19-5541

ORIGINAL

No._____

IN THE

Supreme Court of the United States

QUIANNA CANADA,

Petitioner,

v.

TEXAS MUTUAL INSURANCE COMPANY, STACY PARASTAR GONZALEZ, in her official capacity; MARSHA THIBODAUX, in her official capacity; KRISTEN KIRKPATRICK; EDWARD "ED" COATES; DEMETRIC "DE" LEVIAH; RYAN JOHNSON; LYNETTE CALDWELL

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

QUIANNA CANADA
SELF-REPRESENTED LITIGANT
rfeshoes.memoir@hotmail.com

**Litigant of Record*

QUESTIONS PRESENTED

1. Can federal courts use summary judgment motions to divest the Petitioner's Seventh Amendment right to a jury trial?

2. Does general corporate knowledge satisfy the "knowledge requirement" in Title VII retaliation cases?

3. Can an employer use irrebuttable presumptions to divest the Petitioner of her constitutional and human right to work in the United States?

PARTIES TO THE PROCEEDINGS

All parties to the proceeding are listed in the caption. The petitioner is Quianna Canada.

The Respondents are the Texas Mutual Insurance Company, Stacy Parastar Gonzalez, Marsha Thibodaux, Kristen Kirkpatrick, Edward "Ed" Coates, Demetric "De" Leviah, Ryan Johnson and Lynette Caldwell.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Circuit Courts

Other Circuits

Constitutional Provisions

Statutes

Rules and Regulations

International Statutes

Scholarly Articles and Books

PETITION FOR A WRIT OF CERTIORARI

Petitioner Quianna Canada respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The court of appeals' opinion, *Canada v. Tex. Mut. Ins. Co.*, No. 18-50247 (5th Cir. 019). The district court's opinion and order granting Respondents' motion for summary judgment, (EROA. 2428–2446) is reported *Canada v. Tex. Mut. Ins. Co.*, Case No. A-17-CV-148-SS (W.D. Tex. 2018). The district court's decision denying Petitioner's petition for rehearing en banc is at 18-50247, Doc. 00514948922.

JURISDICTION

The judgment of the court of appeals was entered on May 7, 2019. On May 16, this Court extended the time to file this petition until August 3. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent constitutional provisions are set forth in the appendix to this petition. Appendix D.

INTRODUCTION

The Petitioner, Quianna Canada, is an American Crimes Abandonment Applicant (ACAA)[1] and an indefatigable defender of human rights. Through the years, Petitioner frequented public libraries and read out loud to herself in order to overcome apraxia of the speech and developed highly marketable administrative and communication skills, which she learned about with all the vigor of an autodidact. She recently received acceptance offers from three universities in the United Kingdom to matriculate its Bachelor of Laws undergraduate program, and is presently undertaking an undergraduate degree in Law and Society.

STATEMENT OF THE CASE

I. Proceedings in the District Court

Every time a person is wrongfully terminated; a law is broken and a right infringed. Texas Mutual terminated Ms. Canada from her temporary position as a Policy and Technical Support clerk hours after she communicated with Edward Coates, Human Resources ("HR") manager, that the company's hiring criteria was discriminatory against blacks. On August 26, 2016, she filed a charge with the Equal Employment Opportunity Commission ("EEOC") and received her right to sue letter in December of 2016. *Canada v. Tex. Mut. Ins. Co.*, No. 18-50247 at 10* (5th Cir. 2019) ("*Canada*"). She filed suit in the 200th District Court for Travis County, Texas against the Respondents for race discrimination and retaliation in

[1] ***While "formerly incarcerated people" or "convicted felons" is often used, the preferred term is American Crimes Abandonment Applicant or "ACAA", which refers to deserting or ceasing support of any criminal activity or conduct. Colloquially, it concerns the applicant's (convicted felon) genuine and lawful effort to reenter the job market; specially, those who fill out applications, seek interviews or expect the *Green Factors* in *Green v. Missouri Pac. R. Co.*, 549 F.2d 1158 (8th Cir. 1977) to be applied in employment decisions.

violation of the TCHR Act[2], the relevant terms of which are essentially the same as Title VII[3], 42 U.S.C. § 1981 and various state-law and federal claims.[4] Texas Mutual removed the case to the United States District Court for the Western District of Texas pursuant to 28 U.S.C. § 1331, 1441, 1367 and 1446. The district court granted Texas Mutual procedural and evidentiary concessions, a few of which were bereft of precedential support. When the Petitioner discovered that her state claims dominated, she filed a motion to withdraw her federal claims and to remand the case to state court. The district court refused to relinquish jurisdiction[5] over the matter on the assumption that the Petitioner sought to manipulate the forum. Although she asserted that her case was best suited for state court because her state claims dominated, the district court denied the motions.

On March 26, 2018, the district court decided none of the Petitioner's evidence[6] about her own work ethic created a genuine fact dispute (EROA. 2432) and held her criminal background made her "objectively unqualified for a position at TMIC". In ruling on her retaliation claim, the district court disagreed that general corporate knowledge is sufficient to satisfy the knowledge requirement–holding plaintiffs must provide appreciable evidence that the decision-maker knew of the protected activity at the time of the plaintiff's termination (EROA. 2441-42). The district court eventually dismissed the Petitioner's claims and granted the Respondents' summary judgment motion (EROA. 2444-45). Final judgment was entered on March 26, 2018 (EROA. 2446).

---

[2] Texas Labor Code § 21.051, 21.055, and 21.056.

[3] 42 U.S.C. § 2000e–(2), (3).

[4] Title I of the Civil Rights Act of 1991; Tortious Interference with a Prospective Contract (business relationship), Negligence, Civil Conspiracy and Unjust Enrichment.

[5] The doctrine of abstention allows federal courts to relinquish jurisdiction over a matter and allow a state court to decide a federal constitutional question or a matter of state law.

[6] Petitioner's daily journal, declarations and deposition testimony.

II. Proceedings in the Fifth Circuit

In the Petitioner's case before the Fifth Circuit, it found that the district court did not usurp the jury's function when it weighed evidence and drew all reasonable inferences in favor of Texas Mutual.[7] In affirming this point, the circuit stated that the Petitioner failed to create a genuine fact dispute under *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973) to rebut Texas Mutual's evidence. *Canada*, at 9-10*. In regard to the Petitioner's retaliation claim, the circuit disagreed[8] that under the cat's paw doctrine, she could hold the Respondents liable based on the discriminatory intent of Thibodaux, her supervisor, who was responsible for making the ultimate employment decision, was in the relevant chain of communications and was motivated by discriminatory animus.[9] In affirming the decision, the circuit held that plaintiffs must provide appreciable evidence[10] that the decision-maker knew of the Petitioner's protected activity. *Canada*, at 11*.

