19-8734 ORIGINAL

No.

In the Supreme Court of United States

18-2411

In re Ren Yuan Deng, Petitioner

v.

New York State Office of Mental Health, et. al.

On Petition for a Writ of Mandamus to the United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Did the district court deviation from procedural rule while there was overwhelming genuine issue of material fact disputed in the record granting the motion for summary judgment to Defendants?

2. Did the court of appeals err on its jurisdictional duty denied Petitioner's right as of appeal while the appeal was filed timely?

3. Did the court of appeals lawfully exercise of its prescribed jurisdiction affirming a decision below when the standard review has been seriously violated, as a matter of law?

LIST OF PARTIES & RELATED CASES

New York State Office of Mental Health ("OMH")
Michael Hogan: OMH Commissioner;
Lynn Heath: Director of OMH Human Resources Management
Barbara Forte : Director of Central Office Personnel of OMH
Paul Connelly : Assistance Director of Central Office Personnel of OMH
Molly Finnerty: Director of EBSIS Bureau of OMH
Emily Leckman-Westin: Director of Data Analysis Group of EBSIS Bureau

EBSIS: Evidence Based Services & Implementation Science.

RELATED CASES

- *Deng v. New York State Office of Mental Health, et, al.,* No. 18-2411, U.S. Court of Appeals for the Second Circuit. Summary Order entered Nov. 4, 2019

- *Deng v. New York State Office of Mental, et, al.,* No. 13-cv-6801, U.S. District Court for the Southern District of New York. Final Judgment entered on Feb. 28, 2018.

- *Deng v. New York State Office of Mental, et, al.,* No. 13-cv-6801, U.S. District Court for the Southern District of New York. Order entered on July 18, 2018.

- Deng v. New York State Office of Mental, et, al., No. 13-cv-6801, U.S. District Court for the Southern District of New York. Memorandum & Opinion for motion-to-dismiss entered on January 15, 2015.

- *Deng v. New York State Office of Mental Health* "Right-to-Sue" letter from EEOC, entered June 27, 2013

TABLE OF CONTENTS

APPENDICES

TABLE OF AUTHORITIES

Cases Page(s)

STATUTES

Federal Statutes:

STATE:

RULES:

PETITION FOR AN EXTRAORDINARY WRIT

Petitioner Ren Yuan Deng respectfully petitions for a writ of mandamus to correct the errors of law of the United States Court of Appeals for the Second Circuit as well as the error of law of the District Court for the Southern District New York.

OPINION BELOW

The Decision of the Court of Appeals has been reported at 783 Fed. Appx. 72 *; 2019 U.S. App. LEXIS 32869 **; 2019 WL 5688196 and is reproduced as Appendix **A.** The Decision of the District Court, dated February 28, 2018 is unreported. It is reproduced as Appendix **B.** The Order of the District Court, dated July 18, 2018, has been reported at 2018 U.S. Dist. LEXIS 121126 and is reproduced as Appendix **C.** The Decision of the District Court on the motion-to-dismiss has been reported at 2015 U.S. Dist. LEXIS 4926 *; 2015 WL 221046 and is reproduced as Appendix **D**

JURISDICTION

Petitioner found judicial errors and informed the appellate court on January 2, 2020; a petition for an extraordinary writ was filed on March 25, 2020. This Court has jurisdiction pursuant to 28 U. S. C. § 1651(a).

RELEVANT FEDERAL RULES

Part (d) is commonly referred to as Rule 60's "savings clause" and states: "This rule does not limit a court's power to entertain an independent action to relieve a party from a judgment, order, or proceeding." *See, Hazel-Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944)

STATEMENT OF THE CASE

I. INTRODUCTION OF THE CASE

The final judgment was an error of law deviation from the procedural rule granting Defendants summary judgment for which there were overwhelming genuine issues of material fact disputed, resulting

from Defendants' counsel having engaged in improper or unsound litigation tactics. These tactics directed to hamper the judicial machinery, caused the district court not to perform its impartial task of adjudging cases in the usual manner and ultimately caused Petitioner to lose its meritorious case, with substantial prejudices to Petitioner.

The appellate court's summary order erred in two respects: denying Petitioner's appeal as of right; affirmance of an erroneous decisions below, for which the standard of review has been violated as a matter of law, resulting in a complete miscarriage of justice.

II. PROCEDURAL BACKGROUND

In 2010, Petitioner filed a complaint of ongoing discrimination and retaliation on the basis of race and national origin to the U.S. Equal Employment Opportunity Commission. ("EEOC") See: (App. F, #140: Heath Ex. 14) EEOC invited a "conciliation" proceeding. (Deng Ex. 11, p9 2nd email) The efforts proved unsuccessful and Petitioner received a right-to-sue letter. (App. G)

Petitioner filed lawsuit in the U.S. District Court for Southern District of New York on September 23, 2013. The Court issued "Mediation Reference Order." (App. F, #5) Five claims were granted in the motion-to-dismiss; Defendants' qualified immunities denied. (App. F, #41) Defendants' prior counsel filed affidavit in a bad faith. (App. F, #64)

Defendants' prior counsel filed affidavit in a bad faith. (App. F, #64) From June 2015-March 2016, Petitioner filed motions to compel discovery and objection of the client-lawyer privilege. (App. F, #70-108); Petitioner objected to Defendants file motion for summary judgment because the issues of witness credibility and factual disputed over material matters can only be resolved at trial. (App. F, #109-110)

III. MOTION FOR SUMMARY JUDGMENT PROCEEDINGS

A. In April 2017, Defendants moved to file a motion for summary judgment. (App. F, #135-146) (Will be discussed at 16 after **B.)**

B. Petitioner filed an opposition to Defendants' motion for summary judgment (App. F, #150-152, #182) and established her own Local 56.1 statement of undisputed material facts for five claims (App. F, #150, (Pl's rule 56.1 ¶115 – 283)) **without contradiction,** See: (App. F, #155-1) that she suffered from intentional race discrimination of Title VII and Equal Protection Clause. (App. F, #155-1, Pl's rule 56.1 ¶115-209, 270-275); First Amendment Retaliation (*Id.* ¶210-246); Family and Medical leave Action ("FMLA") Retaliation (*Id.* ¶247-258); and New York Labor Law § 193 Violation (*Id.* ¶259-260) Petitioner also established concrete evidence **without contradiction** on the titles of: "Challenging Defendants' credibility" (*Id.* ¶261-265); "Creation of Fraudulent Record Like Criminal Running from Scene" (*Id.* ¶266-269); "Discriminatory biases against

minority had become institutionalized as an integral part of the employment process" (*Id.* ¶270-278); and "Defendants conscious know the law choose to discrimination anyway" (*Id.* ¶279-283)

