

NO. \_\_\_\_

**21-5473**  
IN THE

SUPREME COURT OF THE UNITED STATES

JAMESON ROSADO,  
Petitioner,  
v.

**ORIGINAL**

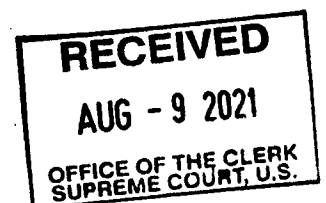
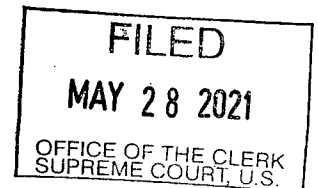
UNITED STATES ATTORNEY GENERAL & STATE OF NEW JERSEY,

Respondent.

On Petition for Writ of Certiorari to the  
United State Court of Appeals, Third Circuit

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

### QUESTIONS PRESENTED FOR REVIEW

1. Whether Jamie was ordered for the FFD to ultimately have him removed from federal service in retaliation for pursuing prior EEO activity;
2. Whether Mike Ward referred Jamie to the Inspection Division in retaliation for disclosing his EEO activity during a meeting in April 2010
3. Whether the allegations of insubordination and misconduct were clustered together to exaggerate the severity as a pretext for discrimination and retaliation to remove Jamie for engaging in EEO activity;
4. Whether the Agency's removal of Jamie was based on discriminatory and retaliatory motives despite receiving successful performance reviews and having been found fit for duty;
5. Whether Jamie was removed in retaliation for his EEO activity related to the current case as well as previous EEO activity;
6. Whether Mike Ward's referral of Jamie to the Inspection Division for insubordination was in retaliation for an EEO investigation which Mr. Ward was present;
7. Whether Mike Ward's referral to the Inspection Division was based on retaliation for failing to follow the chain of command when Jamie was "put off" by his first and second line supervisors;
8. Whether the Agency's alleged reasons for ordering the FFD in abundance of caution based on statements Jamie made on August 30, 2011 are a pretext for retaliation.

9. Whether the District Court prejudiced BOTH the initial processing of the complaint AND appeal or BOTH.

10. Whether Martin F. Zielinski's purported eleven (11) stressors relied upon in recommending the FFD were a pretext for retaliation as many factors enumerated are common stress factors to any ordinary person and do not pose a high security risk. Additionally, Jamie's wife was not, in fact, leaving him;

11. Whether Mike Ward's referral to the Inspection Division for misconduct, insubordination, and miscellaneous violations were a pretext for retaliation and actually motivated by discrimination to get Jamie removed because of mental illness;

12. Whether the allegation of misconduct that Jamie was not performing his duties despite receiving successful performance evaluations signed by his first and second line supervisor was a pretext for retaliation for engaging in prior EEO activity;

13. Whether the Agency's allegation of insubordination for going outside his chain of command regarding his prior EEO matter was a pretext for retaliation when Jamie had previously received an email from Mike Ward stating "the FBI operates via an open door policy" and the chain of command "does not preclude anyone from reaching out to higher levels of management if he/she feels the need".

14. Why did the District Court engage in exparte communications with other State of NJ Judges while prejudicing my complaint?

15. Why did for former Magistrate Judge Joseph Dickson burden me with additional

losses AFTER my matter was erroneously dismissed?

16. What Court will remedy the reprisal established by the EEOC, in addition to FBI Newark witnesses?

17. When can appellant expect relief, including reinstatement, which he has waited a decade for?

## **PARTIES INVOLVED**

Third Circuit Court of Appeals  
601 Market St Ste 18614,  
Philadelphia, PA 19106  
Case 20-2801

District Court, Newark  
50 Walnut St Rm 4015,  
Newark, NJ 07102  
2:15 CV 03999; Rosado v. AG

US Attorney's Office Camden  
401 Market Street  
Camden, NJ 08102

US Attorney's Office  
970 Broad Street  
Newark, NJ 07102

NJ Appellate Division Clerk's Office,  
P.O. Box 006  
Trenton, New Jersey, 08625  
2:15 cv 03999 , 1201W2020 000354 & appeal A002741-20T4  
1201XTR2020-2 & appeal A000819-20

