

No. 20-7510

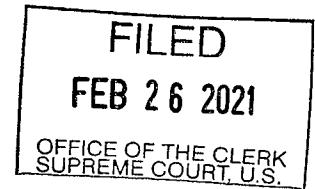
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

In re LEONARD ENGLISH, JR. - PETITIONER

ON PETITION FOR WRIT OF MANDAMUS TO

THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT



PETITION FOR WRIT OF MANDAMUS

Leonard English, Jr.
2713 Josephine Street
Mobile, AL 36607
(303) 638-3355

Question Presented

- 1) Does any judge have the discretion to arbitrarily pick what relevant written & verified facts to consider and not apply them to governing laws for no stated reason?
- 2) Do American citizens have a right to request help from the government for a dispute according to the **First Amendment** of the United States Constitution?
- 3) Do American citizens have equal protection under the law according to the **Fifth Amendment**?
- 4) The Canons say we have the right to fairness, impartially, and to be heard in American courts, but is this also a basic civil right under the **Ninth Amendment**?
- 5) Can a minority citizen depend on the written laws and policies & procedures of America when the opposition is a majority?
- 6) Does an American employee have any rights when it comes to avoiding situations that might lead to imprisonment when they are in a hostile, harassing, and retaliatory work environment?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1) THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
- 2) THE UNITED STATES SMALL BUSINESS ADMINISTRATION
THROUGH THEIR DEFENDERS, THE DEPARTMENT OF JUSTICE
- 3) SOLICITOR GENERAL OF THE UNITED STATES

RELATED CASES

NONE

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the court appears at Appendix to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was January 5, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 16, 2021, and a copy of the order denying rehearing appears at **Appendix D**.

An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts: The date on which the highest state court decided my case was . A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: , and a copy of the order denying rehearing appears at Appendix .

An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due process

Rights to a fair due process

Civil Rights

- Discrimination
- Retaliation

STATEMENT OF THE CASE

In accordance with United States Supreme Court Rules **20 and 21**, I'm requesting a Writ of Mandamus for the Tenth Circuit Court of Appeals' Opinion dated **January 5, 2021** and Order dated **February 16, 2021**.

The United States District Court for Colorado and the United States Court of Appeals for the Tenth Circuit have abused their discretion and arbitrarily decided not to consider all the written & verified facts and review claims made under certain governing laws for my lawsuit. They are refusing to acknowledge that my protected complaints & activities are against the two people that removed me from Federal service and the malicious & false stalking allegations by one of them. This is beyond an abuse of discretion. By not having all of the facts of my lawsuits considered, this has been very harmful to my case and it's affecting my right rights to a fair decision. I'm asking the Supreme Court to order a correction of the abuse of discretion. I reviewed all of the errors by the District Court in **Appendices F and G**.

The major allegation that I was accused of is absence without leave(AWOL) when I performed a legal self-removal(**Appendix A, page 4, footnote**) from the office to avoid conflict with a person that had falsely accused me of criminal allegations(stalking). According to the SBA's Master Agreement(**MA**), I'm not supposed to be considered AWOL(that's a violation of policies & procedures), especially when I reported the self-removal to the senior management by the next business day(**#48, pages 272-283**). I followed up with the senior management(**#48, pages 285-305**). The charges for misconduct are by the same person that falsely accused me of the criminal behavior and who couldn't follow policies & procedures; that person has no credibility. By the way, my alleged misconduct occurred while dealing with illegal harassment & hostility from a person I had multiple protected complaints & activities against and the management never responded to any of my complaints. How many violations and acts of misconduct does a pack of so-called managers have to make before it's considered illegal retaliation.

My protected complaints & activities(31)(Document #55-1) were against Jennifer Vigil and Peter Gibbs, the two people that issued all the adverse actions against me, including the **false & malicious stalking allegation**(#48, page 118, lines 5-19)(that was immediate retaliation and that's a criminal allegation) by Vigil and the removal(#s 45-21 & 45-22).

I had a grave concern about meeting Vigil in her office, alone. She actually made two false stalking charges against me(#48-2, pages 41 & 42).

