ORIGINAL

19-5119

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHANA CABANTAC ARUCAN,

Petitioner,

vs.

CAMBRIDGE EAST HEALTHCARE CENTER/
SAVA SENIORCARE LLC., ET AL,

Respondents,

On Petition For Writ Of Certiorari

To The United States Court Of Appeals

For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In a case brought under the Title VII Discrimination in Employment Act, Age Discrimination as illegal termination & harassment with police misconduct & unconstitutional, where a long -term ,older female employee – Johana C Arucan / Petitioner (myself) is displaced by a younger male employee on January 8, 2016 (8 hours work) as evidenced on Rehab Optima Computer Therapist Scheduled-App. 51-59 , may a court properly grant summary judgment by accepting as the employer's disputed claim that plaintiff /Petitioner was a poor performer- unintentional incident for responding to Catherine B call light for help,which was corrected appropriately by the Petitioner at Rehab Optima Documentation Addendum , and that the alleged poor performance , not Age , title VII Discrimination in Employment Act , illegal termination , was the reason for the firing ?
2. Whether Madison Heights Police Officers are responsible for policy that allows to illegally arrest innocent people for trespassing during Petitioner's scheduled working hours on January 8, 2016 for 8 hours , which caused harmed due to wrong protocol, & It violated of Fourth, Fifth,Seventh, Eight, Fourteenth Amendment ,Equal Protection Act to the United

States Constitution , 42 U.S.C $ 1983 and police officers misconduct barred for Immunity ?

3. Denial of appointed counsel resulted in fundamental unfairness impinging on her due process rights ? To Dismiss Petitioner's Claim in favor of the Respondent's Grant Summary of Judgment without Discoveries is an abused of discretion /power ?
4. The Court Practices in Michigan & National are unconstitutional and discriminatory therefore needs Reform as it damaging the life and future of All hardworking minority U.S. Citizens innocent victims "For People and not Prison" ? It violated of Fourth, Fifth, Seventh, Eight, Fourteenth Amendments to the United States Constitution ?
5. That the Court to Withdraw the 43 rd District Court – Madison Heights , Mi. Pleading as it is unconstitutional, illegal, void, discriminatory and miscarriage of justice . Court Practices innocent minorities victims asked to Plea , which due to the miscarriage of justice system innocent victims Plea against their will ,but have no choice but to Plea, just to get out of the injustice system and wants to move on into their life and future , goals that were postponed ?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below , as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States

1. Johana Cabantac Arucan , Petitioner ; and
2. Sava seniorcare L.L.C. , doing business as Cambridge East Healthcare Center , Paige Vantiem, Megan Reusser - Mocny ,John Heinrich , Rick Zamojski, Respondents

RULE 29.6 DISCLOSURE

No parent or publicly owned corporation owns 10% or more of the stock in a publicly owned corporation.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Johana C. Arucan respectfully prays that a writ of certiorari issue to review the orders and judgment below .

OPINIONS BELOW

The unpublished Michigan Administrative Hearing System by Judge Wheatley audio proceeding as recorded on a CD and transcript is found at May 19, 2016 Case No. 6768198 and is reprinted at App. A-1-50. The unpublished opinion order of the Michigan Administrative Hearing system on May 19, 2016 by Judge Wheatley is found at May 20, 2016 Case No. 6768198 to review the merits is reprinted at App.B- 51-59.

The unpublished mandate of theUnited States Court of Appeals for the Sixth Circuit is found at March 6, 2019 Case No. 18-1447 (6th Cir. 2019) , and is reprinted in the App.C- 60-61. The unpublished opinion of the United States Court of Appeals for the Sixth Circuit is found at Feb.12, 2019 Case No.18-1447 (6th Cir. 2019), and is reprinted in the Appendix (App.) D-at 62-72. The unreported order of the United States District Court for the Eastern District of Michigan granting summary judgment is found at March 30,2018 Case No.2-16-cv-12726 (Eastern Dist. Mi. 2018), and is reprinted as App. E-73-85. The unreported order of Michigan 43rd District Court is found at April

12,2016 Case No. 087801(43rd District Court of Mi 2016), and is reprinted as App.F- 86-87 . and unpublished 43rd District Court Audio Transcript Hearing is found at April 12,2016 Case No. 087801 , and is reprinted as App.G- 88-93 .

Medicare State Survey Inspection -Cambridge East Healthcare Center were other employees - Respondents / Defendants makes mistakes and harmed patients and yet they were not terminated on September 9, 2015 was reported at medicare.gov and was reprinted at App.H- 94-104.

JURISDICTION

This Court has jurisdiction to review the decision of the United States Court of Appeals for the Sixth Circuit decided on February 12,2019 , by writ of certiorari under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution

Amendment IV provides " the right of the people to be secure in their persons,houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause,supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"

The U.S. CONST. Amendment V provides " No person shall be held to answer for a capital,or otherwise infamous crime,unless on a presentment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger ; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty ,or property, without due process of law ;nor shall private property be taken for public use, without just compensation".

The U.S. CONST. Amendment VII provides " In suits at common law, where the value in controversy shall exceed twenty dollars ,the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States ,than according to the rules of the common law.

The U.S. CONST. Amendment VIII provides " Excessive bail shall not be required ,nor excessive fines imposed,nor cruel and unusual punishments inflicted ."

The U.S CONST. Amendment XIV -Section 1 provides " All persons born or naturalized in the United States , and subject to the jurisdiction thereof,are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life,liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws ."

