No. 19-7744

PARTHA A.RAI CHOWDHURI – (202) 276-7168 (Mobile) – 13714 Bidwell Place, Bristow, VA 20136

IN THE Supreme Court of the United States

PARTHA A. RAI CHOWDHURI,

Petitioner Pro Se,

v.

SGT INC./ KBR WYLE INC. 7700 GREENBELT ROAD STE 400 GREENBELT MD 20770

and

CYBERDATA TECH. 455 SPRINGPARK PLACE STE 300 HERNDON VA 20170

Respondents.

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

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PETITION FOR A WRIT OF CERTIORARI

PARTHA A. RAI CHOWDHURI

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21 December, 2019

QUESTIONS PRESENTED

1) Whether the Fourth Circuit erred and disregarded this Court's precedents when it denied Petitioner's request to amend significantly incorrect records in the District Court for the limited purpose of asserting Petitioner's right to proceedings that are free and fair under the Seventh and Fourteenth Amendments and common law.
2) Whether the Fourth Circuit's unpublished ruling on Petitioner's present matter creates differences from Third Circuit's Precedential ruling on No. 13.3521, 27 Sept. 2016, in Millicent Carvalho-Grevious v. Delaware State University No. 15-3521 (3rd Cir.2017), which states: "We hold that, at the prima facie stage, a plaintiff need only proffer evidence sufficient to raise the inference that her engagement in a protected activity was the likely reason for the adverse employment action, not the but-for reason.", "We conclude that Nassar*[University of Texas Southwestern Medical Center v. Nassar, 133 S. Ct. 2517 (2013)]* does not alter the plaintiff's burden at the prima facie stage".
3) Whether the Fourth Circuit's unpublished ruling on Petitioner's present matter creates differences from the Eleventh Circuit's opinion in Wright v. Southland Corp., 187 F.3d 1287 (11th Cir. 1999, Judge Gerald Tjoflat, explaining that, though Plaintiff may establish a prima facie case of discrimination using the McDonnell Douglas method, Plaintiff may also more easily establish a case using traditional methods, also explained the importance of not exclusively relying on McDonnell Douglas in cases where there isn't direct evidence, by providing a

hypothetical in which factors for *McDonnell Douglas* wouldn't be met even though discrimination could likely be found), the Seventh Circuit's opinion in Sylvester v. SOS Children's Villages Illinois Inc. 453 F.3d 900 (7th Cir. 2006), where Judge Posner found that there was no rich mosaic of circumstantial evidence, but there was "enough" circumstantial evidence to preclude summary judgment), and the U.S. Supreme Court's decisions which touch the issue – which the opinions in *Wright* and *Sylvester* agree with – such as International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977), where US Supreme Court rejected employer's assertion that McDonnell Douglas is the "only means of establishing a prima facie case of individual discrimination.".

4) Whether the Fourth Circuit's affirmation of the District Court MSJ Order on October 24, 2018, reflects differences with the Eleventh Circuit's ruling in Bechtel Constr. Co. v. Secretary of Labor, 50 F.3d 926, 934 (11th Cir.1995) , where the ruling states: Proximity in time is sufficient to raise an inference of causation (the general rule is close temporal proximity between employee's protected conduct and adverse employment action is sufficient circumstantial evidence to create a genuine issue of material fact of a causal connection, with the exception that temporal proximity alone is insufficient to create a genuine issue of fact as to causal connection where there is unrebutted evidence that the decision maker did not have knowledge that the employee engaged in protected conduct – Respondents' Counsel didn't provide evidence the Managers were unaware of

Petitioner's protected activity, and the SGT Inc. Dy. Program Manager acknowledged on Feb. 22, 2016, that they were).

5) Given that the Fourth Circuit never formally acknowledged Petitioner's request for additional words in an amended re-hearing petition, or the re-hearing petition itself dt. 08/01/2019 (the acknowledged original re-hearing petition was dt. 07/19/2019, and all these were submitted by 08/12/2019, due date for re-hearing petition): Whether Fourth Circuit couldn't apply Blizzard v. Marion Tech. Coll., 698 F.3d 275, 288-89 (6th Cir. 2012), quoting James v. Metro. Gov't of Nashville, 243 Fed.Appx. 74, 79 (6th Cir.2007), and Halfacre v. Home Depot 221 Fed. Appx. 424, 433 (6th Cir. 2007), to determine whether Petitioner's minimal salary increase or bonus(given unasked with only five months of service – SGT Inc. gave only annual bonus and salary increases to employees – these weren't monthly) alleged by the SGT Inc. Manager Rex Bowling and following Cyberdata Tech. Manager Ms. Jenkins' unexpected, unwarranted vituperation of Petitioner, 10/21/2015 to 10/28/2015, 3.P.5 (below – *please see in amended petition for rehearing* – ref. Blizzard v. Marion Tech. Coll., 698 F.3d 275, 288-89 (6th Cir.), Halfacre v. Home Depot 221 Fed. Appx. 424, 433 (6th Cir. 2007) "significantly impact an employee's wages or professional advancement are also materially adverse".), was materially adverse. Also, whether the Fourth Circuit couldn't consider that, in the amended Request for re-hearing, Petitioner sought attention to the following in the same District Court which decided 8:16-cv-

03135-PX:

In 8:17-cv-00231-PX, D. Md. opinion filed 4/29/2019 –

"The Fourth Circuit has explained that "evidence of conduct or statements that both reflect directly the alleged discriminatory attitude and that bear discriminatory animus at the summary judgment stage"".

6) Whether the Fourth Circuit unintentionally discriminated against Petitioner when it denied Petitioner's request for rehearing which was based partly on Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006), stating that Title VII's anti-retaliation provision(Section 704(a)) isn't limited to discriminatory actions affecting a term/condition/privilege of employment, being broader than Title VII's core anti-discrimination provision (Section 703(a)), and on Griggs v. Duke Power Co. 401 U.S. 424 (1971), where it was decided that where employer/s use/s a neutral policy/rule, or utilize/s a neutral test, and the policy or test disproportionately affects minorities/women adversely, employer/s must justify the neutral rule/test by proving it is from business necessity (Title VII emphasises consequences of employment practices in operation, not simply motivation). Respondent Cyberdata Tech. never submitted anything to the effect that disparate impacts on colored employees, including higher turnover, are from business necessity.

7) Whether the Fourth Circuit in its ruling didn't apply Supreme Court's decision in Watson v. Fort Worth Bank & Trust 487 U.S. 977 (1988), declaring that disparate

impact analysis can apply to subjective/discretionary selection practices. Also, whether the Fourth Circuit unknowingly didn't apply Fourth Circuit's own rulings in Boyer-Liberto v. Fontainebleau Corp., No. 13-1473 (4th Cir. May 7, 2015) – held that an employee remains protected by Title VII's anti-retaliation section (and § 1981) when complaining about race harassment, even if the offending conduct has not yet ripened into a hostile work environment – and Haynes v. Waste Connections, Inc., 7-2431, 4th Cir. April 23, 2019.

PARTIES TO THE PROCEEDING

The caption names all parties to the proceedings.

CORPORATE DISCLOSURE STATEMENT

Petitioner doesn't and didn't hold stock/shares/corporate interest in either respondent entity.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Partha A. Rai Chowdhuri respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit was submitted. The Fourth Circuit's order denying rehearing was also submitted. The orders of the district court are published and available at https://www.govinfo.gov/content/pkg/USCOURTS-mdd-8_16-cv-03135/pdf/USCOURTS-mdd-8_16-cv-03135-0.pdf, and https://www.govinfo.gov/content/pkg/USCOURTS-mdd-8_16-cv-03135/pdf/USCOURTS-mdd-8_16-cv-03135-1.pdf.

JURISDICTION

The judgment of the Court of Appeals was entered on July 16, 2019. Pet. App. 1. The Court of Appeals denied a timely petition for rehearing on August 27, 2019. Pet. App. 2. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

In pertinent part 42 U.S.C. § 2000e-2(a)(1) states: "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such

individual's race, color, religion, sex, or national origin."

I. INTRODUCTION

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination "because of" an individual's "race, color, religion, sex, or national origin". 78 Stat. 255, 42 U. S. C. §2000e–2(a)(1). The Act also prohibits retaliation against persons who assert rights under the statute.