---

[7] Texas Mutual filed reports that it imputes to the Petitioner's punctuality. The Fifth Circuit thinks the alleged reports prove the Petitioner "was repeatedly tardy during her temporary assignment...". According to the circuit, alleged tardiness in a temporary position made the Petitioner unqualified not only for three applied-for administrative permanent positions but justifies Texas Mutual's decision not to interview her for all three positions. *Canada*, at 9*.

[8] Essentially, the circuit thinks the Petitioner must provide appreciable evidence that: (1) the biased supervisor (Thibodaux) influenced the decision-maker (Kirkpatrick) to terminate her employment; and (2) the biased HR manager (Coates) communicated with the decision-maker (Kirkpatrick) and influenced her to terminate Petitioner's assignment. Essentially, it closed its eyes to the fact that Coates supervised Kirkpatrick.

[9] Although Coates is an official who has the authority to direct others to hire and fire, the Fifth Circuit thinks no nexus exists between Coates' statements to the Petitioner "The feelings mutual" ... "I don't want people like you here – you blacks..." and her hours-later termination.

[10] The Fifth Circuit found the Petitioner's declaration and deposition evidence regarding her complaint to HR that she believed Texas Mutual's hiring practices discriminated against blacks and that she believed her supervisor targeted her because she is black to be insufficient to satisfy the knowledge requirement. *Canada*, at 9*.

The Fifth Circuit, however, did not address whether an employer use of irrebuttable presumptions to divest the Petitioner of her constitutional and human right to work in the United States. *Canada*, at 8*. As a result of the circuit's fully affirmed decision, the Petitioner filed a Motion for Rehearing En Banc, *see* 18-50247, Doc. 00514909690. The motion was denied on May 8, 2019. See *id.*, Doc. 00514948922.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD RESOLVE WHETHER FEDERAL COURTS' CURTAILMENT OF A LITIGANT'S ACCESS TO A JURY TRIAL IN A TITLE VII CASE INFRINGE THEIR SEVENTH AMENDMENT RIGHT.

A. The Fifth Circuit's rule that plaintiffs must mention legal theories in their complaint is incorrect and creates an intolerable conflict with this Court's precedent.

The Fifth Circuit infringed upon the very substance of the U.S. Constitution when it decided none of Petitioner's claims should reach a jury. *Canada*, at 2*. In the United States, the right to jury trial is cherished as a fundamental constitutional guarantee (Law Review Editors, 1969, p. 1). The Seventh Amendment, which was ratified in 1791, resolved the controversy by guaranteeing *the right to trial by jury*, in suits at common law in federal courts where the amount in controversy exceeds twenty dollars. U.S. CONST. amend. VII. This sentence expressly grants an unabridged and inviolate constitutional right to a jury trial which cannot be disregarded by any court. *Jacob v. City of New York*, 315 U.S. 752, 753 (1942) ("The right of jury trial in civil cases at common law is a basic and fundamental feature of our system of federal jurisprudence which is protected by the Seventh Amendment"); *see* Fed. R. Civ. P. 38. Since there has been a merger of law and equity in the federal courts, the Petitioner can insist on her right to jury trial on facts relating to the legal aspects of her case (*see*

EROA. 623, 644, 659) (bringing a disparate treatment claim, requesting relief under 42 U.S.C. § 1981 and demanding a trial by jury).[11] Although the Petitioner filed non-conclusory declarations (EROA. 2342, 2375, 2403) and gave deposition testimony[12] to support her claims, the Fifth Circuit states this is not enough: litigants must mention legal theories and frameworks in their complaint, *Canada*, at 9*. Because the Petitioner did not mention the "direct-evidence framework" in her complaint, the circuit believes she waived her right to argue the claim before a jury. *Canada*, at 8-9*.

Rule 8 of the Fed. R. Civ. P. does not support the appellate court's contention that plaintiffs must mention theories in their complaint before a jury can hear their cases. In fact, this Court specifically stated, "We think that it is impossible to square the "heightened pleading standard" applied by the Fifth Circuit in the case with the liberal system of "notice pleading" set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only a short and plain statement of the claim showing that the pleader is entitled to relief." *Leatherman v. Tarrant County Narcotics Intelligence Coordination Unit,* 507 U.S. 163, 168 (1993). A full reading of this Court's decision in *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), infers that it is enough that plaintiffs allege that they were injured, and that their allegations can conceivably give rise to a viable claim. The circuit points to no in dicta from this Court that instructs lower courts to search for facts and legal theories within a plaintiff's complaint or to dismiss the complaint if there are none. Even if this Court accepted the Fifth Circuit's contention that a plaintiff waives the right to argue claims under the direct-evidence framework by failing to mention it in their complaint, *Canada*, at 9-10*, this Court has never held it is permissible to circumvent a litigant's right to jury trial. For instance, she requested a jury trial on all Title VII claims in her

---

[11] The Fourteenth Amendment is properly invoked here by the Petitioner to protect her Seventh Amendment right to a jury trial.

[12] Pl. Dep. June12, 2017, (p. 139, at 11-14; p. 144, at 1-5; p. 150, at 10-19, 20-24; p. 160, at 8-25; p. 161, at 1-24; p. 168, at 4-10; p. 174, at 16-22; p. 220, at 24-25; p. 221, at 1-4; p. 233, at 1-5; p. 237, at 2-25; p. 240, at 12-16; p. 286, at 2-12).

complaint and sought compensatory and punitive damages[13] on her disparate treatment claim (EROA. 644) under the Civil Rights Act of 1991 § 102 (c)(1):

> "If a complaining party seeks compensatory or punitive damages under this section:
> (1) Any party may demand a trial by jury".

When Title VII claims are linked to intentional discrimination or disparate treatment cause of actions, as here, the Fifth Circuit should have found the Petitioner had a right to a jury trial (Lewis, 2013, pp. 572-73; Sperino & Thomas, 2017, p. 19). *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959), holding "if th[e] legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact; *Tull v. United States*, 481 U.S. 412, 417 (1987) ("the right to a trial by jury extends to causes of action created by Congress"); *Teamsters v. Terry*, 494 U.S. 564, 565 (1990), carefully preserving the right to trial by jury where legal rights are at stake. As shown, the district court had no functional justification for denying the Petitioner her right to a jury trial.