Petitioner's Five Substantive Claims:

(I & II) Title VII & Equal Protection Clause of intentional discrimination
See: (App. F, #155-1, Pl's 56.1 ¶115-209, 270-275)

(A). EBSIS Bureaus' Pattern or practice of race discrimination

Evidence in the record demonstrated that Bureau Director Finnerty had a pattern or practice of promoting leadership by race: the director, project manager, team leader position or title were exclusively for the white staff, disproportionately excluded minority staff that was not job related. This pattern and practice of race discrimination had been un-remedied for the 12 years that Petitioner worked at OMH. (Deng Decl., 37, 176 (a-l)

(B). Race discrimination was a standard operating procedure

(1). Intentional discrimination against Petitioner (Asian):

(a) 13th and 14th Amendments violation:

Evidence in the record demonstrated that Defendant Finnerty colluded with a group of white Executive employees persistently in *two years* to coerce Petitioner (Asian) under Leckman's (white) supervision by all means: resignation, pull out from the project, revoked system access,

notice of discipline, administrative action, counseling memo, directive, economic harm, and unsatisfactory performance evaluation, etc., See: (Deng Decls., 40-51, 129); (Deng Ex. 29, p1) disregarded Petitioner's earnest grievance. See: (Finnerty Ex. 7, p2); (Heath Ex. 4); (Deng Decl., 17, 80, 83, 86, 94-99) caused her suffering from the badges and the incidents of slavery, in violation of 13rd Amendment violation. With malice, Defendants intensively burst 13 bad facts into Petitioner's unblemished Personal folder, and remaining after termination to foreclose her employment opportunity; (Deng Decl., 129) setting up a phony work assignment order; (Deng Decl., 82, 130-153) trumped up with "probable cause" arbitrarily invoked emergency procedure after three months of the phony work assignment order unconstitutionally forced Petitioner out of OMH at the interrogation in violation of Petitioner's property and liberty rights. See: (Deng Decl., 154-56) Following by a biased, tainted and fraudulent arbitration hearing to terminate Petitioner who was a genuine research scientist, and no disciplinary history. See: (Deng Decl., 3-9, 158-163, 165-67, 176 (c)(e-i)) Defendants Heath and Finnerty shifted explanation of Petitioner's termination. (Deng Decl., 164)

(b) Fourth Amendment Violation. See: *Mancusi v. DeForte*

Evidence in the record demonstrated that, without pre-notice or legitimate reason, Defendant Leckman abused her supervisory power and

colluded with IT Personnel extensively to intrude, search, seize, delete, or damage her 10 years of program and data files in her computer. Nearly all the folders were affected severely. "Purge immediately" was marked on some program files. Prohibiting Petitioner to work on her own created research program, a message would pop up, "...It is already opened exclusively by another user, or you need permission to view its data." (Deng Decl., 123)

(c) Garrity Right & Fifth Amendment violation

At interrogation, interrogator Honikel threatened a charge of "insubordination" if Petitioner does not answer questions. Defendants, used the compelled statement to terminate Petitioner at arbitration ignored Petitioner's objection "it was setup" at interrogation. See: (Deng Ex. 32, "S-2" at 21); (Deng Decl., 153)

(2). Intention discrimination against the other minority employees

(a) Discriminatory failure of promoting Shao (Asian)

Evidence in the record demonstrated that Leckman (white) was elevated promotion over Shao (Asian) to the Research Scientist IV. Leckman was research scientist II, Shao was Research Scientist III, and had six years more seniority than Leckman. See: (Deng Decls., 16, 176 (a))

(b) Discriminatory assigned inexperienced Leckman (white) to supervise more seniority and more experienced Chen (Asian) in covering

Leckman inexperience related to job in terms of detrimental Chen's opportunity for professional growth at OMH. (Deng Decl., 34, 176(c))

(c) Commissioner Hogan misused his state position and power, discriminatorily forced out Emy Murphy, (minority) Chief of OMH Diversity Management Bureau from OMH because she supported, and protected employee's rights and recklessly promoted Nunez Rodriguez to replace Murphy, designed Rodriguez to play conflict roles that she investigated Petitioner's internal complaint tasked with defending OMH against Petitioner's EEOC charge. Rodriguez placed falsehood statement into the agency's investigatory record. Creation of Fraudulent Record – Like a Criminal Running from Scene. See: (Deng Decls., 52, 78, 99, 116, 148, 188-189); (Deng Ex. 11, at 9, 2nd email)

(C). Motivated by race, In spite of higher qualification than the similarly situated white counterparts, decision-maker Finnerty intentionally failed to promote Petitioner (Asian) in her 12-year tenure at OMH See Petitioner's qualification: (Deng Decl. 3, 8);(App. F, #182)→(Deng Re-Ex. 3)

(a). In March 2004, without job posting, Tom White (white) was secretly promoted to the Research Scientist V. (Deng Decl., #10, 13);

(b). In March 2009, without job posting, inexperienced Leckman (white) was elevated again to the Research Scientist V before her became a permanent employee. (Deng Decl., 20, 25-33); (Deng Decl., 37 "Table 3")

(c). In May 2010, without job posting, Finnerty privately gave the

Bureau's title of Research Scientist V to promote Ms. Radigan who was in another Bureau. (Deng Decl. 36)

(D). With racial animus, Finnerty treated Petitioner as an intellectual slave, or personal property setup to take her research credit and accused her incompetence.

(a). After Petitioner had accomplished an innovated PSYCKES Pharmacy project that was a breakthrough in the mental health field. (App. F. #182 –> Re-Ex 3 at 2) Finnerty demanded a hard copy of Petitioner's programming coding, assigned Tom White (white) as her supervisor, then without personal review, accusing Petitioner "performance is seriously lacking" to extend an additional six-month to her three-year standard probationary period in lieu of termination. Tom White took Petitioner's award credit of the innovated PSYCKES Pharmacy program, and was promoted to the Research Scientist V afterward, not before assigned as Petitioner's supervisor with whom he shared the same Research Scientist IV. See: (Deng Ex. 3, at 1-2, 43-44) (Deng Decl., 5, 8 10-13)

(b). With discriminatory animus, Bureau Director Finnerty assigned Myrhol-Clark, (white) M.S. an entry-level of Research Scientist II as Petitioner's supervisor; Petitioner was M.D., M.S. Research Scientist IV & Biostatistician. (Deng Decl., 3) to take Petitioner's research credit on the OMH initial Web Reporting project for which Petitioner received compliment from OMH committee; (Myrhol-Clark was not working on the

project.) and accused her had difficulty delivery work product.

