courts, on March 21, 2011, I requested to take a family and medical leave to take care of my ailing parent (see App. D., *infra).* Defendant denied immediately the next day on March 22, 2011, without communicating with me for any document of "an FMLA form signed by a doctor" for my 75 years old, retired mom (see App. E., *infra).* My request to take a family and medical leave on March 21, 2011, and defendant's denial on March 22, 2011 are presented in the Appendix for this Court to review.

The District Court erred in conclusion that "no FMLA violation has been demonstrated".

FMLA claims were filed on March 21, 2013 at EEOC for the violation that University of Miami denied my request to take a family and medical leave on March 22, 2011 within the two year statute of FMLA claims, and within the three year statute for willful violations.

The Eleventh Circuit's holding that petitioners' right to challenge defendant University of Miami's discriminations, retaliation, and FMLA violations expired 300 days after the adverse action was first made and announced on October 7, 2011– no matter that announcement was reversed, and that University subsequently used its discriminatory classification, and performed the adverse action on March 7, 2013 to terminate me as an employee taking medical leave – is wrongly decided under this Court's precedents, and should be reviewed.

In the case Lewis v. City of Chicago, the Honorable Justice Scalia at the Supreme Court delivered the opinion for a unanimous Court to rule that Lewis' EEOC charges were filed timely within 300 days after the employer's use of the discriminatory practice; the 300 days were not counting from the employer's announcement of the discriminatory practice. The Supreme Court reversed the decision of the lower court and remanded the case for further proceedings.

This division of authority has previously been noted by the Third, Fifth, and Sixth Circuits, and leading commentators likewise agree that the courts of appeals are in conflict.

Five circuits – the Second, Fifth, Ninth, Eleventh, and D.C. Circuits – have held that each instance of a repeated refusal to hire, promote, or provide employment benefits, based on a facially neutral policy that has a disparate impact on a protected group and that is not job related and consistent with business necessity, constitutes an independent violation of Title VII. See Guardians Ass'n v. Civil Serv. Comm'n, 633 F.2d 232, 248-50 (2d Cir. 1980), aff'd on other grounds, 463 U.S. 582 (1983); Gonzalez v. Firestone Tire & Rubber Co., 610 F.2d 241, 249 (5th Cir. 1980); Bouman v. Block, 940 F.2d 1211, 1220-21 (9th Cir. 1991); Beavers v. Am. Cast Iron Pipe Co., 975 F.2d 792, 797-800 (11th Cir. 1992); Anderson v. Zubieta, 180 F.3d 329, 335-37 (D.C. Cir. 1999). This rule provides plaintiffs with a new limitations period that commences with each subsequent refusal to hire (or other adverse employment action) caused by the application of the policy.

This case presents an ideal vehicle for this Court to resolve the entrenched circuit split, and affirm the ruling in the precedent case Lewis v. City of Chicago. The question presented is a pure question of law unencumbered by any factual disagreement between the parties.

In addition, the split opinion between the District Court and the Eleventh Circuit of the timeline to file FMLA claims within two year statute and within three year statute for willful violations are presented here for this Court to review and rule.

XVIII. The Questions Presented Are of Significant Importance to The Administration of Title VII Claims, Retaliation Claim and FMLA Claims

The courts of appeals are intractably divided over the proper analysis and resolution of claim-accrual questions in disparate impact cases. Some courts hold that a challenge to an employment practice with a discriminatory adverse impact is timely if filed within the charge-filing period after any **use** of the practice that adversely affects the charging party. Other decisions hold that a challenge is timely only if charges are filed within the charge filing period after the charging party learns of the adoption of the employment practice in

question, even if the practice is not immediately used to make employment decisions and is then used repeatedly for this purpose over a lengthy period of time.

This conflict requires resolution by this Court not only because of the intractable split among the courts of appeals, but also because clarity and uniformity regarding the charge-filing deadline are of significant importance to the administration of Title VII claims, retaliation claim, and FMLA claims in the lower courts.

This is an ongoing feature of Title VII litigation. The disarray among the courts of appeals in adjudicating the timeliness of these frequent disparate impact challenges is contrary to Congress's determination to establish nationally uniform protection against employment discrimination.

The split among the courts of appeals also threatens to undermine Congress's broad remedial purpose in enacting Title VII. The Congress enacted Title VII to eliminate systems that perpetuate workplace discrimination:

> The objective of Congress in the enactment of Title VII . . . was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

H.R. Rep. No. 88-914 (1963), reprinted in 1964 U.S.C.C.A.N. 2391, 2393. Indeed, this Court has long recognized that in passing legislation to eliminate pervasive discrimination in employment, Congress sought to ensure "the effective application of uniform, fair and strongly enforced policies." Morton v. Mancari, 417 U.S. 535, 547 (1974) (discussing the legislative history of the 1972 amendments to Title VII) (quoting H.R. Rep. No. 92-238, at 24-25 (1971), reprinted in 1972 U.S.C.C.A.N. 2137, 2159); cf. Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 754 (1998) (noting that Title VII requires a "uniform and predictable standard").