The Title VII Discrimination Employment Civil Rights Act of 1964, states employment discrimination based on race , sex,color, religion, and national origin is strictly prohibited by Title VII. Age Discrimination in Employment Act of 1967 . Hostile work environment violates the prohibitions of Title VII. When a illegal termination is wrongful with forced to quit or harassment is found to be not only pervasive but severe, altering an employee's existence as well the terms and conditions of employees work, it is an abusive relationship. Hostile work environments and violating the Civil Rights Act under 42 U.S.C. § 1983, Retaliation are a violations of U.S. federal law .

STATEMENT OF THE CASE

Fourty-three(43) year -old Johana C. Arucan – Myself (herein after "Petitioner"), Asian woman, who immigrated to the United States in 2004. English is not my first language , but Tagalog.

I graduated of Bachelor of Science in Physical Therapy and Bachelor of Science in Nursing.

I, Petitioner – Johana C Arucan was employed by Respondent Savaseniorcare L.L.C.'s (hereinafter " Respondent")Cambridge East Healthcare Center , for more than 3years as a full time Physical Therapist Assistant. The Respondent – Cambridge East Healthcare Center hired the Petitioner on September 24,2012 .

The petitioner brought a pro se suit against Respondents – former employer Sava seniorcare

L.L.C. / Cambridge East Healthcare Center, and the Administrator Paige Vantiem , Therapy Manager Megan Reusser, and two Madison Heights Police Officers for Discrimination- Title VII of the Civil Rights Act of 1964 , on the basis of her sex, race, national origin , and protected activities . Age Discrimination in Employment Act of 1967. For Retaliation and Harrassment / illegal termination , adverse employment actions . For also violated the United States Constitution Amendment IV , V, VII, VIII, XIV. The Court Systems in Michigan and Nationwide are Unconstitutional and Discriminatory and needs REFORM as it damaging a hardworking US Citizens life and good future , and not to allow police officers to unlawfully arrest innocents victims during their work hours or business hours , then locked up into cell those innocent victims if no CASH to give ? *ACLU v. 36 th District Court in Detriot challenging discriminatory cash bail system that punishes innocent people in Detriot (*Eastern District Court Mi, 2019*)* Unusual punishments and prolonged the innocents victim agony , and ignored by the other parties Respondents , who alleged the Petitioner , so innocent victims are forced to PLEA just to get out and move on into life , because the charged case is not moving at all and no shows by the Respondents for 3 or more times at 43rd District Court during the pre-trials dated February 23,2016, March 17,2016, April 12, 2016- App. 88-93 and other 5 dates were postponed ? The petitioner appeal of the district court's March 30,2018 , Opinion and order granting Respondents motions for summary judgment against Johana C Arucan , and denied motion for appointed

counsel and to reopen discovery (Order of 3/30/2018, App.73-85) and the Sixth Circuit Court of Appeal (Opinion of 2/12/2019), App. 62-72 .

On the morning of January 8, 2016, Johana Arucan went to work as a respected physical therapist assistant with a good reputation .A few hours later , Johana C . Arucan was illegal terminated by force to quit in handcuff to replaced with a younger man employee at work . There is a genuine fact dispute regarding the circumstances of my illegal one day termination and wrongful arrest by force during my work hours . It was an unjust discharge / retaliation / discrimination / harassment and illegal . It damaged my good name and prevents employment and needs REFORM . That constitutes adverse action in response to create the employees harm – Retaliation . Changing of Johana C . Arucan's patient list of schedules / work , not receive a paycheck during pay ending January 13, 2016 for Petitioner's accrued 50.09 vacation balances . In telephone hearing for the Michigan Administrative Hearing , Judge Wheatley and Atty.Dina Tasevska asked to state " any and all reasons why I was wrongfully terminated "Respondent answered that Petitioner was terminated due to unintentional incident seen patient Catherine B instead of Catherine Y not on petitioner's printed schedule / assignments on January 5, 2016, due to changing assignments of patients as Bobby Manalel -PT orally endorsed Catherine Y , in which petitioner asserted that Cambridge East Healthcare mismanaged the work schedule/ assignment due to late arrival of supervisor Megan Ressuer which is changing Johana C. Arucan's patient's list of

schedule or work is one adverse employment action , and fired Petitioner for their mistake is discrimination. or unjust discharge because Cambridge East Healthcare Center – new Therapy Manager Megan Reusser late arrival to work and mismanagement by the other staff on January 5,2016 are liable for the wrong delegations of therapist patients list of schedules assignments which should be available 1 day before the start day of work. Judge Wheatley order and decision on May 20, 2016 " Misconduct in connection with work has not been established .(Order of May 20, 2016 , App. 51-59). While the employee handbook excerpt does note certain types of conduct warrant immediate termination, the employer did not show that petitioner actions met employees handbook's immediate termination . Petitioner is not aware of violating any company policies by making corrections - addendums for the unintentional incident when a patient Catherine B- call light when goes on to provide assistance to the patients / residents who need assistance , and incident of provided therapy but other employees and administrators / managements who caused HARMED of patients and residents or neglect per Medicare State Survey Inspection on September 9,2015 including 3 Citations violations/ discrepancies for the Cambridge East Healthcare Administrator Paige Vantiem , 1 citation violation /discrepancies for Physical Therapy Bobby Manalel for their mistakes at work , who were white or male performed deficiently, received citations, mistakes and harmed patients even to the point of causing Delphia Washington death when Paige Vantiem

wrong treated the patient . Delphia (Black African old woman) is not the patient of Paige Vantiem . Paige Vantiem , a white woman in not a treating nurse at Cambridge East Healthcare Center ,but Nursing Home Administrator , and yet for their worst actions they were not terminated from their employment , which supported petitioner's Title VII Discrimination Employment Civil Rights Act of 1964 . The Medicare State Survey Inspection Report – Cambridge East Healthcare is reported at medicare.gov and was reprinted at App. 94-104.

