

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Kaon-Jabbar East El PETITIONER

vs.

United Parcel Service, Inc. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Ninth Circuit

(“AMENDED”) PETITION FOR WRIT OF CERTIORARI

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4788 N. Lombard St.  
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“AMENDED” PETITION  
FOR WRIT OF CERTIORARI  
IN THE SUPREME COURT  
OF THE UNITED STATES  
09/07/2021

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QUESTION(S) PRESENTED

In Title VII of the Civil Rights Act of 1964, Congress generally prohibited private employers from discriminating against an individual "because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §§ 2000e-2(a)(1), 2(a)(2) and 2(c)(2). In 1972, Congress amended the statute to specify that " 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." § 2000e(j). Furthermore, an additional legal analysis is needed to determine, whether the initial Dismissal at the District Court level was a product of compromised adjudication. When the Founding Fathers established the Judicial Branch under the said Government, they expressly enacted a "Due Process Clause" to guarantee not only the 'unalienable rights' of American citizens, but to guarantee the judicial seat cannot be swayed by personal gain.

The Constitutional questions presented are as follows:

Can an employer justify zero accountability for wrongful employee discrimination with a federal policy or statute, as a loophole to pressure an employee into the 'involuntary act' of completing a 'voluntary section' of an employee application; especially when the 'involuntary act' of an employee is selecting from a list of 'voluntary' race classifications only after pressured by the employer, while disregarding employee's expressed religious conflict with said race classifications?

Can a judge preside over a Case involving a litigant whom said judge once had a fiduciary, attorney-client privilege, and/or business relationship with?

Can a lower Court suspend a Rule in order to extend filing deadlines, due to ungovernable conditions of natural disasters, such as global pandemics and national epidemics; especially if the Supreme Court of The United States has already manifested such an extension for itself as a higher Court?

1 **LIST OF PARTIES**

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

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

5 **RELATED CASES**

6 United States District Court (Portland, OR):  
7 *East El v. United Parcel Service, Inc.*  
8 Case No. 3:19-cv-333-SI. (May 22, 2020)

9 United States Court of Appeals (9<sup>th</sup> Circuit):  
10 *East El v. United Parcel Service, Inc.*  
11 Case No. 20-35590 (March 29, 2021)

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1 IN THE  
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5 Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

6 OPINIONS BELOW

7 ☒ For cases from **federal courts**:

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

10 ☐ reported at \_\_\_\_\_; or,  
11 ☐ has been designated for publication but is not yet reported; or,  
12 ☒ is unpublished.

13 The opinion of the United States district court appears at Appendix C to the petition  
14 and is

15 ☐ reported at \_\_\_\_\_; or,  
16 ☐ has been designated for publication but is not yet reported; or,  
17 ☒ is unpublished.

18 ☐ For cases from **state courts**:

19 The opinion of the highest state court to review the merits appears at  
20 Appendix \_\_\_\_\_ to the petition and is

21 ☐ reported at \_\_\_\_\_; or,  
22 ☐ has been designated for publication but is not yet reported; or, ☐ is unpublished.

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

24 ☐ reported at \_\_\_\_\_; or,  
25 ☐ has been designated for publication but is not yet reported; or,  
26 ☐ is unpublished.

27  
28 1.

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**JURISDICTION**

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 16, 2020.

☐ 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: March 29, 2021, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

1                                   **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

2   First Amendment reads as follows: Congress shall make no law respecting an  
3   establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom  
4   of speech, or of the press; or the right of the people peaceably to assemble, and to petition  
5   the Government for a redress of grievances.

6   42 U.S.C. § 2000e-2(a)(1) to fail or refuse to hire or to discharge any individual, or  
7   otherwise to discriminate against any individual with respect to his compensation, terms,  
8   conditions, or privileges of employment, because of such individual's race, color, religion,  
9   sex, or national origin.

10   42 U.S.C. § 2000e-2(a)(2) to limit, segregate, or classify his employees or applicants for  
11   employment in any way which would deprive or tend to deprive any individual of  
12   employment opportunities or otherwise adversely affect his status as an employee, because  
13   of such individual's race, color, religion, sex, or national origin.

14   42 U.S.C. § 2000e-2(c)(2) to limit, segregate, or classify its membership or applicants for  
15   membership, or to classify or fail or refuse to refer for employment any individual, in any  
16   way which would deprive or tend to deprive any individual of employment opportunities, or  
17   would limit such employment opportunities or otherwise adversely affect his status as  
18   an employee or as an applicant for employment, because of such individual's race,  
19   color, religion, sex, or national origin.

20   42 U.S.C. § 2000e(j) defines "religion": The term "religion" includes all aspects of religious  
21   observance and practice, as well as belief, unless an employer demonstrates that he is  
22   unable to reasonably accommodate to an employee's or prospective employee's religious  
23   observance or practice without undue hardship on the conduct of the employer's business.

