

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

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In The  
**Supreme Court of the United States**

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JUDY LONG,

*Petitioner,*

v.

ALAMEDA UNIFIED SCHOOL DISTRICT,

*Respondent.*

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

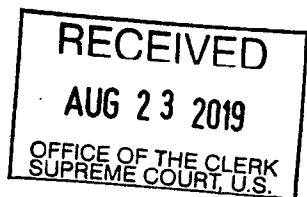
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**PETITION FOR A WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

What is the appropriate standard of review when a trial court improperly grants a motion for summary judgment dismissing the right to a jury trial?

## **PARTIES TO THE PROCEEDING**

Petitioner Judy Long was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondent Alameda Unified School District was the defendant in the district court proceedings and appellee in the court of appeals proceedings.

## **RELATED CASES**

- *Long v. Alameda Unified School District*, No. 3:16-cv-06279, U.S. District Court for the Northern District of California. Judgment entered May 22, 2018.
- *Long v. Alameda Unified School District*, No. 18-16131, U.S. Court of Appeals for the Ninth Circuit. Judgment entered March 19, 2019.
- *Long v. Alameda Unified School District*, No. 18-16131, U.S. Court of Appeals for the Ninth Circuit. Judgment entered May 24, 2019.
- *Long v. Alameda Unified School District*, No. 3:16-cv-06279, U.S. District Court for the Northern District of California. Judgment entered July 10, 2019.

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**PETITION FOR A WRIT OF CERTIORARI**

Judy Long petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

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**OPINIONS BELOW**

The Ninth Circuit's opinion is reported at *Long v. Alameda Unified School District*, 746 F. App'x 639 (9th Cir. 2018) and reproduced at App. 1-3. The Ninth Circuit's denial of petitioner's motion for reconsideration and rehearing *en banc* is reproduced at App. 20. The opinions of the District Court for the Northern District of California are reproduced at App. 4-19.

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**JURISDICTION**

The Court of Appeals entered judgment on March 19, 2019. App. 1-3. The court denied a timely petition for rehearing *en banc* on May 24, 2019. App. 20.

The Court has jurisdiction under 28 U.S.C. § 1254(1).

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## **STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED**

This case does not involve interpretation of statutory or constitutional provisions.

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## **INTRODUCTION AND STATEMENT OF THE CASE**

The issue presented in this case involves a genuine and current conflict between the Courts of Appeals that is significant and substantially important because it will determine the standard of review when dismissal of cases through summary judgment motion. Furthermore, the Ninth Circuit opinion affirming the district court's *summary judgment* ruling created a circuit split regarding the proper standard of appellate review in such cases.

Petitioner Judy Long was always the only African American English as a Second Language (ESL) teacher for ten years of teaching at Alameda Adult School, a school within the Alameda Unified School District. Long taught students from Mexico, Yemen, Syria, Afghanistan and many other countries. She demonstrated effective teaching skills as an ESL teacher and next she was assigned her own Computer classes. Long was teaching both ESL and Computer classes at Alameda Adult School. During her ten years of teaching, she was the only ESL teacher fired at Alameda Adult School, and it was an unprecedented situation. Teachers were removed by; teachers' contracts not

being renewed or classes canceled. No other ESL teacher fired, and after Long was fired the next ESL teacher hired was not African American.

The many years Long taught, she found that colleagues and staff were pleasant and engaging. Long enjoyed the friendly, small, and positive work environment. She realized the standards for all teachers were the same regardless of race, but Joy Chua differed.

It is widely known teaching is a low-paid profession. Long, like many other teachers, is passionate about teaching and has a desire to help others so she accepts this career even with the below average pay.

Long's aggregated absence was less than two weeks, as being employed for ten years, she was always on time and ready to teach.

Long always requested or called in to report an absence, even in the midst of being fired. On December 20, 2013, Chua stated in an email, "She (Long) called in sick the last two days." Long still called in after she was told December 20, 2013 would be her last day.

Long did nothing so egregious, yet Chua a Principal for only three months quickly discharged Long on December 20, 2013 because of Long's race, which was in violation of Title VII of the Civil Rights Act of 1964.

## **Attorney Disbarred**

Long's attorney Albert Boasberg, after briefly representing her, was arrested and sentenced to four years in state prison. Long is a Pro Se Plaintiff.

## **Direct evidence**

In this Petition there will be legal citations that references, "Circumstantial evidence", but the Plaintiff has predominantly "Direct evidence." Plaintiff does not rely on conclusory allegations. In a lengthy complaint, Plaintiff asserted the following of mostly direct evidence to prove racial motives.

### **Led by Chua: Dishonest Emails, Questionable "Student Ambassador" Report, and Inaccurate Observation – all done in one day December 5, 2013**

- **December 5, 2013, first document, Defendant e-mailed false information regarding Plaintiff**

Defendant's fabricated email is direct evidence that proves intentional discrimination, the starting point proof in 2013 regarding "Student Ambassadors Project."

***Students' Complaints Devised by Defendant.*** Chua instructed lead teacher, Lisa Gonzalves, regarding the "Student Ambassadors Project" on what to say about Long, which was negative and not true, in an email from Chua to Gonzalves dated December 5, 2013.

Chua was not involved with the Student Ambassadors so it was not practical for her to have knowledge regarding the feedback about Long. Chua did not write emails for other ESL teachers, only Long. Chua had no reason to send an email to Gonzalves regarding Long on December 5, 2013, but only to create erroneous information to terminate Long, the Black ESL teacher.

Chua stated to her boss School District Superintendent Sean McPhetridge in her evaluation, "Support I (Chua) need to continue to grow as a leader and join in on walkthrough protocol and evaluate protocol," this is evidence she was not involved in the walkthrough.

Gonzalves single-handedly managed the Student Ambassadors project, as referenced in Gonzalves's email.

An email from Gonzalves sent to Long had almost the same text that was conveyed from Chua to Gonzalves, Chua behind the scene directed the lie to be similar as in 2012.