Petitioner's 1 job description as a PTA – is responsible for the screening of patients /residents of the facility within 24 hours of hospitalization/ admission for further referrals if they needed skilled therapy services or upon referral from staff of a significant change , which unintentionally seen Catherine B case as she needs my help for her essential activities of daily living , ambulation , light exercises as tolerated to attain the prior level of her functions after the hospitatization .

On January 8, 2016 , the innocent petitioner went to work as scheduled for 8 hours and someone a white employees from Cambridge East Healthcare Center called the Madison Heights Police Department on petitioner . 2 white color skin women and 2 white color skin men harassed and denied the rights to equal dignity to the petitioner. An assault of trespassing during the petitioner's 8 hours work scheduled , reprinted in Appendix 51-59 , illegal termination by force in handcuffed to replaced with a younger man employee at work , due to lack of hours for the staff , Cambridge east gave my scheduled work 8 hours on January 8, 2016 to a

younger man named Aaron Ivan Tanap. I suffered chest pain with enlarged chest wall on x ray , an infliction of emotional distress & discrimination – title VII Employment Civil Rights Act of 1964 and Age Discrimination in Employment Act of 1967 ,that results in a Retaliation, § 1983. The Respondents charges but didn't appeared / no show up for 3X- dated February 23, 2016 , March 17, 2016, April 12, 2016 and 5 dates were postponed at MI 43rd District Court and the charges of trespassing should be immediately Dismiss during the first date of appearance – February 23, 2016. - contempt of justice , cruelty , punishment, and denied to Petitioner 's the rights of the United States Constitution Amendment IV, Amendment V, Amendment VII, Amendment VIII, Amendment XIV. The Respondents Charges should be reverse , to withdraw Petitioner's Plea -App. 88-93 due to ineffective Respondents, the judgment and sentence is Void or illegal, the sentence is unconstitutional .

In this case, Petitioner proved a *prima facie case* Discrimination with proof of the following : (1) that Iam a member of a protected class (i.e. race, color,sex,or national origin ; (2) that I was subjected to an adverse employment action; (3) that I was qualified for the job ; (4) I was replaced by a person outside of the protected class or that I was treated differently from similarly -situated employees outside of the protected class.

Respondent cited my illegal termination- for unintentional incident of seeing patient Catherine B instead of Catherine Y is Void / illegal termination because my employer's Cambridge East Healthcare Center mismanagement / changing of my - Johana C.

Arucan 's List of patients work Schedule on January 5, 2016 – Bobby Manalel , PT took my patients who are listed on my original list of patients , and on January 8, 2016 to replaced me with a younger man PT Assistant are adverse employment actions – Age Discrimination of Employment Act of 1967. Cambridge East Healthcare Center newly hired therapy manager Megan Ressuer and other staff Bobby Manalel, PT are liable for the wrong delegations and mismanagement of changing the therapist staff patients list of schedule/ work on January 5, 2016 is adequate to sustain a finding of Respondents liability for intentional discrimination - adverse employment actions, hostile work environment.

Retaliated with harassment and police brutality on day 1 during my scheduled 8 hours of work on January 8, 2016 . The illegal charged of trespassing was illegal and unconstitutional . I am scheduled for work (8 hours) on January 8, 2016 and clock in /punch in upon my arrival as usual , so Iam not a trespass- (Void / illegal charges) . My employer intentionally contructed illegal termination because I was replaced by a younger man PT Assistant .

The 2 police officers violated the US Constitutional Rights to me as a U.S. Citizen . I was unduly handcuffed with force , hence caused injury on my chest as seen on X-ray , damaged my good name , career, and getting gainful employments which ended me homeless , and lived from one families rooms to the other .

The lower court denied the right to have a appointed counsel for several times to have the jury determine the facts .

Because the present case is typical of a large number of courts of appeals' opinions which either disregards *Reeves* , or give the case such a narrow construction as to make it impossible to prove discrimination without an admission by the employer and the other parties , Petitioner requests the Writ be granted.

REASONS FOR GRANTING THE PETITION

MAY IT PLEASE THE COURT:

This Court should grant the petition and reverse the court below.

I. Introduction

I, the Petitioner submits the following in support of my writ of certiorari to review the decision of the Sixth Circuit Court of Appeals affirming the District Court, Eastern District of Michigan, granting granting respondent's Motion for Summary Judgment. (App. 73- 85)
This Court should reverse the lower court's decision to dismiss the case for several reasons.

First, the lower court's conclusion that I, Johana C. Arucan did not need appointed counsel is incorrect and should be reversed. I, Ms. Arucan with no previous federal litigation experience , lacked the means to investigate ,prepare, and present my complex Title VII case , under 28 U.S.C. § 1915 (e) (1). I asked the lower court on four different occasions for appointed counsel and was denied each time .