The Seventh Amendment right to a jury trial is not limited to Petitioner's federal claims. The Fourteenth Amendment incorporates the Bill of Rights, including the Seventh Amendment and applies those rights to the States. *United States v. Wilkins*, 348 F.2d 844, 850 (2d Cir. 1965); U.S. CONST. amend. XIV. In *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968), this Court recognized that many of the rights guaranteed by the first eight amendments are protected against state action by the Privileges or Immunities Clause of the Fourteenth Amendment. As demonstrated, the lower court's denial of the constitutional right to a jury trial violates both the Seventh Amendment guarantee of the right and the Fourteenth Amendment

---

[13] Because juries decided monetary remedies in common law courts, and judges determined other types of remedies in equity courts, the Seventh Amendment preserved juries' authority to decide money issues (Oldham, 2006, pp. 45-79). Thus, actions for money damages are usually within the province of the jury.

incorporation of such a right. In all, the Fifth Circuit was incorrect in finding that such a right did not exist. For this reason, its decision should be overturned and the Petitioner should be afforded her right to a jury trial.

B. The Fifth Circuit usurped the role of the jury by weighing credibility and assigning weight to evidence.

The Fifth Circuit also infringed the Petitioner's constitutional right when it usurped the role of the jury, weighed credibility and assigned weight to the following evidence:

> "The system recorded that on 13 of the 28 days, Canada swiped the badge after 8:00 a.m., *Canada*, at 2*"; "Because we agree that Canada's lack of punctuality negated her eligibility for the positions, *id.* at 8*"; "...we also agree with the district court that Canada was unqualified for the positions she sought. TMIC introduced evidence that Canada was repeatedly tardy during her temporary assignment, in contravention of a written employment policy", *id.* at 9*.

The Petitioner reviewed the Respondents' badge reports at her deposition and knew immediately that the reports were fraudulent[14] because (1) she was punctual; and (2) tardiness is a racial stereotype and a charge frequently launched against black American employees to degrade them and undermine their work ethic. To shift the burden to the Respondents, the Petitioner filed declarations (EROA. 2342, 2375, 2403) and submitted her daily journal that she maintained during her employment at Texas Mutual that not only contradicted the false reported poor performance, but set forth facts regarding knowledge of her own punctuality[15] (App. Br., pp. 7-8, 13-15, 18, 37, 41). Although the Fifth Circuit held "speculation about the accuracy of the badge system does not create a genuine factual issue (*Canada*, at 10*)", the Petitioner submits it

---

[14] *Supra note*, 12 at p. 237.

[15] *Id.*, *see also* pp. 139, 150, 160-61.

was within the province of the jury to decide whether the Respondents badge reports were authentic or fabricated. *Jacob*, 315 U.S. 756, 758.

Both judges and juries have power in civil cases. Where a statute governs, judges are responsible for interpreting what the statutes mean. When there are fact disputes, the cases go to a jury and it decides whether the facts presented in the case are true or not (Sperino & Thomas, 2017, pp. 19, 158-59). The rationale behind this, beside the Constitution's explicit language, is that a jury may have a different perspective than a federal judge on what the evidence shows and may reach a different result (Sperino & Thomas, 2017, pp. 20-21). For instance, federal judges with "...elite backgrounds and credentials" often analyze discrimination cases that favor employers and disfavor workers.[16] Whereas, a jury with "...more of a mix of the population... [of]...income levels, women, and people of different races and religions"[17] will often decide traditional discrimination cases in a fair manner. *See* Schneider (2010) "...because civil rights cases often involve subtle issues of credibility, inferences, and close legal questions, where issues concerning the "genuineness" and "materiality" of the facts are frequently intertwined with law, a district judge may be a less fair decisionmaker than jurors, who are likely to be far more diverse and to bring a broader range of perspectives to bear on the problem (pp. 542-43). Although not explicitly stated, the legal community understands this Court's holding in *Anderson v. Liberty Lobby, Inc.*, "...credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict" to be a precedential interdiction that estops a trial court from refusing to submit the case to a jury. 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986); *see also Barry v. Edmunds*, 116 U.S. 550, 565 (1886) ("[i]n no case is it permissible for the court to substitute itself for the jury.")

---

[16] *Sperino & Thomas, Id.*

[17] *Id.*

The circuit drew inferences in favor of Texas Mutual, concluded that the Respondents' evidence was superior and did not consider the shortcomings the Petitioner identified in Texas Mutual's evidence. Without this Court's intervention, district courts will continue to use pleading technicalities to supplant the role of a jury, function as super-jurors and infringe hundreds of thousands of litigants' Seventh Amendment right to a jury trial. On account of this, the circuit's decision should be reversed.

II. THIS COURT SHOULD RESOLVE WHETHER GENERAL CORPORATE KNOWLEDGE SATISFIES THE KNOWLEDGE REQUIREMENT IN TITLE VII RETALIATION CASES.

The Fifth Circuit incorrectly found that general corporate knowledge that Petitioner engaged in a protected activity, does not satisfy the knowledge requirement in her retaliation claim. *Canada,* at 10-11*. Because the circuit's decision conflicts with how other circuits have ruled on this important matter, certiorari is warranted. See Sup. Ct. R. 10.

A. The circuit courts are split, creating two opposing rules governing whether general corporate knowledge that an employee engaged in a protected activity, satisfies the knowledge requirement.

Prior to the *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2532 (2013) decision, this Court recognized that workers could get to a jury in a cat's paw case. *Staub v. Proctor Hospital*, 562 U.S. 411, 422 (2011); (Sperino & Thomas, 2017, p. 95; Jackson-Kaloz, 2018, p. 412). Cat's paw theory makes an employer vicariously liable when a non-decision-making employee with a retaliatory animus influences a superior who has decision-making power to take an adverse action against a plaintiff (Barnard, Cutler, Lynch, Buckley-Norwood, & Johnson, 2017, p. 17). After *Staub*, circuits have applied inconsistent standards regarding the level of influence over the adverse employment decision that is necessary for an influencer's impermissible bias to be imputed to the employer (Jackson-Kaloz, 2018, p. 413). Like the decision below,

circuits think *Nassar* diminishes a plaintiff's ability to impute the influencer's animus to the decision-maker (Barnard, *et. al.*, 2017, *id.*). As a result, circuits have dismissed cases in which workers presented evidence of animus perpetuated by a supervisor and where that animus may have affected the later negative decision (Sperino & Thomas, 2017, p. 95). The Third and Eighth circuits appear to have taken no position, while others have found the cat's paw theory of liability to be one of the most inscrutable perplexities of agency law. See *Henderson v. Chrysler Group, LLC.*, Fed. Appx. 488 at *14 (6th Cir. 2015) ("when considering retaliation claims, we have stated that 'the availability of cat's paw theory to impute knowledge of a protected activity to the decisionmaker is less than clear under this court's precedent....").