Twenty(20) of the protected complaints & activities are undisputed(Appendix H: #39, pages 15-22). Those protected complaints included two formal EEOC complaints against Vigil and Gibbs. Vigil and Gibbs were my 1st and 2nd line supervisors; that created a causal connection and a motivating factor for retaliation.¹ *Staub v. Proctor Hosp.*, 562 U.S. 411, 418-22 (2011) (applying "cat's paw" theory to a retaliation claim under the Uniformed Services Employment and Reemployment Rights Act, which is "very similar to Title VII"; holding that "if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment

¹ <https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#C. Causal>

action, then the employer is liable").² See #s 48 and 55. Vigil & Gibbs took the actions against me themselves. Those two blatantly violated the SBA's policies & procedures to remove me from Federal service and subjected me to multiple instances of regular retaliation and retaliatory harassment. Regarding the self-removal, I had performed an agency approved maneuver to avoid conflict in the office, especially since I had just found out about that first malicious criminal allegation.

I suffered multiple materially and tangible adverse actions by Vigil and Gibbs, including letters of reprimand, downgraded performance reviews, AWOLSSs, numerous incidents of retaliatory harassment(including threats, provocations, and interference with my job), a suspension, and removal. All of those personnel actions are actionable under *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. (2006)^{3,4,5,6}. The complaints and retaliation lasted for

² https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#_ftn145

³ <https://www.eeoc.gov/retaliation>

⁴ https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues#B_Materially

⁵ <https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-retaliation-and-related-issues>

⁶ <https://www.eeoc.gov/policy/docs/harassment.html>

over two(2) years, from April 2014 through September 2016; that's severe and pervasive. The SBA management refused to follow their own policies & procedures by investigating my complaints (#48-2, pages 18 & 19, No. 19 & #48-2, pages 23 & 24, items No. 24 & 25 and #48-2, pages 162-176). The SBA's senior management appeared to not be concerned (#48-2, pages 99 & 100, item #s 6 & 7). I guess the concerns of a Black man being harassed by a White woman was not that important to a predominantly White management team.

I noticed the Tenth Circuit brought up Frank Lalumiere, former SBA surety bond Director, in their January 5, 2021 decision (Appendix A). Lalumiere was my 3rd line supervisor. When I made a complaint to him in October 2014 (Appendix H: Document #39, Item #15), he told me not to bother him with any type of complaints (#48, pages 155 & 156). Fast forward to November 2015, Lalumiere ordered me into to a hostile, harassing, and retaliatory work environment after Jennifer Vigil terminated my telework schedule prematurely. Keep in mind, this is after Vigil said I was stalking her (#48, page 118, lines 5-19). The MA says I should have had a 5 day notice, Vigil did an immediate

termination. I tried to get the senior management to give me some guidance on the situation, but they ignored my questions, as usual(Appendix F: #58, page 42-43, #s 21-23 or #48-3, pages 77-81). I also told them about how Vigil had called me that morning in a hostile manner making threats(#48-3, page 80, ¶3). Lalumiere wanted me to report to the office when I had been teleworking that day. By the way, Lalumiere was located in Washington, D.C. while I was in Denver, CO; that's a distance of about 1,500 miles. I had teleworked for 3 hours and I had to take the remainder of the day off; that was interference with my job performance. On **May 17, 2016**, I ended up getting a 30-day suspension for this incident, which was approved by Peter Gibbs(#48, pages 348-353). This was after my self-removal on **April 22, 2016**. There were multiple violations by the SBA management in this incident.

Regarding the **April 22, 2016** self-removal, I never returned to work on **May 17, 2016** like the Tenth Circuit indicated in **Appendix A, page 5, ¶2, last sentence**). Gibbs suspended me on **May 17, 2016** while I was still waiting on a response from the senior management(#48, pages 348-

353 and Appendix H: #39, item 39). For the most complete picture of the situation, I suggest reviewing Appendix F: #58, pages 26-32.