See: Finnerty's written deposition (Deng Ex. 14, p2, p4):

(i) Q: Did Britt Myrhol-Clark, Research Scientist 2 ever supervises Dr. Deng [Petitioner]?

A: "... for a period of time Dr. Deng [Petitioner] was assigned to support a project directed by Ms. Myrhol-Clark. *As the project lead Ms. Myrhol-Clark would define the analyses that needed to be performed, reviewed results for quality and accuracy, and provided feedback or direction.* However, Ms. Myrhol-Clark was never Dr. Deng's administrative supervisor." (emphasis added)

(ii) Q: Was Dr. Deng [Petitioner] not allowed present at staff meetings and do you recall if she asked if she could?

A: "...As a biostatistician [Petitioner], ... It would not be an expectation that Dr. Deng [Petitioner] would report out on her work, because her work was to provide information and support to the project leads. ...it would not have been appropriate for Dr. Deng to present her work at a staff meeting..."

(iii) Finnerty also directly lie to the court in answering to the Amended complaint. ¶17, 18, which related working under Myrhol-Clark:

Quotation of Finnerty's deposition: "... plaintiff [Petitioner] had difficulty delivering work product and upon information and belief that plaintiff was advised of the need to have her work reviewed and approved." See: (Deng Decl., 179)

(c). With discriminatory animus, Finnerty colluded with a group white Defendants of OMH Personnel: Heath, Forte and Connelly to coerce Petitioner (Asia) under Leckman's (white) supervision after she had promoted to the research scientist V, by all means. And setting up to unconstitutionally terminates Petitioner. The evidence was set forth *supra:* at B.1.(a) And maliciously cutoff her health insurance regardless

that Petitioner had worked over ten years for State. (Deng Decl., 172).

(E). Finnerty's pattern or practice of promoting leaders by race not qualification had wasted millions of dollars of government funding See: (Finnerty Ex. 34. P7-9 "government funding")

(a). Leckman's irrational promotions violated law

Leckman's promotions in a role from Research Scientist II to Research Scientist V before she became a permanent employee in violation of "the policy of the "GOER"; Civil Service Section 52(8); and 29 U.S. Code § 152 (NLRA.) See: (Deng Decl., 20, 21-23)

(b). Leckman had no job-related work experience. See: (Deng Decls., 25-33) Jane Meissner, Manager of OMH Employee Relation wrote to Heath, "... but she [Leckman] is inexperienced." See: (Deng Decl., 24)

(i) Finnerty promoted inexperienced Leckman to be the Director of PSYCKES Medicaid project, a state funded project in 2007; in 2011 the researchers in CAC expert panel found that every report in the project was statistical significance, but no data. They requested to review the SAS code of the project; Leckman refused to send the code to be reviewed by Statistical Director Carole Siegel. (Deng Ex. 16 at 12). See: (Deng Decl., 17, 27-28)

(ii) In 2007, Petitioner was also assigned to work on the PSYCKES Medicaid project under Leckman. (Deng Decl., 17) Leckman intentionally created a "decoy" folder (App. F, #182)→ (Deng Re-Ex 5 #1) to prohibit

Petitioner working on the project. Eight months later, with racial animus, Finnerty removed Petitioner from the project. See: (Deng Decl., 17, 180)

(iii) Finnerty's written deposition was "**Direct Evidence,**" on which relevance to race discrimination, she wrote subjectively: "... Emily [Leckman] is the only research scientist on the data analysis team with a PHD. Further Emily [Leckman] has an ability to work flexible with a variety of people, and has excellent organizational and social skills. *Louann [Petitioner] dose not have experience working successfully across a range of groups,* and has struggled to work as a member of a team. *For these and other reasons, the team leader role would not be a good fit for Louann [Petitioner].*" See: (App. F, #182)→(Deng Re-Ex. 2)

> ("testimony that supervisor twice said he would not promote plaintiff to position in question is direct evidence of discriminatory animus...") *Laderach v. U-Haul of North- western Ohio,* 207 F.3d 825, 829 (6th Cir. 2000)

(iv). As supervisor, Leckman evaluated Petitioner's research reports "weird" but not tried to figure-out how to improve the project. See: (Deng Decl., 32) (Leckman Ex. 20, p2, lines 5-8) Despite Leckman had no job related experience, Finnerty permitted her to have a second job at CUNY for over 10 years. She left early at 4:30PM. The Bureau's working hour was 9am-5pm. See: (Deng Decl., 35) Leckman's declaration indicated that her second job was from "2007 – Present." See: (Leckman Ex. 57, at 1 (DENG 804)); (App. F, #182)→ (Deng Re-Ex. 7)

Today's technology was over one thousand mills per day, without experience related to the job, only relied on taking research credit from the minorities, could she be survived in another company?

(F) With racial animus, Defendants Heath, Finnerty, Leckman and the unethical Tom White served as the state witnesses at a biased, fraud and tainted arbitration hearing set up to terminate Petitioner

Evidence in the record demonstrated that with actual malicious, Defendant Heath perpetrated a defamatory email sent to a group of OMH managers (Deng Decls., 119-121) citing the fake performance review made by conspiracy of Finnerty & Tom White that had been rescinded in 2004. See: (Deng Ex. 3, p1-12);(Deng Decl., 10-12) to stigmatize Petitioner's professional reputation and good name. And submitted it with the fake performance evaluation as the state evidence S25, S33 along with the 13 bad facts in Petitioner's personal folder and the compelling statement at interrogation. (Deng Decl., 129, 154) Then serving along with Finnerty, Leckman, and Tom White as the state witnesses falsely charging Petitioner incompetence, misconduct, and insubordination at a biased, fraud, and tainted arbitration hearing to terminate Petitioner who was a genuine research scientist, made invaluable contribution to the OMH. (emphasis added) See: (Deng Decl., 3, 5, 8, 158-69)

(III) First Amendment Retaliation (App. F, #155-1, *Id.* ¶210-246)

Evidence in the record demonstrated that two days after receiving the Notice of Petitioner's EEOC charge, motivated in retaliation,

Defendant Heath colluded with the other Defendants to "build a case" against Petitioner (Deng Decl., 66) and to prohibit other reasonable employee to take the statutory protective activity, with a state of mind of malice, callous, fraud, and deliberate indifference.