This provision is designed "to strike at the entire spectrum of disparate treatment of men and women in employment," Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 78 (1998) (quoting Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 64 (1986)). This Court recognizes "that new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged" – Obergefell v. Hodges, 135 S. Ct. 2584, 2602-04(2015).

II. PETITIONER's STATEMENTS

1. An insight/revelation had come in Rogers v. Equal Employment Opportunity Commission 454 F.2d 234 (5th Cir. 1972) where the Court had stated:

"an employer's patient discrimination may constitute a subtle scheme designed to create a working environment imbued with discrimination and directed ultimately at minority group employees. As patently discriminatory practices become outlawed, those employers bent on pursuing a general policy declared illegal by Congressional mandate will undoubtedly devise more sophisticated methods to perpetuate discrimination among employees. The petitioners' alleged patient discrimination may very well be just such a sophisticated method", and "the nuances and subtleties of discriminatory employment practices are no longer

confined to bread and butter issues.".

2. Even after years, Respondents haven't produced a log entry or programming artifact about issues of fact raised by Petitioner, and made only blanket statements about an investigation and its results (please see below, and Emiko S. v. Dep't of Commerce, EEOC Appeal No. 0120170543 (Apr. 27, 2017), Gena C. v. Dep't of Health & Human Serv., EEOC Appeal No. 0120151764 (June 7, 2017)).

The ruling at **1.** states: "the relationship between an employee and his working environment is of such significance as to be entitled to statutory protection.".

The above Court noted 30.: "The hearing before District Judge Fisher consisted only of discussion with counsel, including that for EEOC. At that level EEOC eschewed the construction which it now asserts on appeal as an alternative meaning.", at 31., "Mrs. Chavez claims only that she is offended by the manner in which her former employers treated their customers." and at 32., "at the appellate level, the narrower construction is asserted by EEOC as an alternative construction on the basis of which it should obtain the discovery it desires. This shifting position, as I point out below, is one of the reasons why I would grant relief only on the narrower ground." – however, even with the shift in the EEOC's Charge interpretation on Appeal, relief was granted on narrower grounds.

3. In Petitioner's present matter, Mr. Bowling, the SGT Inc. Dy. Program Manager, made facial gestures and signs of obvious dislike in September 2015 when informed that Petitioner had been associating with Mr. Okwara and inquired whether Petitioner knew some developers and SGT employees in the group where

Petitioner was working, none of whom were colored. When Petitioner said he didn't, Mr. Bowling informed Petitioner that, with some SGT Inc. employees on site, Petitioner would be placed in Performance Appraisal, which wasn't review: MSJ Order Pages 2,3 are wrong. In Baldwin v. Foxx, No. 0120133080, 2015 WL 4397641 (EEOC July 16, 2015 FN. 7, Pg. 8), EEOC decision noted association discrimination may be established where evidence permits the inference that an agency's act or omission would not have occurred if the complainant and associate were of the same race.

Please see, e.g., Floyd v. Amite County School Dist., 581 F.3d 244, 249 (5th Cir. 2009): "This court has recognized that . . . Title VII prohibit[s] discrimination against an employee on the basis of a personal relationship between the employee and a person of a different race.". Ms. Jenkins, the Cyberdata Program Manager, showed immense irritation, *which Petitioner stated during deposition and, along with many more things, isn't recorded – as Petitioner submitted in repeated requests to the Fourth Circuit Court of Appeals to amend the record* – and vituperated Petitioner. While vituperating Petitioner in late October 2015 – when Petitioner mentioned to her exogenous program text(code) changes of unknown origin, seen only on the workstations used by colored developers, including Mr. Okwara specifically, and Petitioner – Ms. Jenkins said she had been responsible for the foregoing Performance Appraisal. Her remarks then, and false and vin-

dictive emails she sent to Mr. Bowling in January 2016, around the time Petitioner made EEOC Charge 531-2016-00649C at the EEOC Baltimore against Cyberdata Tech.(around three months before Petitioner was terminated), and only around a month after SGT received EEOC Charge 531-2016-00346C, aren't stray in nature, because they had direct bearing on the discrimination, and retaliation:

Deffenbaugh-Williams v. Wal-Mart Stores, Inc., 156 F.3d 581 (5th Cir. 1998):

"Far from being a "stray remark", the comment, made only around five months before termination and directly bearing on the discriminatory issue presented, is of critical importance.".

In that matter also Plaintiff Deffenbaugh, like Petitioner, faced allegations from employer management about things Deffenbaugh hadn't actually done.

McGinest v. GTE Service Corp., 360 F.3d 1103 (9th Cir. 2004): "As the Supreme Court has stated, "The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 81-82, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). As a result, when a court too readily grants summary judgment, it runs the risk of providing a protective shield for discriminatory behavior that our society has determined must be extirpated.", "In evaluating the significance of the statements in question, we consider the objective hostility of the workplace from the perspective of the Plaintiff. Nichols, 256 F.3d 864 at 872; Ellison v. Brady, 924 F.2d 872, 878-79 (9th Cir. 1991)", "this in no

way suggests that discrimination based upon an individual's race, gender, or age is near an end. Discrimination continues to pollute the social and economic mainstream of American life, and is often simply masked in more subtle forms", F.N. 10 ref. Aman v. Cort Furniture Rental Corp., 85 F.3d 1074 (3d Cir. 1996: "In our view, however, the use of "code words" can, under circumstances such as we encounter here, violate Title VII.").

Petitioner couldn't serve any colored client/co-worker/customer/staff, and work for the "Nomads" Project, discussed with colored co-workers and NOAA staff who Petitioner knew, around Christmas 2015, as planned to be done in 2016, was assigned to non-colored developer Ada Lockleigh Quinn who joined in January 2016. Upon knowledge and belief, Petitioner was replaced by Ada Lockleigh Quinn and Jeff Beck, who were non-colored developers (Amended Complaint).

Also, the opinion in Washington v. Garrett, 10 F.3d 1421, 1434 (9th Cir. 1993) stated: "when an employee alleges that her position was abolished for discriminatory reasons, the fact that she was not replaced by someone not of her protected class is not fatal to her claim.".

Each of five persons/parties in the development group whom Petitioner was *directly asked/instructed* to *personally interact with* by the Cyberdata and SGT Inc. Program Manager and Dy. Program Manager for assigned work and delivery *in particular* was *non-colored, non-African and non-Asian.* Petitioner was never asked to directly interact with Bingfan Yin, Ph. D., who was highly experienced, extensively interviewed Petitioner for the position, and revealed the

identity of the principal contractor, as well as work to be done by Petitioner – even on work items(Tickets)/issues where Bingfan had substantial contributions – or with Jun Wu who had substantial contributions. Title VII also prohibits discrimination against employee/s based on interaction of a protected aspect of the employee's identity with the identity of a person with whom the employee associates – in Petitioner's present matter, the person is Mr. Jonas Okwara. An employer, for example, commits this forbidden "associational" discrimination when it treats an employee having interracial relationship/s differently from other employees who have relationship/s with persons only of the same race. Marriage is and professional association/contact(s) would be example/s of such relationships.

4. The matter began with Petitioner being the only developer on a development group of about nineteen persons maintained at NOAA/NCWCP, College Park, by respondent Cyberdata Tech. to declare as valid and functioning Mr. Okwara's work on the computer programs he inherited from Mr. Okwara when Mr. Okwara was discontinued in August 2015. On subsequently being asked by Ms. Jenkins, Cyberdata Tech Program Manager, all remaining developers inheriting computer programs from Mr. Okwara publicly declared Mr. Okwara's work on the computer programs they inherited from Mr. Okwara as non-functioning. Mr. Okwara had worked at NOAA, Silver Spring for five or more years before he worked at

NOAA/NCWCP, College Park. He has a Master's degree in Computer Science from Regis College(which was considered difficult to graduate from), with a 4.0 GPA – the highest. Mr. Okwara informed Atty. Nyombi in telephonic conversation he believed Ms. Jenkins had ethnic bias, and considered Ms. Jenkins "difficult" to work with because of bias. No non-colored employee made such an assessment of Ms. Jenkins, officially or otherwise.