**December 5, 2013, second document, Defendant received a problematic "Student Ambassador Report" untruthful comments regarding Long**

Chua received a questionable "Student Ambassador Report" from Gonzalves regarding Long on or about December 5, 2013. Since Gonzalves provided a "Student Ambassador Report" to Chua, it did not make sense for Chua to email Gonzalves regarding the same information. This report further proves Chua's email

sent to Gonzalves December 5, 2013 was dishonest and unnecessary.

Chua's Declaration states, "On or about December 5, 2013, I (Chua) received a 'student ambassador report.'" This important "Report" is missing basic information: Who is it to? Who is it from? What is the date? What is the subject? No person's name for ending recognition. The closing is "Thanks Judy!" this makes it appears the "Report" was sent to Long the Plaintiff, and not Chua the Defendant. This inept and suspicious "Report" would not be acceptable by administrators in a professional environment, Alameda Adult is an accredited school. See Exh. 7, App. 35, Section 9 and App. 37 (Chua's Declaration receiving Report and the Report).

### **Chua coordinated and orchestrated students' complaints**

In October 2012 (two months after Chua was hired, and Long had been teaching for nine years with no student complaints – this being the first criticism), a complaint letter was given to Principal Alysse Castro, addressed to Plaintiff, signed by 14 students in Plaintiff's ESL class. Students with limited English, different in languages, only in class for 5 weeks – all came together, and wrote a detailed letter in English with such high degree of **specificity** is absurd – including the insistence student complaints were not under the control of Chua.

On their own, a total of 23 ESL students formed two groups and said similar negative things about Plaintiff in 2012 and again in 2013, all done within one year and the same first year Chua was hired, and complaints only aimed at Plaintiff as the Black ESL teacher, this makes it apparent complaints were devised by Defendant to remove Long.

Chua's incendiary rhetoric to the students could have jeopardized the safety of Plaintiff.

It is the Defendant statement in the Alameda's EEOC position statement – she stated, "The Student Ambassadors returned with concerns from nine of charging party's students that were *strikingly similar* to those expressed back in 2012." It has been proven the Defendant was responsible for the damaging statements in 2013, and since Defendant stated "*strikingly similar*" in 2012; this means Defendant masterminded the complaints in 2012 and 2013.

**Dr. Marc Santamaria confirms students' complaints are not known in ESL teaching.**

Defendant has no expert witness to dispute Dr. Marc Santamaria.

Dr. Santamaria was referred to Plaintiff by University of California, Berkeley because of his academic background and work experience which makes him an expert witness. He declared, "He has never seen, had experience with, or heard of ESL students filing complaints to school authorities or staff. Part of my

master's thesis in ESL was about long-term memory and how students can incorporate repetition in their language learning activities putting words and phrases into their long-term memory. Repetition is vital to learning a language. Further, there are some words used in the complaint letter against Long that indicates someone influence the students in writing the letter. Students complained, "Too many days with the same lesson."

#### **Students could not have solely written the letter**

"Students were not always understanding." stated in Previous Principal Alysse Castro's Declaration. See Exh. 24, App. 41, Section 7. Students not understanding but they wrote a detailed complaint letter about Long it cannot be both ways. Did the ESL students understand English and wrote the complaint letter or were they influenced? Based on Castro statement the students could not have solely written the letter.

Studies from ESL professionals, because ESL students are worried about immigration and do not want to draw attention to themselves, in addition, their cultural values of respecting teachers. If ESL students are dissatisfied with a teacher, they will not attend class, transfer to a different class, not pay registration fees, or go to a different school.

Long always maintained class size and her classes were never canceled because of low student attendance.

**Chua not knowing ESL is evident and evidence**

Chua had no ESL experience before becoming an ESL administrator, and her first time being a Principal was at Alameda Adult School.

In the field of ESL teaching, it is industry known students do not file grievances against teachers. In most subjects of teaching, if there are a total of 23 student complaints there are concerns about the teacher, but that is not the benchmark for ESL teachers because ESL students do not file grievances. The benchmark for ESL teaching is maintaining class size, EL Civics, teaching materials used in classroom learning, engaging students, classroom environment, and test scores.

Because Chua lacked ESL experience, she was unaware ESL students do not express disapproval about their teachers – so the complaints stood out as being suspicious and made it transparent they were actually instigated and planned by Chua.

**Plaintiff needed to know**

Superintendent Sean McPhetridge in his evaluation of Chua states, “Teachers need to be included in discourse about their teaching.”

There is no verifiable evidence from any administrator that there was communication with Plaintiff regarding students’ complaints; therefore Plaintiff never received guidance on how to handle the matter and avoid future problems. Plaintiff’s first time seeing and

knowing about the students' complaints was when she filed a grievance with EEOC.

### **Plaintiff Followed Instruction, but Fired Anyway**

- **December 5, 2013, third document, Defendant emailed an inaccurate evaluation to Long**

Defendant's email dated December 5, 2013; stated: "**I would like to see students in pairs and group discussion.**" Chua's email dated December 18, 2013 she stated, "**You (being Ms. Long) had students work in groups** to write 2 to 3 sentences describing each pictures in a set of 6 pictures." Defendant's email dated December 5, 2013, she asked to see students work in groups and on December 18, 2013 Defendant saw students working in groups. Long meticulously followed her instructions, but was fired anyway.

### **Plaintiff Given Only Seven Days To Make Change**

Chua also stated in the December 5, 2013, email, "**I observed your lesson on 11/5/13**". We have another observation 12/11/13, seven days later on December 18, 2013 Chua sent a final email which was terminating Long.

A series of reprehensible activities all done in one day, December 5, 2013, this injurious conduct only geared to Long as the Black ESL teacher is proof Chua singled out Long and was setting the ground work to

terminate Long, all other ESL teachers did not experience this relentless unfair treatment.