Adverse employment actions:

(1) Retaliatory revoked Petitioner's OMH system access four-month after filing race discrimination complaint to the Personnel; (Deng Decl., 45) (2) Retaliatorily Barred Petitioner to attend the Bureau staff meetings to render her no information to do her research job after receiving the notice of her EEOC charge; (Deng Decl., 68) (3) Petitioner needed quiet space to work, Defendants retaliatory moved her from a private office to a loud workstation in a hallway by a door with people in or out to broke her strain of thoughts; (Deng Decl., 69-72) (4) Intentionally retaliatorily assigned Petitioner a disproportionately heaving loaded of "Medication Adherence" project, an unsolved research topic in the research filed over thirty years. (Deng Decl., 73) Threatening charge of insubordination if Petitioner connected with other individuals about the project. Retaliatory extensively undermined Petitioner work performance; (Deng Decl., 33, 74-77); (Deng Ex. 16, DENG 1559) (5) Commissioner Hogan rejected Petitioner's plea of not moving her office near Finnerty because she had experienced wanton retaliation after filing the EEOC charge.. Hogan's

rejection with deliberate indifference put Petitioner into Finnerty's hands for extensive retaliation. (Deng Decl., 186)(Deng Ex. 43 "Medical record") (6) Leckman retaliatory prohibited Petitioner to attend mandatory job training resulted in Petitioner completely lost accessing database. (Deng Decl., 82) (7) Finnerty and Leckman rotate retaliatory harassed Petitioner in front of employees to undermine her self-esteem and caused emotional distress. (Deng Decl., 80, 84, 86, 93) (8) Personnel repeatedly retaliatory delivered the same interrogation letter six times in a week caused Petitioner collapsing (Deng Decl., 81) (9) By all the means to coerce Petitioner submission to Leckman's unlawful supervision caused her suffering from the badges and the incidents of slavery of 13rd Amendment violation. (Deng Decl., 79, 84, 87, 93) (10) Intentionally daily harassing-email and call for months caused Petitioner nerves broke down, well-being deteriorated rapidly. And continuing unabatedly after multiple complaints (Deng Decl., 94-99) (11) Retaliatory deprived Petitioner's Ten-year continuous service award payment. (Deng Decl., 108)

(IV) FMLA Retaliation (App. F, #155-1, *Id.* ¶247-258)

Evidence in the record demonstrated that:

(1) During the period of Petitioner's FMLA leave, Defendants Heath and Finnerty expressly desired Petitioner to leave. (Deng Decl., 127-28)

(2) During the period of Petitioner's FMLA leave, Defendants imposed

oppressive and unsupported 2nd Notice Of Discipline, and placed into Petitioner's personal file. (Deng Decl., 100)

(3) During the period of Petitioner's FMLA leave, Defendants Forte and Connelly placed two oppressive reprimands into Petitioner's personal file (Deng Decl., 129(6)(7));

(2) Two day after returning from FMLA leave Bureau Director Finnerty established a new Bureau attendance policy and a counseling memo to coerce Petitioner submission to Leckman's unlawful supervision and as a mean to deduct Petitioner's wage: $4,819.62. (Finnerty Ex. 25); (Deng Ex. 29, at 1)

(3) Petitioner timely reported her unforeseeable leave to the Secretary following by the longstanding Bureau protocol for over 10 years that was recognized by Central Office Personnel, Defendants Leckman and Finnerty timely received Petitioner's unforeseeable leaves. (Deng Decls. 111-117) (Deng Ex. 10, at 16, 2nd par. (DENG 1411)

(4). The other colleagues of the Office did not incur wage deduction. They did as Petitioner did to report unforeseeable leave to secretary. (Deng Decl. 118)

(5) There is an <u>especially compelling evidence of pretext</u> that the Decisionmaker Finnerty herself wantonly violation of OMH Attendance policy namely she did not come to work at her office from April – December

2011 and often brought her infant to work. (Deng Decl., 105)

Here is Finnerty's written disposition (Deng Ex. 14)

Q: Have you brought you child into work?

A: [Finnerty acknowledged that] she brought her child into work and was unaware that this was against OMH policy.

(V) New York labor law § 193 Retaliation (App. F, #155-1, *Id.* ¶259-260)

Evidence in the record demonstrated that motivated in retaliation, Defendants Heath, Finnerty, Forte, Connelly and Leckman intentionally imposed a counseling memo immediately after Petitioner's FMLA return as a mean to deduct Petitioner wage **$4,819.62** without agreement to incur her economic harm. (Finnerty Ex. 25); (Deng Ex. 29, p1)

Defendants had no contradiction to Petitioner's local rule 56.1 Statement of undisputed facts for the five substantive claims:

Defendants' counsel stated: "Defendants are unable to provide specific factual responses to many of the argumentative and unsupported statements contained in Plaintiff's Statement." (App. F, #155-1, at 1)

DEFENDANTS' COUNSEL AS A COURT'S OFFICER WILLFULLY COMMITTED FRAUD UPON ON THE COURT DIRECTED TO HAMPER THE JUDICIAL MACHINARY VIOLATION OF RULE 60 SAVING CLAUSE, RULE 11 AND RULES OF PROFESSIONAL:

A. With bad faith, perpetrated fraud upon the court directly hampered the judicial machinery ultimately caused Petitioner meritorious case to loss (App. F, #135-146, #155)

(I) Defendants' declaration, and evidence in support motion for summary judgment were false, irrelevant, inconsistency or no personal knowledge, must be inadmissible See. Fed. R. Evid. 402

(1). Finnerty's false declarations: (App. F, #138)

a. Finnerty's decl., #6 stating, "...I agreed to permit Dr. Deng to work under my supervision on the condition that [Petitioner's] probation period would be extended by six months, since we had not worked together for some time and since her last supervisor recommended termination." Finnerty's declaration was false directly lie to the court and conflicted with the evidence in the record. In fact, Petitioner's supervisor was Finnerty. Tom White was pretense. The evidence in the record demonstrated that Finnerty signed Petitioner's timesheet in 2003-2004; and issued Petitioner's performance evaluation in 2002. (Deng Decl., 184); (Deng Ex. 1, DENG 003-005)

b. Finnerty Decl., #55 was false and directly lies to the court. In order to cover liability of race discrimination, she removed Myrhol Britt and Edith Kealey (whites) from the coauthor list in a paper, titled, "Scales to evaluate quality of medication..." See: (Finnerty Ex. 34, at 11, item 14); see the original paper. See: (App. F, #182) → (Deng Re-Ex 1)

c. In Finnerty Decl., #55, Chen (Asian) was counted twice in a conference. Finnery trickily wrote Tochterman as "Tochterman A" on #24;

"Zanger Tochterman" on #25. See: (Finnerty Ex. 34, at 7) The same tricky was done on #30 & #31 on the same page.

