

18-7514 ORIGINAL

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

JAN 16 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

TONI R. PALMER — PETITIONER  
(Your Name)

vs.  
KAISER FOUNDATION HOSPITALS  
TECHNOLOGY RISK OFFICE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TONI R. PALMER  
(Your Name)

4705 IRAN STREET  
(Address)

DENVER, CO 80249  
(City, State, Zip Code)

303-574-9449  
(Phone Number)

## QUESTION(S) PRESENTED

- 1) F.R.C.P. 12(b)(6) SAYS THAT YOU DON'T HAVE A CLAIM UPON WHICH YOU ARE ENTITLED TO RELIEF BUT A SUMMARY JUDGMENT SAYS YOU DO NOT HAVE EVIDENCE TO PROVE YOUR CLAIM.
- 2) DID THE DISTRICT AND APPEALS COURT ERR WHEN THEY GRANTED AND AFFIRMED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WHEN THERE IS EVIDENCE SUBMITTED BY APPELLANT THAT PROVES THERE ARE GENUINE DISPUTES AS TO MATERIAL FACTS?
- 3) SHOULD CONSTRUING A PRO SE PLAINTIFF'S COMPLAINT LIBERALLY HAVE THE SAME OR MORE LIBERALITY RELATING TO A PRO SE PLAINTIFF WITH PROVEN MENTAL HEALTH DISORDER?
- 4) DOES THE COURT HAVE AN OBLIGATION TO POINT OUT ERRORS MADE BY PRO SE PLAINTIFF AS WELL AS GIVE OPPORTUNITY TO CORRECT INSTEAD OF SOLELY CONDEMNING AND PENALIZING?

## LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION .....	6

## INDEX TO APPENDICES

APPENDIX A ORDER AND JUDGMENT COURT OF APPEALS  
FOR THE TENTH CIRCUIT

APPENDIX B  
ORDER ADOPTING NOV. 17, 2017 RECOMMENDATION

APPENDIX C  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

APPENDIX D  
PLAINTIFF OBJECTION TO RECOMMENDATION

APPENDIX E  
APPELLANT'S OPENING BRIEF

APPENDIX F  
DISTRICT JUDGE ORDER VACATING AWARD OF COSTS

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

PRYOR V. KAISER FOUNDATION HEALTH PLAN OF COLO	APPENDIX D, PG 12
JONES V. KAISER PERMANENTE COLORADO	1:11-CV-00470
JACKSON V. KAISER FOUNDATION HEALTH PLAN	1:11-CV-00229
BLAND V. KAISER FOUNDATION HEALTH PLAN	1:10-CV-0202
DEMOTT V. KAISER et AL, COLORADO	1:14-CV-02263
MCSAW V. PERMANENTE FEDERATION, LLC, THE ETAL COLORADO	1:16-CV-00571
	1:12-CV-00382

### STATUTES AND RULES

D.C. COLO. LCIV R 16.6  
F.R.C.P. 56(B)  
F.R.C.P. 14  
Fed. R. CIV. P. 30(e)

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was OCTOBER 18, 2018.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

*APPEALS COURT REJECTED APPELLANT'S REQUEST FOR HEARING.*

☐ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

COLORADO CODE OF JUDICIAL CONDUCT  
CANON 111 A 7



## STATEMENT OF THE CASE

APPELLANT FILED HER INTENTIONAL EMOTIONAL DISTRESS, FMLA RETALIATION AND INTERFERENCE, AND CIVIL RIGHTS ACT OF 1964 TITLE VII ON SEPTEMBER 20, 2016. DEFENDANT FILED MOTION FOR SUMMARY JUDGMENT ON JUNE 2, 2017. APPELLANT FILED OPPOSITION ON JUNE 16, 2017, AS SHE PROVIDED EVIDENCE DURING DISCOVERY TO CONTRADICT DEFENDANT'S ASSERTIONS. MAGISTRATE JUDGE PROVIDED RECOMMENDATION ON NOV. 17, 2017. APPELLANT OBJECTED DEC. 1, 2017. DISTRICT JUDGE ADOPTED RECOMMENDATION DEC. 22, 2017. APPELLANT FILED NOTICE OF APPEAL JAN. 20, 2018. COURT OF APPEALS FOR THE TENTH CIRCUIT AFFIRMED OCT. 18, 2018. CONSEQUENTLY, APPELLANT BRINGS THIS APPEAL. PLAINTIFF'S ACTUAL APPEAL FILED WITH TENTH CIRCUIT ON APRIL 9, 2018.

RULE 10(c)

## REASONS FOR GRANTING THE PETITION

COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.. WHICH IS "PLAINTIFF'S EVIDENCE DOES NOT CREATE A GENUINE ISSUE OF MATERIAL FACT TO SUBMIT TO A JURY." WHILE IT IS TRUE COURTS CANNOT BE ADVOCATE FOR PRO SE PLAINTIFF THIS SHOULD ALSO HOLD TRUE PERTAINING TO DEFENDANT. THE PRO SE LITIGANT'S CONSTITUTIONALLY PROTECTED INTEREST IS IN A MEANINGFUL OPPORTUNITY TO BE HEARD, AS WELL AS THE RIGHT TO A NEUTRAL AND DETACHED DECISION MAKER. TO CHARACTERIZE RELEVANT EVIDENCE AS VOLUMINOUS AND GIBBERISH IN AN EFFORT TO CONSERVE TIME AND DOLLARS UNDERMINES THE INTEGRITY AND COMMITMENT BY A PRO SE PLAINTIFF. IF THE COURT IS NOT WILLING TO OVERSEE SETTLEMENT NEGOTIATIONS DUE TO A DEFENDANT'S DESIRE NOT TO DO SO, DESPITE THE RECORD, WHAT IS THE PURPOSE OF ANY LITIGANT FILING A COMPLAINT?

OF NATIONAL IMPORTANCE IS THE OBLIGATION OF THE COURT TO ENSURE PRO SE PLAINTIFF'S ARE TREATED FAIRLY WITH REGARDS TO FOLLOWING PROPER PROCEDURES. IT IS IMPERATIVE THE COURT TAKE A NEUTRAL APPROACH AND PROPERLY OVERSEE ALL <sup>STEPS IN</sup> PROCEEDINGS, NOT JUST THOSE THAT ARE WELCOMED BY DEFENDANT, BUT ALSO THOSE THAT BRING IMPARTIAL JUSTICE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Jan 16, 2019