“Direct or circumstantial evidence that a discriminatory reason more likely motivated the employer, or that the employer’s proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not believable.” *Anthoine v. N. Cent. Cty. Consortium*, 605 F.3d 740, 753 (9th Cir. 2010) (internal quotation marks and citations omitted).

**Long worked for four Principals at Alameda Adult School during her 10 years, Recommendations are as followed:**

**First**, Principal Peggy McCarthy (she resigned suddenly Plaintiff did not have a chance to get a letter of recommendation) – but there is verification of work experience Satisfactory.

**Second**, Principal Tom Orput – Outstanding Letter of Recommendation.

**Third**, Principal Alysse Castro – had concerns, but because Long continue to work as an ESL teacher, and Castro granted a transfer Long requested, it can only be concluded teaching standards were met. It is common knowledge an administrator will not pass along an underperforming employee for the next administrator to deal with. If Long was an underperforming employee, why didn’t Castro fire Long?

Why did Castro allow Long to work the entire time under her leadership as Principal from September

2011 to June 2013? Only Castro can answer these questions. Castro indecisive either Long was an underperforming employee and needed to be fired or not an underperforming employee and continued to work.

**Fourth**, Principal Joy Chua – a principal only three months, discharged Long.

**Next ESL teaching assignment for Long, after she was terminated**

**Recommendations are as followed:**

Kristen Pursley – Strongly recommended

Kristen Pursley – Long's students performed well on the EL Civics exam (for each student that passed the school receives funding)

Eric Peterson, Ph.D. – Outstanding Letter of Recommendation

**Recommendations from Vice Principal at Alameda Adult School and other school districts:**

Vice Principal of Alameda Adult School, Lynn Mackey – Highly recommended

Vice Principal of Berkeley Adult School, June C. Johnson – Highly recommended

Principal of Albany Adult School, Barry Shapiro – Highly recommended

*The many letters of recommendation surpassed the two administrators that expressed concerns (Castro*

*and Chua), and one administrator (Chua) terminated the Plaintiff.*

### **Survey specifically for ESL students**

Where Chua is not an employee, a **Survey** developed specifically for **ESL** students to **think independently**, all 14 students gave favorable opinions about Long as their ESL teacher.

### **Previous Principal Alysse Castro**

Alysse Castro stated in her Declaration, “I noted that Plaintiff had established a good personal rapport with the students. I also found Plaintiff to be collegial with me and other Adult School staff.” See Exh. 24, App. 40, Section 4.

Long routinely gets compliments on her pleasant and friendly personality.

Because a complaint letter was given to Principal Alysse Castro, she stated, “I told the students I would visit the classroom several times over the coming weeks.” See Exh. 24, App. 40, Section 6 (*Students’ complaint investigated, but no investigation regarding the Plaintiff’s complaint – See “Plaintiff Filed Internal Complaint,” pgs. 25-26 in this document*).

As an employee of ten years, Plaintiff has had many unannounced observations and never has she worn earplugs. This was a one-time occurrence as a long-term employee, and that was wearing earplugs.

The earplugs were to mute the sound and not disturb the students as they worked on an assignment. It was not an ongoing problem as confirmed by Castro, she stated in her Declaration, "I observed no further unprofessional conduct rising to the level of the headphones incident." See Exh. 24, App. 42.

Because Long was not terminated, the only conclusion is Long must have been meeting California Teaching Standards as an ESL teacher under the leadership of former Principal Alysse Castro. Long continued to work as an ESL teacher, and Castro granted the transfer as requested by Long.

**Chua underperforming as Principal at Alameda Adult School; nevertheless, she was given resources and time to make changes, but Long being a Black employee was not allowed the same opportunity**

*Alameda Unified School District Superintendent Sean McPhetridge*, noted in his detailed evaluation of Chua, "The substitute Principal status report should be used as a guide. This should be done immediately."

A substitute Principal, while Chua was on leave, realized Chua was not following policies and procedures, to give a teacher only seven days to make changes with no tangible material was impossible and afterwards the teacher was terminated.

The gaps in policies and procedures allowed Chua to act on her intolerance toward African American employees.

No other ESL teacher was given the task to make adjustments in seven days or be terminated, this was an impossible requirement only for the Black ESL teacher, Long.

The documented concerns regarding Chua in the 2013/2014 Annual Professional Development Plan and Evaluation, and six years later, 2019, she still continues to be Principal at Alameda Adult School.

**Three teachers similarly situated in Granting Summary Judgment, but the two Black teachers have written negative evaluations and loses employment, but the White teacher has no written negative evaluation and continues to teach.**

May 22, 2018, Order Granting Summary Judgment states, “That evidence shows that three Adult School teachers were disciplined – two of whom, (Long & Williams) were African-American, and one of whom was White (Allen). The other two teachers “improved and met performance requirements,” while Long “failed to meet performance requirements [and was] terminated”

*This statement is incorrect for the following reasons:* Williams the other African American teacher, her “contract was later rescinded for unknown reasons” meaning she is no longer an employee – *this was clearly stated by Defendant.* See Exh. 35, App. 47.

Williams wanted to continue teaching and did not know why her contract was rescinded. She reapplied online for her same position and was not hired, and an African American was not hired.

***The Black teachers only, Long and Williams received written negative evaluations.***

**The Black teachers only, Long and Williams no longer employees, both wanted to maintain their employment**

Although Defendant claimed that she gave one White employee a written negative evaluation, the Defendant failed to attach a copy of that written negative evaluation, but did attach copies of written negative evaluation regarding Long, Plaintiff, Black ESL teacher and Rachel Williams, Black High School Diploma/GED teacher.

Long was fired. Williams' contract was rescinded by Defendant, no contract meant no work therefore Williams was no longer a teacher.

Allen, the White employee, never received a written negative evaluation and continued to teach.