5. Atty. Nyombi couldn't arrange for Mr. Okwara's statement. Mr. Okwara also spoke with Petitioner on (301)346-3295, 9:08am until 9:34am ET 24 Jan 2018 and said he'd made working all five pending tickets assigned to him before being discontinued by Cyberdata Tech., which Mr. Bruce Hebbard, then SGT Inc.(Senior Software Developer), who didn't inherit programs/work from Mr. Okwara and never thus declared, verified. Mr. Okwara also informed that Ms. Carmen Jenkins made a facial expression of dislike at him when seeing him out of the NCWCP building, as he bade farewell. Ms. Jenkins assigned Petitioner the program/work Mr. Okwara had been doing when Mr. Okwara was discontinued. Mr. Okwara appears reluctant to come forward with a statement because he apprehended further consequences for him. He himself earlier lost a case in the Fourth Circuit Court of Appeals through unpublished decision. Petitioner here cites BURLINGTON INDUSTRIES, INC. v. ELLERTH(1998) 54 U.S. 742(No. 97-569) "Summary judgment was granted for the employer, so we must take the facts alleged by the employee to be true. United States v. Diebold, Inc. 369 U.S. 654, 655 (1962) (per curiam)". Petitioner cites Erickson v. Pardus, 551 U.S. 89, 94

(2007): "A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.", and Sealed Plaintiff v. Sealed Respondent #1, 537 F.3d 185, 191-93 (2d Cir. 2008).

6. There are numerous mis-reportings in Petitioner's purported deposition which Petitioner informed the Circuit Court of. There was on the average more than one factual error on each of more than four hundred pages. Atty. Nyombi sent the deposition record to Petitioner late, and United States Postal Service took more than a working week to deliver his First-Class mail from Silver Spring to Gaithersburg, MD. There wasn't time left within which Petitioner could make a complete list of the above. The form given for correcting errors was grossly inadequate considering the number and frequency of above errors, which are now in the Fourth Circuit Court record. Atty. Nyombi hasn't forwarded the errors that Petitioner listed – he was also mis-led by Respondents' tendentious and sometimes false briefings.

MSJ Order dated 10/24/2018, 8:16-cv-03135PX, states about Petitioner, " failed to demonstrate that he had been fulfilling Respondents' legitimate employment expectations at the time of discharge. From October of 2015 to Plaintiff's termination in April of 2016, Respondents consistently documented Rai Chowdhuri's deficiencies in the speed and quality of his work and offered suggestions for improvement.". Petitioner **didn't** receive suggestion/s for improvements, even to software feature/s Petitioner worked on – there isn't even accurate,consistent and reasonable time record in the work tickets. It hap-

pened only when Petitioner brought to management's notice in September 2015 that development setup and code on the workstations given to colored developers was changing though developer/s weren't changing them — it was retaliatory, as history in company Managers' Declarations shows. Legitimate employer expectation isn't clear when employer's hired management is openly mendacious, inventing things which never happened, and aren't there in work tickets/emails/records/deposition. There's only Performance Improvement Plan(PIP) accusing Petitioner – things which never happened. MSJ Order(above) states "acknowledged that his work suffered from delays due to code errors. ECF 135-1 at 63-65, 77, 82, 91.".

ECF 135-1 is incoherently-recorded, where Petitioner actually said Petitioner had worked more because code Petitioner developed changed, beyond Petitioner's control. Petitioner hasn't stated that only reasons for delay are code error or Petitioner made code errors causing delays. Code error sometimes wasn't even there in the work Ticket record (#8048: Carmen Jenkins alleged "major error"), or imported when Petitioner was asked to manually merge code from outside the scope of a work ticket (#8554), or the solution was sometimes changed through management intervention which wasn't recorded in the ticket, or changed through installs/updates by Cyberdata Tech system administrators — last work Ticket "PGEN Exit Dialogs have no Cancel Options"(the first Ticket assigned after 01/14/2016, when Petitioner charged Cyberdata Tech.) — or sometimes Petitioner was asked to cosmetically solve the issue in the ticket instead of in required detail. For one work Ticket Carmen Jenkins herself said the problem was caused by configuration,

that Petitioner wasn't responsible for it, and the ticket was resolved which she'd record in the ticket, in 09/2015 — before Petitioner mentioned problems Petitioner faced with exogenous changes of source code. Similarly, before Petitioner, in September 2015, mentioned the problems Petitioner faced Ms. Jenkins said for another assigned work Ticket that Petitioner didn't have to do further work because she considered it resolved for the issue and accordingly updated the Ticket. There are tickets resolved by Petitioner before late 09/2015 where Ms. Jenkins and current Cyberdata Manager Mr. Huber used "good" to describe Petitioner's work. Mr. Steve Russell said the same then in a review meeting. The NOAA Software Designer also said so. Mr. Polston, ex-NOAA meteorologist(CyberData), tested Petitioner's code and said it worked. Manual code merging isn't common/usual practice. It wasn't discussed with Petitioner at interview. Cyberdata Tech.'s is among only three sites where Petitioner saw extensive manual code merging in around twenty-five years of software development experience.

7. Petitioner **didn't** depose there was design collaboration on last work Ticket (Annexure 3, dated 08/02/2019).

In ECF-145 06/04/2018(CyberData Tech.), at 11. on P.6,7, there's unquantified assertion that Petitioner's work contained "more errors than that of any other developer.", without contemporaneous computation/code comment/documentation/record of assignment complexity, and developer-wise error count, using appropriate means/software like Bugzilla/ defect register/s. Petitioner asked about these(12/2015 and at PIP meetings in 2016). Retained CyberData employees R. Reynolds, A. Su, J. Lopez and E. Brown had to

publicly admit their coding errors — Petitioner never had to — and Steve Russell also. Referring Brown, 756 F.3d at 230 42-44 (quoting Graham, 230 F.3d at 39) : "'[w]hether two employees are similarly situated . . . presents a question of fact,' rather than a legal question to be resolved on a motion to dismiss.", also applicable to Steve Russell. Inference of discrimination also arises when employer replaces terminated/demoted employee with individual outside the employee's protected class, which Petitioner's amended complaint mentions: examples Carlton v. Mystic Transp., Inc., 202 F.3d 129, 135 (2d Cir.2000); Cook v. Arrowsmith Shelburne, Inc., 69 F.3d 1235, 1239 (2d Cir.1995).

8. Had salary increase mentioned in ECF 130-4 been for improvement, Mr. Bowling would likely declare he'd reminded Petitioner of it when Petitioner stated illness and inability to be effective for PIP assignments, or when Petitioner repeatedly mentioned retaliation at PIP meetings 02/22/2016, and 04/18/2016 — these aren't even in SGT Human Resources PIP and termination letters.

9. In MSJ Order(10/24/2018) errors begin from basic information about which agency handled which EEOC Charge. Additional documents Petitioner filed in Circuit Court, caused by MSJ Order inaccuracies, and Respondents' concealments/misinterpretations of facts/deposition, added efforts Petitioner had to make. These are part of reasons for which Petitioner opposes move/s to recover costs from Petitioner.

10. In 10/2015, Mr. White, CyberData Tech., said Linux workstations used by some developers should be changed. Petitioner didn't know other workstations were involved, until 04/2019. Petitioner tried to find which developers, and reasons for change. Mr. White advised Petitioner to change his workstation. Petitioner used another, smaller, workstation available where Petitioner was then sitting, with Petitioner's existing developer account. Eclipse worked the same on the other, smaller, workstation as on the workstation Petitioner already had. Carmen Jenkins heard the problem Petitioner faced and didn't authorize/suggest Petitioner change workstation — she brusquely brushed off the problem and attempted to prevent Petitioner's speaking about colored developers' workstations — other workstation was subsequently re-installed/re-configured for another developer.

On 02/15/2016 and in 03/2016, Mr. Stephen Gilbert, Software Designer, mentioned issue/s where lines of code were obliterated/overlooked by the Eclipse IDE. He said nearly all Eclipse workstation installations worked normally — however, it happened on some. No developers publicly reported obliterated/overlooked lines of code in Eclipse IDE, apart from Petitioner. Mr. Gilbert was a user on Linux workstations in the laboratory where Petitioner worked. Though Mr. Gilbert didn't provide cause/s to Petitioner for the particular problem Petitioner faced, or how he remediated the issue/s, he knew that Eclipse IDE obliterated/overlooked lines of code. Petitioner knew only in 04/2019 that Mr. Gilbert's statement was likely documented.