Middlesex County Prosecutor's Office  
25 Kirkpatrick St #3  
New Brunswick, NJ 08901  
2:15 cv 03999 , 1201W2020 000354 & appeal A002741-20T4  
1201XTR2020-2 & appeal A000819-20

State matters involve Supreme Court's recent unanimous ruling re  
Caniglia v. Strom, 20-157 ( see appendix 38a-59a, inclusive)

## CERTIFICATE OF COMPLIANCE

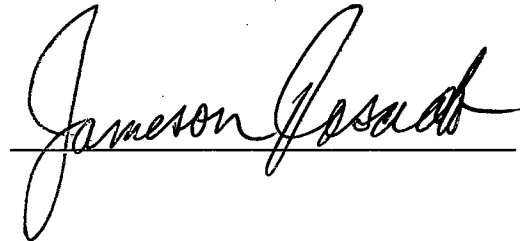
Rosado v. AG, US & State of NJ

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 4,803 words, 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.

This writ is also submitted timely.

Executed on August 3, 2021

A handwritten signature in black ink, reading "Jameson Rosado", is written over a horizontal line.

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The Equal Employment Opportunity Commission's regulations allow an Administrative Judge to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. See 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. *Caniglia v Strom*, 20-157, US Supreme Court, March 24, 2021(appx. 38a-59a)

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PETITION FOR A WRIT OF CERTIORARI  
STATEMENT OF THE CASE

Petitioner Jameson Rosado respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

The decision of the United States Court of Appeals for the Third Circuit Court of Appeals can be found at Pet. App. 1a.

JURISDICTION

The Third Circuit entered judgment on March 10, 2021. See Pet. App. 1a.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

Before getting into the substantive nature of this document, the appellant, referred to as "Jamie" in this pleading is a pro se litigant in which the District Court prejudiced AND exploited BOTH during & after this civil matter was erroneously dismissed. Specifically concerning summary judgment, because the appellant is a pro se litigant, he filed a 1) 106-page motion 2) opposing summary judgment, 3) written by 3 attorneys, 4) twice. Because he is a pro se litigant, he initially filed the \_\_\_\_\_

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document (DOC 1-3) on the Newark District Court's website on June 12, 2015. It was not terminated until August 6, 2018 by former Magistrate Judge Joseph Dickson, as "premature", with a new deadline for re-filing on June 6, 2019. On July 24, 2020, Chief Judge Freda Wolfson reassigned the matter to Judge John M. Vazquez, whom erroneously dismissed it on August 5, 2020. Two days AFTER the dismissal, former Magistrate Judge Joseph Dickson inappropriately dispatched 2 U.S. Marshals to the Carteret, NJ Police Department in an effort to intimidate the appellant, FOR A THIRD TIME, and this visit was a pretext visit designed to "entrap" appellant to contact the former Magistrate Judge so a second inappropriate unwarranted & unlawful visit would occur days later, on August 13, 2020, when appellant was burdened with State charges, losses of over \$3,000 to address State appeals which ultimately had to be withdrawn. Also, those State charges were in the name of another Carteret police officer on behalf of the Judge, and resulted in my firearms being confiscated and a permanent ban.

Because 1) the District Court took advantage of appellant as a pro se litigant, and 2) because of a number of returned submissions by the US Supreme Court, the Appellant will be filing an additional separate

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pleading addressing the State charges.

PLEASE DO NOT RETURN THIS DOCUMENT.

It should also be noted, during BOTH federal civil matters AND fabricated State charges, evidence was withheld by the State & Federal government violating both appellant's due process rights, and rules of discovery. In June 2017, the District Court generated an "active shooter bulletin", which the District Court refused to turn over twice requested. The bulletin 1) is dated, 2) has Judges Esther Salas and Joseph Dickson's names on it ( the judges assigned) and also 3) had my FBI employment photo on it, 4) referencing the very pending FBI litigation, which as Courts are aware : posting that document prematurely prejudices the complaint.