B. Four circuits do not support the proposition that corporate or managerial knowledge can override a decisionmaker's lack of knowledge in retaliation cases.

The Fifth Circuit has staunchly maintained that proof of "actual" decision-maker knowledge – not corporate knowledge – is required. *Canada,* at 10-11*; *Robinson v. Jackson State*, No. 16-60760 (5th Cir. 2017) (unpublished) (quoting *Beattie v. Madison Cty. Sch. Dist.*, 254 F.3d 595, 604 (5th Cir. 2001). In an OSHA case, the Seventh Circuit found a corporate knowledge instruction to a jury, where it could find a "willful" violation of the statute if defendants were aware of or was deliberately indifferent to the facts relating to the hazard in question to be improper. *United States v. LE Myers Co.*, 562 F.3d 845 (7th Cir. 2009) (rev. and remand). Then, in *EEOC v. BCI Coca-Cola Bottling Co. of L.A.*, 450 F.3d 476, 487–88 (10th Cir. 2006), the Tenth Circuit held "...more than mere influence and more than mere input must be established in the decision-making process to satisfy the element of causation." Although the Eleventh Circuit found that corporations do not actually make the decision to take the adverse employment action; a decision-maker does, "albeit on the corporation's behalf", it found decision-makers must have knowledge. *Burch v. Coca-Cola Bottling Co.*, No. 14-14931, at *4 (11th Cir. 2015) (quoting *Brungart v. Bellsouth Telecommunications*, 231 F.3d 791, 800 (11th Cir. 2000))

(rejecting implied or imputed corporate knowledge) (affirmed).[18]

C. Three circuits have experienced an intra-circuit conflict and have reached contrary results on the issue.

In 2006, the First Circuit stated that even if "there is sufficient proof" that an employee "engaged in protected activity by complaining to management" about a supervisor's conduct, there must be evidence that the decision-maker, the employee who discharged the employee, had knowledge that the employee complained to corporate officials about their misconduct. *Pomales v. Celulares Telefónica, Inc.*, 447 F.3d 79, 84-85 (1st Cir. 2006) (affirming district court's grant of summary judgment on retaliation claim). Six years later, the circuit explained that "in the Title VII context, that general corporate knowledge is sufficient to satisfy the knowledge element of a prima facie case." *Harrington v. Aggregate Indus.*, 668 F.3d 25 (1st Cir. 2012) (rev. and remand). In the Sixth Circuit, for a plaintiff to prevail on a cat's paw theory of liability, the plaintiff must establish that someone "in the relevant chain of communications was motivated by discriminatory animus" and was aware of the protected activity (affirmed). See *Henderson*, at 18*[19] but recognized the same year that "...cat's paw liability [extends] to [h]uman [r]esources employees because, like supervisors, they can "effect a significant change in employment status." *Voltz v. Erie Cty.*, 617 Fed. App'x 417, 424 (6th Cir. 2015). Before this Court adopted the cat's paw doctrine, the Ninth Circuit agreed that a plaintiff needs

---

[18] *Bass v. Bd. of Cty. Comm'rs, Orange Cty., Fla.*, 256 F.3d 1095, 1119 (11th Cir. 2001).

[19] *Frazier v. USF Holland, Inc.*, 250 F. App'x 142, 148 (6th Cir. 2007) ("The decisionmaker's knowledge of the protected activity is an essential element of the prima facie case of unlawful retaliation." General "corporate knowledge" will not suffice). *Evans v. Prof'l Transp., Inc.*, 614 F. App'x 297, 300-01 (6th Cir. 2015) ("Contrary to their contention, plaintiffs cannot establish the second element of the prima facie case of retaliation merely by showing that [the employer] had 'general corporate knowledge' of their participation in [protected litigation].")

evidence that a company official had knowledge of its complaint or had part in the decision-making process. *Cohen v. Fred Meyer, Inc.,* 686 F.2d 793, 797 n.5 (9th Cir. 1982). The circuit reappraised its thinking and adopted a new standard, finding a "jury could infer" that a supervisor "knew or suspected" that the plaintiff had reported Title VII violations to human resources. *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1113 (9th Cir. 2003). The circuit reverted back to a heightened standard of causation in *Cafasso v. General Dynamics C4 Systems*, 637 F.3d 1061 (9th Cir. 2011), emphasizing that "a plaintiff must do more than merely allege...others in the organization had knowledge of the protected activity and could have affected the decisionmaker's decision-making process...a plaintiff must adduce evidence that someone with knowledge of her protected activity and retaliatory animus "set in motion" the adverse employment action." *Id.*

D. One circuit has consistently held that general corporate knowledge that an employee engaged in a protected activity, satisfies the knowledge requirement.

The Second Circuit has consistently held the knowledge element is satisfied when the employee has "complained directly" to another employee "whose job it was to investigate and resolve such complaints." *Patane v. Clark*, 508 F.3d 106, 115 (2d Cir. 2007) (per curiam); *Henry v. Wyeth Pharmaceuticals, Inc.*, 616 F.3d 134, 147-48 (2d Cir. 2010)("... reject[ing] the argument that in order to satisfy the causation requirement, a plaintiff must show that the particular individuals who carried out an adverse action knew of the protected activity...[a] causal connection is sufficiently demonstrated if the agent who decides to impose the adverse action but is ignorant of the plaintiff's protected activity acts pursuant to encouragement by a superior (who has knowledge to disfavor the plaintiff"); see *Kwan v. Andalex Grp. LLC*, 737 F.3d 834, 844 (2d Cir. 2013), where causation prong of the prima facie case satisfied through "temporal proximity because the three-week period between *Kwan's* alleged complaint and her termination was sufficiently short to make a prima facie showing of causation."