When Petitioner discussed the problem Petitioner faced with Cyberdata system admini-

strators, they did Eclipse workstation installation and configuration and checks for petitioner. The problem remained unchanged, even with their participation. Petitioner is sure the problem Petitioner faced was in two Linux workstations Mr. Okwara used – of which colored developer Mr. Bernier used one — both in the laboratory(used to be for only non-development workstations) where only colored developers(Petitioner also) initially sat. Both Linux workstations at Petitioner's initial seat had it.

11. Respondents didn't produce contemporaneous or near-timed evidence showing the Linux workstation Petitioner used being used by other developer/s to do the same development work Petitioner was doing, without having problems Petitioner faced, and without Linux workstation re-configuration/re-imaging/re-installation/update since Petitioner's usage. Without evidence, their Manager's Declaration of "far-fetched"(ECF-129-1 11.,p.3), isn't tenable. Petitioner saw problems Petitioner reported. Mr. Hebbard did. Paul Obe, Cyberdata Tech. Assistant Linux Administrator, recognized these.

There's, however, proof that security software daemon processes interfere with operation and use of Java development software. For example, Computer Associates anti-virus/firewall prevents installation and operation of WebSphere, and is paused for WebSphere, including Eclipse, to be installed/started. Eclipse and WebSphere are IBM Java development software. These are well-known at NRPC which uses both. Norton Internet Security can interfere with .NET

development. Petitioner has existing confidential complaints about such issues which the Federal Trade Commission has accepted.

12. Evidence/report wasn't produced of investigating Petitioner's workstation, for exogenous code alterations, or Petitioner's developer account(wasn't on Petitioner's workstation), or code repository where code developed and checked-in by Petitioner was unreadable by colleagues and altered — important because Petitioner never reported the problem directly to NOAA; NOAA couldn't investigate. Petitioner's F.B.I. submissions show problems with Petitioner's Linux development account from the beginning, and Jonas Okwara's problems with source code and development setup.

Petitioner saw such investigations before and since Petitioner worked for Respondents, with full details provided — recently in November 2018. Petitioner respectfully declines assertions implying only that mentioning investigation is in itself adequate.

Respondents never investigated Petitioner's discrimination allegations, even with EEOC Charges notified, or circulated non-discrimination policies to on-site employees.

Petitioner didn't receive print copy of Employee Handbook with policy/ies, reference Faragher v. City of Boca Raton, 524 U.S. 775, 788, 118 S.Ct. 2275 (1998).

In EEOC and Estela Black v. HP Pelzer Automotive, Inc. No.: 1:17-CV-31-TAV-CHS, US Court for Eastern District, Tennessee:

6. "dispute over the quality of the investigation is material".

13. In the present matter, MSJ Order(1/24/2018) omits Petitioner's medical condition, though mentioned as applicable in the Order of 8/16/2017. It instead "credits"(acknowledges/believes) Respondents' Declarations and Deposition/records.

14. Respondents didn't treat their exhibits where these didn't support them. In any/all Respondents' exhibits, Ms. Jenkins and Mr. Bowling didn't show faulty program code/output. They concluded Petitioner wasn't qualified for his job (email April 8, 2016, 8:21 AM , ECF 130-15, 04/12/2018, 58. ECF 130-4 04/12/2018) — it wasn't communicated to Petitioner, however. There isn't record/documentation, made then, supporting the conclusion. Only one manager-to-manager email(without response) says Petitioner doesn't have the technical skill-set for Petitioner's "Senior Classification", ten days prior to ending Petitioner's work, when Petitioner was ill, more than year after Ms. Jenkins herself interviewed Petitioner — Petitioner worked by himself in the position for nearly a year. The one email was about last Work Ticket "PGEN Exit Dialogs have no Cancel Options", involving Eclipse SWT — a skill required for all work Tickets. When the email was sent, last Ticket didn't involve other skills.

In Loeb v. Textron, Inc. 600 F.2d 1003 (1st Cir. 6/21/1979) F.N.10: "unless the employee's job has been redefined, the fact that he was hired initially indicates that he had the basic qualifications for the job, in terms of degrees, certificates, skills and

experience".

15. Petitioner already submitted Petitioner was recruited Software Engineer II by SGT. Even Software Engineer III isn't "Senior classification" at NOAA. Mr. Bernier was Software Engineer III with only four years experience following Master's Degree, it isn't described as "Senior": Annexure earlier submitted (https://www.linkedin.com/in/jason-bernier-0a836521) . Bernier and Okwara had more certifications/distinctions than project staff that Petitioner knew of, and more experience with atmospherics-related computing than many retained developers. Carmen Jenkins' "Senior classification" remark, nearly year after Petitioner's joined work, is specious.

16. Carmen Jenkins alleges Petitioner introduced "major error" in work Ticket #8048. Although Mr. Hebbard's email to Petitioner 01/20/2016 11:45 am gave lines of source code changes causing the problem, these weren't in ticket #8048 where Petitioner entered all added/changed code — he didn't question Petitioner's emailed record of development meetings or explanation about lines of code causing the problem. Referring C-20, 23. p.8 and 32. p.10, ECF 130-2(SGT Inc.): Respondent's explanation of changes in source code under development by Petitioner, while work Ticket/s would be assigned to Petitioner, working on source code, aren't practically possible.

17. Though declared in ECF 130-4 there weren't actually "design collaborations" for the last work Ticket. Petitioner has design collaboration email for other work Tickets. Petitioner didn't have design mentoring for last work Ticket — only review followed by requirement change Ms. Jenkins wanted, around 02/26/2016, and remedial attempt

from NOAA Software Designer who couldn't provide information, to resolve problems following requirement change, upto 04/18/2016. The information was necessary after Ms. Jenkins' requirement change at design review — NOAA Software Designer then advised design(SWT) modification, requiring more information/resolution. Petitioner reiterates earlier submissions about ECF 130-4, P.24 ECF 130-2(SGT Inc., 04/12/18), P.10(19.) ECF 130-2 about Petitioner's F.B.I. submissions, and Cyberdata's Exhibit A10(4/12/2018).

18. Mr. Bowling never mentioned minority employees at 62.ECF-130-4 to Petitioner — only asked Petitioner in 09/2015 whether Petitioner knew some Caucasian employees.

19. Petitioner informed F.B.I. that code Petitioner wrote for ticket 8554 wasn't working by 11/19/2015, though working when checked-in.

19. Petitioner submitted contradiction between 31. and 11., ECF 130-4. Item 11. says Petitioner received merit salary increase to "recognize his contributions" — if Petitioner didn't complete any work tickets, and had "more errors than that of any other developer." it would be known by the time of salary increase — the non-existent contributions wouldn't be recognized.

20. Ms. Jenkins states in 14., p.3 ECF 129-1 that the last work Ticket "should have taken a full-time employee no more than two weeks to complete", whereas ECF 130-15 p.2, she stated "I would expect a junior programmer to be able to accomplish this in 2 weeks max.". Petitioner received NCWCP emails through 09/2016. The last work Ticket

was reassigned 05/04/2016 to Steve Russell, who worked with web-and Java-based NOAA-specific software and dedicated libraries and essential development framework since 01/2011, and AWIPS2 (project) software, dedicated libraries and essential development framework since 01/2014. Petitioner didn't receive email that last work Ticket was completely resolved by 05/19/2016 — two weeks. Petitioner has submitted further about Steve Russell's NOAA experience and positioning.

21. Petitioner filed in District Court, 12/17/2017, to extend time for interrogatories and discovery. Petitioner was officially(including F.B.I.) advised to submit only authorized copies, requested from owners, of documents — DOC/ NOAA websites for making requests weren't available through 04/2018.