SUMMARY JUDGMENT MUST BE DENIED BECAUSE THERE ARE MATERIAL ISSUES IN DISPUTE WHICH REQUIRE A HEARING:

1. The accepted claims in this case overlap with Jamie's subsequent EEO, the nature of which being Jamie's termination for engaging in the current and previous EEO activity. Thus, the claims of discrimination and retaliation in this case are a "means to an end" as Jamie's removal

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was based upon the expansion of the Inspection Division investigation which is disputed in this action as pretextual. If your honor feels compelled to consolidate this case with the next case, we would consent to such consolidation.

2. Based on the facts, evidence, and testimony in this case, a reasonable juror could find that the Agency's actions against Complainant were in retaliation for protected EEO activity.

3. The facts, evidence, and testimony in this case all demonstrate that Jameson Rosado was ordered for a Fitness for Duty Exam in retaliation for engaging in EEO activity. Additionally, the evidence shows that Jamie was subject to reprisal when the Inspection Division expanded its investigation to include matter disclosed in his previous EEO.

4. The record contains numerous inconsistencies, contradictions, and conflicting evidence regarding the reasons: (1) the Inspection Division investigation was expanded; and (2) the fitness for duty (FFD) was scheduled. These inconsistencies and weaknesses blatantly demonstrate pretext and prove that the Agency's proffered reasons are unworthy of credence necessitating a hearing. Further, because this case can only be resolved by weighing conflicting evidence, issuing a decision without

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holding a hearing is not appropriate.

5. Even if the Agency's facts alleged in the Agency's Motion are undisputed, there still exists numerous issues of material fact in dispute warranting a Hearing. Among those genuine material issues of fact are in the questions presented.

#### APPELLANT'S STATEMENT OF UNDISPUTED FACTS

1. Jamie engaged in protected activity including initiating EEO contact. ROI Exhibit 9, Jameson Rosado Sworn Statement FBI Bates 163 and 164.

2. On June 8, 2011 Jamie emailed Sandra Bungo detailing the substance of his EEO activity. ROI Exhibit 36, FBI Bates 286

3. On June 8, 2011 Supervisory Special Agent, Amanda Moran, who was assigned to investigate allegations of misconduct and insubordination surrounding Jamie, became aware of the substance of Jamie's EEO claim when Sandra Bungo forwarded Ms. Moran an email from Jamie detailing his EEO activity and provided a summary of his EEO retaliation complaint. ROI &Exhibit 36, FBI Bates 286.

4. Sanda Bungo, among others, approved the decision to expand the investigation referred by Mike Ward. See Exhibit E, Moran Deposition

Page 33, line 3.

5. Ronald Lyman did not require employees who heard the alleged threatening statements regarding "Hurricane Jamie" to document their concerns in writing. See Exhibit F, Velazquez Deposition, Page 21 line(s) 23-25 and Page 22 (1-4).

6. Mr. Lyman has also said Jamie "unknowingly made threats." See Exhibit G, Rosado Statement dated September 12, 2011, Page 2.

7. Jamie's statements were not viewed as an imminent threat because when Judy Stone contacted Mike Ward on September 29, and he did not get back to her until November 8, 2011. See Exhibit D, Stone Deposition, Page 32, line(s) 7- 11.

8. Those employees who heard the statements regarding "Hurricane Jamie" had the initial reaction to "shrug it off as another silly... Jamie Rosado quote." See Exhibit F, Velazquez Deposition, Page 22 /line(s) 2-3.

9. Mike Ward's referral to the Inspection Division states Jamie has never threatened nor would resort to work place violence. ROI Exhibit 25 p. 3, FBI Bates 246.

Jamie advised Mike Ward via email that his work product suffered as a result of a hostile work environment. Specifically, Jamie stated

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"management needs to also be aware if the conditions continue as such, performance may suffer, for that's what happens when it becomes unbearable in coming to work. ROI Exhibit 21 page 1.

11. Jamie performed work for the Black Eagle Investigation working the command post and NCIC work but was not given an award which other employees received. Id.

12. Jamie felt that no matter what he did his performance would never be acceptable in light of the protected EEO activity he was engaged.

13. Jamie received a positive rating on his 2010 PAR. See Exhibit H, Ward Deposition, Page 21, line(s) 5-8.

14. Jamie received a successful rating on his 2009 PAR because "he did what we asked of him... we have other employees in the office that perform far below" Jamie. See Exhibit H, Ward Deposition, Page 22, line(s) 6-8.