Second, I establishes a *prima facie* case of disparate treatment discrimination under Title VII of the federal Civil Rights Act of 1964 , with proof of the following : (1) that Iam a member of a protected class (race, color,sex ,or national origin), (2) that Iam subjected to an adverse employment action, (3)that I was qualified for the job, (4) was replaced by a person outside the protected class or was treated differently from a similarly situated person outside the protected class. *Deleon v. Kalamazoo Cnty. Road Comm'n* , 739 F.3d 914, 918 (6th Cir. 2014). Respondents conjured the use of state power to resolve an employment matter. The Cambridge East Healthcare Respondents – Therapy Manager Megan Resseur and PT Bobby Manalel mismanaged me, changing of my list of patients schedules to a mistake on January 5 ,2016 then force quit /harass with illegal termination on January 8,2016 for that mistake ,in which the respondents are liable for the mistake alleged . I was replaced by a younger man on January 8,2016 . I was motivated to work -when I was asked to work and sacrifice missed spending holidays with my family and my employer even dont appreciated it) . It is the Cambridge East Healthcare Center job to put me in a position to succeed . Instead , Cambridge East Healthcare Center failed me , force to quit with harassment when my employer replaced me – then caused to arrest and detain me after my employer replaced me on January 8, 2016. A reasonable juror could find that I was deprived the dignity of work and denied my constitutional rights as a U. S. Citizen

. Iam not a trespassed and should be reverse at 43 rd District Court due to the judgment is illegal or void and unconstitutional . It damaged my good name , career and gainful employment as a upstanding hardworking U. S. Citizens .

Third, I states a " class -of -one " equal protection claim against the Respondents , under *Village of Willowbrook v. Olech, 528 U.S. 562* (2000). A claim is facially plausible when the petitioner ' pleads factual content that allows the court to draw the reasonable inference that the respondents are liable for the mistake alleged." *Colely v. Lucas Cty.,* 799 F.3d 530, 537 (6th Cir. 2015) quoting *Ashcroft v. Iqbal,* 556 U.S 662 , 678 (2009). A reasonable juror can conclude that Respondents choice to weapon-ize state power against me , a US Citizen- Naturalized American innocent woman at work is irrational and arbitrary.

Finally , the Court should restore my U.S . CONST. Fourth Amendment Claims against The Respondents as they all needlessly used state power to bring me to heel. A party is liable under 1983 if she " sets in motion a series of events that respondents knew or reasonably should have known would cause others to deprive petitioner's constitutional rights." *Morris v. Dearborne,* 181 F.3d 657,672 (5th Cir.1999); see also *Young v.Vega,* 574 F. App'x 684, 689 (6th Cir. 2014). Any waiver determination by this Court would result in a plain miscarriage of justice . *See Hood v. Tenn. Student Assistance Corp.,* 319 F.3d 755, 760 (6th Cir. 2003).

II. Standard of Review for Summary Judgment

This Court should grant the Writ to cure the confusion in the Courts of Appeals about when summary judgment should be granted in an employment discrimination case and to make clear that direct evidence is not required .

In reviewing summary judgment , the court must view the evidence presented in light most favorable to the party opposing the motion . *Rhodes v. Guiberson Oil Tools,* 75 F.3d 959 (5th Cir. 1996). In the recent case of *Reeves v. Sanderson Plumbing Products, Inc.,*the unanimous U.S. Supreme Court reaffirmed that "the standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that the inquiry under each is the same ." *Reeves* ,at 2110. This Honorable Court held that , although all of the evidence should be reviewed by the court, not all evidence should be given weight. The court " must disregard all evidence favorable to the moving party that the jury is not required to believe . See *Wright & Miller* , at 299. That is ,the court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses." . *Reeves* , at 2110. In the present case , a jury question is present because the petitioner presented evidence that, when taken as a whole, created a fact issue as to whether the negative alleged that petitioner saw

a wrong patient due to managements -unfair practice of changing her patients list of schedule on January 5, 2016 , and was not proven ordered on May 20, 2016 by Judge Wheatley's Hearing on May 19, 2016 (App. 51-59) . Then on January 8 , 2016 to illegally terminated with force , harassment to replaced the petitioner to a younger man PT Assistant named Aaron Ivan Tanap, to wrongfully arrest and detained the petitioner was negative retaliatory and /or Employment Discrimination , violated her Equal Protected Rights and U.S . Constitutional Law as a hardworking U.S. Citizens.

A. The district court abused its discretion denying Johana C. Arucan – Petitioner appointed counsel at a critical stage of the case .

There is no dollar amount to the due process guarantee; the complexity of the summary judgment rules , Title VII, and Constitutional Law warranted appointment of counsel under 28 U.S.C.§ 1915(E) (1).

A district court has discretion to appoint counsel for an indigent civil litigant . 28 U.S.C.*§1915* (e)(1) (The court may request an attorney to represent any person unable to afford counsel."); *Reneer v. Sewell* , 975 F.2d258, 261 (6th Cir. 1992) (" The appointment of counsel to civil litigants is a decision left to the sound discretion of the district court , and this decision will be overturned only when the denial of counsel results in fundamental unfairness

impinging on due process rights."). " Appointment of counsel in a civil case is not a constitutional right. It is a privilege that is justified only by exceptional circumstances ." *Lavado v. Keohane, 992 F.2d 601* (6th Cir. 1993). " In determining whether ' exceptional circumstances ' exist , courts have examined " the type of case and the abilities of the plaintiff to represent himself ." Id. (citing *Archie v. Christian,* 812 F.2d 250, 253 (5th Cir. 1987). " This generally involves a determination of the complexity of the factual and legal issues involved ." Id. (citing *Cookish v. Cunningham,* 787 F.2d 1, 3 (1st Cir. 1986).