Defendant's EEOC position statement, "Moreover, Principal Chua has worked with other black Adult School **teachers** to support their performance so that they could retain their positions. For example, teacher Rachel Williams had some of the same performance issues faced by charging party. As she did with charging party, Principal Chua gave Williams specific written

feedback and expectations. Unlike charging party, Williams took that feedback to heart and improved her performance. As a result, she remains at Adult School.”

“Principal Chua has worked with other black Adult School teachers to support their performance so that they could retain their positions,” only Williams was mentioned, but Williams does not retain her position, her contract was rescinded by Chua, and Defendant stated, “teachers,” teachers being plural. Who are the other Black teachers? How long had they been employed at the time of Chua’s statement? Are they currently employed? If not, how long did they work? These questions Chua has refused to answer.

**When Chua became Principal, she sets Long apart from other ESL teachers with different requirements**

In September 2013 Chua became Principal at Alameda Adult School.

Long’s first time teaching another level and she moved to a different classroom, this started in September 2013, and also a similar situation for two other ESL teachers.

On August 20, 2013, Chua’s email stated, “In ESL, Solveiga, Dave and Judy have taken on **different ESL levels and moved classrooms. Let’s make sure to support them** in their new assignments!”

Even if allegedly there was a genuine concern with Long’s teaching skills, Chua never gave her enough

time or resources to make the changes so desired, furthermore this was Long first time teaching a different level which started September 2013. The other two ESL teachers received support from Chua and continued to work, but Long received criticism and was fired on December 20, 2013.

**Direct evidence as exactly the same classroom for Plaintiff and another teacher, but different requirement for Plaintiff**

In Chua's email December 5, 2013, she stated, "I (Chua) observed and was concerned that you (Long) were located at the back of the room."

Long as the evening ESL teacher shared the same classroom with Carol Palecki the morning ESL teacher. Observation regarding classroom seating arrangements by Principal Chua would apply to both Long and Palecki. The seating arrangements would be the same for morning and evening ESL teachers since they shared the identical classrooms.

Plaintiff was new to the classroom and seats were already arranged by the morning ESL teacher Carol Palecki; Plaintiff had just started teaching in the classroom September 2013.

If Defendant did not like the seating arrangement why didn't she speak to the morning ESL teacher, since that teacher was in the classroom at least one year prior to Long? Chua did not reprimand Palecki,

but singled out Long, and used seating arrangements as grounds for discharging her.

**Again, compelling evidence as exactly the same seating arrangements for all ESL teachers, but different requirement for Plaintiff**

Noted by the lead teacher Lisa Gonzalves, "As you go up the levels, there a gradual shift in arrangement which lends itself to more group work. By the time you get to Intermediate High the desks are arranged in little pods, and in the end, in Advanced, the desks are arranged in large pods, ***with little focus on the teacher or front of the room.*** Interesting, especially since it was not collectively intentional!!!"

Seating arrangements collectively for the school, but instead for Long it was disapproved and used as grounds for dismissal.

**Peer to Peer and Administrator Reviews, Long in same situation as other ESL teachers**

Plaintiff's peers being other ESL teachers fully understood what it takes to be a good ESL teacher and they implemented California Teaching Standards; the same teaching standards Plaintiff used. The Peer to Peer and Administrator reviews clearly reflected that Plaintiff's students' learning goals and academic growth were being achieved. Peer to Peer and Administrator reviews, a must for all ESL teachers, this was a requirement by Principal Chua. Long received positive feedback and quality instructional practices

occurred in her class. These reviews something required by Chua, but she was dismissive of Long's results. More importantly, Long being in the same situation as other ESL teachers, the positive feedback she received was overlooked, yet the other ESL teachers continue with their teaching assignments and were not terminated.

**“Similarly situated” and “Exactly the same situated”**

Conclusive evidence of Long in “similar situations” and “exactly the same situations” and was treated less than favorable as an African American employee. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (relevant direct evidence include treating similarly situated persons of a different race more favorably).

**Students’ Test Scores, and ESL Material Used by Long when Chua observed her on December 11, 2013, nine days later Long was terminated**

Long used “*Stand Out*” books, which were purchased by the District for the ESL department, as her core source for classroom teaching. She researched and provided supplementary instructional materials, making sure it corresponded with the course syllabus, to do these extra things were time consuming, challenging, and took **lots of work**, but Long wanted her students to achieve their goals.

Supplementary instructional material was to write about pictures (this was something ESL teachers were trained to do in ESL Professional Development) one picture students wrote about were the United States Presidents. See Exh. 31, App. 43-44. Chua made a comment about the pictures in her email dated December 18, 2013, the email that terminated Long.

Long's hard work pays off, test results proved students had **great learning gains, and yet**, soon after **Long was fired** (on the bottom page of the CASAS test results, it reads the year "CASAS 2013", 16 students took the CASAS exam). The data from CASAS exam (a California state exam given 4 times a school year to determine students' learning gains) was evidence that Long's students scored well. This information demonstrated students were learning English and that **Long was successful as an ESL teacher at Alameda Adult School.**

***Students' test data is crucial in evaluating teachers' performance, it's a component linked to the employment of teachers. However, Chua did not consider Long's students' test scores.***

*See Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003) (relevant direct and circumstantial facts include proof that the Defendant's stated race-neutral reasons are false).

**Chua terminated Long the reasons Vague and Contradictions, No Resources Provided, and Unrealistic Time Frame – Seven days**

While there are panels to hire teachers at Alameda Adult School, Principal Chua curiously had the sole authority to fire Plaintiff with no accountability.

Chua's attorneys and Chua have distinctively different reasons as to why Long was fired. Defendant makes a change perhaps advice from her lawyers, and now she includes students' complaint letter in her Declaration. Initially in Chua's two emails she did not include students' complaints as the reasons why Long was terminated. The story-swapping of attorneys and Chua, makes it ambiguous and the question still remains why did Chua fire Long? The only conclusion Long was a Black employee in a no-win situation: she followed Principal Chua's instructions and fired. She followed California Teaching Standards and fired. All other teachers, which were not Black, continued to work with no negative written evaluation.