22. Manager for SGT Inc. in ECF 130-4 stated that Petitioner had lowest salary raise/bonus of any SGT Inc. employee on project, which followed Performance Appraisal and Ms. Jenkins' vituperation, 10/21/2015 to 10/28/2015. Petitioner refers Blizzard v. Marion Tech. Coll., 698 F.3d 275, 288-89 (6th Cir. 2012), Halfacre v. Home Depot 221 Fed. Appx. 424, 433 (6th Cir. 2007) "significantly impact an employee's wages or professional advancement are also materially adverse". To Petitioner though Bowling only said that it was rare to get salary increase at all with such few months of service as Petitioner. Salary raise with appreciation was given after Performance Appraisal, in 12/2015. In Haynes v. Waste Connections, Inc., 7-2431, 4th Cir. April 23, 2019 at p.8, Court stated Petitioner Haynes didn't have to obtain the max bonus — be the

"perfect or model employee". Mr. Hebbard, who assessed Petitioner's performance-related assignments, said through 01/2016 that he gave only favorable assessments stating Petitioner had shown mastery of the assignments. Mr. Bowling, SGT Manager, repeatedly said CyberData, meaning Ms. Jenkins, insisted on the PIP. In 8:17-cv-00231-PX, D. Md. opinion filed 4/29/2019, the District Court which heard Petitioner's case:

"The Fourth Circuit has explained that "evidence of
conduct or statements that both reflect directly the alleged discriminatory attitude and that bear discriminatory animus at the summary judgment stage"".

False allegations against Petitioner, in the PIP leading to ending of Petitioner's employment, and during daily work — which were after Petitioner mentioned the disparity in the workstations, followed by non-colored developers publicly admitting errors in their work — such as making the NOAA Federal Software Designer uncomfortable, which the Designer denied within minutes, or that Petitioner's "language" in work Tickets was faulty, or that Petitioner shouldn't use common/simple English words in work Tickets — whereas Petitioner only described technology — or saying "No" to the Federal Project Manager for adding NTRANS data to work Ticket 8554, or allegations that Jonas Okwara, when discontinued, hadn't made code in his work Tickets working, including #8554(Petitioner submitted to F.B.I) or Krishna was doing thing/s the NOAA Software Designer disliked, were only against male dark-complexioned people. No other developer/person had such false, public, allegations about them.

23. Petitioner petitions also against fabricated Declarations, Exhibits and Deposition from

Respondents' Managers, containing events which never happened and acts/words/ phrases/sentences which Petitioner didn't do/use, quoted in MSJ Order(above). Accepting these as genuine and devoid of error is discrimination and prejudice against Petitioner. Mendacity towards individual/s often signifies race-related disrespect and discrimination, against individual/s against/towards whom such mendacity is directed. Petitioner protested the above unequal treatment and requested that MSJ Order in 8:16cv-03135PX be set aside. Petitioner draws attention to press interviews by former President John F. Kennedy(while Senator) and Attorney-General Robert Kennedy where they explained how a well-educated African American professor was falsely treated by bigots as a person who "apparently wasn't educated", and "ineligible(unqualified) to vote", and how it was the type of acintivity they'd act against as race-based discrimination.

Petitioner's F.B.I. submissions show working code by Mr. Okwara misreported as non-working by non-colored developers, and Petitioner being misinformed about Mr. Okwara's previous experience.

24. Carris v. First-Student Inc. 2d. Cir. 15-3350 (03/08/2017):

To survive a motion to dismiss, a Title VII Plaintiff doesn't have to plead a full prima facie case pursuant to the first stage of the burden-shifting framework outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); she "need only give plausible support to a minimal inference of discriminatory motivation." Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 84(2d Cir. 2015).

"In discriminatory discharge claim/s, circumstantial evidence could include employer/s,

after discharging Plaintiff, continuing to seek applicants of the Plaintiff's qualifications to fill that position; or employer/s criticism of Plaintiff's performance in . . . degrading terms; or invidious comments about others in the protected group; or more favorable treatment of employees outside the protected group; or sequence of events leading to Plaintiff's discharge" ref. Leibowitz v. Cornell Univ., 584 F.3d 487, 502 (2d Cir. 2009).

25. Regarding Mr. Okwara's discontinuation for allegedly only being a not-good fit for his position Petitioner brings to notice 584 F.3d 487 (2d Cir. 2009), 4.Notes. Referring Supreme Court in Robinson v. Shell Oil, Title VII; prohibitions against retaliation protect former(like Jonas Okwara) and current employees.

26. Pretext can be shown by

"weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action," Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10th Cir. 1997) and examining various factors including "prior treatment of plaintiff; the employer's policy and practice regarding . . . employment [of Plaintiff's class] (including statistical data); disturbing procedural irregularities (e.g., falsifying or manipulating criteria); and the use of subjective criteria ref. Simms v. Okla. ex rel. Dep't of Mental Health & Substance Abuse Servs., 165 F.3d 1321, 1328 (10th Cir. 1999).".

27. Petitioner submitted Ms. Jenkins' conduct towards Petitioner and Mr. Okwara, and that only non-colored developers in their Project remained with CyberData Tech. in 2018. With many things, Petitioner submitted consistently-occouring problems known only on workstations given male colored developers, making performance more difficult for them, in the program/project Ms. Jenkins managed for CyberData Tech. Exhibit B ECF-129(4/12/2018) is error. Deposition didn't record where Petitioner mentions Ms. Jenkins' vituperation, 10/21/2015 to 10/28/2015 : "She was really irritated when I told her about

Jonas. If looks could kill — she narrowed her eyes and said to me "You know who told Rex about you? I gave him the adverse input, I had you put in Performance Appraisal"" —unprovoked hatred and vindictiveness towards Petitioner because of Petitioner's mentioning disparity in developer workstations. These voluntary remarks, or allegations that Petitioner raised his voice, had no reason. Petitioner only spoke about Jonas, and never about Performance Appraisal — which was SGT matter — to Carmen Jenkins, or replied to her.

28. Boyer-Liberto v. Fontainebleau Corp 786 F.3d 264 (2015), 4th Circuit mentions how opposition activity, like complaints to/through an employer, is protected where employee/s oppose/s "employment actions actually/believed unlawful under Title VII. The employee will have a reasonable belief that a hostile environment is occurring if the isolated incident is physically threatening or humiliating.".

Petitioner reported at the earliest exogenous changes of code and development set-up seen only on colored developers' workstations. Only colored developers (Bernier, Okwara, Vepuri) had observations about the nature of work/criticized unsatisfactory development conditions.

29. CyberData Tech.'s management selectively gave male non-Caucasian/foreign national employees, particularly, more difficult code-writing development assignments, like work Ticket 8554, as efficiency/selection bars. These were much more difficult for at least three out of five (Petitioner, Bernier, Okwara) because code they developed, and

development setup, changed beyond their control even when they weren't developing. The opinion in Griggs v. Duke Power Co. 401 U.S. 424 (1971), stated that where employer/s use/s a neutral policy/rule, or utilize/s a neutral test, and policy or test disproportionately affects minorities/women adversely, employer/s must justify the neutral rule or test by proving it is from business necessity. Title VII bears on consequences of employment practices in operation, not simply motivation. CyberData Tech. hasn't shown business necessity justifying disparate impacts on colored employees, including more turnover. The opinion in Watson v. Fort Worth Bank & Trust 487 U.S. 977 (1988), stated disparate impact analysis can apply to subjective/discretionary selection practices.

30. Management and employees publicly made false/negative comments, about performance of these employees, including Mr. Okwara. Whereas Ms. Jenkins Declares(ECF-129, 4/12/2018) they tried retaining Mr. Vepuri, she actually only stated in public that Mr. Vepuri "won't be here" because NOAA Federal Software designer "didn't like what he was doing". CyberData's current manager Huber, much less qualified than Mr. Okwara, volunteered negative comments that "Jonas just didn't get it". Huber and Ms. Jenkins browsed work tickets and code on non-NOAA/personal mobile phones, which NOAA forbids.

Jonas Okwara had foreign national CAC badge through CyberData Tech.

30. Ref. Blizzard v. Marion Tech. Coll., 698 F.3d 275, 288-89 (6th Cir. 2012):

The CyberData Manager snapped at Petitioner, attempting to silence Petitioner's oral(intra-company) complaints saying she hadn't time to hear; these details didn't concern her — SGT Inc. manager fabricated that complaints weren't made.

Please see p.343,344 ECF-135.