I requested and was granted a *de novo* appeal of the District Court's opinion. The review should have been from the beginning and based strictly on the facts and laws. I wanted to spare the government the expense and embarrassment of going through a trial. When you review the January 5, 2021 decision by the Tenth Circuit, you will notice that neither did they mention that my protected complaints & activities were against Peter Gibbs & Jennifer Vigil, including the complaint & notification about my April 22, 2016 self-removal that was sent to several senior managers, nor did they mention the malicious stalking allegations from December 2015 and June 2016 nor did they review my claims under *Burlington Northern* and *Withrow v. Larkin*, 421 U.S. 35, 58 (1975). The Tenth Circuit did mention *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998)⁷, but what good is that without first recognizing the

⁷ <https://www.eeoc.gov/policy/docs/harassment.html>

prerequisite governing law and actionable items, including retaliatory harassment, under *Burlington Northern*.

I'm asking the Supreme Court to order a correction of the abuse of discretion and uphold the rule of law & equal protection under the law by requiring the Tenth Circuit Court of Appeals to review my wrongful termination lawsuit under *Burlington Northern* and *Withrow* and comply with the binding precedent of the United States Supreme Court and any of the Tenth Circuit's own binding precedent.

After reviewing and recognizing the retaliation under *Burlington Northern* and *Withrow*, I'm also asking the Court to order the Tenth Circuit to thoroughly consider retaliatory harassment and rule according to the binding precedent of *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998) and *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).

I had a clean personnel file and an excellent performance record prior to the protected complaints & activities (#48-3, pages 306-315 & 317).

My Material Facts have included claims under *Burlington Northern & Santa Fe Railway Co. v. White*, *Withrow v. Larkin*, and *Burlington Industries, Inc. v. Ellerth*, & *Faragher v. City of Boca Raton* since 2016.

Adverse employment actions(material & tangible) are ones that would discourage a reasonable employee from engaging in conduct protected by Title VII. *Burlington Northern and Santa Fe RR Co. v. White*, 548 U.S. 63, 68 (2006).

“Retaliation claims are “not limited to discriminatory actions that affect the terms and conditions of employment and may extend to harms that are not workplace-related or employment related so long as a reasonable employee would have found the challenged action materially adverse”. See *Burlington N*548 U.S. at 64.

Article VI of the United States Constitution says.⁸

Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United

⁸ <https://constitution.congress.gov/browse/article-6/>

States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Clause 3

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

First Amendment⁹

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment¹⁰

No person shall..... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

⁹ <https://constitution.congress.gov/browse/amendment-1/>

¹⁰ <https://constitution.congress.gov/constitution/amendment-5/>

The government considers my job property. I have additional remedies available to me in other forums because of that. Also, the Fifth Amendment requires equal protection under the law.

The Ninth Amendment¹¹

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

I have a right to a fair judicial process; the Canons explicitly give every American citizen that right.

The Rule of Law

America is a Constitutional Republic. We regular Americans depend on the United States Constitution, statutory laws, United States Supreme Court precedents, and Circuit Court precedents for us to function properly. The Rule of Law is the foundation of the country's judiciary branch. We ordinary citizens depend on the rule of law. We need the rule of law to keep us safe and protect our rights.

¹¹ <https://constitution.congress.gov/constitution/amendment-9/>

Per the United States Courts' website:¹²

Rule of law is a principle under which all persons, institutions, and entities are accountable to laws that are:

- *Publicly promulgated*
- *Equally enforced*
- *Independently adjudicated*
- *And consistent with international human rights principles.*

It further says:

Equality before the law is such an essential part of the American system of government that, when a majority, whether acting intentionally or unintentionally, infringes upon the rights of a minority, the Court may see fit to hear both sides of the controversy in court.

The American Bar Association says:¹³

The rule of law is a set of principles, or ideals, for ensuring an orderly and just society.

It further states:¹⁴

Judges interpret and apply the law to specific issues brought before them when two parties disagree and resolve disputes between people, companies, and units of government.

¹² <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>

¹³ https://www.americanbar.org/groups/public_education/resources/rule-of-law/

¹⁴ https://www.americanbar.org/groups/public_education/resources/rule-of-law/rule-of-law-and-the-courts/

Often, the judiciary is called on to uphold limitations on the government. The judiciary protects against abuses by the other branches of government. It protects minorities of all types from the majority and protects the right of people who cannot protect themselves.

The Role of Judges

Even though judges work for the government, they are not law enforcement officers. Judges are not prosecutors and they do not arrest people or try to prove that they are guilty. Their role is to see that the rule of court procedures are followed by both sides without being influenced by public perception or their own personal views.