**Missing Formal procedures – Chua decided two emails was good enough in discharging Long, emails dated December 5, 2013 and December 18, 2013**

Defendant's attorneys in accord with Plaintiff, there should have been oversight when Long was terminated. See Exh. 37, App. 51 (Response to Interrogatories No. 4 – Chua whose decision was **approved by the District's Governing Board**) but there was **NO**

**approval by the School District's Governing Board.**

Alameda Adult School – Article 22 on page 84 section 22.08 **Evaluation** – states the use of **Adult School evaluation form**. Chua did not use an evaluation form as stipulated in Article 22.

Human Resources was included late in the process, and no tangible resources provided to Long as to what Chua expected, and how quickly Chua terminated Long – a short time of seven days, but instead only two inaccurate emails was submitted by Chua as to her choice on how to terminate Long; this proves another example of Chua not following procedures, and her self-serving action to unjustifiably fire Long, a Black American teacher.

Once Defendant's attorneys realized in terminating Long there was **NO approval by the School District's Governing Board**, no Adult School evaluation form – Article 22, no oversight, no investigation of Plaintiff's complaint, and no formal process; their position changed to unfounded, illogical, and unreasonable explanations.

**Chua only communicated with HR because Long did not sign Resignation/Retirement form, Chua wanted to circumvent policies and procedures**

When an employee is terminated, it is customary to give the employee his/her final paycheck on the last day; organizations follow this protocol even when it's

not required. There was no final paycheck for Long on her last day as an ESL teacher December 20, 2013. Principal Chua intentionally shielded her actions from HR. Chua knew she should have followed HR guidelines, that's why she hard-pressed Plaintiff to sign the Resignation/Retirement form, if Plaintiff signed the form – Chua would have sidestep policies and procedures.

December holidays is a joyous time, but for Long December 2013 was a stressful time; no employment, it was a shock, and totally unexpected. Long had worked so hard to do her best, but supposedly, it was not enough. Defendant had terminated Plaintiff just before the December holidays with no final paycheck; this shows her malicious intent for Plaintiff as a Black employee.

When Chua realized Long was not going to sign the Resignation/Retirement form, Chua's first contact with Human Resources (HR) regarding terminating Long was an email sent December 17, 2013. In the email she states, "Let me know if I have any misinformation." and "She (Long) was surprised." If Chua followed HR procedures she would not be referencing, "Let me know if I have any misinformation" and "She (Long) was surprised." When terminating a person information is reviewed in advance by HR and being fired should not be a surprise. Chua's words in this email December 17, 2013 indicates she did not follow Human Resources procedures.

Another email from Chua dated December 20, 2013 (the same day Long was fired) exposed her lack to abide by Human Resources (HR) protocol, Chua stated in that email, “I haven’t received any resignation papers, let me know if we can go ahead with today being her last day. Also let me know if you would like me to be at a meeting.”

Steps are needed to properly fire someone especially when nothing terrible occurred, it is not done in just 3 days, from December 17, 2013 to December 20, 2013.

### **“I TOLD YOU”**

“I told you” are words used in Defendant’s email dated December 18, 2013 when she terminated Plaintiff, these 3 words are powerful and have a connotation of dislike.

### **Plaintiff Filed Internal Complaint**

Defendant claimed in EEOC position statement, “that Plaintiff did not file a grievance or complaint.” Plaintiff was never made aware of or provided copies of Defendant’s Exhibits C and D containing internal procedures for filing grievance and/or a formal complaint.

Student complaints occurred within one year (2012-2013) the same first year Chua was hired, and not two years as stated in Defendant’s EEOC statement.

However, in an attempt to save her job and seek oversight, Long communicated, back and forth, via email to Sharon Lampel, Chief Human Resource Officer at Alameda Unified School District. Long was hoping that a third party involvement would provide oversight, but there was no oversight, no investigation, and no mention of internal procedures for filing grievance and/or a formal complaint; it was just shrugged off, taking no action whatsoever. But student complaints were addressed, investigated, and included in the discharged of Plaintiff.

*Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977) (relevant direct evidence include proof that the Defendant departed from normal procedure).

**The Appellate Courts varies significantly in the decision process regarding Summary Judgment Motions**

The party moving for *summary judgment* has the burden of establishing the absence of a genuine dispute of material fact on the issue to be decided. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To avoid summary judgment, the party opposing must identify the specific, material facts that are genuinely disputed. *Makaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1189 (9th Cir. 2013). The court must view the evidence in the light most favorable to the party opposing the motion and draw all reasonable inferences in that party's favor. *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d

1252, 1257 (9th Cir. 2001). “Where conflicting inferences may be drawn from the facts, the case must go to the jury.” *Pyramid Technologies, Inc. v. Hartford Cas. Ins. Co.*, 752 F.3d 807, 818 (9th Cir. 2014) (citation and quotation marks omitted). The motion will be granted *only* if the undisputed evidence and inferences show that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Proc. 56(a).

Given the totality of this case, some Circuit Courts would have effectively overturned the granting of *summary judgment* to the Defendant and also overturned the District Court decision that the Plaintiff pay Defendant’s bill of costs, and other Circuit Courts would have affirmed the decision. For more information regarding bill of costs see pg. 41 in this document.

The ruling of the U.S. Supreme Court in this case, will procure the necessary uniformity between the U.S. Courts of Appeals related to summary judgment motions including bill of costs.

**Principal Chua used Long’s name on the internet and flyers to register students AFTER she fired Long, see internet**

School Superintendent Sean McPhetridge in the evaluation of Chua stated, “Increase # of dates for registration to fill empty classes. Identity the loss of students.”