(2). Leckman's declarations are inconsistent (App. F, #139)

a. Leckman Decl., #14, Leckman stated, "I ... reassigned... Qingxian Chen, the Deputy Director of Data Analysis during the time period.... When I met with Dr. Deng on October 27. 2010..." It was inconsistency with Declaration #62, "Since approximately 2012, Ms. Chen has been the Deputy Director of Data Analysis for EBSIS." Besides, both Leckman's declarations were testimony inadmissible. (emphasis added)

b. Declaration inconsistent with the email:

Leckman Decl., #70, "...I assigned Dr. Deng to that project [Medication Adherence] in late October 2010." It conflicted with an email she sent to Petitioner, " ... the [Medication] Adherence .. was .. the large CAC advisory group endorsed, it has not yet become a target for discussion at any of the CAC data analysis sub-committee meetings we have held to date." (Deng Ex. 16, DENG 1559)

c. Declaration was testimony and inconsistent with the evidence in the record.

Leckman Decl., #59, "I have never taken credit for work done by a minority colleague and have never attempted to impede a minority colleague's job performance." Which conflicting with the evidence in the

record: (Deng Decl., 58, 68, 73-77, 82, 93-96, 117-18, 122-123, 144-45, 181); (Deng Ex. 16, p8-19)

(3). Forte's declarations were weaknesses, implausibility, and inconsistency. (App. F, #141)

Forte Decl., #9 stated, "unable to report for work due to illness... must personally notify your supervisor or a person designated by your supervisor." In Forte Decls., 13 & 14, it stated, "Sick leave is a benefit available to employees to protect them.....while the use of sick leave does not always require prior supervisor approval." See: (Forte Ex. 4, at 5, last par., & at 6, 1st par.)

(4). Heath's declaration denying her liability was conflicted with the evidence in the record (App. F, #140)

a. Heath Decl., #22: "I have never taken any action with respect to Dr. Deng that was motivated by Dr. Deng's race or national origin. Nor have I ever taken any action with respect to Dr. Deng in retaliation for her filing an EEOC charge or taking leave pursuant to the Family and Medical Leave Act... I have never authorized or ratified discrimination or harassment by any OMH employee or officer." without citation or evidence. And conflicted with the evidence in the record. See (Deng Decl., 176 (i), 66, 130-32, 134-35, 137, 139, 146, 149)(Hogan Ex. 4, 8, 9)

b. Heath Decl., #29: "I had no personal involvement in any issues regarding Dr. Deng's access to OMH servers after her access was restored

in November 2010." This was a clever lying directed to the court. Heath decided to reduce Petitioner's access before Petitioner's system had restoration. See (Deng Decl., 169)

(5). Connelly's false declaration in deny his liability (App. F. #142)

Connelly Decl., #8 declares without citation: "Dr. Deng did not state during the July 28 meeting that she believed she had been discriminated against on the basis of her race or national origin." His declaration without citation was false. (i) Petitioner (Asian) had complained that the hostile work environment that Finnerty carried on was unbearable in coercing her under Leckman's (white) supervision, directly caused her suffering from distress and physical harm. See: (Connelly Decl., 7) (ii) Finnerty's probative emails of disparate treatment in Petitioner's archive folders over the years were being spoliation immediately after Petitioner complained to Personnel. (Deng Decl., 46) (iii) Connelly told Petitioner, essentially, "if next time this happens, you report to us," when hearing that Finnerty told Petitioner, "Why don't you keep the blink up when she is in the room; and put the blink down when she is not in the room," in partial to Hackethal (white) who insisted not to put down the blink because she liked to enjoyed a river view, however the sunshine made Petitioner unable to see her computer screen. Hackethal attempted a fight, saying, "You are in America you need to know how to deal with Americans." (Deng Decl., 176 (f)) (iv)

In the meeting, Petitioner clearly stated, "I am being treated unequally because I am Asian American." At end, Connelly told Petitioner, "We do investigation." (App. F, #136 at footnote 11)

(6). Hogan's false declaration. (App. F, #143)

Hogan Decl., #10, "On October 28, 2011, I also received an email from Lynn Heath, the OMH Director of Human Resources Management, in which she stated that her department was working with Dr. Deng in an attempt to resolve Dr. Deng's issues." The declaration was false. Hogan's deliberate indifference to Defendants' mistreatment plan was displayed again in about two years after Petitioner filed the EEOC complaint in violation of supervisor liability rules of 2, 3, 4, 5. Rule 2. After being informed of the violation failed to remedy; (Hogan Ex. 1-9); Rule 3. Creating a policy or custom of persistent, widespread constitutional violation and allowed it to continue; (Deng Decl., 104, 187-89); Rule 4. Grossly negligent in supervising subordinates who committed the wrongful acts (Deng Decl., 50, 90-91, 97-98). Rule 5. Exhibiting deliberate indifference (Deng Decl., 97-98, 186)(Hogan Ex. 1-9) As a guru in the mental Health field, Hogan may not argue that this type of practice was to produce mental illness patient rather than fulfilling of OMH's mission. (Deng Ex. 43 "Medical record")

(7). Prochera of Central Office Personnel (App. F, #144)

During the litigation period, Prochera advocated the misconduct of discrimination and retaliation with Defendants as a group against Petitioner; and awarded promotion to associate director. See, (Prochera Ex. 3); (Deng Decl., 47, 195)

(8) David B. Harding was IT Personnel (App. F. #145)

Harding made a great effort to unconditionally assist Defendants by entering Petitioner's computer extensively damaging her networking, cutting off her system access, causing spoliation of Finnerty's probative emails from Petitioner's archive email folder. (Heath Ex. 10); (Deng Decls., 46, 123, 145(3), 156)

(9). Ana Tochlerman, unqualified witness (App. F, #146)

To cover Finnerty's misconduct of retaliatory actions to revoke Petitioner's system access for 4 months after complaining race discrimination to the Personnel. (Deng Decl., 45) With bad faith Defendants Counsel knowingly submitted Tochlerman as a witness to the court to cover Finnerty's misconduct and knew that Tochlerman did not have personal knowledge and her declaration failed to establish an evidentiary foundation for the admission of exhibit relied on in the motion. For instance, on her declaration, item 6, she stated, ""...I no longer remember the specific details of Ms. Miracle's report to me." On item 7, she stated, " I do not recall the precise date... " (Deng Decl., 49)

But on the Counsel's legal argument, (App. F, #136 at 19) he directly lie to the court, asserted, "It is further undisputed that, on or around July 28, 2010, Ms. Zanger [Tochterman] informed Finnerty about a concern that Plaintiff had potentially been accessing confidential data unrelated to her Assignment." Finnerty ¶27; Tochterman Decl., ¶7."