## STATEMENT OF THE CASE

Plaintiff-Appellant Kaon-Jabbar East El ("Mr. El"), brought this action against his former employer, Defendant-Appellee United Parcel Service, Inc. ("UPS"). Mr. El worked for UPS from November 19, 2016 through January 15, 2017, and turned down an offer to return to UPS on February 2, 2017; due to the disparate impact he experienced as a result of disparate treatment by UPS. Mr. El asserted four claims, alleging: (1) religious discrimination, in violation of Oregon Revised Statutes ("ORS") § 659A.030; (2) race discrimination, in violation of ORS § 659A.030; (3) whistleblower retaliation, in violation of ORS § 659A.199; and (4) common law constructive termination.

Mr. El completed an online application for the position of seasonal Driver Helper at UPS on November 17, 2016. This online application includes a "voluntary self-disclosure" section asking applicants to state their race, but never allowed applicants the option of checking a box stating, *"choose not to voluntarily self-disclose,"* until only after Mr. El filed his civil suit. During the period of Discovery it was revealed (at Mr. El's November 21, 2019 Deposition) that UPS produced two 'unlike' employment applications, and Mr. El challenged this issue during his Deposition, because one of the applications Mr. El had never seen before.

The online application also included a 'race' disclosure field in the "personal information" section. Mr. El declined to answer all racial identification questions and left them blank, but (even though he has never been convicted nor charged with a crime) Mr. El also left the 'voluntary' criminal history section blank. He further maintains that neither 'racial' identification question he saw, gave applicants the option to select *"Other"* (nor *"the like"*) which is equivalent to *"choose not to voluntarily self-disclose."* Mr. El stated that he declined to answer these questions, because as a member of Moorish Science Temple of America ("MSTofA") misclassifying his race conflicts with his religious beliefs, as a Moorish American Moslem; as taught to him by Prophet Noble Drew Ali in the religion of Islamism. [Note: Mr. El's religion prefers the original spelling "Moslem" over the altered "Muslim."]

Mr. El interviewed at UPS on November 19, 2016 and received an offer to work as a seasonal Driver Helper. Mr. El's interviewer Cassandra Jackson ("Ms. Jackson") never mentioned nor made any issue about the 'voluntary' application sections, which Mr. El left blank. Though Mr. El acknowledges Ms. Jackson may have told him that there was additional paperwork he would have to fill out; Ms. Jackson never told Mr. El that UPS would treat his 'voluntary' information as 'involuntary.' Shortly after the interview, Mr. El met his former supervisor Karl Zabel ("Mr. Zabel") during a facility tour with other coworkers.

During new employee orientation on November 26, 2016, Lori Atkinson ("Ms. Atkinson"), UPS Human Resources Supervisor ("HR Supv.") approached Mr. El and had him removed from employee orientation and informed him that his application was incomplete. Ms. Atkinson told him that UPS could not get him paid; until he completed the race classification portions of the application. The available options stated on the printed form were "Hispanic," "White," "Black," "Asian American/Pacific Islander," "Hawaiian or Other Pacific Islander,"

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1 "American Indian/Alaskan Native," and "Two or More Races." The online form did not  
2 include an option for "Other" (nor *'the like'*) which is equivalent to *"choose not to voluntarily*  
3 *self-disclose."* Mr. El told Ms. Atkinson that he left the race classification question blank,  
4 because it was 'voluntary' and that misclassifying himself with the available race  
5 classifications conflicted with his religion. Ms. Atkinson informed Mr. El that UPS would not  
6 be able to pay Mr. El; unless he selected a race classification. Mr. El repeated that choosing  
7 any of the listed options would 'vehemently' conflict with his religion; wherein, Prophet  
8 Noble Drew Ali teaches him that his race is "Human." He asked Ms. Atkinson if he had to  
9 "compromise how he religiously identifies and racially identifies to get paid?" Ms. Atkinson  
10 told Mr. El that she understood his point, but "the feds make us do it," which clearly  
11 conveyed she was not going to stop, regardless of Mr. El's 'expressed' religious dissent.  
12 Mr. El disagreed with Ms. Atkinson pressuring him into religious compromise by coercing  
13 him to select from race classifications, which clash with his religion, so Ms. Atkinson called  
14 over another HR Supv. named Abzael Loeza ("Mr. Loeza") to hammer home the point with  
15 more pressure. Mr. El stated that he would 'temporarily' select "White" under protest, but  
16 qualifying his identity as a Color (or any classification connected to a Color) is against his  
17 religion. However, he 'involuntarily' selected "White" since "North Africa" (specifically  
18 Morocco) is included in the legal definition of "White." As a Moorish American Moslem,  
19 Mr. El's religion teaches him, that he is a descendant of Moroccans and born in America.