Plaintiff had a reputation of being a “Good Teacher” and students followed her because they learned

English and enjoyed her class. Plaintiff at one time had 42 students and despite those many students, data revealed learning gains. At the time when Peggy McCarthy was Principal at Alameda Adult School, and at a school holiday party, Plaintiff was surprised and honored as "The Teacher With The Best Student Attendance."

Chua knew firing Long would have an impact on student attendance therefore she used Long's name to register students knowing she discharged Long. Principal Chua still wanted Long's student following. Chua continued to list Long's name as an ESL teacher even though she fired her. It was dishonest, students paid fees and registered for Long's class expecting to see Long, but instead got a different teacher.

If Long was an underperforming ESL teacher as Chua declared, why did she use Long's name, knowing Long was no longer an ESL teacher?

Long's name used to register students, information on the archives of Alameda Adult School website: [http://aas-alamedausd-ca.schoolloop.com/search/search\\_results?d=x&search\\_term=March+25%2C+2014](http://aas-alamedausd-ca.schoolloop.com/search/search_results?d=x&search_term=March+25%2C+2014)

1. Look at (esl march.april 2014) and you will see Plaintiff's name (Night Classes, Level Intermediate Low, M-TH, 6:00pm – 9:00pm, Plaintiff's name **Long**, Fee \$50) yet Long was no longer an ESL teacher.
2. Go back and look at (ESL jan 2014) again you will see Plaintiff's name yet again Long was no longer an ESL teacher.

**3. FLYERS,**

Long's name used to register students on two different dates, both dates Long no longer an ESL teacher.

Alameda Unified School District has at least 20 different schools, so it would be nearly impossible for the Information Technology (IT) department to edit and update the frequent changes of so many different schools' websites, instead websites are designed so each school can edit their own website, and changes be approved, as the responsibility by each school administrator.

**A Continued Working Relationship With Alameda Unified School District after being terminated from Alameda Adult School**

Plaintiff worked for Alameda Unified School District after being fired from Alameda Adult School. Because Plaintiff being a long term employee, she knew many other employees at the Adult School and Alameda Unified School District, and those employees knew the quality of Long work; that it was stellar and the only thing they concluded was her race; they helped Long as much as possible.

Long worked, with no problem, teaching for Alameda Unified School District. In fact, some schools asked her to come back because they were impressed with her teaching strategies.

***Plaintiff's job evaluation rewarded her a contract to continue teaching at Alameda Unified School District.***

Alameda Unified School District – Substitute Teacher's Contract was offered to Long to continue teaching for Alameda Unified School District. Long declined because she wanted the stability to continue her career as an ESL teacher.

**Between 2013 to 2014, all Black Employees and only Black employees at Alameda Adult School were eliminated in the workplace by Principal Joy Chua and this was within her first year as Principal**

Plaintiff, Black ESL Teacher – Judy Long, Black GED teacher – Rachel Williams, Black Security Guard – Eric Jefferson, and Black Custodian – all no longer employed at Alameda Adult School.

During a short period of time, Defendant removed all-and-only black employees this showed a pattern of racial bias.

Chua underlying harassment was to make sure that no African American employee would be in the workplace, and because of this lawsuit any African American employee is a short-term employee under the leadership of Chua.

### **Principal Chua NO Policy and Procedure for Long as a Black employee**

Policies and procedures are used to protect employees as well as administrators. The School District's guidelines and Chua's evaluation from her boss instructed her on how to evaluate employees. Chua exceeded her authority by ignoring procedures and injecting her lies, unfair and biased conduct; therefore making Long unprotected as an African American employee.

These are well-pleaded allegations of facts which give rise to plausible inferences of racial discrimination. See *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100 (2003) (relevant direct and circumstantial facts include proof that the Defendant's stated race-neutral reasons are false); *Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-67 (1977) (relevant direct evidence include proof that the Defendant departed from normal procedure).

### **Racial Slur from Principal Chua**

On December 20, 2013, Chua called Long and said, "Black Nigger," this confirms her racial animus towards African American employees, Long has never received a call like this. The hateful call on the precise day Long was fired was not a coincidence, but callous and deliberate by Chua. Chua tries to conceal her identity and obviously would not make a call like this from her phone.

Chua's manipulative tactics involving deception and coercion exists without her being known – she hides in the background, this has been corroborated as a proven pattern. For example, the occurrence of student complaints, she used Gonzalves to write the dishonest email involving Long and the "Student Ambassador Project"; she stated Gonzalves gave her a "Student Ambassador Report" regarding Long – the report is questionable and suspicious; used Long's name to register students knowing Long was no longer an ESL teacher, and other incidents – so the racial slur is not surprising given her racial animus toward Long as an African American employee.

The Plaintiff was tenacious regarding the many uses of subpoenas for telecommunication about specific phone numbers to establish a link that Chua was the caller regarding the racial slur on the same day Long was terminated.

A subpoena proves on the same day Long was fired (December 20, 2013) Long received a phone call from phone number **(310) 956-4791**. Plaintiff knows nobody with an area code (310). Defendant has lived in Southern California, she has family in Southern California, although Defendant works in Northern California her work cell phone number is a Southern California number, and the caller that harassed Long had a Southern California phone number. The caller's first 4 numbers **(310) 9** is the very same first 4 numbers as Chua, and they are Southern California phone numbers.

Alameda Unified School District is located in the San Francisco Bay Area, Northern California. The phone number starting with **(310) 9** is in Southern California, the estimated distance about 400 miles from San Francisco Bay Area, Northern California.

The uniqueness of Chua's first four numbers (being approximately 400 miles away) identical to the caller's number, along with the proven facts of Chua's contemptible behavior towards African American employees, the racial slur on the same day Long was fired, and Plaintiff knows Chua's voice – this altogether makes powerful circumstantial evidence that Chua made the disparaging phone call. *Desert Palace, Inc. v Costa*, 539 U.S. 90 (2003) 299 F.3d 838 (explaining that circumstantial evidence “is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence” (quoting *Rogers v. Missouri Pacific R. Co.*, 352 U.S. 500, 508 n. 17 (1957)).

