No. 21-611

IN THE
SUPREME COURT OF THE UNITED STATES

GERTRUDE CORETTA FENNELL HAMILTON,
Petitioner,

v.

UNITED STATES OF AMERICA, D.O.J.;
CHARLESTON S.C. DISTRICT COURT;
STATE OF SOUTH CAROLINA,
Respondents.

On Petition for Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

GERTRUDE C.F. HAMILTON
Pro Se
99 ELMWOOD STREET
WALTERBORO, SC 29488
(843) 599-2257
trudyham1@aol.com

OCTOBER 22, 2021

QUESTIONS PRESENTED FOR REVIEW

1. Whether a Pattern and/or Practice of Discrimination took place in Charleston S.C. District Court, depriving Pro Se Petitioner of Constitutional Rights?
2. Whether retaliation (including obstructing the court's investigation) against a (OSHA) Whistleblower is protected by immunity under the Eleventh Amendment states protection with a waiver of Sovereign Immunity?
3. Whether fraudulent acts on the court with civil conspiracy still protected with Qualified or Absolute Immunity with a waiver of Sovereign Immunity?
4. Whether "Equal Protection" is provided on Pro Se litigation with inappropriate standard for review (28 U.S.C. § 1915) is systematic misconduct using frivolous in pro se paid litigation still entitles Charleston District Court employees outside their jurisdiction to Qualified and or Absolute Immunity?
5. Whether multiple intentional violations of "Due Process" Statute notification by the court with intent to dismiss immune from suit?
6. Whether Inherited Power or authority, is immune from FTCA's, that show deprivation of constitutional rights with fraudulent (breach of duty) under the Color of Law in governmental office actionable?
7. Whether Equal Protection was provided by the Executive Branch to prevent racial bias / retaliation against Pro Se Petitioner whom

filed Judicial Complaints against court officials?

8. Whether attorneys willfully and deliberately lying to this Supreme Court in Case 10-115 (2010) on "lost time" accident OSHA report or bankruptcy automatic stay invoked 26 U.S.C. § 7206(1) or "Fraud on the Court" denies qualified immunity?
9. Whether the Charleston District Court (management /USA-DOJ Agents) committed "Obstruction of Justice"; violating their oath of public office with amending the dismissal of an ADA and Counterclaim intentionally depriving timely rights to appeal Fed R App P. 4(a)(1)(A) un-constitutional?
10. Whether Charleston District Court's racial bias causing fraud on the court and denial of Title VII "ADA" Failure to accommodate claim immune from lawsuits?
11. Whether negligence and, or intentional abuse of authority with a deputy clerk Amending Summary Judgment 28 U.S.C. § 955 without an Order violates Pro Se constitutional rights cause for action with waiver Sovereign Immunity under FTCA?
12. Whether a district court issuing an Amended Summary Judgement after closing a case, reducing the number of Title VII claims dismissed, without sending notification to Pro Se litigant, is still a final judgment for appeal with two claims never closed actionable?
13. Whether proceedings pending before the Charleston District Court with a Chapter 11 stay allows proceeding with ADA claims to have

summary judgment amended during the stay changing the date a case is ripe for a timely appeal before a lift order is issued legal?

14. Whether appealing from a SDNY Bankruptcy Court with an Order lifting the stay to a Charleston District Court for reconsideration of a disputed material fact with the Magistrates R&R allows 30 days to appeal under 11 U.S.C.§ 108(c) for continuing a civil action?

LIST OF PARTIES

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

LIST OF RELATED CASES

Hamilton v. Dayco Prods., LLC..., 07-2782, U. S. District Court for the Charleston District of South Carolina, ("***Hamilton I***") Amended Judgment entered June 8, 2009
Hamilton v. Dayco Products and Mark IV Industries, Inc., et al, 09-1999, U. S. Court of Appeals for the Fourth Circuit. Judgment entered April 30, 2010
Hamilton v. Dayco Products and Mark IV Industries al, Inc., et 10-115, Supreme Court of the United States. Judgment entered October 4, 2010

Hamilton v. In re Mark IV Industries, Inc., et al, 09-12795, United States Bankruptcy Court Southern District of New York. Judgment entered July 21, 2011
Hamilton v. Murray, No. 15-2085-PMD-MGB, / ("***Hamilton II***"). U. S. District Court for the Charleston District of South Carolina, Judgment entered October 15, 2015
Hamilton v. Murray, 15-2406, U. S. Court of Appeals for the Fourth Circuit. Judgment entered June 27, 2016
Hamilton v. Newman, et al., 18-00622, ("***Hamilton III***"). U. S. District Court for the Charleston District of South Carolina, Judgment entered September 26, 2018
Hamilton v. United States of America –DOJ..., 20-01666, / ("***Hamilton IV***"), U. S. District Court for the Charleston District of South Carolina, Judgment entered October 7, 2020
Hamilton v. United States of America –DOJ...,20-2189, U. S. Court of Appeals for the Fourth Circuit. Judgment entered July 19, 2021