20 Toward the end of the meeting, Mr. El informed Ms. Atkinson that the situation upset him  
21 and that he would return with his religious documentation. Mr. El also requested that UPS  
22 create a racial option for "Other" (or *'the like'*) or even a 'write-in'. Mr. El met with Ms.  
23 Atkinson again on December 9, 2016. They discussed his issue with the race identification  
24 question. Mr. El repeated his objections and asked that UPS change his race to "Human"  
25 on the form. He further clarified his religion teaches him, that his race-group is "Asiatic",  
26 which is not to be confused with (nor equated to) "Asian" and he would like to be able to  
27 'write-in' the correct self-identifier, according to his religion. Ms. Atkinson told Mr. El that  
28 there was nothing she could do. Mr. El obtained contact information for one of Ms.  
Atkinson's superiors Regional HR Director: Dominique Johnson ("Ms. Johnson") from the  
receptionist on his way out.

Mr. El spoke with Ms. Johnson by telephone approximately three times, and he reiterated  
that being pressured to both: (1) self-identify his race 'involuntarily' and (2) select from race  
classifications, which conflicted with his religious beliefs; were still unresolved issues. Ms.  
Johnson scheduled a meeting with Mr. El, but suddenly could not attend in person, so she  
had District HR Director: Dennis Ewing ("Mr. Ewing") into replace her, but Ms. Johnson did  
call into the meeting. Mr. El again asked that UPS provide him with the option of listing  
"Human" or "Other" and that UPS correct Mr. El's race classification in its records. Ms.  
Johnson and Mr. Ewing responded, that they would get back with Mr. El and never did.

After completing all HR requests of 'on-call' Driver Helpers at UPS by Ms. Atkinson, Mr. El  
was required to check-in via email or phone by 7 a.m. or by 11 a.m. only if he missed the 7  
a.m. check-in. Then, the Driver Helper Coordinator: Mr. Zabel, became able to assign him  
to assist a UPS Driver, if help was needed. Driver Helpers who do not miss any days of

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checking-in to confirm their availability may collect an availability bonus of \$200 at the end of each week, even if they are not ultimately assigned to assist a UPS Driver.

Mr. El spoke with Mr. Zabel by telephone on December 12, 2016 to check in and to inform him that he would be unavailable to work from December 15, 2016 through December 19, 2016, because of a death in his family. Mr. El also requested, by email on December 15, that Mr. Zabel discontinue sending Mr. El daily emails; until his original return date December 20. Consequently, Mr. El suffered another family death on December 19, 2016 in the same city of the original December 16, 2016 funeral he initially came for. To this effect, Mr. El left Mr. Zabel a voicemail on December 19, 2016 informing Mr. Zabel, that he would be returning one day later than expected on December 21, 2016; instead of December 20, 2016, due to the sudden additional family loss. Mr. Zabel missed that voicemail and called Mr. El on the morning of December 20, 2016 to ask about Mr. El's availability. Mr. El did not respond immediately, but later that morning sent an email to Mr. Zabel explaining that he would not be returning until the next day.

Mr. El returned to Portland very early the next morning, and checked-in with Mr. Zabel via email, but was not assigned to a Driver (i.e. "on car"). Mr. El also was available for work on December 22<sup>nd</sup> and December 23<sup>rd</sup> of 2016, but was not assigned to assist a UPS Driver either day. Mr. El received his availability bonus check on December 23<sup>rd</sup> and discussed with Mr. Zabel about the religious and racial discrimination issues, which started and stemmed from his interaction with Ms. Atkinson. On December 27, 2016, Mr. Zabel sent a group email to all UPS Driver Helpers whom Mr. Zabel was coordinating, asking if any would be interested in a permanent position at the UPS Portland hub. Mr. El replied, expressing interest in a permanent position and also asking whether any Driver Helper shifts were available that day. Again, Mr. Zabel informed Mr. El that no Driver Helper shifts were available that day, and Mr. Zabel promised to follow up with more information on the permanent position.

Mr. El's first attorney Alan Nieczyporuk severed relationship with HKM, LLP and said Law Firm did not communicate this to Mr. El for 3 weeks. Mr. El expressed his disappointment on the transition method and substitute counsel: Shemia Fagan (then Oregon Senator: District 24, now Oregon Secretary of State) filed a Motion To Withdraw As Counsel, and Mr. El has been Pro Se ever since said Motion. At Mr. El's November 21, 2019 Deposition, UPS produced two 'unlike' Employee Applications, that Mr. El had allegedly filled out, but one of the applications Mr. El had never seen before. One which includes an incomplete Felony/Conviction section [pg. 4, Bates #000004]. This same Felony/Conviction section was removed from both [pg. 9, Bates #000096] and [pg.24, Bates #000111]. Furthermore, the portion of the Deposition wherein UPS Lawyer (Mr. Morehead, Esq.) acknowledged that the Employment Applications come from 'two different sources' is [pg. 263, line 2-25], which was further clarified in extended dialogue [pg. 21, line 20—pg. 51, line 20]. Deposition Transcript and both 'unlike' Employee Application exhibits are not included, due to the 40 page minimum, but will be made available upon the Court's request at a future date.