Under the District Court and the Eleventh Circuit's ruling, a discriminatory employment practice that is not challenged within the short charge-filing period after its initial announcement of termination (even this announcement of termination was failed and reversed, even the initial announcement of termination date was not valid), the employers may be immunized from subsequent challenge by applicants or employees. This outcome would undermine Congress's intent to authorize civil actions by private litigants as an important means of eradicating employment discrimination: "Congress has cast the Title VII plaintiff in the role of 'a private attorney general,' vindicating a policy 'of the highest priority.'" ("Congress gave private individuals a significant role in the enforcement process of Title VII.... [T]he private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices." (citations omitted)).

This Court should grant the petition for a writ of certiorari to resolve an important question that has long divided the courts of appeals. The division of authority on the question presented – whether an EEOC charge for disparate impact discrimination must be filed within the charge-filing period after the adverse impact of an employment practice is first announced, or whether charges are timely if filed within the time period after any subsequent **use** of that unlawful practice was raised and acknowledged as in the case Lewis v. City of Chicago.

In the case Lewis v. City of Chicago, the Honorable Justice Scalia at the Supreme Court delivered the opinion for a unanimous Court to rule that Lewis' EEOC charges were filed timely within 300 days after the employer's use of the discriminatory practice; the 300 days were not counting from the employer's announcement of the discriminatory practice. The Supreme Court reversed the decision of the lower court and remanded the case for further proceedings.

This legal distinction is of enormous practical importance, effectively determining whether an employer may indefinitely follow a discriminatory employment practice if affected employees or applicants fail to object to the initial promulgation of the procedure within the brief Title VII limitations period. The use of employment practices such as the hiring procedure at issue here is widespread – and is in fact required by state or local law for many public employers across the country – making the need for a nationally uniform claim-accrual rule paramount.

The ununiformed opinions on the so central question as when Title VII disparate impact claims, together with the similar essential questions regarding retaliation claim and FMLA claims, and accrue is untenable, especially in light of the frequency with which disparate impact challenges to employment practices arise and the clear Congressional mandate for nationally uniform application of the law.

XIX. The Courts Below Erred

The clear and acknowledged conflict among the circuits on this important question of employment law is sufficient, without more, to justify this Court's review. Certiorari is also warranted, however, because the Eleventh Circuit's decision departs from this Court's precedents on the timeliness of employment discrimination claims, FMLA claims and is inconsistent with the language of Title VII.

First, regarding timelines of filing EEOC charges, in the case of Lewis v. City of Chicago, the Honorable Justice Scalia at the Supreme Court delivered the opinion for a unanimous Court to rule that Lewis' EEOC charges were filed timely within 300 days after the employer's use of the discriminatory practice; the 300 days were not counting from the employer's announcement of the discriminatory practice. The Supreme Court reversed the decision of the lower court and remanded the case for further proceedings;

Secondly, regarding the filing and timelines of retaliation claim, this is a case with significant public importance for this Court to rule that accidently not checking the box of

"retaliation" at EEOC charges by the EEOC officer makes the claim of retaliation barred or not barred;

Thirdly, regarding the filing and timelines of FMLA claims, this is a case with significant public importance for this Court to rule that a request to take a family and medical leave for an ailing parent should be considered to be protected by the FMLA; and the filing of the FMLA claims at EEOC within both the two year statute, and within the three year statute for willful violations should be barred or should not be barred;

Fourthly, regarding evaluation on performance of a faculty on the tenure track during the eight year probationary period, this is a significant and unprecedented case for this Court to rule whether not having "*five first authored publications*" submitted/accepted in one year" should be classified as "poor performance" or not.

Finally, I respectfully request this Court to review the unprovided opportunity of the lower courts for me to present Petitioner's discovery including the affidavits, testimonies of 49 witnesses submitted to the counsels and then to the lower courts; and the lower courts' ruling of the summary judgement based on only two defendant' affidavits of Szapocznik and Keitz without the affidavits, depositions, and the testimonies from the 49 witnesses from me. The facts warrant this Court to remand the case for further proceedings.

This Court has established two clear principles governing claim accrual in Title VII disparate treatment cases.

(i) A Title VII violation exists, and a new charge-filing period consequently begins, each time an employer's actions satisfy – at the time of those actions – all elements of a violation. See Ledbetter v. Goodyear Tire & Rubber Co., 127 S. Ct. 2162, 2167-68 (2007) (emphasizing that the "critical question" in determining timeliness is "whether any present violation exist[ed]" within 300 days of the filing of the charge (quoting United Air Lines, Inc. v. Evans, 431 U.S. 553, 558 (1977))); see also Del. State Coll. v. Ricks, 449 U.S. 250, 252-54, 258 (1980);

(ii) Where there are recurring present violations of the statute, that those violations may be related to an earlier act of discrimination does not prevent new claims from accruing (and a new charge filing period from commencing) with each subsequent act that satisfies all elements of a Title VII violation. This Court explained in National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002), that:

> [e]ach discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180- or 300-day time period after the discrete discriminatory act occurred. The existence of past acts and the employee's prior knowledge of their occurrence, however, does not bar employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed. Id. at 113;
>
> see also Ledbetter, 127 S. Ct. at 2174 ("[A] freestanding violation may always be charged within its own charging period regardless of its connection to other violations.").

