No. 20-1322

IN THE

Supreme Court of The United States

§

MICHAEL NEELY,

Petitioner,

v.

THE BOEING COMPANY,

Respondent,

§

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

§

PETITION FOR REHEARING

§

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TABLE OF AUTHORITIES

Cases

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Pursuant to Rule 44 and 16[3] of this court, the Petitioner Michael Neely respectfully petitions for re-hearing of this case before a full nine-Member Court. Petitioner submits the following circumstances that will result in substantial and controlling effects if the Supreme Court does not cert and opine. This court was petitioned to intervene in the lower court's manifest error of standard review where the effect dismissed this case. The petitioner amplified in its writ petition that *"The United States Supreme Court,*

court of appeal[s] and district court[s] have entered decision[s] in conflict of the decision[s] made in the lower courts of this case on the same important matters, and the lower court[s] decision[s] are so far departed from the accepted and usual course of judicial proceedings, it calls for an exercise of the Supreme court supervisory power" . Petitioner also emphasized the importance of public health and safety, and The United States intervention into the safety violations related in this case.

Here, the impact of denying rehearing will impose new legal authority hitherto new prerequisite affecting and altering the standard review for all EEOC, Whistleblower, SOX, Dodd Frank cases, increasing the number of appeals in the lower courts and writs to this court due to the errors made in this case.

ARGUMENT

1 Federal Rule 56[a] Summary Judgment is black and white "*The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact..."* The petitioner responded with direct evidence that the defendants supporting factual position (FR56[c][1]) was flawed, and that a genuine dispute indeed exited as to its material facts presented and the Defendant could not prevail. *Importantly, a court must not "weigh the evidence and determine the truth of the matter" in deciding a motion for summary judgment. Id Anderson, 477 U.S. at 249", and "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record* **[as is the case with defendants summary][emphasized]**, *so that no*

reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 380 (2007). Here, a jury would weigh Petitioners direct evidence in belief over defendant's statements. *The lower court must not weigh the truth on summary judgment Id Anderson, 477 U.S. at 249", and Id Scott v. Harris, 550 U.S. 372, 380 (2007).* Petitioners summary response articulated and exhibited direct evidence at Dismiss, Summary Judgment and Appeal for the lower court's to return a favorable decision for Petitioner to survive all claims under the standard review, yet an unfavorable judgment was made in error.

i. Reconsideration is appropriate where the court *"has misapprehended the facts, a party's position, or controlling law."* Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000). Courts have held that *"a whistleblower need not show that the employer actually committed fraud, but only that the employee had a reasonable belief that fraud was occurring, citing Guyden v. Aetna, Inc. 544 F.3d 376, 384 (2nd Cir. 2008).* Additionally, the lower court only considered the Defenses claims that petitioners complaints only addressed safety issues, which is a manifest error of the court on decision.

ii. Petitioners does *"not have to prove that he reported an actual violation. . . . He would have to prove only that he 'reasonably believed that there might have been' a violation and that he was 'fired for even suggesting further inquiry.' . . . We have referred to this standard as a 'minimal threshold requirement.'" Wadler v. Bio-Rad Labs., Inc., 916 F.3d 1176 (9th Cir.2019) (quoting Van Asdale at 1001 and citing Sylvester v. Parexel Int'l LLC, No. 07-123, 2011*

*WL 2517148, at *14 (Dep't of Labor May 25, 2011) (en banc))*. Here Petitioner exceeded the standard of review at summary proving he reported, and filed physical complaints internally and externally to government agencies while still employed.

iii. The lower court[s] have held that an intervening change in the controlling law is an appropriate ground for granting reconsideration, as long as it is binding precedent, McNamara v. Royal Bank of Scotland, 2013 U.S. Dist. LEXIS 66516 (U.S.D.C. So.Cal.). citing Kona Enters. Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000). The decision of the Supreme Court in Somers is binding that changed the law regarding what a whistleblower must do as a prerequisite to bringing a Dodd Frank claim in federal court. Here, Petitioner met the prerequisite set by the Supreme Court in Somers, and accordingly, the lower court overlooked and erred in judgment.

iv. A whistleblower does not have to file specific whistleblower claim[a] of a violation when he or she files a claim of wrongful discharge in violation of public policy. Here the lower court erred in its summary decision on the sole premise of age discrimination overlooking Petitioners whistleblowing claims. "*While Plaintiff's federal whistleblowing claims have been dismissed, Plaintiff need not prove that he has a valid whistleblowing claim under federal law in order to state a claim for wrongful discharge, only that his termination may have been motivated by reasons that violate the public policy of protecting whistleblowers. See Thompson v. St. Regis Paper Co., 102 Wash. 2d 219, 232, 685 P.2d 1081, 1089 (1984).* The definition of "whistleblowing" under federal law is not the sole determinant of

whether Plaintiff can be considered a "whistleblower" within the bounds of his wrongful discharge claim. Where, as here, the Court must credit all reasonable inferences arising from Plaintiff's allegations, his contention that his termination was motivated by his alleged whistleblowing activities is sufficient to state a claim for wrongful discharge under Washington law.