15. The eleven stressors indicated by Marty Zielinski had no bearing on Jamie's performance at work as evidenced by two consecutive successful performance ratings in the field intelligence group. See Exhibit A, Rosado Deposition, page 41 line(s) 22-25.

16. The 11 stressors Marty Zielinski relied upon in suggesting the FFD

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are personal stressors that go on in "everybody's life." See Exhibit A, Rosado Deposition page 42 line(s) 17-18.

17. On February 18, 2011 Mike Ward sent Jamie an email stating "the FBI operates via an open door policy." Although Mr. Ward encouraged Jamie to follow the chain of command "it certainly does not preclude anyone from reaching out to higher levels of management ... " ROI Exhibit 22, page 1 FBI Bates 235.

18. On February 18, 2011 in the same email to Jamie, Mike Ward stated that "there will be no reprisal if you deem it necessary to reach out to anyone at FBIHQ including the Director's Office." Id.

19. Jamie did not follow his chain of command because he felt he was not being properly heard in his office as told to him by Marty Zielinski on September 1, 2011. He felt DD Pistole may be able to assist with his EEO matter, as well as other situations that arose in the NK office. See Exhibit G, Rosado Statement dated September 12, 2011 Page 3.

20. Additionally, Jamie did not follow his chain of command because he was very frustrated with how slow the EEO process is. Id at 2. He did not feel he was getting an adequate response from NK management and felt it necessary to reach out to someone at FBIHQ, which he understood to be

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his right. Id at 3.

21. In or about April of 2010 Mike Ward became aware Jamie had engaged in protected EEO activity. ROI Exhibit 10 page 2 FBI Bates 173.

22. The FFD occurred on December 5, 2011. The evaluators concluded Jamie was fit for duty. ROI Exhibit 15, page 6, FBI Bates 215, Jamie's Protected Activity

23. In 2009, Jamie initiated an EEO action due to discriminatory treatment he experienced in the Newark Field Office. ROI Exhibit 9 FBI Bates 163.

24. Jamie engaged in protected EEO activity when he informed Mike Ward of his pending EEO matter in a meeting in April of 2010. ROI Exhibit JO FBI Bates 173.

## ARGUMENT

### I. Legal Standards

The Equal Employment Opportunity Commission's regulations allow an Administrative Judge to issue a decision without a hearing when he or she finds that there is no genuine issue of material fact. See 29 C.F.R. § 1614.109(g). This regulation is patterned after the summary judgment procedure set forth in Rule 56 of the Federal Rules of Civil Procedure. In

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ruling on a motion for summary judgment, a court's function is not to weigh the evidence but rather to determine whether there are genuine issues for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 249, 255 (1986). The evidence of the non-moving party must be believed at the summary judgment stage and all justifiable inferences must be drawn in the non-moving party's favor. *Id.* If a case can only be resolved by weighing conflicting evidence, summary judgment is not appropriate.

Summary judgment is "ordinarily inappropriate" in employment discrimination cases, such as this one, where the employer's intent and state of mind are in dispute. See *Carlton v. Hisstic Transp., Inc.*, 202 F.3d 129, 134 (2d Cir.2000); *Gallo v. Prudential Residential Servs.*, 22 F.3d 1219, 1224 (2d Cir.1994). In discrimination cases, summary judgment may not be granted simply because the court believes that the plaintiff will be unable to meet his or her burden of persuasion at trial. There must either be a lack of evidence in support of the plaintiff's position, or the evidence must be so overwhelmingly tilted in one direction that any contrary finding would constitute clear error. See *Danzer v. Norden Sys., Inc.*, 151 F.3d 50, 54 (2d Cir.1998); *Weber v. Parfums Givenchy, Inc.*, 49 F.Supp.2d 343, 354 (S.D.N.Y.1999).