Black's Law Dictionary says The Four Pillars of Rule of Law are:¹⁵

- The law applies to everyone
- The laws are not secret or arbitrary
- The laws are enforced fairly
- The justice system is fair

Lexico (powered by Oxford Dictionary) says:¹⁶

Rule of law: The restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws.

¹⁵ <https://thelawdictionary.org/article/four-pillars-rule-of-law/>

¹⁶ https://www.lexico.com/en/definition/rule_of_law

Equal Protection Under The Law¹⁷

Equal Protection refers to the idea that a governmental body may not deny people equal protection of its governing laws. The governing body state must treat an individual in the same manner as others in similar conditions and circumstances.

The Fifth Amendment's Due Process Clause requires the United States government to practice equal protection.

When an individual believes that either the federal government or a state government has violated that individual's guaranteed equal rights, that individual is able to bring a lawsuit against that governmental body for relief.

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power.¹⁸

*When the Constitution requires a hearing, it requires a fair one, held before a tribunal that meets currently prevailing standards of impartiality. A party must be given an opportunity not only to present evidence, but also to know the claims of the opposing party and to meet them.*¹⁹

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https://www.law.cornell.edu/wex/equal_protection#:~:text=Equal%20Protection%20refers%20to%20the,in%20similar%20conditions%20and%20circumstances

¹⁸ https://constitution.congress.gov/browse/essay/amdt5-4-4-1/ALDE_00000878/

¹⁹ https://constitution.congress.gov/browse/essay/amdt5-4-4-3-2-2-3/ALDE_00000885/

All Writs Act²⁰

28 U.S. Code § 1651 - Writs

(a)

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b)

An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

Mandamus²¹

A (writ of) mandamus is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.

The Canons²²

Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of

²⁰ <https://www.law.cornell.edu/uscode/text/28/1651>

²¹

[https://www.law.cornell.edu/wex/mandamus#:~:text=A%20\(writ%20of\)%20mandamus%20is,United%20States%20Dist.](https://www.law.cornell.edu/wex/mandamus#:~:text=A%20(writ%20of)%20mandamus%20is,United%20States%20Dist.)

²² <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges#d>

the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities

(A) Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.

Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law.

Abuse of Discretion²³

Definition

A standard of review used by appellate courts to review decisions of lower courts. The appellate court will typically

²³ https://www.law.cornell.edu/wex/abuse_of_discretion

find that the decision was an abuse of discretion if the discretionary decision was made in plain error.

Overview

The abuse of discretion standard is used for when a lower court makes a discretionary ruling. On appeal, if a party challenges the ruling, then the appellate court will use the abuse of discretion standard to review the ruling.

The abuse of discretion standard is used by appellate courts to review lower court decisions in both criminal law and civil law.

In General Electric Co. v. Joiner, 522 U.S. 136 (1997), the Supreme Court held that abuse of discretion standard is the proper standard to use when reviewing evidentiary rulings, including whether to admit or exclude expert testimony.

A Simple Definition of Abuse of Discretion²⁴

A failure to take into proper consideration the facts and law relating to a particular matter; an Arbitrary or unreasonable departure from precedent and settled judicial custom.

Where a trial court must exercise discretion in deciding a question, it must do so in a way that is not clearly against logic and the evidence. An improvident exercise of discretion is an error of law and grounds for reversing a decision on appeal. It does not, however, necessarily amount to bad faith, intentional wrong, or misconduct by the trial judge.

²⁴ <https://legal-dictionary.thefreedictionary.com/Abuse+of+Discretion>

As a Black American citizen, I hope I can depend on this information.

Binding Precedent Requirement

I'm asking the Supreme Court to uphold the rule of law by ordering the Tenth Circuit to honor the **binding precedent** I reviewed in my appeal in their circuit and follow the practice of *stare decisis*²⁵(to stand by things already decided), as well as honor the **Cannons** by considering all facts.

The Offices of the United States Attorneys' website says **binding precedent** is²⁶:

A prior decision by a court that must be followed without a compelling reason or significantly different facts or issues. Courts are often bound by the decisions of appellate courts with authority to review their decisions. For example, district courts are bound by the decisions of the court of appeals that can review their cases, and all courts – both state and federal – are bound by the decisions of the Supreme Court of the United States.