E. The Court's intervention and guidance will resolve the split.

This case is an ideal vehicle to reconcile the circuit split and decide whether general corporate knowledge that an employee engaged in a protected activity, satisfies the knowledge requirement in Title VII retaliation claims. The facts and procedural posture of the case exemplify the question presented[20]and shows the district court and the Fifth Circuit misconstrued the cat's paw theory of liability. For instance, they put forward that a plaintiff must present appreciable evidence that the decisionmaker (Kirkpatrick "the gullible cat") and the biased manager (Coates "the deceitful monkey") communicated; finding a plaintiff must provide appreciable evidence that the biased manager had influence over the decisionmaker. *Canada*, at 9-11*. It also thinks that a biased supervisor's (Thibodaux) "perceived unawareness" of an employee's complaint insulates both the supervisor and the corporation from liability, *id.* at 11*. Even if the law suggests that it is the decisionmakers' knowledge that is crucial, the narrow exception to this rule since *Staub* has been the cat's paw theory. *See Halasa v. ITT Educ. Servs.*, 690 F.3d 848 (7th Cir. 2012).

---

[20] After Thibodaux (1) warned the Petitioner that she did not want a black person working in her department; (2) brandished a "On Colored People's Time" meme – a derogatory racist stereotype depicting people of color as being lazy and frequently late, *see X-Marks: Native Signatures of Assent* (2010, p. 9); (3) refused to interview her for the available PTS position; the Petitioner submits, she reasonably believed Texas Mutual's hiring practices violated Title VII. *Ex post facto*, Thibodaux maligned her work ethic to other supervisors and torpedoed her chances of working at Texas Mutual, she asked HR to intervene (EROA. 2403); *see also* Pl. Dep., at pp. 168, 174, 220-221, 233, 286. Even though Coates volunteered to address the Petitioner's contention about Thibodaux's discriminatory hiring practices, he tried to wear down the Petitioner by attrition and aspersions (stating he agreed with Thibodaux, that he did not want black applicants like her working at Texas Mutual) in lieu of taking appropriate actions to rectify the issue. Approximately four hours later, the Respondents terminated the Petitioner's employment.

(1) The Supreme Court should adopt a general corporate knowledge standard now.

The Supreme Court should adopt the general knowledge standard in retaliation cases because it proves notice of an employee's complaint, shows employer culpability and would deter retaliatory conduct in the workplace. Opposition that reaches a decisionmaker at the managerial level of the company is considered to be opposition under Title VII (Pearson, 2018, p. 5). This Court held in *Crawford v. Metro. Gov't of Nashville & Davidson Cnty.*, "'[w]hen an employee communicates to her employer a belief that the employer has engaged in ...a form of employment discrimination, that communication' *virtually always* 'constitutes the employee's opposition to the activity." 555 U.S. at 276 (2009). Title VII protects the right to speak out against such discrimination. It also protects against retaliation for the exercise of the right to speak out against discrimination. *Hernandez*, at 1113. But too often, employers like Texas Mutual take adverse actions against employees who oppose a form of employment discrimination; and later, evade liability by selecting a "decisionmaker" who can plausibly claim lack of any knowledge of the protected activity. *Kwan*, 737 F.3d at 843. It is "frequently impossible for a plaintiff...to discover direct evidence contradicting [an employer's] contention that he did not know something." *Hernandez*, at 1114. As the Ninth Circuit reasoned, the "what-did-he-know-and-when-did-he-know-it questions are often difficult to answer..." *Id.*, at 1113-14. Although the decision in *United States v. Ladish Malting Co.*, 135 F.3d 484 (7th Cir. 1998) was reversed, Honorable Easterbrook accepted that a corporation always "knows" what their employees who are responsible for an aspect of the business know. *Id.* at 493. Easterbrook reasoned that, "[m]ost federal statutes that make anything of corporate knowledge also require the knowledge to be possessed by persons authorized to do something about what they know." *Id.* at 492-93. As shown, *Nassar's* "but-for causation standard does not alter the plaintiff's ability to demonstrate causation with the general corporate knowledge standard at the prima facie stage on summary judgment or at trial indirectly through temporal

proximity" *Kwan,* 737 F.3d at 845. General corporate knowledge is a sensible standard for this Court to adopt and will undoubtedly resolve the present conflict between the lower circuits.[21]

III. CAN AN EMPLOYER USE IRREBUTTABLE PRESUMPTIONS TO DIVEST THE PETITIONER OF HER CONSTITUTIONAL AND HUMAN RIGHT TO WORK IN THE UNITED STATES?

The district court held applicants with multiple felony convictions are objectively unqualified for employment when they fail to pass a criminal background check (EROA. 2439). It found no error with Texas Mutual's justification that its "...business needs preclude the hiring of an individual with multiple felony convictions" because, seemingly, multiple felony convictions implicate that a person is dishonest and lacks integrity (EROA. 1898-99). While the Fifth Circuit avoided this fundamental constitutional issue on appeal, this case is a superior vehicle for determining whether an employer's irrebuttable presumption against hiring applicants with felony convictions violate the citizen's constitutional and human right to work.

A. Irrational prejudices against ACAAs is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Texas Mutual claims that it must exclude applicants with multiple felony convictions because it handles sensitive information (EROA. 1899). While it alleged that its policy satisfies a legitimate business need, it failed to identify what, if any, sensitive information the Petitioner would have had access to in any of the administrative

---

[21] A jury should conclude whether the employer simply brought a manager to be the 'sole decisionmaker' for the purpose of terminating a complainant, or whether an agent of the company is acting explicitly or implicitly upon the orders of a superior who has the requisite knowledge. See *Henry*, at 148.

positions for which she applied.[22] Unable to exhume misconduct from the Petitioner's prior occupations and link it with the prior convictions listed on her background report, the Respondents then decided to build a narrative of bias around her punctuality. Independent of law, the district court accepted the broad hypothesis that multiple felony convictions suggest a person would be dishonest and lack integrity in the workplace (EROA. 2439-40). Multiple felony convictions have very little, if any, probative value in showing the Petitioner is incapable of exercising integrity and honesty in any of the administrative positions for which she applied. In fact, no studies support the idea that formerly incarcerated individuals are poor workers or pose a greater security risk than workers who have not been convicted of a crime (Onwuachi-Willig, 2018 p. 1400; Carlin & Frick, 2013, p. 115). Indeed, research found employees with a criminal record have a much longer tenure...and appear to be no worse than, and possibly even better than, workers without such a background (Minor, Persico & Weiss, 2017, p. 18).[23] Assuming Texas Mutual has a legitimate interest in protecting "sensitive information" that allows its policy to discriminate among applicants in this manner, the Respondents are still subject to the same constitutional limitations applicable to governmental action at other levels. *Hunter v. Underwood,* 471 U.S. 222, 233 (1985), "if a provision disenfranchises various felons and is motivated, at least in part, by a desire to disenfranchise [African Americans], it is invalidated on its face."[24]

---

[22] The Respondents also failed to state how the Petitioner would go on to harm the company.