The lower court abused its discretion , because it did not apply § 1915 (e)(1) to the operative facts of the case , at the summary judgment stage of the case , for the Petitioner – Johana C. Arucan . It did not consider whether " exceptional circumstances " were present when the case hung in the balance for a pro se litigant . Petitioner asked for appointed counsel four different times , and once in response to Respondents summary judgment motions. In November 2016, the lower court denied one request for appointed counsel because Petitioner " appeared to have a reasonable and adequate understanding of the relatively – straightforward issues involved in the case . " (Order of 11/26/2016 ; Page ID # 142) . But the Record showed the petitioner 's repeatedly demonstrated a financial and legal inability to represent herself . The very best jurists have grappled with Title VII's scope for over a half- century . Asserting

constitutional claims increases the complexity of Johana C. Arucan 's case . See*Lavado,* 992 F.2d at 606 . The lower court's conclusion that Ms. Arucan " appeared to have a reasonable and adequate understanding of the relatively-straightforward issues involved in the case " is incorrect . Moreover , Petitioner 's *pro se* objections, prayers, and pleadings, evinced an immutable lack of appreciating the actual substantive and procedural legal issues at play. She does not have a prolific litigation history on constitutional matters.Exceptional circumstances exist where an indigent woman has a colorable action but lacks the means to investigate ,prepare , or present her case . See *Johnson v. Howard,* 20 F. Supp. 2d 1128, 1129 (W.D. Mich. 1998). Those factors were present .

Today , summary judgment is essentially a mini-trial. And the *McDonnell Douglas* burdens make summary judgment a crucial, determinative aspect of a plaintiff's/ petitioner's case. See STEPHEN B BURBANK, *Vanishing Trials and Summary Judgment in Federal Civil Cases : Drifting Toward Bethlehem or Gomorrah?,* 1 J. EMPIRICAL LEGAL STUD. 591, 600 (2004) ; PAUL W. MOLLICA, *Federal Summary Judgement at High Tide,* 84 MARQ. L. REV. 141 , 141- 142 (2000). (" The increase in summary dispositions of civil cases stirs fear that , in the haste to resolve weak cases, courts risk overriding the constitutional imperatives of due process and the right to a civil jury trial under the Fifth and Seventh Amendments."). But the Rule does not eliminate the right to a civil trial .

In *Swierkiewicz v. Sorema,* the Supreme Court unanimously held that the prima facie case under *McDonnell Douglas* is an evidentiary standard- not a pleading requirement . 534 U.S. 506 , 510, 122, S. Ct. 992, 152 L. Ed.2d 1 (2002) . Respectfully, the issues before the Petitioner were complex . The Record shows that Johana C. Arucan asked the lower court for additional discovery to oppose Respondents' motions for summary judgment . (See Motion to Compel of 5/1/2017 , Page ID # 607-09). The May 1, 2017 pleadings- and Petitioner's several requests for appointed counsel – demonstrated Ms. Arucan's "need for discovery , what material facts hopes to uncover , and why she has not previously discovered the information .
" *Cacevic v. City of Hazel Park,* 226 F.3d 483, 488 (6th Cir. 2000). She lacked the means to investigate , prepare , and present her case, under 28 U.S.C.§ 1915 (e) (1). Thus summary judgment is premature ; the lower court abused its discretion when it misapplied Rule 56 (d) and denied Johana C. Arucan the relief she consistently sought . *See Abercrombie & Fitch Stores , Inc. v. American Shoefitters, Inc.,* 280 F.3d 619, 627 (6th Cir. 2002) . Summary judgment without needed discovery is an abuse of discretion .

Petitioner askes this Court to reverse the judgment and remand the case to a judge who appears to be impartial . Every Citizen , regardless of wealth , sex, creed, or color , deserves a " reasonable opportunity to present all material made pertinent to such a motion by Rule

56. "*Kostrzewa v. City of Troy* , 247 F.3d 633, 643 (6th Cir 2001). The lower court's repeated denial of appointed counsel violated our shared notions of fundamental fairness. *Reneer v. Sewell*, 975 F.2d 258, 261(6th Cir. 1992). A appointed counsel may have helped Johana C . Arucan defend her constitutional rights to a civil trial . *See Spotts v. United States* , 429 F.3d 248, 250 (6th Cir. 2005) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (stating that the Court holds pleadings of pro se litigants to less stringent standards than formal pleadings drafted by lawyers) ; *Boswell v. Mayer*, 169 F.3d 384, 387 (6th Cir. 1999) (pro se plaintiffs enjoy thebenefit of a liberal construction of their pleadings and filings).

B. Genuine material fact disputes exist, under the *MCDONNELL-DOUGLASS,* for Johana C. Arucan's Title VII Discrimination , Harassment and Retaliation Claims

Title VII of the Civil Rights Act of 1964 prohibits employers from " failing or refusing to hire or discharging any individual , or otherwise .... Discriminating against any individual with respect to her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, sex, national origin , religion. " 42 U.S.C.§ 2000e-3 (a) (1) . In this case Johana C. Arucan establishes a *prima facie case* of disparate -treatment discrimination and Retaliation with proof of the following : (1) that

she is a member of a protected class ; (2) that she was subjected to an adverse employment action; (3) that she was qualified for the job ; and that she was treated differently from similarly-situated employees outside of the protected class. *Deleon v. Kalamazoo Cnty. Road Comm'n* , 739 F.3d 914, 914 , 918(6th Cir. 2014). *McDonnell-Douglas Corp. v. Green* , 411 U.S. 792, 802 (1973); see also *Talley v. Bravo Pitinio Restaurant* ,61 F.3d 1241, 1246 (6th Cir. 1995) . Likewise Petitioner's hostile work environment claim should survive because the statue prohibits a "workplace permitted with discriminatory intimidation, ridicule , and insults that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 , 21 (1993). Employment adverse actions like for instances are , changing of petitioner's patient's patients schedules , force her to quit during her scheduled work day – January 8, 2016 for 8 hours , not get a paycheck for her accrued vacation hours of more than 50 hours , caused her harmed and Retaliation for wrongful alleged of trespass which damaged petitioner's good name , future , career , and to get a gainful employment . The petitioner didn't deserves it , her family didn't send her to College for more than 8 years to finished Bachelor of Science in Physical Therapy and Bachelor of Science in Nursing .