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During May 18, 2020 Oral Argument, Mr. El stipulated to Judge Simon, that in UPS's MOTION FOR SUMMARY JUDGEMENT; UPS added a DECLARATION IN SUPPORT FOR SUMMARY JUDGEMENT from Ms. Atkinson labeled "UPS-R 000097" which contained back office email dialogue about Mr. El (between Ms. Atkinson, Mr. Loeza, Mr. Ewing, and Ms. Johnson) regarding Mr. El's religious/racial Complaint, and UPS never provided exhibits Bates numbered "UPS-R #####" during Discovery. Rather UPS only provided exhibits Bates numbered "UPS #####" without the "-R". This means UPS provided exhibits Bates numbered "UPS 000001—000120," but UPS never provided exhibits Bates numbered "UPS-R 000001—000096" or more, except "UPS-R 000097". UPS only provided one exhibit labeled "UPS-R" (which is the "UPS-R 0000097" back office email dialogue) and buried the others. Mr. El told Judge Simon it would be proper to reopen Discovery; since new evidence has surfaced with "one way dialogue" emails, but the Court has not seen, if these emails were "responded to" for fully vetting connections to Retaliation Collaboration and other Causation. However, Judge Simon did not allow Mr. El to reopen Discovery; even though it was 'blatantly' obvious, that there was outstanding evidence not provided by UPS during Discovery, which ended 76 days prior on March 3, 2020.

As mentioned in Mr. El's "Informal Opening Brief" portion of his June 21, 2020 Notice Of Appeal: Mr. El found out, that 9 years prior (2011) Judge Michael Howard Simon, as a partner at Perkins Coie LLP, represented UPS for 11 years (2000-2011). During Judge Simon's tenure at Perkins Coie LLP, as a business litigator Judge Simon represented 'employers' pro bono in First Amendment Cases, just like Mr. El's First Amendment "religious natured" Case is against his former 'employer'. Instead of Recusing himself; Judge Simon presided over Mr. El's Case against Judge Simon's former client UPS.

Judge Simon's relationship with Perkins Coie Law Firm and UPS and corresponding hyperlinks are as follows:

- 1986: Judge Simon joined Perkins Coie LLP as a business litigation Lawyer, then in 1990: Judge Simon became a Partner at Perkins Coie LLP. Judge Simon represented Employers against Employees in high-profile 1<sup>st</sup> Amendment Cases. (Note: Mr. El's Case is also a 1st Amendment Case as well, regarding his Religion, etc.) See: "President Obama Names Five To The United States District Court" <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/president-obama-names-five-united-states-district-court-0>
- 2000: Perkins Coie LLP becomes Attorneys for UPS, while Judge Simon was a Partner at said law firm. See: "UPS Picks Perkins Coie As Legal Counsel" <https://www.bizjournals.com/portland/stories/2000/07/31/daily22.html>
- 2010: Judge Simon was appointed to Oregon Federal Court by Pres. Barak Obama. See: "Obama Nominates Two For U.S. District Court Judgeships In Oregon" <https://www.oregonlive.com/news/2010/07/obama-nominates-two-men-as-jud.html>
- 2011: Judge Simon resigns from Perkins Coie Law LLP and as an attorney for UPS. See: "Rep. David Wu loses another employee: attorney Michael Simon" <https://www.oregonlive.com/politics/2011/04/rep-david-wu-loses-another-emp.html>