v. The ninth circuit, and other court[s], have made decisions that conflict with the lower court's decision in this case. Ellis v. City of Seattle, 142 Wash.2d 450, 13 P.3d 1065 (2000) and Green v. Ralee Eng'g Co., 19 Cal. 4th 66 78 Cal.Rptr.2d 16, 960 P.2d 1046 (1998), which has been cited by the lower court in Rivera v. National R.R. Passenger Corp., 331 F.3d 1074, 1080 (9th Cir. 2003), and the Washington Supreme Court in Cent. Puget Sound Reg'l Transit Auth. v. WR-Sri 120th N. LLC, 191 Wash.2d 223, 422 P.3d 891, 909 (2018) and Danny v. Laidlaw Transit Servs., 165 Wash. 2d 200, 193 P.3d 128, 151 (2008) demonstrate that public safety is a public policy concern. Petitioner also exhibited in his writ that the U.S. Department of Labor ALJ adjudicated he was a whistleblower under the statute. Prior to Dismiss and Summary Judgment, the defendant stipulated it accepted the facts pleaded in Plaintiff's Second Amended Complaint were true.

vi. The Petitioner was prejudiced, denied 30[b][6] depositions and related discovery after proper notice. The lack of this evidence supports Rule 56[d] facts unavailable to the nonmovant. The petitioners discovery motion was not adjudicated until after Summary decision which is a violation of Rule 56[b] outstanding discovery issues existed, furthering that genuine dispute exited to material fact. The district failed to apply Fed. R.Civ. P. 56; , R.56(d)(2) denying

Petitioner Fed. R. Civ. P. 30; R.30(b)(6). Other circuits have reversed on failure to allow more time for depositions before granting summary judgment against the Plaintiff. Tonnas v. Stonebridge Life Insurance Co., 2003 WL 22430515 (5th Cir. Oct. 27, 2003). In Tonnas, since this turned on rule 56 issue, it was reviewed under the abuse of discretion standard of review. "A court ... may rely on a document to which the complaint refers if the document is central to the party's claims and its authenticity is not in question". Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006)."

CONCLUSION

For the foregoing limited reasons with Petitioners writ, the petition for rehearing should be granted.

Respectfully submitted.

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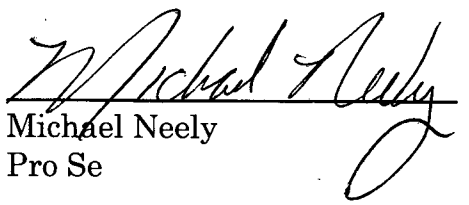
CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.



Michael Neely
Pro Se

June 21, 2021

IN THE SUPREME COURT OF THE UNITED STATES

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MICHAEL NEELY

v.

THE BOEING COMPANY

CERTIFICATE OF SERVICE

I, Michael Neely, petitioner in these matters, certify that, on June 21, 2021, 40 copies of the Petition for Rehearing in the above-captioned case were sent timely, by third-party commercial carrier for delivery overnight, to the U.S. Supreme Court Clerk for docket filing and distribution to justices chambers.

I, Michael Neely, also certify that three copies of the Petition for Rehearing in the above-captioned case were sent, by third-party commercial carrier for delivery and by electronic mail, to the following counsel:

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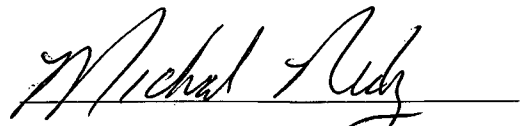
I further certify that all parties required to be served have been served.



Michael Neely, Pro se

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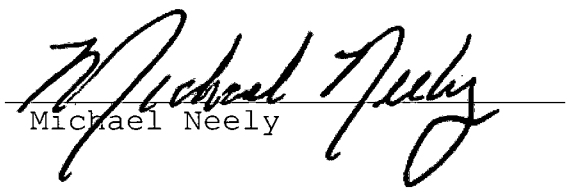
CERTIFICATE OF COMPLIANCE WITH PAGE LIMITATIONS

I, Michael Neely, self represented as petitioners, certify that the Petition for Rehearing in the above-captioned case is within the 3000 word limitations per rule 33 with 1312 words, excluding the parts of the petition that are exempted by Rule 33.2(b).



Michael Neely

June 20, 2021