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Rehabilitation claims are analyzed using the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). See *Sista v. CDC Ixis N Am., Inc.*, 445 F.3d 161, 169 (2d Cir.2006).<sup>1</sup> Under this framework, Jamie must initially establish a *prima facie* case by demonstrating that he was subjected to an adverse employment action under circumstances that would support an inference of discrimination. *Furnco Construction Co. v. Waters*, 438 U.S. 567, 576 (1978). The burden then shifts to the agency to articulate a legitimate, nondiscriminatory reason for its actions. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). To ultimately prevail, Jamie must prove, by a preponderance of the evidence, that the agency's explanation is pretextual. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, (2000); *St. Mary's Honor Center v. Hicks*, 509 U.S. 502,519 (1993). Discrimination cases, like this case, are often NOT based on direct evidence because "[e]mployers are rarely so cooperative as to include a notation in the personnel file that the firing is for a reason expressly forbidden by law." *Bickerstaff v. Vassar College*, 196 F.3d 435, 448 (2nd Cir. 1999). Direct evidence of discriminatory intent is rare, and often must be inferred from circumstantial evidence found in the pleadings.

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Holtz v. Rockefeller & Co., Inc., 258 F.3d 62, 69 (2d Cir. 2001). Because direct evidence of an employer's discriminatory intent is rarely be found, "affidavits and depositions must be carefully scrutinized for circumstantial proof which, if believed, would show discrimination." Gallo v. Prudential Residential Servs., L.P., 22 F.3d 1219, 1224 (2d Cir.1994). For the foregoing reasons, motions for summary judgment in employment discrimination actions should be evaluated with special care and greater caution must be exercised in granting summary judgment in employment discrimination cases. See Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir.1997).

1.The same analytical framework governs claims under both the ADA and the Rehabilitation Act. See Donahue v. Conrail, 224 F.3d 226,232 (3d Cir.2000).

## II. A Reasonable Juror May Find That Complainant Established a Prima Facie Retaliation Claim

Jamie can establish a prima facie case of retaliation because, as set forth below,

(1) he engaged in statutorily-protected activity, (2) he suffered adverse employment action, and (3) the protected activity and adverse

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employment action were causally connected. See *Patane v. Clark*, 508 F.3d 106, 115 (2d Cir. 2007), *Dennis v. Osram Sylvania, Inc.*, 549 F.3d 851 (2008). "The burden of establishing a prima facie case in a retaliation action is not onerous, but one easily met." *Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir. 2000).

Jamie engaged in EEOC protected activity dating back to 2007. See Jamie's Declaration at 12. Jamie's protected activity also included his EEO complaint in 2009. See ROI Exhibit 9, page 3. Based on the evidence it is clear that Mike Ward and Amanda Moran were aware of the instances where Jamie engaged in protected activity.

SAC Mr. Ward was physically present in the office for a two-week investigation of Jamie's previous EEO related claims. In April of 2010, Jamie requested a meeting with Mr. Ward. As a result of their meeting, Mr. Ward became aware of Jamie's participation in the EEO process. See ROI Exhibit 10 p. 2. Mike Ward's referral on March 14, 2011 references email correspondence with Jamie on March 9, 2011 in which EEO matters were discussed. As a result of Mr. Ward's referral, Amanda Moran became aware of Jamie's EEO activity and claims against the Agency. ROI Exhibit 25, page(s) 2 and 3. Moreover, Amanda Moran may

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have also become aware of Jamie's participation in the EEO process in or around March of 2011. See ROI Exhibit 11 page(s) 2 and 3.

The Agency cannot contest the fact that Jamie suffered adverse employment action. Additionally, the Agency's papers are deficient because it does not argue Jamie failed to establish a Prima Facie Case. We can only take that to mean Jamie has established a Prima Facie Case. Notwithstanding, Jamie demonstrates sufficient evidence to raise a genuine issue of material fact regarding whether a causal connection could be established between his protected activity and the adverse action he suffered. To establish the causal connection Jamie must "put forth some evidence to deduce a causal connection between the retaliatory action and the protected activity and requiring the court to draw reasonable inferences from that evidence, provided it is credible." Nguyen, 229 F.3d at 556 (quoting EEOC v. Avery Dennison Corp., 104 F.3d 858, 861 (6th Cir. 1997)). In making this determination, an Administrative Judge must view the evidence in light most favorable to the non-movant and must draw all reasonable inference in the non-movant's favor.