1 On July 6, 2020, The United States Court of Appeals (9<sup>th</sup> Circuit) issued a Notice To Show  
2 Cause ("Show Cause"), due to jurisdictional limitations set forth in 28 U.S. Code § 2107(a);  
3 since his Notice Of Appeal papers (mailed June 21, 2020) were received on June 26, 2020,  
4 which was 4 days after his 30 day deadline (June 22, 2020). Both Mr. El and UPS  
5 Answered, Responded, and Replied to the 9<sup>th</sup> Circuit's Show Cause over the course of  
6 several months, and Mr. El's Appeal was ultimately DISMISSED on October 16, 2020 for the  
7 said issues in 28 U.S. Code § 2107(a) raised by the Appellate Court. 14 days later (October  
8 30, 2020) Mr. El 'timely' filed a Motion For Extension of Time ("Extension") to file a Motion  
9 For Reconsideration and Rehearing En Banc ("Reconsideration En Banc") in the Appellate  
10 Court. Sequentially, on November 16, 2020 Mr. El also filed a Motion To Reopen Time To  
11 File An Appeal ("Reopen Time") with the lower Oregon District Court via 28 U.S. Code §  
12 2107(c)(2) and Federal Rules of Appellate Procedure ("FRAP") Rule 4(6)(a)(b)(c), which  
13 was DENIED on December 16, 2020. The Extension was GRANTED by the Appellate  
14 Court on February 17, 2021, and Mr. El 'timely' filed his Reconsideration En Banc on March  
15 4, 2021, which was later DENIED on March 29, 2021. At this time Mr. El began to make  
16 preparations for his Petition For Writ Of Certiorari ("Petition") to the Supreme Court of The  
17 United States ("SCOTUS").  
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## REASONS FOR GRANTING THE PETITION

It is Mr. El's plea to the SCOTUS to not only evaluate UPS according the Laws, Rules, and Regulations enacted by Congress, and *Trans World Airlines, Inc. v. Hardison (1977)*, but to also evaluate UPS according to their own standard:

"All UPS employees **have the right** to work in an environment **free of any type of harassment and/or discrimination**. Harassment and/or discrimination because of **race, gender, national origin, disability, sexual orientation, gender identity, veteran or military status, pregnancy, age, religion, or other legally protected characteristic or basis, or any unlawful means, will not be tolerated**. Incidents of harassment and/or discrimination **must be reported immediately** to the appropriate manager or through other reporting mechanisms." ~UPS Policy Book: We Maintain an Environment Free of Discrimination and Harassment, pg. 24

"Every person **should feel free to discuss matters with our management team**. Employees are responsible for acknowledging delegated lines of authority and are **encouraged to discuss their ideas or try to resolve a disputed matter with their immediate supervisor or manager before seeking the counsel of others**." ~UPS Policy Book: We Promote an Open Door Approach to Managing People, pg. 25

This is not the first time the SCOTUS is being presented with UPS 'failing to accommodate.' The SCOTUS has already Ruled against UPS in *Young v. UPS (2015)* for 'confirmed' employment discrimination, which is the same year the SCOTUS recognized "failure to religiously accommodate" in *EEOC v. Abercrombie & Fitch (2015)* and in that Case the Appellant was Islamic as Mr. El too is Islamic; wherein, both she and Mr. El were faced with having to 'compromise' their religious devotions as a 'condition of employment.' Where Abercrombie & Fitch would have Samantha Elauf compromise wearing her religious head covering ("Hijab") in order to be a Sales Model; UPS would have Mr. El compromise his religious devotions that govern, dictate, and define his racial identity ("Human" and "Asiatic") to be a Truck Helper:

"9. According to all true and divine records of the **human race** there is no negro, black, or colored race attached to the human family, because all the inhabitants of Africa were and are of the **human race**, descendants of the ancient Canaanite nation from the holy land of Canaan. 10. What your ancient forefathers were, you are today without doubt or contradiction. 11. There is no one who is able to change man from the descendant nature of his forefathers; unless his power extends beyond the great universal Creator Allah Himself." ~The Holy Koran of The Moorish Science Temple of America, Ch.47:9-11

"Our Divine and National Movement stands for the specific grand principles of Love, Truth, Peace, Freedom, and Justice, and I, The Prophet, am applying to all loyal, faithful Moors, members, and the American citizens to help me in my great uplifting acts of uplifting fallen humanity among the **Asiatic race** and nation, for I have suffered much and severely in the past through misunderstanding of what the movement was dedicated to." ~The Prophet Makes Plea To Nation, ¶ 1, Sent. 1

19.

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1 When Ms. Atkinson pressured Mr. El to select from race classifications that conflict with his  
2 religion, he informed her that his religion obligates him to acknowledge (and not comply  
3 with) race classifications, that were produced by the institution of American slavery, and  
4 said 'slavery rooted' race classifications are now 'eternalized' by the Office of Management  
5 and Budget ("OMB") Federal Directive 15. The 'slavery root' of these race classifications  
6 (that Mr. El's religion prohibits him to self-identify with) have also been addressed by U.C.  
7 Berkeley Law School Professor: Ian Haney-Lopez who sheds light on this dispute by  
8 stating, *"This has become a burgeoning field, with studies aimed at uncovering legal  
9 productions of race in the contexts of slavery, postbellum South, the census, OMB  
10 Directive 15 on federal categories, contemporary immigration laws, and so on. But today  
11 race is legally constructed principally indirectly by legal institutions that produce and bolster  
12 deleterious racial ideologies without forthrightly engaging in the categorical debates that so  
13 preoccupied race law through the early twentieth century."* ~White By Law: The Legal  
14 Construction of Race (2006) preface XV, ¶3, Sent. 3-4