See: (Deng Decl., 49-50)

His misstatement contradicted with the evidence in the record: "It is an ACT file ... which has no protected client information in it." See (Deng Ex. 11, p1, second email)

(II) With bad faith, submitting the Fabricated evidence, & invalid evidence directly lie to the court

(1). The 3rd NOD submitted to the court had concealed Petitioner's "Response Statement," which Petitioner requested as part of the NOD file. (Deng Decl., 107)

(2). The 4th NOD's cover page had been fabricated The replaced the "New" cover page falsely made up that Defendants had given Petitioner 14-day to grieve the instant discipline, intent to cover-up Defendants arbitrarily invoked emergency procedure at the end of the interrogation unconstitutionally removal of Petitioner from OMH. See: (Deng Decl., 161)

Note: Petitioner had pointed out the falsified 3rd & 4th NODs at Motion-to-Dismiss. (App. F, #37 at 18, Exhibit 7, 8, and att. 1st, 2nd) The counsel re-submitting them again in motion for summary judgment with bad faith to deny Petitioner's cause of action.

(3). The 4th NOD (instant NOD) was "invalid," because the past three NODs cited in supporting of termination suspension were never adjudicated. See (Deng Decl., 154); (Heath Decl., 24)

(III) With bad faith, wantonly omission of extensive critical evidence to avoid Defendants' liability

The counsel intentionally omitted the entirety of the critical material facts of Title VII claim. See the comparison of Defendants' motion of local 56.1 statement versus Petitioner's motion of local 56.1 statement: (App. F, #135) v. (App. F, #155-1, Id. ¶115-164); omitted the un-posted job promotion. (App. F, #56, #60, par.30); omitted the Fourth, Fifth, Fourteenth Amendments violation; omitted the 13 bad facts papered into Petitioner's personnel file and remaining after termination to foreclose her future employment opportunity; omitted the fake assignment order of terminating Petitioner; the invalid instant discipline; the tainted arbitration hearing, and Heath and Finnerty shifting explanation of Petitioner's termination, etc. See: (Deng Decls., 123, 129, 145, 153-154, 158-167); (Heath Decl., 24)

(IV) Contempt of court, reckless denied all court's prior ruling, regardless the First Amendment Retaliation and denied Defendant's qualified immunity are the questions of law decided by the court

Quotation of Defendants' "Table of Contents": (App. F, #136)

ARGUMENT

I. PLAINTIFF HAS FAILED TO ESTABLISH A CLAIM FROM INTENTIONAL DISCRIMINATION

A. No Adverse Employment action

B. No inference of Discrimination intent

C. Legitimate Reasons for Alleged Adverse Actions

D. No Personal Involvement by Leckman-Westin or Heath

II. PLAINTIFF HAS FAILED TO ESTABLISH A FIRST AMENDMENT RETALIATION CLAIM

A. Plaintiff's EEOC Charge Did Not Address a Matter of Public Concern

B. The Alleged Acts of Retaliation Were Not Adverse Employment Action Causally Connected to the EEOC Charge

C. Heath, Forte, Connelly and Hogan Had No Personal Involvement and All Defendants Have Qualified Immunity

III. PLAINTIFF HAS FAILED TO ESTABLISH AN FMLA RETALITION CLAIM

A. Plaintiff Received Full Pay for the Entirely of Her FMLA Leave

B. Plaintiff Was Not Paid For Certain Days She Was Absent From Work Without Approval in June-September 2012

IV. PLAINTIFF'S NEW YORK LABOR LAW CLAIM FAILS BECAUSE DEFENDANTS DID NOT DEDUCT ANY EARNED WAGES

ARGUMENT (App. F, #155)

I. THE OPPOSITION CONFIRMS THAT THERE IS NO EVIDENCE OF DISPARATE TREATMET.

II. THE OPPOSITION CONFIRMS NO FIRST AMENDMENT RETALIATION

III. THE OPPOSITION CONFIRMS NO FMLA RETALIATION

IV. THE OPPOSITION CONFIRMS NO NEW YORK LABOR LAW VIOLATION

The First Amendment Retaliation and Defendants' qualified immunity were questions of law to be decided by the court. But the counsel arbitrarily, capriciously argued: *"Plaintiffs EEOC charge did not address a matter of public concern"; "Heath, Forte, Connelly, and Hogan had no personal involvement and all Defendants have Qualified Immunity."; "Finnerty had no personal involvement in Plaintiffs request for access to additional data in January 2011 - in the event that the Court dismisses the other alleged retaliatory actions but permits that one to survive, Finnerty should be dismissed for lack of personal involvement. Finnerty Decl., 62. Likewise, Leckman-Westin had no personal involvement in determining who was invited to PSYCKES Team Meetings, Leckman-Westin Decl. 68, and should be dismissed in the event that claim alone were to survive."* See: (App. F, #136 at 22, 29, footnote 18)). See (App. D, "court's prior ruling on "motion-to-dismiss")

(V) With bad faith knowingly set improper liabilities to the OMH Policymaker and Personnel managers in denying their liability

With bad faith, the counsel distorted Petitioner's response to the motion lie to the court: "Plaintiff also concedes that Forte, Connelly, and Hogan had no personal involvement in any of these three alleged adverse actions. 56.1 Resp. ¶¶ 112-114." (emphasis added) See: (App. F, #155 at 9)

The counsel improperly set the liabilities to OMH Policymaker and

the Personnel managers directly dishonest to the court. See the quotation:

112. Leckman-Westin, Heath, Forte, Connelly, and Hogan had no personal involvement in *determining who was invited to the PSYCKES Team Meetings.* Leckman-Westin Decl. ¶ 66; Heath Decl., ¶ 26; Forte Decl. ¶ 29; Connelly Decl. ¶ 18; Hogan Decl. ¶ 17.

113. Finnerty, Heath, Forte, Connelly, and Hogan had no personal involvement *in responding to Plaintiffs request for access to additional OMH confidential data in January 2011.* Finnerty Decl. ¶ 62; Heath Deed. ¶ 29; Forte Decl. ¶ 30; Connelly Decl. ¶ 19; Hogan Decl. ¶1

114. Heath, Forte, Connelly, and Hogan had no personal involvement *in the decision to assign Plaintiff to the medication adherence project.* Heath Decl. ¶ 30; Forte Decl. ¶ 3 1; Connelly Decl. ¶ 20; Hogan Decl. ¶1 9.