Petitioner's pleadings and deposition testimony show that she was treated differently that other similarly-situated employees ; her job

ultimately went to a younger male Physical Therapist Assistant . It's a obvious adverse employer actions and constructive termination – Petitioner asserted that Cambridge East Healthcare Center changed / mismanaged her work schedule , and fired her for their mistake . She was not given a progressive discipline which is again a employer adverse action . Petitioner pointed to facts showing of the Medicare State Survey Inspection – Cambridge east Healthcare Center Result on Sept. 9, 2015 , and was reprinted at App.94-104. As evidence " other physical therapists – employees , administrator, supervisors who were white or male performed mistakes , deficiently . received citations, and harmed patients even to causing death due to mistakes of Administrator Paige Vantiem for seeing a wrong patient – Delphia Washington , yet were not terminated from their employment." (Order of 3/ 30/ 2018, R. 78 , Page ID # 999; see also R. 77; Page ID # 987 ,989-90.) These factors meet the *McDonnell-Douglas* standard, as employer reasons for termination do not tell the entire story. (See, e.g., Notice of Determination , R. 50-7 Page ID # 345 (" Misconduct in connection with work has not been established .") As this Court advised in *White v. Baxter Healthcare Corp.,* 533 F.3d 381, 392-93 (6th Cir. 2008) (internal quotation marks and citations omitted).

Pretext may be established either directly by persuading the (trier of fact) that a discriminatory reason more likely motivated the employer or indirectly by showing that the

employer's proffered explanation is unworthy of credence . A plaintiff will usually demonstrate pretext by showing that the employer's stated reason for the adverse employment action either (1) has no basis in fact , (2) was not the actual reason , or (3) is insufficient to explain the employer's action .

A reasonable juror could find that Petitioner corrected unintentional incident App. 51-59 was within the bounds of Cambridge East Healthcare Center mismanagement – changing of her patient's list schedule due to late arrival of Supervisor Megan Reusser and didn't did her job right -poor management . Moreover , documentation in the Record supports the Petitioner's Claim was fired for impermissible reasons. (See , e.g ., Notice of Determination, R. 50-7 ; Page ID # 345 " Misconduct in connection with work has not been established ." While the employee handbook excerpt does note certain types of conduct warrant immediate termination, the Employer did not show that Johana C . Arucan actions met the handbook's " immediate termination " threshold. A jury could conclude that the Cambridge East Healthcare Center – Respondents acts were not only pretext for a wrongful termination , but abusive , violating Johana C. Arucan's rights under 42 U.S.C .§ 1983 for civil rights violations acting "under color of " state -level or local law has deprived Petitioner's of rights created by the U.S. Constitution or federal statutes .

C. Petitioner 's States Plausible and Triable Equal Protection Claims Against the Respondents , is an "appropriate one for this Court to determine " more precisely the circumstances "

" The Equal Protection Clause safeguards against the disparate treatment of similarly situated individuals as a result of government action that " either burdens a fundamental right , targets a suspect class, or has no rational basis . " *Patereck v. Village of Armada,* 801 F.3d 630, 649 (6th Cir. 2015) (citing *Center for Bio-Ethical Reform, Inc. v. Napolitano,* 648 F .3d 365, 379 (6th Cir. 2011). Petitioner states a " class -of-one " equal protection claim against the Respondents , under *Village of Willowbrook v. Olech,* 528 U.S. 562 (2000).

A claim is facially plausible when the Plaintiff " pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged . " *Colely v. Lucas Cty .,* 799 F.3d 530, 537 (6th Cir. 2015) (quoting *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). " A judge may not grant a Rule 12 (b) (6) motion based on a disbelief of a complaint's factual allegations . " *Saglioccolo v. Eagle Ins. Co.,* 112 F.3d 226, 228-29 (6th Cir . 1997)(citations omitted). A reviewing court , then must " construe the complaint in the light most favorable to the plaintiff, accept her allegations as true and draw all reasonable inferences in favor of the

plaintiff." *Bassett v. National Collegiate Athletic Ass'n* , 528 F.3d 426, 428 (6th Cir. 2008). A reasonable juror can find animus -or conclude that these acts are arbitrary. See *Cleveland Fire Fighters v. City of Cleveland,* 502 F.3d 545, 549 (6th Cir. 2007); *EJS Properties , L.L.C. v. City of Toledo* , 698F.3d 845, 864 (6th Cir. 2012). Petitioner's constitutional claims should be restored . In the alternative , Petitioner asks that this Court allow her to amend her pleadings , App. 88- 93 under *Iqbal* and its progeny, on remand.