The opinion in Burlington Northern and Santa Fe Railway Co. v. White, 548 U.S. 53 (2006), states Title VII's anti-retaliation provision(Section 704(a)) isn't limited to discriminatory actions affecting a term/condition/privilege of employment, and is broader than Title VII's core anti-discrimination provision (Section 703(a)).

31. Petitioner personally mentioned workstation disparity towards colored developers, including Mr. Okwara, to CyberData Tech.'s Program Manager(Ms. Jenkins). Petitioner informed SGT Inc. personally and in writing, 01/07/2016, of protected activity opposing CyberData. Ms. Jenkins forwarded her emails(CyberData Exhibits at EEOC, and at Court), all the same day in March 2016, around the same time, to the Company President. Shortly after, Carmen Jenkins sent email to Rex Bowling regarding Petitioner and last work Ticket "PGEN Exit Dialogs have no Cancel Options", saying Petitioner was taking longer than expected to solve the Ticket. She repeated this month later, April 2016 — Petitioner's CAC badge was taken April 18, the last day Petitioner was on premises.

Please see F.N.11, Smyth-Riding v Sciences & Engg Services LLC., 699 (Fourth Circuit 2017), applying to Ms. Jenkins.

32. The submitted Intake Questionnaire from EEOC Charge N. 531-2016-00346C against SGT Inc. (Fourth Circuit record)showed that Petitioner never mentioned Dr. Bingfan Yin and Mr. Jun Wu in the EEOC Charge, and Petitioner did mention Mr. Bernier. It doesn't

make sense that Petitioner wouldn't mention Dr. Yin and Mr. Wu in the EEOC Charge, and would instead tell Mr. Bowling on 21 December 2015, which never actually happened. Petitioner never mentioned discrimination against Mr. Bernier to Mr. Bowling either, and if Petitioner had, Petitioner's counsel Mr. Nyombi would have drafted accordingly in Petitioner's response, dated January 7 2016, to the Performance Improvement Plan, where discrimination and retaliation, and the reaction of management to even the mention of Mr. Okwara are clearly mentioned. The response is an Exhibit in District Court proceedings.

33. The submitted facsimile dated November 28 2015, entered at EEOC Baltimore Field Office on December 14, also showed that Petitioner had worked two months with an injured thumb, for which Petitioner had requested Mr. Bowling's permission to attend a physician. The physician and the specialist were unavailable on weekends, and the treatment would have included physiotherapy, which was also unavailable on weekends. Petitioner knows because Petitioner had a similar injury earlier, though it wasn't on the thumb. The inflammation spread to Petitioner's arms in these two months. Petitioner had contacted Urgent Care Centers, and they all advised Petitioner to see his regular physician because it wasn't a trauma or disability case.

34. Petitioner also begs leave to once more state that Petitioner's EEOC Charges didn't name an individual as respondent– rather, the companies involved are the respondents. Petitioner has seen cases where some companies have hired individuals from weaker sections/protected classes, sometimes also in order to fulfil compliance or project

requirements, and those companies have subsequently been unable to prevent discriminatory or disparate treatment of such hires made from among members of the weaker sections/protected classes, or discrimination by association, and retaliation, against individuals who associated with such hires, or brought to notice discriminatory and disparate treatment towards such hires. Such companies were able to ensure the hiring, however they weren't able to prevent subsequent discrimination, discrimination by association, and retaliation in the matter of dismissal. Petitioner's case matter enters the discrimination by association category (please see Petitioner's response to the Performance Improvement Plan, dated 7 January 2016, submitted in District Court). The Ats titude of the management in the Respondent companies is manifested through the reaction of the managers to Mr. Okwara, and to Petitioner's mention of Mr. Okwara, who is from Nigeria. Their instant, spontaneous, facial expressions of dislike – with Mr. Bowling even asking Petitioner whether Petitioner knew any developers/SGT staff other than Mr. Okwara, naming individuals of whom none were non-Caucasian (instead of the non-Caucasian staff mentioned in Mr. Bowling's Declaration) – are the actual face of discrimination showing through. Mr. Okwara doesn't have adverse conduct/interaction against his name/eligibility, and one of the Respondents was projecting that Mr. Okwara's discontinuation wasn't effectively a dismissal.

35. Petitioner informed EEOC Baltimore Field Office, on 5 Jan 2016, that the XML Petitioner was working on didn't have adequate documentation (*it wasn't about the code being legacy, as Mr. Bowling's Declaration states*), which would require additional effort

to be made to find a solution to an assignment, and Petitioner was working more on meta-languages and presentation languages since December 2015,whereas Petitioner had been recruited to work in programming languages. Petitioner also informed the EEOC that there were changes happening to the source code on Petitioner's workstation when it wasn't being used, as can be seen in the included documents submitted to the Fourth Circuit, because it was actually happening at the time, *and alteration of Petitioner's work is a concern about unfairness* Petitioner had. Petitioner would have recorded in facsimiles to EEOC Baltimore Field Office had Petitioner discussed with Mr. Bowling/Ms. Jenkins/anyone else at the work-site, or anywhere else, and any response, regarding "legacy code" and being unfamiliar with it, or the assignment being unfair. Mr. Bowling's Declaration is inaccurate because he wasn't attentive to what Petitioner actually said to him. Petitioner truthfully repeats that Petitioner never discussed with Mr. Bowling/Ms. Jenkins/anyone else anywhere regarding legacy code, or unfamiliarity with the language in an assignment, or unfairness of an assignment, with reference to 7. in "Request For Omission From Consideration And Record", dated February 23, (29. in Mr. Bowling's Declaration).

36. The email, with subject "9407" (Fourth Circuit record), dated 16 Dec 2015 13:52:57 -0500 from Petitioner's work email to the NOAA Federal Software Designer, Mr. Gilbert, and to Mr. Hebbard, is about inconsistency in the Git and Gerritt installation at the site (at 1.). There wasn't any reply to the email to state otherwise , or about discrepancy in the information given in the email, from either recipient. Also, when

Petitioner had mentioned to Mr. Bowling during the meeting in September 2015 that there was a problem with exogenous modifications to the code Petitioner was working on, while Petitioner wasn't working on it (which Petitioner had seen Mr. Okwara having to face, as well as changes in Mr. Okwara's development set-up), Mr. Bowling had said he would obtain information on source code management (which approximately means repositing, revision tracking, versioning, making, and maintenance of source code) and build systems on-site. However, Mr. Bowling never did so.

37. EEOC Charge 2016-531-00346C was mailed to SGT Inc. on 2 December 2015. Their Counsel (Pargament and Hallowell PLLC) were in contact with EEOC Baltimore Field Office by or on 22 February 2016, when Petitioner had a Performance Review meeting. Their statement of position to the EEOC Baltimore Field Office was made around first week of April 2016, and Petitioner's CAC Badge was taken from Petitioner by Mr. Rex Bowling on April 18 2016. Neither Petitioner, nor any of Petitioner's Counsel ever received SGT Inc.'s statement of position from the EEOC Baltimore Field Office (Ms. Brunhilda Brache), even though Petitioner physically went to the EEOC Baltimore Field Office at the end of May 2016 (Petitioner and Counsel did receive Cyberdata Tech.'s statement of position almost immediately). Petitioner's Charge 2016-531-00346C was received at the Prince George's County Government Human Relations Commission on April 29 2016. *The statement of position by SGT Inc. doesn't deal with discrimination by association, which is considered illegal*, and it doesn't also address that Petitioner was never given a copy of SGT Inc.'s Equal

Employment and non-Discrimination policies at any stage, or allowed to take Petitioner's issues to a higher level of management, as these policies state. In fact, Shelley Johnson, who is Chief Human Resources Officer at SGT Inc., sent email to Mr. Rex Bowling, Ms. Jacqueline McCoy(SGT Human Resources), and Ms. Ann Ward (SGT Human Resources, Greenbelt Office) specifically excusing herself from meeting with Petitioner. Neither of the Respondent companies instituted any inquiry into the issues raised by Petitioner even when the charges became known to them and to their management. The Greenbelt Human Resources of SGT Inc. was where Petitioner was formally assigned at the time of joining work and Petitioner doesn't know why only Ms. Jacqueline McCoy, who isn't from SGT Inc. Greenbelt office, was doing Performance Review Meetings with Petitioner.