[23] "Our estimates suggest that the average customer service worker with a criminal record is a better deal for the employer than the average worker without a record" (Minor, Persico & Weiss, 2017, p. 19). These statistics have improved with time. For instance, "[S]tudies have suggested that after a few years, a person with a criminal record is less likely than persons without a record to commit crimes." (Carlin & Frick, 2013, p. 119; Nodes, 2019, p. 180).

[24] Studies have shown that labor market discrimination is particularly pernicious for ex-offenders who are racial minorities, and has a disparate impact especially if they are black (Onwuachi-Willig, 2018, p. 1390). *Infra note*, 27.

The Fourteenth Amendment does not prohibit irrational denials of equal protection; it prohibits *every denial* of equal protection to any person within the state's jurisdiction (Mitchell, 2017, p. 1250) regardless of the reasons or motivations for that denial (p. 1244). The description — 'any person within its jurisdiction' — includes felons. Had the framers wanted to exclude convicted felons from the ambit of Equal Protection or otherwise limit their eligibility under equal protection, they would have included an exception clause in section one (Mitchell, 2017, p. 1233). Although the amendment's text dealt primarily with the protection of the economic rights of new black citizens (Sandefur, 2002, p. 77), it protects all persons and gives every "person" an equal entitlement to equal protection (Mitchell, 2017, p. 1249). The equal protection provision is universal in its application, as it protects all persons within the territorial jurisdiction without regard to the citizen's criminal history, and is a pledge of the protection of equal laws. *Truax v. Raich*, 239 U.S. 33, 39 (1915) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)). As presented, irrational prejudices against ACAAs violate the Equal Protection Clause of the Fourteenth Amendment.

B. An employers' irrebuttable presumption against hiring ACAAs violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

Texas Mutual[25] did not have a compelling reason to limit the Petitioner's free choice of employment (Mantouvalou *et. al.*, 2015, p. 12). The lower courts should have found its exclusionary policy[26] erected an irrebuttable presumption (*e.g.*, likely to be dishonest, lack integrity and commit

---

[25] The Respondents, like many public and private employers in the United States, have barriers in place to block the hiring of people with felony convictions, which adversely impacts employment prospects for millions of working-age citizens (U.S. Commission on Civil Rights, 2019, pp. 22-29, 35, 45, 60). Roughly 70 % of state and federal collateral consequences relate to employment (Westrope, 2018, p. 369).

[26] Respondents' Employee Handbook also creates an irrebuttable presumption because it states that "conviction of a criminal or other offense which would render continued employment detrimental to the company" constitutes grounds for termination (EROA. 1899).

crimes while on the job) against the Petitioner's fitness for employment on the basis of her past felony convictions, where those convictions did not reflect at all upon any of the qualifications she would need to perform satisfactorily on the job.[27] Irrebuttable presumptions have long been disfavored under the Due Process Clause of the Fourteenth Amendment. *Schware v. Board of Bar Examiners*, 353 U.S. 239 (1957);[28] *Cleveland Board of Education v. Lafleur*, 414 U.S. 632, 644 (1974);[29] and see *Stanley v. Illinois*, 405 U.S. 645 (1972), holding unconstitutional on due process grounds Illinois' statutory irrebuttable presumption that all unmarried fathers are unsuitable and unqualified parents. There is room to argue that Texas Mutual's policy represents a good-faith attempt to achieve a laudable goal. However, the Respondents were unable to show its policy would pass muster under the Due Process Clause of the Fourteenth Amendment, as it employs an irrebuttable presumption that unduly penalizes all applicants with prior felony convictions.[30] The Fourteenth Amendment guarantees the right of a person to enter professions – "all

---

[27] *Supra note*, 24. Criminal convictions are public record information. Applicants with "criminal records have no legal remedy of removal from a [juridical], police blotter or a mug shot website, meaning...employers and third-parties can easily uncover arrest [and conviction] information" (Westrope, 2018, p. 374) – and can do so for about twenty dollars and a few minutes online (Geiger, 2006, p. 1199). After third-parties give employers access to this information, research shows black applicants are penalized more and rated as less desirable for having a prior felony conviction than white applicants (Goldman, Cooper & Kugler, 2019, pp. 9-14). White hiring managers were more likely to find minorities with felony convictions offensive to others, likely to cause harm, low in character and immoral as compared with whites with identical felony convictions (p. 11). As a result, black applicants suffered a larger increase in the rating of two of the four reasons to not hire (harm, poor character) when a background check showed a felony conviction compared to white applicants (pp. 13-14).

[28] *Schware* was never formally charged nor tried for any offense related to them, *id.*, 353 U.S. 242 (1957) but that does not mean the decision is inapposite to the case at bar. This Court has never held an employer may use criminal convictions as a proxy for personality characteristics, job instability or poor performance. See also (Nodes, 2019, p. 180).

[29] Invalidating local education board rules requiring pregnant teachers to take maternity leave without pay a specified number of months before and after the expected birth of her child.

[30] *Lafluer*, at 648.

the pursuits and avocations of life" (Harrison, 1992, p. 1426). The provision in the Constitution of the United States which secures a person's privilege of employment, or the pursuit of the other ordinary avocations of life, is the provision that:

> "no State shall make or enforce any law which shall abridge the privileges or immunities of a citizen." U.S. CONST. amend. XIV.

To reiterate, if this amendment protects "a citizen", then it also protects those citizens with felony convictions. In essence, to the extent the blanket ban reflects Texas Mutual's thinking that all non-violent felons are unfit to work in any of its positions, it suffers from the same constitutional deficiencies that plague the irrebuttable presumption in the termination rules.[31] To preserve the integrity of the constitutional system, review is warranted.

C. The phrase "privileges" in the Fourteenth Amendment protects the freedom from unjustifiable barriers in employment.

A citizen's right to work is a key part of a fair society, as it shifts some power from employers to the applicant. Without it, employers – in this case Texas Mutual – can deprive any person with multiple felony convictions of the opportunity to pursue a vocation or profession, thus rendering these persons without redress. The right to work is particularly important in the private sector, as there is no, or little, protection guaranteeing workers with felony convictions access to employment and not to be unfairly deprived thereof.[32] On the other hand, important public safety concerns may justify placing reasonable restrictions on employment for people with certain types of convictions. For example, prohibiting a convicted sex offender from running a day care center is a legitimate restriction that serves to protect the public safety of children (The United States Commission on Civil Rights, Briefing Report, 2019,

---

[31] *Id.*, at 649.