The record is replete with evidence of a causal connection between



Jamie's protected activity and the Agency's retaliatory action. An inference of a retaliatory motive must be drawn in Jamie's favor in that such a short period of time passed between the retaliatory acts and the protected activity. Close temporal proximity between a plaintiff's protected action and an employer's adverse employment action has been held to be sufficient to establish the requisite causal connection between a protected activity and retaliatory action. See e.g., *Clark County School District v. Breeden*, 532 U.S. 268, 273 (2001).

SAC Mike Ward made Amanda Moran aware of Jamie's protected EEO activity when he forwarded his referral to the Inspection Division on March 14, 2011. Thereafter, on June 3, 2011 Amanda Moran expanded her investigation. ROI Exhibit 33. Because brief intervals of time exist between Jamie's ongoing protected activities and the adverse action he suffered, genuine issues of material fact exist regarding a causal connection. See e.g. *Singfield v. Akron Metro. Hous. Auth.*, 389 F.3d 555, 563 (6th Cir.2004) (finding that 3-month interval between protected Title VII activity and (adverse action) constituted sufficient evidence to establish a prima facie causal connection; *Santos v. Costco Wholesale, Inc.*, 271 F.Supp.2d 565, 575 (S.D.N.Y.2003) (approximately three months

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sufficient to establish prima facie case); *Sügg v. Port Auth. of N.Y. and N.J.*, 1999 WL 269905, at \*6 (S.D.N.Y.1999) (six months sufficient).

The fact that Jamie's earlier EEO protected activity and ordering the Fitness for Duty Exam were causally connected is demonstrated by evidence that Jamie's statements regarding "Hurricane Jamie" were non-threatening and not taken seriously. See Exhibit F, Velazquez Deposition, Page 22 line(s) 2-3. Further, Judy Stone's signed sworn statement states she "did not believe Mr. Rosado represented an imminent threat to himself or others." ROI Exhibit 10 FBI Bates 213. However, the Agency relies on these out of context, over exaggerated statements to order the FFD. Additionally, the eleven stressors relied upon by Martin Zielinski in advising a FFD are stressors common to ordinary people. ROI Exhibit 14 page 3. Jamie received two consecutive performance ratings while allegedly experiencing the above mentioned eleven stressors.

In sum, a trier of fact could easily conclude from the above facts and evidence that the Agency's adverse employment actions against Jamie were connected to, and in retaliation, for his continuous engagement in protected activity, in violation of Title VII and the Rehabilitation Act.

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### III. The Agency's Reasons are Pretextual in Nature and Genuine Issues of Material Fact Exists Precluding Summary Judgment

#### 1) The Agency's Reasons for ordering the FFD Are Pretextual in Nature and Genuine Issues of Material Fact Exists Precluding Summary Judgment

The Agency only maintains that it can articulate a legitimate, nondiscriminatory reason for its action. Notwithstanding, Jamie demonstrates sufficient evidence to raise a genuine issue of material fact regarding whether the alleged legitimate, nondiscriminatory reason articulated is a pretext for retaliatory treatment. Even if the Agency can proffer legitimate, nondiscriminatory reasons for its actions, which Jamie maintains that it did not, Summary Judgment is precluded as the Agency's reasons are pretextual in nature and genuine issues of material fact exist on the record.

"A plaintiff can demonstrate pretext by showing that the proffered reason (1) has no basis in fact, (2) did not actually motivate the defendant's challenged conduct, or (3) was insufficient to warrant the challenged conduct." *Lewis v. A.B. Dick Co.*, 231 F.3d 1016, 1021 (6th Cir. 2000).

Pretext can also be demonstrated by "showing weaknesses, \_\_\_\_\_

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implausibilities, inconsistencies, incoherencies, or contradictions in the [Agency's] proffered reasons for its action that a reasonable fact finder could rationally find them unworthy of credence." *Dalesandro v. Potter*, EEOC DOC 01A50250, 2006 WL 266297 (2006). As set forth below, the Agency's proffered reasons regarding the adverse action Jamie suffered, specifically ordering the FFD and expanding the Inspection Division Investigation are "unworthy of credence." *Thurman v. Yellow Freight Sys.*, 90 F.3d 1160, 1166 (6th Cir. 1996) (citing *Texas Dept. of Comfy. Affairs v. Burdine*, 450 U.S. 248,256 (1981)). Rather, the Agency was motivated by discrimination and retaliation.