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

OPINIONS BELOW

JURISDICTION

On July 19, 2021 the U.S. Fourth Circuit Court of Appeals issued Mandate on Case No. 20-2189 for Opinion ECF #6, entered May 25, 2021. See (App. A pg.1). On July 19, 2021, Order List: 594 U.S. The "Supreme Court of the U.S....COVID-19 timely petitions; prior to July 19, 2021... extended to 150 days from the date of that judgment or order." (App. B pg. 2). Due on or before October 25, 2021. Jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2403(a). Notifications of Rule 29.4(b) have been made. *See* Informal Brief 20-2189 4th Cir. Filed 11/30/2020 ECF No. 4 pg. 3: "Color of Law-FTCA-Appellant exhausted administration remedies timely filed 28 U.S.C. §§ 1346. In *F.D.I.C. v. Meyer*, 510 U.S.471, 477 (1994): FTCA "waived the sovereign immunity of the United States for certain torts committed by federal employees.1346 (b) (1), 2671 et seq. Whistleblower in S. C. §§ 41-15-510 & 520 "Lost Time Accident" – ("OSHA"). Multiple Civil Rights Violations 18 U.S.C. § 241 Conspiracy of rights, and 18 U.S.C. § 242 deprivation of Rights under Color of Law." FTCA 28 U.S.C. §§2671-thru-§§2680, Supplemental Jurisdiction 28 U.S.C. § 1367 and over state of D.C. & SC claims. Also 28 U.S.C. § 1331 and 28 U.S.C. § 1332; Brief ECF 4 pgs. 2 & 3. Subject-Matter Jurisdiction is added with (FTCA) 28 U.S.C. 1346(b), 2671 et seq., waives sovereign immunity of certain torts committed by federal employees "under circumstances where the USA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission

occurred." 28 U.S.C. §1346 (b)(1). S. C. and Washington D.C. for States torts, under §2676 for state violated laws. *F.D.I.C. v. Meyer*, 510 U.S.471, 477 (1994): FTCA "waived the sovereign immunity of the United States for certain torts committed by federal employees." The private person analogies for governmental tasks waives the USA-Executive Branch Sovereign Immunity and provides Subject-Matter Jurisdiction where private person, people would be subject to liability by state torts. (FTCA) waiver 28 U.S.C. 1346(b), 2671 et seq., waives the sovereign immunity of certain torts committed by federal employees under circumstances where the USA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. 1346 (b)(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. State Laws and Regulations Relating to Occupational Safety Health Administration; "29 CFR 1904.9 states that "if an employee is medically removed under the medical surveillance requirements of an OSHA standard, you must record the case on the OSHA 300 Log." S.C. and Washington, D.C.
2. Civil Rights Act of 1964 Title VII, 42 U.S.C. § 2000e et seq.
3. Americans with Disabilities Act (ADA) Title I and Title V, 42 U.S.C. § 12203(a); Act of 1990 42 U.S.C. §12101 et seq
4. Labor and Employment S.C. Code Ann. § 41-1-80 (1986)

5. FTCA 28 U.S.C. §§2671-thru-§§2680 Waiver of sovereign immunity – Form #95 completed.
6. "Color of Law-FTCA-exhausted administration remedies 28 U. S. C. §§ 1346, 1346 (b) (1), 2671
7. Civil Rights Act of 1964 § 701 (b), 42 U.S.C.A. § 200E(B)(2005)-Arbaugh argues that the Civil Rights Act of 1964 § 706(F)(3), 42 U.S.C.A. § 2000e-5(f)(3) (2005) establishes subject-matter jurisdiction in the Federal courts.
8. 11 U.S.C. § 108(c) (2006) Under 11 U.S.C. § 108(c) ...524 of this title, *"...non-bankruptcy law ...30 days after notice of the termination or expiration of the stay ..., with respect to such claim."*
9. Fed. R. App. P. 4(a) and 28 U.S.C. § 2107