D. Petitioner's States Plausible and Triable 42 U.S.C. §1983 Claims against Respondents should be restored .

Section 1983 provides : Every person who, under color of any statute, ordinance , regulation, custom, or usage , of any State or Territory or the District of Columbia , subjects , or causes to be subjected , any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights , privileges , or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law , suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. Here , Petitioner Johana C. Arucan's complaint states a plausible cognizable Fourth Amendment Claim against Respondents , as she was falsely arrested . See

Parker v. City of Toledo, 1 F. 430,433-442 (6th Cir. 2001) (officer's false misinformation used to procure a search warrant created a question of fact). Likewise , the case should survive summary judgment because the Fourth Amendment protects against unduly tight or excessively forceful handcuffing during the course of a seizure . See *Morrison v. Bd. Of Trustees of Green Twp.*, 583 F. 3d 394 , 401 (6th Cir. 2009). There is a genuine material fact dispute Ms. Arucan suffered "some physical injury " due to tight handcuffing (Deposition at 144, R. 50-6; Page infliction of emotional distress.

Respondents John Heinrich & Rick Zamojski maintain that qualified immunity shields them from liability. That argument should not prevail . Qualified immunity requires a two- step inquiry . This Court considers whether " the facts alleged show that the officer's conduct violated a constitutional right ?" *Silberstein v. City of Dayton* , 440 F.3d 306, 311 (6th Cir. 2006) . If "yes," then the Court determines was "the right clearly established " at the time of the violation. Id. As this Court explained in *Leach v. Shelby County Sheriff,*" to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law , caused the deprivation of a federal right . " *Leach,* 891 F.2d 1241, 1245 (6th Cir. 1989).

Petitioner's Fourth Amendment claims against the Respondents should survive

summary judgment . See *Parker v. City of Toledo* , 1 F. App' x 430, 433-442 (6th Cir. 2001) (officer's false misinformation used to procure a search warrant created a question of fact). There is a genuine dispute regarding whether the facts and circumstances within the officer's knowledge were " sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed , is committing or is about to commit an offense . *Michigan v. DeFillippo,* 443 U.S. 31, 37 (1979). This Court should restored summary judgment for policy that should not allows police to illegally arrest innocent hardworking U.S.Citizen-people for trespassing at local business during working /operating hours and intentional infliction of emotional distress and other personal injuries . It is axiomatic " an official causes a constitutional violation if he sets in motion a series of events that defendant/ respondents knew or reasonably should have known would cause others to deprive plaintiff's / Petitoner's constitutional rights ." *Morris v. Dearborne,* 181 F.3d 657, 672 (5th Cir. 1999) ; see *also Young v. Vega,* 574 F. App' x 684 , 689 (6th Cir. 2014) (immunity cannot bar claims wrongfully procured an unreasonable search or seizure). Thus , the Complaint " adequately alleges the commission of acts that violated clearly established law. " *Rondigo, L.L.C. v. Twp. Of Richmond* , 641 F.3d 673, 681 (6th Cir. 2011). There is no dispute that Johana C.

Arucan -Petitioner began her January 8, 2016 day as an full time employee of Cambridge East Healthcare Center , with a right to work (8 hours) as per petitioner's work schedule /assignment and with a right to store her belongings at her job. She worked at Cambridge East Healthcare Center for > three (3) years, as a good employee. A reasonable juror could find that the Cambridge East Healthcare Center , and the Madison Heights 2 police officers – Defendants / Respondents ,et al did not afford the Petitioner the dignity to process what happened to her , grab her personal items – when she told Officer Heinrich that she's going to get her personal belongings at the Therapy Gym located in the rightfully shared with Cambridge East Healthcare Center / Sava seniorcare ,L.L.C. just moments earlier. *See , e.g.,* Elijah Anderson, *The White Space,* SOCIOLOGY AND RACE AND ETHNICITY Vol. (I) 10, 15 (American Sociological Association 2015) (" Almost any white person present in the white space can possess and wield this enormous power.")

Likewise ,42 U.S.C.§ 1983 allows for claims against private individuals and entities who act under the color of state law – but there must be substantial nexus, or strong "joint activity " between the Cambridge East Healthcare Center – Respondents and the government . *Filarsky v. Delia ,* 556 U.S. -, 132 S.Ct. 1657, 1661-62 (2012) (" Section 1983 provides a cause of action against any

person who deprives an individual of federally guaranteed rights ' under color' of state law "). A private individual acts under color of state law when his or her actions are " fairly attributable to the state." *Filarsky,* 566 U. S. at -, 132 S. Ct. at 1661-62; *see also Abdullahi v. Pfizer, Inc.,* 562 F.3d 163, 188 (2d Cir. 2009) (" Under § 1983, state action may be found when there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." (quoting *Brentwood Acad. V. Tenn. Secondary Schl. Athletic Ass'n,* 531 U.S. 288, 295 (2001). Moreover , a private individual can be found to have acted under the color of law if the private individual " is a willful participant in joint activity with the State or its agents ." *Ciambriello v. County of Nassau,* 292 F. 3d 307, 324 (2d Cir. 2002) (citations omitted). But " it is not enough, however , for a plaintiff to plead state involvement in 'some activity of the institution alleged to have inflicted injury upon a plaintiff; rather , the plaintiff must allege that the state was involved " with the activity that caused the injury' giving rise to the action." *Sybalski v. Indep. Grp. Home Living Program, Inc.,* 546 F.3d 255, 258 (2d Cir. 2008) (emphasis and citations omitted). Therefore , the lower court's decision on the Fourth Amendment Claim should be reversed. Finally, Petitioner Johana C. Arucan has not waived her right to contest the 43rd district court's basis for its opinion here on appeal .