Noted in Order Granting Summary Judgment dated May 22, 2018, see App. 16-17 “Long also argues that she has evidence of racial discrimination based on her allegation that Chua called her on December 20, 2013 (the day Long was fired) to make a racially disparaging remark. ECF No. 52 at 17. Long made this allegation for the first time in her brief opposing summary judgment. The Court concludes that Long’s allegation about Chua’s alleged phone call must be stricken pursuant to the sham affidavit rule.”

This was not the first time Plaintiff made the allegation, on January 6, 2017 the information was typed

by Plaintiff in Rule 26(a)(1) Initial disclosures, Plaintiff typed it again in the Settlement Conference dated May 1, 2017, Plaintiff issued many subpoenas for phone records – seeking direct evidence as Chua being the caller, and Plaintiff sent an email to Defendant's attorney requesting permission to release Chua's phone record, and all these documents were received by Defendant and proves this was not the first time Plaintiff made the allegation.

On January 3, 2018, Duus (Defendant's lawyer) replied to Plaintiff. Duus stated, "My client will not consent to the disclosure of phone records. This is certainly something that we can discuss tomorrow," but the next day it was not discussed or at any time thereafter, and never asked about in the deposition of Plaintiff.

The need of Chua's consent made it obvious Plaintiff needed Chua's phone records regarding the racist phone call, there is no other reason Plaintiff would need Defendant's phone records.

### **Racial Discrimination**

For many years Long received positive evaluations with no performance problems, and when Chua became an administrator – Long had an intense burst of poor performance, and it was propelled to a sudden termination.

Consistency, Long's efficacy of teaching ESL for 16 years, based on her many letters of recommendation, she maintained a 4.0 GPA for her teaching credential from University of California, Berkeley she did this while working, her students' had above average test scores, and she maintained required class size; she would not drastically change and lower her teaching skills for a brief period of only three months from September 2013 when Chua became Principal to the day she was terminated December 20, 2013.

No data and no facts as evidence, but one administrator, Chua determined within 3 months that Long as an ESL teacher for 10 years has taught below average and needed to be terminated.

Defendant masked her racial bigotry, used her authority to manipulate others for her appalling schemes, used deception to convince others, dishonest practices, and all those occurrences to justify her claim that Long had poor job performance; it has been proven that was bogus and only a pretext to hide her racial bias.

Plaintiff contends that Alameda Adult School's Principal Joy Chua terminated her because Chua harbors ill will towards her as an African American employee, and she was treated differently from others who were **similarly-situated** and **same-situated** except for the alleged basis of racial discrimination.

**The District Judge participated in extrajudicial activities, this would appear to a reasonable person to undermine the Judge's "independence," "integrity," or "impartiality," during Court**

**proceedings regarding Summary Judgment May 3, 2018. Defendant argues the Sham rule should not apply. Both Defendant and Plaintiff agreed – no Sham rule.**

**TR – Transcript of Proceeding May 3, 2018**

Johnson, representing the Defendant, does not cite the Sham Affidavit Rule in this case. See App. 24. Johnson stated, “The Sham Affidavit Rule, first, in and of itself requires a sworn declaration, which there is none in this matter. So first of all, there is no sworn testimony to begin with. So the Sham Affidavit Rule doesn’t exist because there is no testimony for which – to support the allegation. See App. 25.

The court is asking Johnson questions, and Johnson replied, “No. As Long suggests, she (Chua) was there for three months, had maybe two or three conversations with her.” See App. 26. This statement is inaccurate, Long worked with Chua when she was Vice Principal and Principal from August 2012 to December 2013, Chua spoke at numerous meeting, school accreditation, professional development, etc., the three months of conversation is incorrect.

The court stated to Johnson, “It may not seem like it, but I’m trying to help you.” See App. 27.

Johnson changed his argument, Court replied, “That argument is stronger.” See App. 29.

At the hearing, the Court asked, Long’s attorney, “Whether Long had any explanation for this

contradiction, and he offered none.” **Order Granting Summary Judgment** See App. 18.

**Two facts overlooked**, first in the transcript on May 3, 2018, the court never asked for explanation, and second, the Plaintiff’s attorney was not completely prepared. “He, Plaintiff’s attorney, did not ask the Court for any additional time or briefing.” **Order Granting Summary Judgment** See App. 12.

**The District Judge errors in assessment of the evidence**

- May 22, 2018, Order Granting Summary Judgment states, “That evidence shows that three Adult School teachers were disciplined – two of whom, (Long & Williams) were African-American, and one of whom was White (Allen). The other two teachers “improved and met performance requirements,” while Long “failed to meet performance requirements [and was] terminated” **See Order Granting Summary Judgment** See App. 15

*This statement is incorrect for the following reasons:* Williams the other African American teacher, her “contract was later rescinded for unknown reasons” – this was clearly stated by Defendant. See App. 47. Williams wanted to continue to work and did not know why her contract was rescinded. She reapplied online for her same position and was not hired, and an African American was not hired. Three teachers in similar situation – the two Black teachers lost employment and Allen the White employee never received a written negative evaluation and continued to teach.

- All and only Black employees were removed under the leadership of Chua, this was done in her first year as Principal
- Three ESL teachers Solveiga, Dave and Plaintiff took on **different ESL levels** and **moved to different classrooms**. Chua stated, "**Let's make sure to support them** in their new assignments!" This was Long first time teaching a different level which started September 2013. The other two ESL teachers received support from Chua and continued to work, but Long as the Black American employee received criticism and was fired.
- **Exactly the same classroom for two teachers** Palecki and Plaintiff. Chua did not reprimand Palecki, but singled out Plaintiff, and used seating arrangements as grounds for discharging her. If Defendant did not like the seating arrangement why didn't she speak to the morning ESL teacher, since that teacher was in the classroom at least one year prior to Long. Long had just started in that classroom September 2013.
- The School's classroom seating arrangement, but only Long had different requirements in comparison to all other ESL teachers in the school
- The Peer to Peer and Administrator review, Long received positive feedback and quality instructional practices occurred in her class. Those reviews something required by Chua was overlooked, but more importantly all other ESL teachers continued with their teaching assignments and were not terminated.