In the statement of position with the EEOC, Counsel for SGT Inc. stated on April 8 2016 that the reason why Petitioner was on the Performance Improvement plan until then was inadequate attendance. *It doesn't mention technical knowledge or proficiency as the reason. Petitioner obtained and submitted relevant parts of the Statement of Position by SGT Inc.*. Petitioner is also informed that the Statement of Position by SGT Inc. wasn't sent to Petitioner or his Counsel for response because the EEOC investigators didn't think a response was at all neccessary. The Statement of Position also doesn't mention that Petitioner had the smallest salary raise of all SGT Inc. employees on the Project. Petitioner never asked for or discussed salary raise with SGT Inc. and salary raise related actions/statements were only from SGT Inc. side. Also, Mr. Bowling had said, to begin

with, that salary raise wasn't usually given for only five months of service which is all Petitioner had at the time of the salary raise, and that Mr. Bowling recommended Petitioner for salary raise ahead of time. Counsel for Petitioner has already mentioned in the Complaint and Amended Complaint that lack of attendance is a reason engineered by Respondents through accusing Petitioner of being away from work without permission whereas Petitioner had duly requested time away from work for medical reasons on each occasion, and inquired at the same time whether there would be a problem – and didn't ever receive instructions that Petitioner shouldn't be away from work for medical reasons. Rather, Mr. Bowling questioned Petitioner by email (April 12, 2016) asking why Petitioner wished Mr. Bowling to over-rule instructions from Petitioner's physicians.

Petitioner here quotes Mogenhan v. Napolitano, 08-cv-5457 (D.C. Cir. July 27, 2010): "retaliated against her in ways that "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.""**,** "a fact-finder could reasonably conclude that declining performance appraisals would deter a reasonable employee from engaging in protected EEO activity."**,** "but rather her supervisor's written comments on the appraisal form, that constituted the materially adverse retaliatory act"

– with reference to PIP(no other project personnel were issued PIP/s) initiated by SGT Inc. at the insistence of Cyberdata Tech.'s email on Dec. 30 2015, about month after Petitioner's Charge 531-2016-00346C against SGT Inc. and also with reference to Carmen Jenkins' repeated adverse remarks in exhibited emails**.** Please also see footnote [2], p. 6 08-cv-5457 with reference to Rex Bowling's Declaration about Petitioner's salary increase and alleged bonus, and also see Petitioner's letters to Fourth Circuit Court dated

27 February and 28 February 2019 "Declaration of Mr. Rex Bowling, SGT Inc.", and **3.**, Petitioner's Letter to Fourth Circuit Court dated 23 February 2019 regarding Inaccurate Description in District Court (Pages 2, 7 24 Oct. 2018); Petitioner also mentioned items, **5.** and **11.** particularly, dated 23 February 2019, "Request For Omission From Consideration And Record".). A reasonable fact finder could consider lower pay or bonus as discrimination/retaliation also, to chill/discourage remaining employees (including human resources or accounting, who know pay raises for most employees) from supporting protected activity, because Petitioner's protected activity began September 2015, continuing through December, and was known to some– pay increase and bonus were effective in December 2015; in relation to foregoing please see Davis v. N.Y.C. Dep't of Edu., No. 14-1034 (2d Cir. 2015).

38. *Petitioner refers to Petitioner's opposition(8 May 2017) to Cyberdata Tech.'s motion to dismiss(29 December 2016), attached Exhibits, as well as relevant parts of filings by Atty. Nyombi, in District Court in 2018, with Exhibits.*

The U.S. Supreme Court in Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 held that Actions are "materially adverse" if they are "harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.". The opinion stated "An indefinite suspension without pay could well act as a deterrent to the filing of a discrimination complaint, even if the suspended employee eventually receives backpay." – Petitioner was indefinitely suspended on April 18 2016, by the SGT Inc. Dy. Program Manager (Bowling), who took Petitioner's CAC badge, after Bowling went to the Cyberdata Tech. Program Manager(Jenkins)'s room, when

Petitioner complained of retaliation, without indication of when Petitioner could resume working.

39. With reference to Petitioner's inability to log into Petitioner's Windows account on January 20, 2016, when Ms. Jenkins began smirking and snickering, as she also used to when Petitioner would limp (please see amended Complaint) and the six accusations(including in the PIP) leveled against Petitioner by Ms. Jenkins and Mr. Bowling, about things Petitioner never actually did, and repeated exogenous changes to source code being developed by the colored developers(including Petitioner) which they themselves never made, Petitioner requests to see Ray v. Henderson, 217 F.3d 1234(9th Cir. 2000) where the Ninth Circuit has held that a hostile work environment may be the basis for a retaliation claim under Title VII: "Ray was twice falsely charged with misconduct. He was accused, and then cleared, of opening a package. He was later accused, and then cleared, of knocking down a mailbox on his route. Also, a series of pranks were played on Ray during this time. For example, someone left a dog biscuit near Ray's work space. On another occasion, Ray found a ball bearing in his work space.". and Zelnik v. Fashion Inst, of Tech., 464 F.3d 217, 227 (2d Cir. 2006):

"ridicule was considered a part of a larger campaign of harassment which though trivial in detail may have been substantial in gross, and therefore was actionable.".

Petitioner draws kind attention to Petitioner's "INFORMAL BRIEFING" and "PETITIONER'S PETITION FOR REHEARING, ON INFORMAL BRIEFING" dt. 08/01/2019, to the Fourth Circuit Court.

40. Boyer-Liberto v. Fontainebleau Corp 786 F.3d 264 (2015), 4th Circuit, mentions how opposition activity, like complaints to/through an employer, is protected where

employee/s oppose/s "employment actions actually/believed unlawful under Title VII": "The employee will have a reasonable belief that a hostile environment is occurring if the isolated incident is physically threatening or humiliating.".

Petitioner reported at the earliest exogenous changes of code and development set-up seen only on colored developers' workstations, and the Dy. Program Manager (SGT Inc.) reacted with dislike, at the mention of a colored developer, while the Program Manager(Cyberdata Tech.) showed great irritation bordering on contempt and vituperated Petitioner. Only colored developers (Bernier, Okwara, Vepuri) had observations about the nature of work/criticized unsatisfactory development conditions.

To prove retaliation under § 704(a), a plaintiff doesn't have to prove that the employer had actually committed a discriminatory employment practice. The plaintiff only needs to show that he/she had reasonable belief that the employer was engaged in unlawful employment practices.

Please see Payne v. McLemore's Wholesale Retail Stores, 654 F.2d 1130, 1137 (5th Cir. 1981; employee's reasonable belief that employer was engaged in unlawful employment practices was sufficient to make a prima facie case of retaliation under Title VII). Please see Ross v. Communications Satellite Corp., 758 F.2d 355, 357, n.1 (4th Cir. 1985), where it was alleged that Plaintiff Ross had intimidated co-workers and made threats at work: "An underlying discrimination charge need not be meritorious for a plaintiff to prevail on a claim of retaliation for opposition to the perceived discrimination.". "[T]o show 'protected activity,'" in a Title VII retaliation case, the plaintiff need "only ... prove that he opposed an unlawful employment practice which he reasonably believed had occurred or was occurring." Peters v. Jenney, 327 F.3d 307, 320-21 (4th Cir. 2003). For the same reason, an employee who proceeds with a harassment complaint under employer's anti-harassment policy needn't prove all the legal elements

of a hostile work environment, to be protected from subsequent employer retaliation. Please also see authorities listed in Petitioner's letter to Court dated 19 Feb. 2019 about inaccurate descriptions in District Court, and in Petitioner's opposition, dated 8 May 2017, to Cyberdata Tech.'s initial motion to dismiss in District Court, dated 29 December 2016 (e. g. *Makaeff v. Trump Univ., LLC,* 736 F.3d 1180, 1189 (9th Cir. 2013) "to avoid summary judgment, the nonmovant need only designate specific facts showing that there is a genuine issue for trial.").

There was no other developer – all dark-complexioned developers were off project, only Petitioner remained – who got suggestions for improvement or a PIP.

In 2018, only all Caucasian Cyberdata contractors remained in NOAA/NCWCP.