15 Mr. El's religious prohibitions to said 'slavery rooted' race classifications are principally  
16 clarified as follows, *"With us all members must proclaim their nationality and we are  
17 teaching our people their nationality and their Divine Creed that they may know that they  
18 are a part and a partial of this said government, and know that they are not Negroes,  
19 Colored Folks, Black People or Ethiopians, because these names were given to slaves  
20 by slave holders in 1779 and lasted until 1865 during the time of slavery, but this is a new  
21 era of time now, and all men now must proclaim their free national name to be recognized  
22 by the government in which they live and the nations of the earth, this is the reason why  
23 Allah the Great god of the universe ordained Noble Drew Ali, the Prophet to redeem his  
24 people from their sinful ways. The Moorish Americans are the descendants of the ancient  
25 Moabites whom inhabited the North western and South Western shores of Africa."* ~The  
26 Divine Constitution and By-Laws (Act 6). Religious prohibitions against MSTofA members  
27 (Mr. El included) to self-identify with said 'slavery rooted' race classifications are further  
28 clarified as follows, *"85. Name some of the marks that were put upon the MOORS of  
Northwest by the European nations in 1774. Negro, Black, Colored and Ethiopia."* ~Koran  
Questions for Moorish Americans.

Mr. El explained all of the above to Ms. Atkinson as she continuously 'pressured' him to  
choose from a 'slavery rooted' race classification list, which conflicted with his religion;  
instead of decreasing the pressure on Mr. El, she increased the pressure by having Mr.  
Loeza deal with him on that issue. Mr. Loeza was attempting to select/hover over "Black or  
African American" and Mr. El rejected repeatedly leaving the two of them at an impasse.  
Mr. El's religion does not support its members qualifying their identity as "African American"  
either, because this classification has been treated as synonymous with "Negro", "Black",  
and "Colored" in multiple U.S. Census data; even as recent as 2013, according to IPUMS-  
USA: Census Data for Social, Economic, and Health Research: [https://usa.ipums.org/usa-  
action/variables/RACBLK#questionnaire\\_text\\_section](https://usa.ipums.org/usa-action/variables/RACBLK#questionnaire_text_section) At Mr. El's November 21, 2019  
Deposition, he made it clear to Mr. Morehead, Esq. (UPS Counsel), that this entire situation  
caused him to experience "Posttraumatic Slave Syndrome" (PTSS) as published by Dr. Joy  
Degruy Leary ("Dr. Leary"). Mr. Morehead, Esq. asked Mr. El, if Dr. Leary had personally

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1 diagnosed him and Mr. El clarified, that if both Islamophobia and Homophobia are not listed  
2 in the "Diagnostic Statistical Manual for Disorders: 5<sup>th</sup> Edition" ("DSM-5"), but both  
3 Islamophobia and Homophobia are 'treated' as credible, then you cannot view PTSS as not  
4 credible, just because PTSS is also not listed in the DSM-5.

5 Additional unethical acts by UPS's revealed at the November 21, 2019 Deposition was the  
6 production of two 'different' employment applications where certain sections were removed,  
7 replaced, and renamed with other subtitles and boxes. Among the falsified alterations was  
8 UPS 'suddenly' adding in a "Choose Not To Voluntary Self Disclose" box, which was not  
9 there originally. Even though checking a "Non-Self Disclosure Box" for race is also  
10 'voluntary,' Mr. El would not have missed the opportunity to check such a box; as seen in  
11 the evidence Mr. El's employment application as a school Teacher and medical records  
12 were both subpoenaed, and in both of those records Mr. El actually selected the "Non-Self  
13 Disclosure Box" for race. The truth is UPS did not create such a box; until a suit was filed.

14 There was no option on the application for selecting "Other" or "decline to state." UPS knew  
15 that both the Race and Criminal Background sections of Mr. El's application were both left  
16 blank, but UPS made the conscious decision to 'ignore' the blank Criminal Background  
17 section and 'target' the blank Race section. UPS claims that they were justified with a  
18 'non-discriminatory' reason for 'pressuring' Mr. El to self-identify his race, and they justified  
19 it with the "Standard Form EEO-1 Reporting" from Office of Federal Contract Compliance  
20 Programs ("OFCCP"), which says the 'preferred' method of compiling racial demographics  
21 is for an employee to 'self-identify,' but OFCCP gives UPS the option to use 'visual  
22 observation' (i.e. "racial profile"). UPS had the option to use 'visual observation' or leave  
23 Mr. El alone. UPS chose to harass Mr. El instead of respecting his religious devotions  
24 defining his race. Additionally, removing Mr. El from employee orientation resulting in  
25 'separating' him from his colleagues (for 'involuntarily' identifying race) was act of  
26 segregation, which is strictly prohibited by 42 U.S.C. §§ 2000e-2(a)(2) and 2(c)(2). If the  
27 SCOTUS held in the First Amendment case *Tinker v. Des Moines (1969)*, "students do not  
28 shed their rights at the schoolhouse gate," then in like manner "employees do not shed their  
rights at the employer's gate."