[32] On account of this, they are rendered unemployed.

pp. 21, 46). Prohibiting violent felons from purchasing or possessing firearms is another example of a targeted and tailored policy (Malcolm, 2018, pp. 37-38). However, when employers are given carte blanche to decide what policies constitutes full employment for convicted felons, this not only violates their fundamental labor rights; it violates their human rights. Research shows exclusion from the labor market by unemployment leads to poverty. Poverty may lead to disability – thorough malnutrition, starvation, poor health care, dangerous working or living conditions. Poverty has been shown to trigger a life of crime;[33] whereas, steady jobs make it more likely that ACAAs will be able to financially support themselves or their family (Onwuachi-Willig, 2018, p. 1399). Employment also gives ACAAs the freedom to make their own choices (Mantouvalou *et. al.*, 2015, p. 77), 'freedom to choose suitable employment' (p. 213) and more freedom from unjustifiable discrimination and barriers in employment (p. 26). Given these reasons, the Petitioner–in any manner not inconsistent with the equal rights of other [applicants or employees]–must have a constitutional right to pursue an occupation which may increase her prosperity and develop her faculties, so as to give her highest enjoyment. *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 757 (1884) (Justice Field, concurring). Over a century ago, this Court held that "[t]he right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity [...]" *Truax*, 239 U.S. 41. In a right to make contracts case, Mr. Justice Bradley said:

> "[T]he right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are...liberty and the pursuit of happiness.' This right is a

[33] (Mantouvalou *et. al.*, 2015, pp. 29, 67, 158).

> large ingredient in the civil liberty of the citizen." *Allgeyer v. Louisiana*, 165 U.S. 589-90 (1897) (quoting *Butchers' Union Co.*, 111 U. S. 746, 762).

He also said:

> "I hold that the liberty of pursuit–the right to follow any of the ordinary callings of life– is one of the privileges of a citizen of the United States."[34]

The phrase "privileges [...]" in the Fourteenth Amendment has a broader meaning that includes the right of protection; the right to pursue and obtain happiness and safety.[35] Human rights are self-standing, even if they indirectly contribute... to human happiness (Mantouvalou *et. al.*, 2015, p. 27). In the final analysis, non-violent prior convictions do not "justify punishment in perpetuity to any degree" (Geiger, 2006, pp. 1221-1222). *Cummings v. Missouri*, 71 U.S. 277, 320 (1866), "Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined (finding measures punitive because they prevented former rebels from practicing their occupations). The lower courts chained the Petitioner to prior offenses on her background report. Because it acquiesced in its decision that she should be prohibited from earning an income – a fundamental constitutional and human right – this Court's review is warranted.

D. International Treaties and Customary International Law are relevant to the interpretation of the Statutes applicable in this case.

Customary international law is directly enforceable in U.S. courts without implementing legislation and calls on the U.S. to recognize the rights of its inhabitants under its national laws, and to take measures to realize human

---

[34] *Butchers' Union Co.*, 111 U. S. 746.

[35] *Id.*

rights within its own society.[36] The United States is a party to, and therefore bound by, several international human rights treaties whose provisions would require this Court to interpret our laws consistently with these international agreements. In particular, *The Universal Declaration on Human Rights* (UDHR), which was adopted by this country's vote.[37] The UDHR (1948) declares in Article 23:

> (1) Everyone has the right to work, to free choice of employment * * *
>
> (2) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection * * *

The right to work is often interpreted as including (and perhaps being synonymous with) the right to free choice of employment or occupation. This latter liberty-right consists at least of the freedom of the Petitioner to pursue an occupation of her choice without unjustified restrictions or discrimination" (Mantouvalou *et. al.*, 2015, p. 21). The Petitioner's right to free choice of employment and to choose a profession of her choice as guaranteed under the UDHR is breached when the Respondents, pursuant to the expression of its own racism and fear of ACAAs, prohibits her from choosing particular administrative professions and participating in work, a right which she has–and is clearly a violation of rights within rights. Another provision which requires this Court to interpret our laws consistently with international agreements is Article 6 of

---

[36] International law is part of U.S. law and must be faithfully executed by the President and enforced by U.S. courts when consistent with the U.S. Constitution and legislation adopted by Congress. See also *The Paquete Habana,* 175 U.S. 677, 700 (1900), where the Supreme Court held that customary international law "is part of our law" and directly enforceable in courts when no conflicting treaty, legislative act, or judicial decision controls.

[37] See *Yearbook of the United Nations* (1948-49), Part 1: The United Nations. Section 5: Social, humanitarian and cultural questions. Chapter A: Human rights, p. 535.

the *Declaration on Social Progress and Development* (DSPD).[38] It states in relevant part:

> (1) Social development requires the assurance to everyone of the right to work and the free choice of employment.
>
> (2) Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property...and create conditions leading to genuine equality among people.

In 1969, all the states were asked to undertake measures to eliminate all evils and obstacles to social progress, such as inequality and racism from the society (General Assembly, 1969, p. 2). Twenty-six years later, this country accepted that it is the governments' responsibility to create an environment that includes the promotion and protection of all human rights and fundamental freedoms, thereby allowing each person to reach his or her full human potential. *Report of The World Summit for Social Development*, Programme of Action, paragraph 83 (b) (Copenhagen, March 1995). The Petitioner concedes the UDHR and DSPD does not urge the U.S. to assume international obligations and that treaties are not binding on states. *Medellín v. Texas*, 552 U.S. 491 (2008) (treaties are not binding on states and the United States). Howsoever, a determination of international law by this Court *is* binding on the states and the courts.[39] This evinces that the UDHR and the DSPD could create individual rights that are enforceable. In *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1423 (2018), this Court declined to decide whether a treaty creates individual

---

[38] Proclaimed by General Assembly resolution 2542 (XXIV) of 11 December 1969.

[39] U.S. Constitution, Art. II (2) and Art. VI; Restatement (Third) of Foreign Relations Law of the United States (1987), *see* excerpt at 14.

rights that are enforceable against foreign corporate defendants in court. Because individual rights of U.S. citizens are of a nature to be enforced in domestic courts, this Court should consult the treaties' text in deciding whether employees like the Petitioner have a human right to work in the United States.