The Caucasian program managers and development leads also remained in NOAA.

Atty. Nyombi didn't mention the above in his arguments – he had wrong information that Cyberdata wasn't participating in the contract.

41. Petitioner also respectfully states that "whether an employee is performing at a level that meets legitimate expectations is based on the employer's perception", or the "honest belief" of the employer, isn't on reasonable or common-sense basis ascertained when managers weren't the employers themselves, employer's hired managers gave work instructions that made no sense, and made many statements which had no real basis, as the Respondent employers' managers have.

Washington v. Garrett, 10 F.3d 1421, 1434 (9th Cir. 1993): "68. disbelief of the reasons put forward by the respondent (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show

intentional discrimination.".

In Slattery v. Swiss Reinsurance America Corp., 248 F.3d 87, 91-92 (2d Cir. 2001), the Court expressed concern that "performing satisfactorily" could be misconstrued to impose an improper higher prima facie burden on a plaintiff alleging discriminatory discharge. The Court thus clarified in Slattery that Plaintiff's prima facie showing that he was "qualified for the position" is a "minimal" burden that requires the plaintiff to show only that "he 'possesses the basic skills necessary for performance of [the] job.'" Id. at 91-92 (citation omitted). The Court emphasized that the qualification prong should not be interpreted so as to "shift onto the plaintiff an obligation to anticipate and disprove, in his prima facie case, the employer's proffer of a legitimate, non-discriminatory basis for its decision." Id. at 92. Rather, "especially where discharge is at issue and the employer has already hired the employee, the inference of minimal qualification is not difficult to draw." Id. (citation omitted).

42. Petitioner made requests to the Court of Appeals for the Fourth Circuit, which judged case no. 18-2319, because of mistakes in the evidence submitted by Respondents, in their deposition record, and declarations where things are mentioned which never actually happened, and in the way in which the evidence was quoted. Declarations given by the Program/Dy. Program Manager at Respondent companies, who didn't actually do technical work themselves, or originate the work tickets, aren't accurate. Petitioner requests that the records with the Maryland District and Fourth Circuit Courts may kindly be seen, because they contain relevant information.

43. Singfield v. Akron Metro. Housing Auth., 389 F.3d 555, 563 (6th Cir. 2004): finding three months lapse between the employee's protected act and the termination of his employment to be sufficient to establish causation at summary judgment stage (p. 12),

and Carter v. University of Toledo, 349 F. 3d 269, 274-75 (6th Cir. 2003) (p. 13), which states "A plaintiff may establish pretext by showing that the respondent's articulated legitimate, non-discriminatory reasons: (1) had no basis in fact; (2) was not the actual reason motivating the decision; or (3) was insufficient to justify the decision.".

The Respondents' Program Manager and Dy. Program Manager alleged things which aren't true, while Petitioner was working at NCWCP/NOAA, including that Petitioner was making Mr. Gilbert, NOAA Federal Software Designer, uncomfortable, which Mr. Gilbert, minutes later, said wasn't so, and gave some of these allegations as reasons in the PIP which was the step for discharging Petitioner, and in sworn Declarations, such as Petitioner arguing with unidentified subject matter experts (Mr. Gilbert was considered an expert in NOAA – no one was described as a Subject Matter Expert to Petitioner), was asking for changes in the expected system behavior, and inappropriately informed the Federal Manager, when Company Managers were away from office, that Petitioner couldn't be in for work, although Petitioner's co-workers, from Respondent companies, including Mr. Bruce Hebbard, told Petitioner they informed the Federal Manager(Mr. Plummer) in such instances. Petitioner was irreparably harmed by such allegations, submitted by Respondent companies, in inaccurate sworn Declarations, being accepted.

44. Petitioner informed both Mr. Bowling and Ms. Jacqueline McCoy of SGT Inc. that initial requirement for work Ticket 13560 (the task Petitioner was working on when Petitioner's work was suspended, had been developed by Petitioner and shown to Ms. Jenkins of Cyberdata Tech. by February 22 2016. The Miniature AWIPS screen exit view shown in the AWIPS exit dialog then(Atty. Nyombi submitted to District Court in 2018) was Changed during Review by Ms.

Jenkins on February 26 2019. *However, the change required additional technical information to complete because a SWT Interface class which hadn't till then been implemented, for this purpose, in the code, was to be implemented.*

Petitioner included email from 26 February 2016 ("SGT Inc. were aware of reworking of Ticket 13560" by 18 April 2018, dt. 25 April 2019) where Petitioner informed(reply wasn't received) there had been a problem with the way the code changes Petitioner had made for work Ticket 13560 worked following deployment of a recent release on Petitioner's workstation by a Cyber-data Tech. System Administrator (Gindhart), which Ms. Jenkins wanted before work could proceed. Petitioner repeated the information on April 18 2016, verbally complained of retaliation, and also informed Mr. Bowling and Ms. Jacqueline McCoy of SGT Inc. (Petitioner communicated the stage of work Ticket 13560 at each PIP meeting) that Petitioner had emailed, at 6:03 PM ET 3 March 2016, for technical information, which was being obtained, required to complete work Ticket 13560 to Mr. Stephen Gilbert, NOAA Federal Designer.

45. Frequent electrical work under the seat where Petitioner originally used to sit ceased once Petitioner wasn't working at NCWCP. Ada Lockleigh Quinn got a better seat.

46. Non-colored developers were given alternative work schedule and means to work remotely shortly after joining. Petitioner was ill since December 2015 – however he wasn't given and didn't have such means until nearly March 2016.

CONCLUSION

The District Court MSJ Order on 24 October 2018 is as different from their order denying MTD on 16 August 2017 as day is from night.

Petitioner seeks Certiorari because of significant inaccuracies and incompetence in records and proceedings so far, also reflected in some opinions, which considerably increased Petitioner's burden, while sustaining himself in employment more challenging than the one above. Technology professionals would be adversely affected by a ruling where Respondents claim technical investigation while no/inadequate investigation was done, Respondents produced no technical evidence and no Title VII procedure was in fact followed upon EEOC charges. **A clear standard isn't seen for the importance of adequate and exact technical evidence in employment discrimination disputes, where sabotage and trickery can be involved.** By their actions, NOAA and Department of Commerce resisted authorized release of technical information and artifacts for Federal Court and even misled Petitioner on applicable procedures. Ruling in favor of companies such as Respondents, and their management who harbor disparity and prejudice, do no technical work in areas they directly manage, can-not ensure effective deployment of equipment and infrastructure, or are wasteful, adds to employees' burden and predicament. Respondents' managers feigned ignorance of Petitioner's Physician' letters which were delivered through mail, facsimile and personally also. Rulings which effectively favor parties who disrespect, deride and jeer at dismissed employees legitimizes such behavior(Ada Lockleigh Quinn, Joshua Huber). Petitioner requests that District and Circuit Courts' records in the matter, which are difficult and expensive to send as numerous Appendices/Exhibits, may please be obtained. In Norris v. Alabama 294 U.S. 587 (1935), records were produced for Hon'ble Court which proved tampering

with Jackson County jury rolls.

On 6 Jan. 2016, USDOC email delivered in Petitioner's work Gmail account moved into the spam folder after CyberData Linux administrator Gindhart worked on Petitioner's workstation with the work email account open and the lab network. On 7 Jan. 2016 the invoice emails in one of Petitioner's webmail accounts, which Complainant briefly used through the work network, was delivered as spam, which their administrators said shouldn't happen and Mr. Bowling met Petitioner about the PIP immediately following delivery of these invoice emails. Petitioner's email, personal and social and professional networking accounts have never been normal since use at NOAA/NCWCP. In the present matter, adverse verdicts and motions against Petitioner were only when there were incidents and abnormalities in these accounts or in Petitioner's mobile and internet – presently continuing because of data breach at a former employer through bot-net leading to information theft and emailing of malware to those who worked there, even years ago. Favorable verdicts were on days when these accounts were in normal use – to the minute. Petitioner also twice received favorable verdicts elsewhere when Petitioner complained or initiated redressal – however there have been unfavorable verdicts also. Petitioner is familiar with such things in traffic and civic courts since the time Petitioner was notified of probable identity and information theft (2011) through internet.

Respectfully submitted

Truthfully,

-/s/-