As set forth in more detail below, numerous material issues of fact exist regarding ordering the FFD and expanding the Inspection Division investigation. A hearing is required to make a finding on these material issues of fact.

Pretext is most glaring in this case by virtue of the fact that the comments regarding "Hurricane Jamie" relied upon to order the FFD were not taken as serious threats. The employees who allegedly heard Jamie make these statements initially reacted by "shrugging it off as another silly... Jamie Rosado quote." See Exhibit F, Velazquez Deposition,

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Page 22 line(s) 2 and 3. At the very least, there is an issue of fact as to whether the Agency subjected Jamie to discrimination and retaliation by ordering him to undergo an FFD.

The Agency's purported reasons for ordering the FFD based on Jamie's statements on August 30, 2011 are pretextual and unworthy of credence. More telling is the fact that the evidence clearly shows Ronald Lyman did not require employees who heard these alleged threats to put them in writing. See Exhibit F, Velazquez Deposition, Page 21 /line(s) 23-25 and Page 22 line 2. Accordingly, there is an issue of fact of as to whether the Agency genuinely believed Jamie was a threat to the Newark Field Office when ordering the FFD. A reasonable factfinder could conclude, based on the evidence and testimony, that the Agency ordered the FFD in retaliation for engaging in EEO activity.

This is buttressed by the fact that after Judy Stone followed up with Mike Ward on September 29, 2011 regarding rescheduling the FFD, Mike Ward did not respond until November 8, 2011. See Exhibit D, Stone Deposition Page 32 line(s) 7-10. Jamie's statements could not have been interpreted as an imminent threat or Mr. Ward would have responded promptly.

Therefore, the Agency's purported reasons for ordering the FFD are

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pretextual and undermined by the fact Jamie was found fit for duty. See Exhibit D, Stone Deposition Page 42, line 4.

Moreover, there is a genuine issue of material fact as to whether the Agency ordered the FFD in retaliation for Jamie engaging in protected EEO activity where the testimony clearly established that the stressors listed by Mr. Zielinski had absolutely no bearing on Jamie's work performance. See Exhibit A, Rosado Deposition page 41. This is evidenced by the fact Jamie received two consecutive successful performance ratings while allegedly experiencing the stressors. Id

## 2) The Agency's Reasons for Expanding the Inspection Divisions Investigation are Pretextual in Nature and Genuine Issues of Material Fact Exists Precluding Summary Judgment

As set forth in more detail below, numerous issues of fact exist regarding the reasons the Inspection Division investigation was expanded. A hearing is required to make a finding on these material issues of fact.

There is genuine issue of material fact as to whether the Agency's referral to the Inspection Division was motivated by discrimination and retaliation where the evidence clearly establishes Mike Ward that the "FBI operates via an open-door policy." See ROI Exhibit 22, FBI Bates

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236. Even though Jamie's signed sworn statement mentioned he could be subject to disciplinary action for failing to comply with the confidentiality provision, Jamie was not precluded from reaching out to higher levels of management if he felt the need without fear of reprisal. *Id.* Thus, disputed material issues of fact exist as to whether Mike Ward's referral to the Inspection Division for insubordination was pretextual by engaging in prior EEO activity when he specifically stated to Jamie he could go outside the chain of command to FBIHQ.

Pretext is most evident by the fact that although Jamie did not follow his chain of command, he felt he was not being properly heard in his office. Additionally, DD Pistole may have been able to assist with his EEO matter. See Exhibit G, Rosado Statement September 12, 2011, page 3. Although he did circumvent the chain of command, he did not feel he was getting adequate response from NK management and felt it necessary to reach out to someone at FBIHQ.

The Agency's purported reason for referring Jamie to the Inspection Division for refusing to accept employment responsibilities is pretextual and unreliable. More operative, is the fact Jamie received positive, successful work performance ratings on his 2009 and 2010 PAR. See

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Exhibit H, Ward Deposition Page 21 line(s) 5-8 and Page 22 line 6. Any email Jamie sent regarding his work performance was taken out of context. See Exhibit G, Rosado Statement dated September 12, 2011 page 4. Jamie merely expressed his work performance could suffer as a result of working under a hostile work environment. ROI Exhibit 21 FBI Bates 243. Thus, the Agency's legitimate, non-discriminatory reason for referring Jamie to the Inspection Division are pretextual because Jamie's mere frustration did not rise to a level warranting referral to the Inspection Division.