According to Mr. El's religion, he did not associate his race with any of the options in the  
UPS employment application, and if the SCOTUS held in *Harris Funeral Homes v. EEOC*  
(2020) the right to a 'preferred' gender to Amiee Stephens, then in like manner the  
SCOTUS can hold the right to a 'preferred' race; even if the 'preferred' race is not listed.  
Mr. El invokes the standard of Title VII of the Civil Rights Act of 1964 to be included in the  
evaluation of his Petition; even though Title VII was not in the original filing. According  
SCOTUS holding in *Fort Bend County v. Lois M. Davis (2019)* a litigant is 'not barred'  
from using the Title VII standard in a Case; especially if the Plaintiff filed an EEOC  
complaint to begin with, which Mr. El absolutely did produce. An extreme dismay is Mr. El  
tried to resolve this issue while he was still employed at UPS, but Ms. Johnson and Mr.  
Ewing postponed meeting with him; until after his employment had terminated, yet UPS  
professes, "Integrity --It is the core of who we are and all we do." ~UPS Policy Book:  
Values: Our Enduring Beliefs, pg. 10

21.

Mr. El did not have a fair, unbiased, impartial hearing regarding UPS's MOTION FOR SUMMARY JUDGEMENT, OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGMENT ("Summary Judgement"), because Judge Simon used to have a fiduciary role with and/or for UPS for 11 years from 2000 to 20011. Judge Simon should have Recused himself from all said proceedings; instead of compromising the integrity of the Bench. Mr. El's Case deserves further review by the SCOTUS, due to his "Right To Due Process" was tainted by Judge Simon and his failure to Recuse himself are in violation of: 28 U.S. Code § 455 - Disqualification of justice, judge, or magistrate judge; Code of Conduct for United States Judges: 3(C) Disqualification; and American Bar Association: Rule 2.11 Disqualification. The SCOTUS has already Ruled against judicial misconduct such as this in **Caperton v. A. T. Massey Coal Co. (2009)**; wherein, it states, "whether sitting on [that] case..." "would offer a possible temptation to the average... judge to...lead him not to hold the balance nice, clear and true."

Judge Simon even allowed UPS (his former client) to introduce untimely evidence into the Summary Judgement hearing, which was 76 days late. According to the SCOTUS holding in **Holland v. Jackson (2004)** this is after-discovered evidence and/or newly-discovered evidence, and could have qualified Mr. El for Relief From Judgement or Order ("Relief") under Federal Rules of Civil Procedure ("FRCP") Rule 60(b), if Mr. El had filed said Relief of said Rule within one year of the Ruling against him, but Mr. El had zero confidence in the compromised integrity of the Bench, and in good faith he knew a higher Court must weigh in on said compromise of "Equal Protection Under The Law," which is paramount. Mr. El's first attorney filed a First Request For Production of Documents ("Production") January 31, 2019 and UPS's withholding of evidence is a violation of FRCP Rule 37, which should have resulted in a Default Judgement for said "Failure to Make Disclosures or to Cooperate in Discovery; Sanctions" and Judge Simon is quoted in the transcript saying that he needs to follow the FRCPs, etc., yet it appears that he did not fairly nor impartially do so. It is the said missing evidence of UPS allowed late entry, that prevented Mr. El from fulfilling the 3<sup>rd</sup> and 4<sup>th</sup> of conditions of SCOTUS holding **McDonnell Douglas Corp. v. Green (1973)**. Furthermore, according to the SCOTUS holding in **Green v. Brennan (2015)**, the matter at issue was deciding if the 45 day filing period started at the point of resignation, but it also acknowledged the grounds for injury begins, if a Plaintiff merely feels like resigning, which would play a key role in triggering Constructive Termination: Common Law.

On September 8, 2020 Mr. El 'timely' filed a MOTION FOR DE NOVO APPELLATE REVIEW FOR LEAVE TO PROCEED IN FORMA PAUPERIS ("De Novo Appellate Review") where he specifically stated, "The said petition for LEAVE, also included Mr. El's June 21, 2020 MOTION FOR APPOINTMENT OF COUNSEL ("APPOINTMENT"). However, the Appellate Court's Pro Bono Department notified Mr. El via phone on September 3, 2020 at 6:20 p.m., that the Docket has no record of Mr. El's APPOINTMENT filing. **It is becoming a heightened concern about a developing pattern of documents 'actually' filed by Mr. El are not being located properly or viewed as nonexistent filings. It is not Mr. El's intention to place and undue burden on the Court with such concerns, but it is Mr. El's intention to stress the importance of the Docket reflecting his germane filings. Mr. El plans to refile an updated version of his petition for APPOINTMENT to avoid the Docket's further inaccurate reflection of his filings.**" ~pg.1, lines 24-28 and pg.2, lines 1-6

22.