(emphasis added) See: (App. F, #135)

See: quotation of Petitioner's responses:

112. Partially disputed, in that I requested of Leckman in January 2011 to attend the bureau meetings, but was no avail. In Feb. she removed my office to another building away from the officemate. (Deng Ex. 15, at p52) **Deng Decl. ¶ 68**

113. Partially disputed in that Finnerty and Heath were personally involved in Deng's request for restore data access. **Deng Decl. ¶ 168, 169**

114. Undisputed.

See: (App. F, #150)

(VI) Intentional misleading the court to cover Finnerty's pattern of race discrimination; completely ignored the extensive evidence in the record

The counsel was unwarranted under preexisting law, in misrepresenting to the court (App. F, #135 at ¶ 18) stating: "Plaintiff did not apply for a promotion during her tenure at OMH," and cited Finnerty's false statement. (Finnerty's Decl., 52) The evidence in the record defeated the counsel's misrepresentation to court. See: (Deng Decls., 13, 19,

36, 37)

(VII) Fabricating the evidence and Petitioner's response that were not in the court's record:

(1). Defendants' counsel fabricated Petitioner's response that was not in the court's record, stating: "Plaintiff *concedes* that *no one* at OMH ever said anything derogatory about Asians to her. 56.1 Resp. ¶ 100. The circumstantial evidence of racial animus alleged by Plaintiff and cited by the Court in its ruling on the motion to dismiss, Op. at 14-15, has proven to be unfounded." (emphasis added) See: (App. F, #155 at 5)

The **factual** of Petitioner's response and citation to 56.1 Resp. ¶ 100 (App. F, #150) was: "Undisputed, but note that actions speak louder than words, and that Finnerty (white), as EBSIS Director had a pattern or practice of segregating staff by race and this pattern of overt, deliberate, and intentional racial discrimination was permitted and had not been remedied in 12 years I worked at OMH. **Deng Decl. ¶ 37-39, 176**"

Moreover, Petitioner also provided "direct evidence" of race discrimination to the court. See: (App. F, #182)→ (Deng Re-Ex. 2)

(2). With bad faith, the counsel fabricated the evidence lie to the court that was not in the court's record: "*Moreover, Plaintiff herself clarified that she does not believe the alleged exclusion is connected to the EEOC charge. She testified in her deposition....* Dep:315:19-23 ("Because she was all the

time I was excluded. Because at that time, 2009, 2008, 2009, they have meetings. And that was like published meetings. I was not included.)" (emphasis added) See: (App. F, No. 136 at 25)

See the **true evidence** in the Petitioner's deposition disclosed the counsel's lying. (App. F, #137)→ Dep. 318: 14-15:

Q: what do you believe was the reason that you were not invited?

A: that's just because I filled the EEOC [Charge]
(emphasis added) See also (Deng Decl., 68)

(VIII) Knowing misrepresentation of material fact and law to deny Defendants' liabilities

The Counsel intentionally asserted in his legal argument: "Finnerty was alleged to have explained in 2007 that Leckman-Westin was promoted over an Asian applicant named "Shao" does not overtly refer to race or national origin, had nothing to do with Plaintiff [Petitioner], and, having occurred approximately three years before any of the alleged adverse action." He also misinterpreted the precedent, cited "*Tomassi v. Insignia Fin. Grp., Inc.*," to support his dishonest. See: (App. F, #136 at 18)

a. The counsel's misstatement of "*occurred ... three years before any other alleged adverse actions*" was intentionally lies to the court because the onset allegation was in 2004. Finnerty failure to promote Shao (Asian) was in 2007. See: (Deng Decls., 10, 16)

b. The counsel's misstatement of "*had nothing to do with Plaintiff*," was

unwarranted under the preexisting law because "treatment of other employees generally relevant to issue of employer's discriminatory intent."

c. On the 14 pages of the second memorandum of law, though, the counsel admitted, "Plaintiff [Petitioner] submitted over 700 pages of exhibits." (App. F, #153). But he repeated arbitrarily stating without citation: "Plaintiff concedes..." 17 times in the memorandum of law. (emphasis added) See: (App F, #155)

IV. THE FINAL JUDGMENT OF GRANTING DEFENDANTS SUMMARY JUDGMENT WAS FLATLY ABSURD AND UNJUST, DEVIATION FROM PROCEDURAL RULE (APP. B)

During Petitioner's five years of litigation in the district court, the judge was patient, dignified, and courteous. It is thus fraud where the impartial functions of the court have been corrupted to cause the court not to perform in the usual manner its impartial task of adjudging cases. The judge inevitable conclude: *"As such, Plaintiff's intentional discrimination claims are dismissed, and it is unnecessary for the Court to reach Defendants' alternative arguments with respect to these claims"; "As such, Plaintiff's First Amendment retaliation is precluded as a matter of law, and must be dismissed. The Court need not address Defendants' alternative arguments"; "For these reasons, Plaintiffs FMLA claim fails as a matter of law"; "As such, because Plaintiff never earned any compensation for these days, Defendants could not have illegally deducted any of her earned wages,*

and a New York. Labor Law claim does not lie." Then granting Defendants summary judgment without giving Petitioner of an opportunity to present a substantial portion of her cause of action. See: (Apps. B, D) *I w. BLACKSTONE, COMMENTARIES *70* (precedents and rules must be followed unless flatly absurd and unjust); ("[d]eviation from a legal rule is "error' unless the rule has been waived.") *United States v. Olano.*[1]

PETITIONER FILED MOTION FOR RELIEF PURSUANT TO FED. R. CIV. P. 60(B)(3) The factual findings in court's order were in favor of Petitioner See: (App. F, #163)

Petitioner established clear and convincing evidence requesting the court set aside the final judgment for fraud on the court. And demonstrated the court that (1) the circumstances of Petitioner's case present grounds justifying relief (2) the movant possesses a meritorious claim in the first instance. See: (App. F, #178, #182, #183)

In the opposition, the counsel attributed the judicial error to the district, wrote: "...she [Petitioner] assembled and submitted was voluminous. The Court dismissed her claims in a detailed decision after fully considering her allegations and the undisputed evidence in the record." Added, "She also fails to show any matter that was overlooked

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1. 507 U.S. 725, 732-33 (1993

that might reasonably have altered the court's conclusion." (App. F, #180)

The factual findings in the court's order were in favor of Petitioner. The judge wrote, "...Plaintiff [Petitioner] more clearly alleged fraudulent conduct." "This case has been pending for nearly five years. Plaintiff was provided a substantial amount of discovery," "...as the extensive record appended to her opposition papers..." which was patently conflicted with of granting summary judgment to Defendants. See: (App. C at 4)