Applying these principles to claims of disparate impact discrimination, an EEOC charge should be considered timely if filed within the charge-filing period after any use or

application of a selection process that adversely affects protected groups. Cf. Lorance v. AT&T Techs., Inc., 490 U.S. 900, 908 (1989) (noting that a claim for disparate impact discrimination would accrue at the time the adverse effect of an employment practice is felt by an individual plaintiff); see also 42 U.S.C. § 2000e-2(k)(1)(A) (providing that a disparate impact violation is established when an employer "uses a particular employment practice that causes a disparate impact on the basis of race"").

XX. The Supreme Court of the United States Should Not Resolve the Substantial, Significant and Important Factual Issues in this Case without Full Briefing and Argument before the Nine Justices

The Eleventh Circuit's holding that petitioners' right to challenge defendant University of Miami's discriminations, retaliation, and FMLA violations expired 300 days after the adverse action was first made and announced on October 7, 2011– no matter that announcement was reversed, and that University subsequently used its discriminatory classification, and performed the adverse action on March 7, 2013 to terminate me as an employee taking medical leave – is wrongly decided under this Court's precedents, and should be reviewed.

The courts have NOT even had a chance to "properly look" claims in a lawsuit previously because the courts below did not review the Facts to determine the termination date of as April 9, 2013 causing the claims were barred in errors.

The courts have NOT even had a chance to determine, to litigate every matter within the issues as framed by the pleadings or as incident to or essentially connected with the subject matter previously because the courts below ignored the facts that I was terminated on April 9, 2013 not defendant's so called *"October 12, 2012"*.

My receiving salaries as an employee after defendant's failed announcement of termination on *"October 12, 2012"* reveals to this Supreme Court that I was NOT terminated on *October 12, 2012* but terminated on April 9, 2013 during my medical leave of cancer. Wherefore, my claims filed at EEOC on March 21, 2013, and my five claims filed to the Court of the United States on June 18, 2013 are all timely filed and should NOT be Barred by the District Court of Southern Florida.

Defendant deceive the courts by plotting to use the same patterns of false statements, change of concepts, manufacturing lies as defendant behaved in the Federal Courts to willfully manipulate the laws, to avoid the consequences of violations of the constitutional rights entitled to each of us citizens by the laws.

University of Miami's misconducts were willful, malicious, wanton, and oppressive, and were done with conscious indifference to the consequences, and with specific intent to harm me.

This Court therefore should grant rehearing to provide for a decision by this Supreme Court and grant for full hearing and arguments to rule and provide guidance and a precedent for faculty on the tenure track of more than 5000 universities and colleges of such significance nationwide.

CONCLUSION

For the foregoing reasons, the rehearing of the petition for the writ of certiorari should be granted.

I **appeal** to this Supreme Court of the United States to move forward to hear the evidences and arguments to rule the termination date was NOT defendant's "*October 12,2012*" but April 9, 2013 dated March 7, 2013 in defendant's termination letter during my medical leave of cancer;

I **appeal** to this Supreme Court of the United States to move forward to hear the evidences and arguments to rule my filing of defendant's violation of Family and Medical Leave Act (FMLA) on March 21, 2013 is within the two year statute of FMLA claims, and within the three year statute of willful violations from the date defendant denied my request to take a family and medical leave on March 22, 2011;

I **appeal** to this Supreme Court of the United States to remand the case to the demanded trial before the Court and before the Jury to allow all evidences including depositions, affidavits, and testimonies by the witnesses to be presented to the Court;

I **appeal** to this Supreme Court of the United States to remand the case to a trial for receiving **full, fair, impartial hearings** before the Court, and before the Jury, and for justice to be administered and served.

The petitioner always thought that the courts of Unite States rule based on facts and laws, and not based on Defendant one sided statements, and not based on defendant's only two affidavits to rule without the demanded Jury Trial, without the testimonies of 49 witnesses.

Every citizen must not suspend their critical intellect and must not stand mute and dumb before one party of repeated bullying, insulting and attacking using sanctions, and fees to threaten and force to block a citizen's pursuit for justice to be served.

The Petitioner asks for Honorable Nine Justices of the United States to reconsider this Court's direction and decision in the light of faculty, especially junior faculty on the tenure track that are not aware to seek protections by laws of Title VII, FMLA, and laws against discriminations in gender, race and originality of nation.

This Court should choose and rule to review the petitioner's arguments in the rehearing.

WHEREFORE, for the foregoing reasons, I, *Pro Se*, Dr. Wen Liu, respectfully request this Supreme Court of the United States grant this Petition for Rehearing and order full briefing and argument on the merits of this case.

Respectfully submitted,

By: _____

Wen Liu
7682 SW 169th ST
Miami, FL 33157

December 10, 2018