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1 The above paragraph was Mr. El's first sighting of there being issues with the accuracy of  
2 the Civil Docket, but the clerical issues did not stop there, because Mr. El had to file a  
3 Motion To Correct The Docket ("Docket Correction") in Appellate Court, due to the Clerk  
4 incorrectly titling one of his filings. Furthermore, Mr. El found additional evidence the  
5 Oregon District Court was not keeping timely filings either, as stated by Mr. El in his March  
6 23, 2021 Reply To Response To Motion For Reconsideration and Rehearing En Banc  
7 ("Reply En Banc") as follows, *"The Court's Order dismissing Appellant's Appeal is incorrect:  
8 The Court continues to retain jurisdiction to review this matter additionally, because the  
9 Oregon District Court does not maintain accurately dated submissions on their Docket  
10 [Exhibit 08]. The Appellate Court notified the Lower Court on February 17<sup>th</sup>, 2021 of Mr. El's  
11 "Motion For Extension Of Time" being GRANTED, but the Lower Court filed it one day later  
12 on February 18<sup>th</sup>, 2021. (Dkt. 49). The Appellate Court also notified the Lower Court on  
13 October 16<sup>th</sup>, 2020, that Appellant's Case was DISMISSED, but the Lower Court filed it 3  
14 days later on October 19<sup>th</sup>, 2020. (Dkt. 46). These are two clear examples of Oregon  
15 District Court receiving timely filings, yet they document filings untimely. Kaon-Jabbar  
16 East El respectfully requests that the Court GRANT Appellant's Motion for Reconsideration  
17 and Rehearing En Banc." This is proof that, if the Oregon District Court ("ODC") will  
18 'untimely' docket what the Appellate Court sends them 'timely,' then the ODC will also  
19 'untimely' docket the Notice Of Appeal, that Mr. El sent them 'timely.' Surprisingly, after  
20 Mr. El exposed the negligence of the ODC's docket, when the Appellate Court DISMISSED  
21 Mr. El's "Reconsideration En Banc" and sent it to them 'timely' all of sudden the ODC finally  
22 filed it 'timely' after filing a higher Court's filing 'untimely' twice.*

23 Mr. El made a final entreaty to the Appellate Court regarding the 'alleged' untimely arrival of  
24 his Notice Of Appeal, by citing it is unavoidably known across the nation, that the United  
25 States Postal Service ("USPS") has been having COVID-19 pandemic related delays, and  
26 the following is proof that mail may be delayed up to 4 days, *"USPS Coronavirus Updates:  
27 Expected Delivery Changes"* [https://faq.usps.com/s/article/USPS-Coronavirus-Updates-  
28 Expected-Delivery-Changes](https://faq.usps.com/s/article/USPS-Coronavirus-Updates-Expected-Delivery-Changes) Mr. El went on to use multiple online news media links to prove  
his point. He even went, as far as, recognizing that the Court has the ability for "Suspension  
of Rules" in FRAP Rule 2; to temporarily suspend the 3 day mailing grace period (FRCP  
Rule 6(d)) out to just one more day, due to the above USPS announcement on pandemic  
related delays. Lastly, Mr. El did not receive the Ruling May 22, 2020; until after 21 days  
within the 30 appeal filing period and used his Notice Of Appeal by literally writing "Motion  
For Extension of Time" in the Informal Opening Brief section of his Notice Of Appeal. The  
9<sup>th</sup> Circuit Appellate Court claimed that an Appellant cannot do that; however, in *Young v.  
Kenney (2020)* the 6<sup>th</sup> Circuit Appellate Court acknowledged, that *Young* not being a  
learned Attorney filed his Motion legally unskilled and allowed it by stating, "However,  
district courts must **liberally construe** a document that **could reasonably be interpreted**  
as a motion for an extension of time to file a notice of appeal or a motion to reopen the time  
to file an appeal." Mr. El too is legally unskilled as well. As was stated by the late SCOTUS  
Justice Ruth Bader Ginsburg, "Real change, enduring change, happens one step at a time."

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1 **CONCLUSION**

2

3 The petition for a writ of certiorari should be granted.

4 Respectfully submitted,

5

6 s/Kaon-Jabbar East El

7 Date: 09/07/2021

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