²⁵ https://www.law.cornell.edu/wex/stare_decisis

²⁶ <https://www.justice.gov/usaio/justice-101/glossary>

The website also says case law is:

The use of court decisions to determine how other law (such as statutes) should apply in a given situation. For example, a trial court may use a prior decision from the Supreme Court that has similar issues.

According to the Library of Congress' website, "the U.S. Supreme Court creates binding precedent that all other Federal courts must follow"²⁷.

I hope we can follow the words of the current Chief Justice of the U.S. Supreme Court, John Roberts, when he said:

*During his Supreme Court confirmation hearing in 2005, Chief Justice John Roberts declared, "Judges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath, and judges have to have modesty to be open in the decisional process to the considered views of their colleagues on the bench."*²⁸

This all started over my April 2014 complaint(Appendix H, #8) against a co-worker who had derogatory information in his personnel file from another Federal agency and committed multiple acts of misconduct in the SBA's office(see #52, page 2, last ¶ and page 3, ¶1; #48-3, page 148,

²⁷ <https://www.loc.gov/law/help/judicial-decisions.php>

²⁸ <https://www.scotusblog.com/2018/11/empirical-scotus-the-strength-of-precedent-is-in-the-justices-actions-not-words/>

¶1 and page 155, ¶1). Also see #48-3, pages 129-136. Apparently, the SBA's management team was upset over my concerns about that one particular individual.

Since the Department of Justice is a part of the Executive Branch, I thought they were in a position to enforce the laws, not defend an agency management team that violates the laws. I hope the United States Solicitor General can get this worked out.

REASONS FOR GRANTING THE PETITION

The writ will be in aid of the Court's appellate jurisdiction

- The petition will help the Tenth Circuit uphold the rule of law. It is necessary & appropriate to ensure that the Tenth Circuit follows the United States Constitution, statutory law, U.S. Supreme Court & their own precedent, the Canons, apply the law equally, and maintain public confidence.
- How would this look to the minority community if they saw this.

Exceptional circumstances warrant the exercise of the Court's discretionary powers

- There has to be a correction of the abuse of discretion for this matter, the rule of law and equal protection under the law demands it.

- The Tenth Circuit's decision is a Constitutional violation. It's a civil rights violations. An egregious and very harmful abuse of discretion has occurred with the appearance of discrimination. A plain, material, and harmful error has occurred. The **Fifth Amendment** requires equal protection under the law, due process. The **Ninth Amendment**, along with the Canons, says I have a right to a fair due process in the judicial process, including a review of the facts, evidence, and governing laws of a lawsuit.
- It's appropriate to uphold the rule of law; the Tenth Circuit has a duty review all facts & governing laws and rule according to statutory laws & the Supreme Court's precedent. The Tenth Circuit should also honor the Canons.
- The Tenth Circuit has a duty to perform a complete review of all facts, evidence, and binding precedent under the governing laws.
- With the abuse of discretion and by making an arbitrary decision to not review pertinent facts of the case and the governing laws for the Material Facts, this has the appearance of discrimination in a discrimination & retaliation lawsuit.

- The abuse of discretion is substantially affecting my rights equal protection under the written laws. I almost want to consider this a trespass of the law.
- A situation like the one I experienced should not be allowed to ever happen (regardless of demographics), especially in a taxpayer funded government office, without a strong condemnation.
- In a retaliation lawsuit, there has to be recognition of the complaints, who the complaints were against, and who took adverse actions against the complainant.
- I totally understand and agree with judges having discretion over motions, what evidence to introduce, or witnesses to hear; the court does not have time for things that are irrelevant, but no judge has the right to arbitrarily exclude relevant facts, evidence, and governing laws without a justified reason; if this was the case, the American public should be informed of this so we won't waste time & money on going to court in the first place. Certainly, we wouldn't file any so called protected complaints & activities and expect the court system to protect us.

**Adequate relief cannot be obtained in any other form or
from any other court.**

- There is no other remedy available to me that I know of other than the United States Supreme Court because the decision was made by United States Court of Appeals for the Tenth Circuit, after the panel denied a request for a rehearing and the full bench failed to consider a review.