Petitioner's appeal to withdraw her plea- App. 88-93 , for the ffng. reasons; the judgment is Void or illegal , unconstitutional , a plain miscarriage of justice . *See Kennedy v. Superior Printing Co.,* 215 F.3d 650, 655 (6th Cir. 2000) (noting that the Court may consider grounds supported by the record). A waiver determination by this Court would result in a plain miscarriage of justice. *See Hood v. Tenn. Student Assistance Corp.,* 319 F.3d 755, 760 (6th Cir. 2003). There is precedent in this Court that *Daubenmire v. City of Columbus ,* and similar cases bar Petitioner's claims against the police officers . *Daubenmire,* 507 F.3d 383, 390 (6th Cir. 2008) (Plaintiffs' pleas in state court estopped them from challenging the officers' probable cause determination in a subsequent 42 U.S.C. §1983 lawsuit). It cannot be gain said that Petitioner bargained away her constitutional rights with a no- contest plea .- App. 88-93 , As this Court is well – aware, " criminal justice today is for the most part a system of pleas , not a system of trials . Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *Lafler v. Cooper* , 132 S. Ct. 1376, 1388 (2012); see also *Padilla v. Kentucky,* 130 S Ct 1473, 1485 (2010) .(" pleas account for nearly 95% of all criminal convictions".) Today , " plea bargaining ... is not some adjunct to the criminal justice ; it is the criminal justice

system. " *Missouri v. Frye* , 132 S. Ct. 1399, 1407 (2012).

The 6th Circuit, in this case , expressly refused to followcertain principles that are explicitly stated in *Reeves.* For example, *Reeves* wrote that in deciding whether to grant judgment as a matter of law , the court is to " give credence to the evidence favoring the nonmovant party that is uncontradicted, at least to the extent that the evidence comes from disinterested witnesses." *Reeves* ,530 U.S. at 151. In this case , the 6th Circuit did not follow this admonition. Instead of accepting as true Petitioner's (nonmovant's) evidence of good performance, unintentional incident due to the new Rehab Supervisor Ms. Reusser mismanagement and late arrivals at work , the 6th Circuit accepted as true the testimony of Respondent's witnesses, who claimed that Petitioner was a poor performer or , at least that Respondent had a good faith belief that Petitioner was a poor performer . Accepting as true Respondent's claim that Respondent had a good faith belief that Petitioner was a poor performer disregards *Reeves* teaching that " credibility determinations ..." are " jury functions, not those of a judge." *Reeves* , 530 U.S. at 150-51.

The 6th Circuit also disregarded thepre-*Reeves* 'established principle that " the state of a man's mind is as much a fact as the state of his digestion." *U.S. Postal Serv. Bd. of Governors v. Aikens,* 460 U.S. 711, 716 (1983)(internal citation omitted). Whether

Respondent fired Petitioner because she was old minority female U.S. Citizen or because it had a good faith belief that she was a poor performer is a question of Respondent's state of mind and is, therefore , a question of fact.

The 6th Circuit also disregard *Reeves* since that court never considered as evidence the fact Petitioner had made a *prima facie case* by demonstrating that she performed her job well for over three (3) years, and was then replaced by an employee ~ ten (10) years her age. *Reeves* corrected the 6th Circuit because the court had " disregards critical evidence favorable to petitioner-namely , the evidence supporting petitioner's prima facie case ...."*Reeves,* 530 U.S. at 152.

Just as this Court found it necessary in *Tolan v. Cotton,*__U.S.__, 134 S. Ct.1861, 1886 (2014), to vacate summary judgment granted in an unreasonable force case brought under the Fourth ,Fifth, Seventh, Eight, Fourteenth Amendment because the 6th Circuit "improperly weighed evidence and resolved disputed issues in favor of moving party;..." this Court should again grant *certiorari* in order to correct the 6th Circuit by directing the principles of *Tolan* and *Reeves* must be followed. It is idle for this Court to render opinions if the lower courts are free to disregards these opinions or to interpret the opinions so narrowly that their holdings have no force.

The questions presented here are of the greatest importance . Considering the concise

factual pattern, and the scope of the lower court's over-reach, the case also presents an especially effective vehicle to bring needed clarity and guidance to this area of law .

CONCLUSION

This Court has held that a person has a protected liberty interest "in her reputation, good name , honor , and integrity , as well as being free to move about, live , and practice her profession without the burden of an unjustified label of infamy. *Joelson v. United States* , 86 F.3d 1413, 1420(6th Cir. 1996). What happened to Johana C. Arucan - Petitioner is becoming all too common in our shared civil spaces . But the Constitution is built to weather arbitrary notions of civility . To affirm the result is to say the words, *fundamental fairness* – without its music .

This is the " appropriate case " described by Justice Ginsburg in *Reeves* , 530 U.S. at 154 (Ginsburg J., concurring), for this Court to grant the Writ in order to define more precisely when an employee in an employment discrimination case may be denied her Seventh Amendment right to have a jury determine the facts .

"The very essence of the jury's function is to select from among conflicting inferences and conclusions that which it considers most

reasonable." *Tennant v. Peoria &* P.U. Ry. Co., 321 U.S. 29, 35 (1944). Taking away from the jury such questions as whether Respondents replaced Petitioner with an employee younger man because the Respondents – Cambridge East Healthcare Center alleged, diminishes the Seventh Amendment . Whether Respondents violated Age Discrimination in Employment Act of 1967 , Title VII of the Civil Rights Act of 1964 , Retaliation , Harrassment , Equal Protection , violated 42 U.S.C. § 1983 and Constitutional Amendments IV, V, VII, VIII, XIV .

Respectfully submitted,

S/ _____

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June 26 , 2019