V. THE COURT OF APPEALS COMMITTED JUDICIAL ERRORS ON THE SUMMARY ORDER CAUSED SUBSTANTIAL HARM TO PETITIONER

See: (App. A)

The appellant court erred in two respects. **1.** Denying Petitioner's appeal erred on timing of appeal; 2. Erred on not apply proper standards in evaluating the erroneous decision below when the standard of review had been patently violated. (App. E, #85-86)

In the Appellant Brief, (App. E, #23) Petitioner established concrete evidence to demonstrate that Defendants' motion for summary judgment did not meet the requirement of procedural rule for its egregious misconduct and there were overwhelming genuine issues of material facts to dispute that the motion must be strike as a matter of law. And Petitioner addressed that Defendants had NO contradiction to Petitioner's local rule 56.1 statements of undisputed material fact for her five claims. See: (App. E, #23 at 48) Due to the summary order was only affirmance

without opinion; except, those set forth in the petition *supra*; here, Petitioner attached the "Table of Contents" for this Court review. Please see below. In the "Reply Brief" (App. E, #45), Petitioner established concrete evidence to rebut the legal issues were raised on the Appellees' brief. (App. E, #33) Her brief addressed the Rule 60(b)(3) against Defendants' misconduct; rule 60(d) saving clause against counsel perpetrated "fraud upon the court" ultimately caused Petitioner's meritorious case to lose. (Apps. B, D). See: *Hazel-Atlas Glass Co. v. Hartford Empire Co.*[2]

On August 15, 2019, the appellant court issued "Notice of Submission Date for Determination of Appeal" by Chief Judge Robert A. Katzmann. (App. E #68) One sentence on it, stated, "... If a stipulation to withdraw with prejudice is based on a final settlement of the case, the fully-executed settlement must be reported immediately to the Calendar Team, and a copy of it must be attached to the stipulation." Petitioner personally inquired the case manager regarding the notice. The case manager told her essentially, "You don't need do any thing; the other party doesn't need do anything either. Everything is based on the Brief."

On November 4, 2019, Petitioner received court's "Summary Order."

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2. 322 U.S. 238 (1944)

See: (App. A) To be surprise, the appellant court affirmed the erroneous decision below, and ruled that the Appeals court lacked jurisdiction on Petitioner's appeal because Petitioner's appeal did not meet the requirement of Fed. R. App. P. 4(a)(4)(A)(vi). The "Summary Order" seemly contradicted with the court's notice on August 15, 2019. Upon the record the appellate court had the power and the duty to vacate the District Court's judgment and to give the District Court appropriate directions as to the issue of whether public policy was involved, but it legally failed.

On January 2, 2020, Petitioner contended that the appellate court has committed the judicial errors on the Summary Order. (App. E, #85-86) **First,** Petitioner's appeal was timely under the requirement of Fed. R. App. P. 4(a)(4)(A)(vi), because she filed the notice of appeal on August 15, 2018; (App. E, #1) the district court's order was entered on July 18, 2018 (App. E, #2). It was 28 days after the order was entered. The judicial error deprived Petitioner's appeal as of right. This also conflicted with the "fully-executed settlement" on the court's notice dated August 15, 2019. (App. E #68) **Second**, Petitioner contended, "This is an appeal from a summary judgment, which is reviewed "de novo" in this court. The procedural rule governing- summary judgment should occur only where there is no genuine issue as to any material fact and the movant is entitle to judgment as a

matter of law. In this case, review the record, Defendants were not entitled to the summary judgment because there is overwhelming genuine issues of material facts disputed as a matter of law. The standard of review has been violated." Petitioner contended that her "petition for rehearing" must be mooted or avoid due to the judicial errors on the Summary Order. On January 10, 2020, with good faith, Petitioner sent Defendants party and appellant court an initial settlement estimate for negotiation. At the same day, she received court's notice that the case has been closed. (App. E, #84).

Quotation of Petitioner's "Table of Contents" in appellate court:

ARGUMENT: (Reply Brief) (App. E, #45)

REASONS FOR GRANTING A WRIT OF MANDAMUS

This case is a miscarriage of justice seriously affected constitutional right and the fairness, integrity, or public reputation of judicial proceedings. The petitioner would suffer harm or prejudice in a manner that only be corrected in this Court.

It is clear and undisputed that the district court's ruling deviation from the procedural rule led Petitioner lost her meritorious case in the litigation, highly affecting substantive rights. See: (Apps. E, F) *I w. BLACKSTONE, COMMENTARIES *70* (precedents and rules must be followed unless flatly absurd and unjust).

It is clear and undisputed that the court of appeals failed to lawful exercise its jurisdictional duty, it is suppose to do so. Error of law denied petitioner right as of appeal highly affecting constitutional right, it designed to be protected. And especially costly and chilling the public error of law affirmed a case such as this one where Defendants' credibility was untrustworthy (App. F. #155-1: Pl's rule 56.1 ¶261-265); creating a fraudulent record like criminal running from scene (*Id.* ¶266-269); they know the law choose to discrimination anyway. (*Id.* ¶279-283) And their counsel's egregious misconduct directly hampered the judicial machinery (App. F, #135-146, #155, #180) seriously affected the fairness, integrity or public reputation of judicial proceedings. See: *Matsushita v. Zenith Radio*

Corp.[3]

United States Supreme Court Justice Sherman Minton once stated that every man is "entitled to a fair trial but not a perfect one." See: *Lutwark v. United States.*[3] The statement lends credence to the notion that the American legal system, although not flawless, seeks to be at least just and fair.

Petitioner requests to grant a writ of mandamus in aid of this Court's appellate jurisdiction to correct the jurisdictional errors on the lower courts. See *Kerr v. United States Dist. Court.*[4] As stated in *Will v. United States*[5]: ' The peremptory writ of mandamus has traditionally been used in the federal courts only "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Roche v. Evaporated Milk Assn.*[6]

The exceptional circumstances warrant the exercise of this Court's discretionary powers. Petitioner has demonstrated that she has exhausted all the relief from both district court and court of appeals, supra; adequate

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3. 344 U.S. 604 619 (1953)
4. 426 U.S. 394 (1976)
5. 389 U.S. 90, 95 (1967)
6. 319 U.S. 21, 26 (1943)

relief cannot be obtained in any other form or from any other court. The case manager of the court of appeals informed petitioner petitioning to the U.S. Supreme Court.

Petitioner requests this Court vacating the decision of errors of law from the court of appeals; reversed and remanded the case to the district court. Or any other decision of relief deems proper by this Court.

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition, a writ of mandamus and relief should be granted.

Respectfully Submitted.

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June 9, 2020