The petition is not creating precedent, because the precedent already exist.

CONCLUSION

The decision by the Tenth Circuit, without any known or stated reasons, to not consider relevant facts and review & offer an opinion regarding *Burlington Northern, Withrow, Ellerth/Faragher*, or any other relevant binding precedent is a Constitutional violation, an abuse of discretion, and a violation of the Canons. The SBA has not even disputed my claims.

I don't want to take this suspected abuse any further. I want the SBA to pay for their trespasses and no others. All of the facts of my lawsuit have not been recognized and it has caused harm to my case, including who the protected complaints & activities were against and the false & malicious stalking allegations by the person that recommended me for removal. The governing law for the type of lawsuit I have has not been reviewed; it certainly hasn't been reviewed based on prior standards. My lawsuit was for discrimination and retaliation; *Burlington Northern* is the governing law for retaliation claims. Retaliation is also a violation of statutory law. See the **Civil Rights Act of 1964, Title VII,**

SEC. 2000e-3 [Section 704]²⁹. This would be a **First Amendment** violation as well. The abuse of discretion has substantially affected my rights and has influenced the outcome of the lawsuit. I have repeatedly ask for all of the facts to be considered. I'm suffering from an injustice because of the Tenth Circuit's abuse of discretion; they refuse to perform it's required duty that it's legally bound to do. The Tenth Circuit implied in their Opinion dated January 5, 2021(see **Appendix A, page 9**) that I needed to demonstrate retaliation to have claims under **Ellerth** and **Faragher**. They appeared to review Ellerth and Faragher, but how can that happen without first reviewing the prerequisite governing law, **Burlington Northern**. In the Petition for Rehearing and Rehearing En Banc(see **Appendix E**), I reviewed a few items of the retaliation part of my Material Facts that's actionable under **Burlington Northern**(I wanted to keep things simple); that clearly demonstrated retaliation. Once again, the Tenth Circuit ignored the facts, including those malicious stalking allegations against me by Jennifer Vigil. I also mentioned the unfair due process under **Withrow**. The Tenth Circuit ignored that as well. Regarding the protected complaints & activities

²⁹ <https://www.law.cornell.edu/uscode/text/42/2000e-3>

against the people that removed me, I included the **Undisputed Facts** at **Appendix H. The Tenth Circuit never even mentioned the preceding facts in their opinion or order.**

The Court should grant the petition because of the Tenth Circuit's abuse of discretion by refusing to acknowledge who my protected complaints & activities were against, the malicious criminal allegations against me, by not reviewing and giving an opinion on ***Burlington Northern*** and ***Withrow***, and to uphold the rule of law. The Tenth Circuit's decision was a Constitutional violation, an abuse of discretion, and a violation of the Canons.

The claims in my lawsuit have already been decided by the U.S. Supreme Court and all I need is the Tenth Circuit to review the facts and the governing laws that I've presented. As I stated earlier, I've been saying the same things since 2016 and it appears no one has been interested in the rule of law or equal protection under the law.

I am respectfully asking the U.S. Supreme Court to uphold the rule of law and to recognize the abuse of discretion and the arbitrary decision to ignore pertinent facts & law by the Tenth Circuit and order the Tenth Circuit to review my lawsuit under the governing laws presented in the record and follow all U.S. Supreme Court & Tenth Circuit precedent and U.S. Constitutional standards that's claimed in the record for this matter. The abuse of discretion has substantially affected my rights and has influenced the outcome of the lawsuit.

Appendices **E** and **H** have everything a reasonable decisionmaker needs to resolve this matter for a retaliation claim. All I'm asking for is obedience to **the rule of law and equal protection under the law.**

For all the reasons listed above, I respectfully ask that the Court grant the **Writ of Mandamus or Alternative Writ** and the **Motion to Proceed *In Forma Pauperis.***

Respectfully submitted,



Leonard English, Jr.
Date: February 26, 2021

CERTIFICATE OF COMPLIANCE

No. 07-

***In re* LEONARD ENGLISH, JR.** PETITIONER

As required by Supreme Court Rule 33.2(b), I certify that the petition for a Writ of Mandamus contains 34 pages, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 26, 2021



Leonard English, Jr.