- Plaintiff filed Internal Complaint with HR it was not addressed, but student complaints were not only considered but included as grounds for terminating Plaintiff.
- The powerful circumstantial evidence Chua made a disparaging phone call.

**Material point of facts that were overlooked in the decision made by the District Judge**

- The many dishonest acts by Chua on one day, December 5, 2013
- Chua masterminded the student complaints
- Dr. Santamaria as Plaintiff's expert witness, stated student complaints are not known in ESL teaching
- Defendant has no expert witness to dispute Dr. Santamaria
- Long was a nine year employee never had a student complaint until two months after Chua was hired
- The many times Chua is untruthful, such as the email she sent to Gonzalves on how to lie about Long, she used Long's name to register students knowing Long was no longer an ESL teacher, etc.
- Chua accepted a problematic "Student ambassador Report" which was missing rudimentary information and appears to be addressed to Long and not Chua

- School Superintendent Sean McPhetridge (Chua's boss) in his evaluation of Chua stated, "Teachers need to be included in discourse," Chua ignored this and did not inform Long regarding students complaints. There are other instructions, policies, and procedures Chua refused to adhere to.
- No formal procedure in terminating Long, only two inaccurate emails from Chua regarding why Long was dismissed
- The story swapping between Defendant's attorney and Chua, provides no answer, why was Long fired?
- First, CalStrs (teachers retirement plan) requires teachers to wait six months before they can teach again. Second, Long being an older worker it took a little time to find her next ESL teaching assignment. Third, Long had to work and prove herself before she could get the next commendation after being fired. For these three reasons it took time to get the next commendation after being fired – the District Court judge overlooked recommendations
- The many letters of recommendations overlooked before and after Long was terminated
- Where Chua is not employed, survey developed specifically for ESL students gave favorable opinions about Long as their ESL teacher.
- Previous Principal Alysse Castro indecisive
- Chua is underperforming as Principal but was given a status report and time to make desired changes, the same opportunity was not given to Long

- After Long was fired from Alameda Adult School, she worked and was offered a teacher's contract to work for Alameda Unified School District.

The extrajudicial activities, errors in assessment of the evidence, and material point of facts overlooked were inextricably linked to granting summary judgment to the Defendant. After the Ninth Circuit Court affirmed the decision, the District court re-entered and on July 10, 2019 made another ruling, the Plaintiff must pay the Defendant's bill of costs and also pay the taxed in costs. This sets a precedent, employees will be fearful, not only may their cases be rejected, but they may be penalized by a requirement to pay legal expenses for their employer, regardless the validity of their case.

**Defendants accordingly view *summary judgment* as an opportunity to win without losing at trial**

The granting of *summary judgment* is a strategic benefit for Defendants; despite Plaintiffs' preponderance of evidence, the uncertain standards on appeal alters the balance of justice between plaintiffs and defendants.

The Bill of Rights guarantees the federal government's protection of a variety of rights and freedoms including the seventh amendment to the United States Constitution, the right to a trial by jury.

Wholesale dismissal of claims via an evidentiary mechanism flaunts the process the Court has put in place to promote justice and fairness. *Compare* Fed. R.

Civ. P. 56(a); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) with Fed. R. Evid. 103(d), 104(a), (c).

Accounted for by a concurrence of circumstances, showed the existence of racial discrimination is a factual issue for the jury, not the judge to decide.

**Long has established a prima facie case**, “[t]he burden of production then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the challenged action.” *Chuang v. Univ. of Cal. Davis*, 225 F.3d 1115, 1123-24 (9th Cir.2000). If the employer does so, the plaintiff must then show that the articulated reason is pretextual “either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Texas Dept. of Commun. Affairs v. Burdine*, 450 U.S. at 256. When the evidence is direct, “[w]e require very little evidence to survive summary judgment’ in a discrimination case.” *Lam v. Univ. of Hawaii*, 40 F.3d 1551, 1564 (9th Cir.1994) (quoting *Sischo-Nownejad v. Merced Cnty. Coll. Dist.*, 934 F.2d 1104, 1111 (9th Cir.1991)) (alteration in original).

### **The Ninth Circuit’s Decision Reflects an Existing Circuit Split Regarding Review of Improper Grants of Summary Judgment Motions**

This issue could impact any civil case and presents the opportunity for litigants to abuse court procedure – severely prejudicing the non-movant – without an effective cure. Given the number of appeals related to

court decisions addressing this issue, and the differing standards applied by these courts, it is evident that this abuse of the *summary judgment* procedure is not uncommon, and, as in this case, can have a devastating impact on an otherwise valid case.

If this case had been filed in the other circuits that have addressed this issue, the district court's exclusion of evidence related through a *summary judgment* motion would have been reversed on appeal.

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#### **REASONS FOR GRANTING THE PETITION**

The Ninth Circuit's decision added to an existing circuit split of exceptional importance regarding the proper standard of appellate review when a district court grants the summary judgment by dismissing a case. This Court should grant review to eliminate discrepancies among the circuits, and clarify a uniform standard.

When a district court grants a motion for summary judgment, that grant must be reviewed by the appeals court under the standard used to review motions for summary judgment. The Ninth Circuit failed to do so, dismissing Petitioner's cause of action without proper grounds or procedure. This Court should grant review to prevent abusive uses of summary judge motions and correct the Ninth Circuit's erroneous holding.

The Supreme Court should therefore grant this petition for writ of certiorari in order to clarify the standard of appellate review for *summary judgment* motions that effectively dismiss a cause of action, and correct the Ninth Circuit's erroneous holding in this case.

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### **CONCLUSION**

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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