Based upon these clear issues of material fact that are in dispute, the Agency's Motion should be denied in its entirety and a hearing should be held.

Due to the overlapping issues with the current and subsequent EEO cases, if your honor feels compelled to consolidate this case with the next case, we would consent to such consolidation.

The Commission has repeatedly held that if a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate. See e.g. *McKinnon v. Potter*, EEOC Appeal No. 01200546921 (April 17, 2008). Because Jamie has submitted

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supporting evidence and the credibility of the Agency's legitimate, non-discriminatory reasons are at issue, "there is a need for strident cross-examination and summary judgment on such evidence is improper." See *Pedersen v. Department of Justice*, EEOC Request No. 05940339 (February 24, 1995) (holding that where a case can only be resolved by weighing conflicting evidence, issuing a decision without holding a hearing is not appropriate). Moreover, because "[t]runcation of this process, while material facts are still in dispute and the credibility of witnesses is still ripe for challenge, improperly deprives Jamie of a full and fair investigation of his claims," (see *Bang v. U.S. Postal Serv.*, EEOC Appeal No. 01961575 (Mar. 26, 1998)), Summary Judgment in this case is improper. Jamie has shown enough evidence to raise genuine issues of material fact regarding whether the Agency's purported reasons were in fact pretextual. Moreover, there are several issues which should have been resolved by weighing the conflicting evidence. Taken together, and in the context of precedent cautioning against summary judgment where a case presents lingering factual questions as to employer motive, this evidence is sufficient to defeat the Agency's motion for summary judgment on Jamie's claims. Specifically, courts have repeatedly

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cautioned that motions for summary judgment in employment discrimination actions should be evaluated with special care and greater caution must be exercised in granting summary judgment in employment discrimination cases. See Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir.1997); Belfi v. Prendergast, 191 F.3d 129, 135 (2d Cir.1999).

Regarding processing BOTH federal & State of NJ matters, appellant's due process rights, right to counsel, Miranda Rights, and Rules of Discovery were egregiously violated by several Federal, State & Municipal Authorities. Specifically, his 4th Amendment Right was violated by the U.S. Marshal's, Carteret NJ Police Department, District Court of Newark, NJ, and the Middlesex County Prosecutor's Office. This occurred on August 7, 2020, two days after the dismissal of my civil matter.

A second occurrence of his 4th Amendment Rights were violated on August 13, 2020, when he arrested by Carteret Police, summoned by the US Marshals, after engaging the District Court Judge assigned to his case was entrapped for that response, and an additional 2<sup>nd</sup> amendment violation occurred when his legally owned firearms were illegally seized and a permanent ban occurred as a result.

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## REASONS FOR GRANTING THE WRIT

The District Court prejudices BOTH during & after the matter was erroneously dismissed require a hearing. Remedies are expected and it most likely will need to be resolved by a Judge or panel of Judges should the Supreme Court undertake this complaint. The State charges will undoubtedly require the Supreme Court's intervention and result in petitioner's State charges vacated, and the return of his firearms and other restitution.

The petitioner is amenable to remanding the matter back to the Newark NJ District Court should the U.S. Supreme Court deem that necessary.

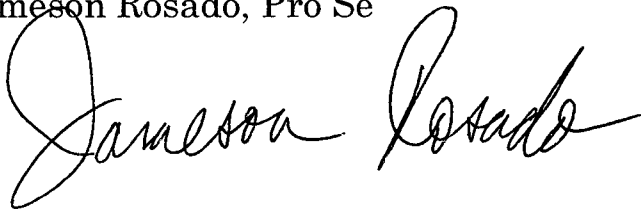
## CONCLUSION

For the foregoing reasons, it is therefore respectfully submitted that a finding of discrimination and retaliation is warranted, or, at the very least there are multitudes of issues of material facts in dispute warranting a hearing.

Mr. Rosado respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

Jameson Rosado, Pro Se

A handwritten signature in black ink that reads "Jameson Rosado". The signature is written in a cursive, flowing style with a large initial "J" and "R".

August 3, 2021