The TCHR Act illustrates employment is a human right. The Act is said to secure for persons in the state of Texas, freedom from discrimination in certain employment transactions, in order to protect their personal dignity. Sec. 21.001 (4). It is also said to protect the health and general welfare of the people and promote the interests, rights, and privileges of persons in the state of Texas. Sec. 21.001 (7)(8). Despite the Act's mandate, employers have found clever ways to circumvent ensuring the rights and privileges of ACAAs are protected. As we have seen in this case, when lower courts are left with an abstract legal right to work law, regulation or precedent for ACAAs, they are unlikely to enforce it. Protections for workers in foreign jurisdictions are much narrower. Consider Article 1 of the *European Social Charter* ("ESC"), which states in relevant part:

> With a view to ensuring the effective exercise of the right to work, the Parties undertake;
>
> (1) To accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.

Number one place the positive obligations of the state front and is central to the definition of the right to work: active action by State Parties to maintain high and stable levels of employment is viewed as 'one of their primary aims and responsibilities' (Mantouvalou *et. al.*, 2015, p. 113).

> (2) To protect effectively the right of the worker to earn his living in an occupation freely entered upon.

Number two requires states to provide effective protection to the entitlement of workers to earn their living in an occupation that they wish to pursue (p. 115). Another example is Article 27, paragraph 1 of the *Constitution of Japan*, which states in relevant part that:

> 'all people shall have the right to work and obligation to work' * * *

Under this provision, the government and the Parliament have enacted many statutes in order to secure 'the right to work' for people in Japan. The provision also requires the state to take such steps as necessary to realize the right to work (Mantouvalou *et. al.*, 2015, p. 211). These are yet another reason why this Court should decide whether the UDHR and the DSPD creates individual rights that are enforceable by this Court. *See* Fed. R. Civ. P. 44.1, which allows this Court to consider any relevant material or source in determining foreign law.[40]

(1) The Supreme Court should adopt the factors in Green v. Missouri Pacific Railroad Company as a Right to Work Doctrine.

Under the *Right to Work* doctrine, an ACAA need only show the gravity of a specific conviction[s] is irrelevant to concerns about danger or risks in a particular position;[41] show no immediate convictions and therefore are unlikely to recidivate,[42] and show no involvements in incidents of criminal conduct post-conviction linking to the same

---

[40] Advisory Committee's 1966 Note on Fed. R. Civ. P. 44.1, 28 U.S.C. App., p. 892 (hereinafter Advisory Committee's Note) 1865-70.

[41] Placing "irrational" restrictions on employment, when no discernible link between the conviction and the job position exists, "undermines efforts to promote public safety and a cost-effective criminal justice system (The United States Commission on Civil Rights, 2019, p. 46).

[42] *Supra note*, 23; (Hamilton-Smith & Vogel, 2015, p. 414), "[R]esearch strongly supports the notion that [ACAAs] who are able to re-enter society with stable work...are less likely to engage in criminal activity.

employer or a previous employer.[43] The burden then shifts to the employer to show it conducted an individualized assessment that consisted of (1) a formal interview with the ACAA[44] (2) consideration by the employer that does not warrant an exception to the exclusion and shows a policy as applied is job related and consistent with business necessity, and (3) written notice to the individual that they were screened out because of a particular conviction.[45] The burden then shifts back to the applicant under the final tripartite test: can they show they were objectively[46] qualified for the position, that the employer failed to conduct a formal interview, and the conviction in question is not directly pertinent to the job in question? If the plaintiff survives all three, an absolute rule to retain the claim in court should apply.

The theory of the Right to Work as a functional doctrine interprets the constitutional effect of the right to work as a legal responsibility of the judiciary, and recognizes that (1) if employers takes an action which prevents ACAAs from realizing the right to work in contravention of the responsibility to strive to realize the right to work, the policy shall be void and the action taken by the employer shall be illegal; (2) an employer who refuses, rejects and limits a ACAA's employment opportunities in lieu of utilizing the factors in *Green*, is considered an aggressive

---

[43] *Green v. Mo. Pac. R.R.*, 523 F.2d 1290 (8th Cir. 1975), acknowledging that permanent exclusions from all employment based on any and all offenses were not consistent with the business necessity standard. 523 F.2d, at 1294-98.

[44] This is an opportunity for the ACAA to demonstrate that the exclusion should not be applied due to their particular circumstances.

[45] For example, prohibiting a convicted sex offender from running a day care center and working in an elementary school is a legitimate restriction that serves to protect the public safety of children (*Supra note*, 40 at pp. 21, 46).

[46] As opposed to subjective hiring criteria. *Barletta v. Rilling*, 973 F. Supp. 2d 132, 139 (D. Conn. 2013), finding particular restrictions irrational. This Court acknowledged that Title VII also provides a remedy for subjective decisionmaking. *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 302 (1977) (recognizing that highly subjective hiring process in which decisionmakers were told to consider "personality, disposition, appearance, poise, voice, articulation, and ability to deal with people," was conducive to subtle discrimination).

infringement of the right to work and shall be interpreted to be void. The horizontal direct effect of the right to work has been invoked in the United Kingdom and Ireland, where the right to work is not recognized in their constitution (Mantouvalou *et. al.*, 2015, p. 217). Considering this, the Petitioner should be permitted to invoke her right to work in the U.S. Current disenfranchisement employment practices in this country can be fairly characterized as a modern form of outlawry. While not, for example, forced to live in the forests as in medieval Germany, the message is nevertheless the same: ex-felons are not deserving of the benefits and protections of the law (Hamilton-Smith & Vogel, 2015, p. 414), nor the freedom to work.

The Petitioner has shown the Respondents violated her constitutional and human right to work in this country when it adopted a hiring policy that contained irrebuttable presumptions against hiring ACAAs. Irrational prejudices against hiring ACAAs are unconstitutional under the Due Process and Equal Protection Clause of the Fourteenth Amendment, and inconsistent with the international human rights agreements mentioned above. Since the Fourteenth Amendment and the international agreements essentially protects the freedom from unjustifiable barriers that infringe a litigant's right to work, the Right to Work Doctrine should be adopted by this Court.

CONCLUSION

For all these reasons, the Court should grant the petition for a writ of certiorari.

Respectfully Submitted,

/s/ Quianna Canada
QUIANNA CANADA
Self-represented Litigant
rfeshoes.memoir@hotmail.com

July 30, 2019