STATEMENT OF THE CASE

The 4th Cir. Court of Appeals erred, overlooked or misapprehended vital facts. Transparency from court-to-court with material facts will confirm. Petitioner prays this court sees the "Fraud on the Courts" by comparing the Opinions in 20-2189 to 09-1999 verses 15-2406, and willful lies by counsel to this Supreme Court in No.10-115 (2010). This action includes most of Petitioner's evidence of Constitutional violations, as well as violations of statutes in multiple lawsuits. Petitioner filed (4) cases within the U. S. District Court of Charleston, S. C. A Pattern and or Practice of discrimination 42 U.S.C § 14141 took place with mismanagement. The employee's (Respondents) are being sued for the systemic practices, biased policies with fraud, discriminatory racial actions, and violating Statutes,

while depriving Petitioner's Constitutional Rights. Multiple violations 42 U.S.C. §§§§ 1981, 1983, 1985, 1986, and § 14141 ("**Pattern or Practice of Discrimination**"). Also, for Fraud on the courts with violations to Fed. R. Civ. P. 60(b)(3), and (d) with Intrinsic Fraud in S.C. and D.C. Attorneys lied multiple times (Susanna H. Murray, Catherine B. Templeton, and Eric C. Schweitzer) in Case 10-115 (2010), in BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to Supreme Court of the U.S. on August 23, 2010. *Hamilton v. Dayco Products, LLC,* S. Ct. 2010, No. 10-115. A copy of the brief was also submitted in *Hamilton II* (ECF No. 1-2 pgs. 89-99) filed 05/21/15 with a copy of OSHA's form 300A @ ECF No. 1-2 pgs.77, 87 & 88 and a copy of a letter from "OSHA" Compliance Manger July 15, 2009. Multiple false statements were made in the brief to deceive the Supreme Court and hide a "lost time" accident. The employer: Mark IV Industries, Inc., and Dayco Products, LLC / ("Mark IV") deceived the Government during the Chapter 11, bankruptcy STAY for approval of Case No. 09-12795 (2009) filed in SDNY. See Case *Hamilton III* ECF 18-3 pgs. 24, 26, 27, 54, 58, 61, and 74, thru 77). These Attorneys also received legal fees for their lying service. It's time for a fact check. See (App. X pgs.112-to-122); immunity and inherited power and, or authority, or racism with management "USA" involved with civil conspiracy, negligence and fraudulent misconduct; caused multiple injustices by those sworn to protect and rule on the law with facts.

A Claim for fraud on the court should be directed to the court on which the alleged fraud was committed. 11 Charles A. Wright et al., *Federal Practice and Procedure* § 2870 (3d ed. 2012) citing

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 247-50 (1944)); *see also Pentagen Techs. Int'l Ltd. V. CACI Int'l, Inc.*, 282 F. App'x 32, 34 (2d Cir. 2008). Whereas, this Supreme Court has the opportunity to correct an injustice that violated the dignity and integrity of this Supreme Court that "fraud upon the court" took place in by Mark IV's Attorneys; Murray, Templeton and Schweitzer. Intrinsic fraud external to the matter reviewed by the Charleston District Court in Petitioner's original lawsuit. Old battles have become new again, with the privileged recording findings as if, "you don't know what you don't know" after gleaning, overlooking, or skipping facts. Yet, receiving genuine material facts proving multiple injustices by Court employees. The 14th Amendment provides no State may "deprive any liberty, or property, without due process of law." Much deceiving, misleading acts of fraud prevented Petitioner from being heard on her Title VII "ADA" and "Failure to Accommodate, Wrongful termination in violation of 41-1-80, Retaliation for reporting discrimination to OSHA, and Long-Term Disability Discrimination. Schemes of a civil conspiracy (§1985), S. C. Const. Title 16, Chapter 5, 16-5-10 did what Respondents' Attorneys and "USA" Charleston Court employees intended, with judicial estoppel, amended S.J., and bankruptcy STAY, misconduct deprived Petitioner of justice. Charleston District Court employees barred a timely appeal, but was it legal without jurisdiction? Facts according to the 4th Circuit *See*, Opinion ECF #17 (App. BB pgs.137-139 @ pg. 138); "*As a preliminary matter, Hamilton's appeal is timely only as to the denial of her motion for Reconsideration... Fed. R. Civ. P. 60 (b).*" No one

fact checked the process. No one looked at the docket for facts with (3) attorneys submitting oppositions.

Petitioner appealed to the Charleston District Court with the Motion for Reconsideration with a lift ORDER timely from Mark IV's Chapter 11, (App. DD pgs. 142-144), from July 17, 2009 the day the Bankruptcy Court lifted the stay to August 11, 2009 (date of an appeal for reconsideration with SC District Court) is less than 30 days. See, 28 U.S.C. § 1291 (2006) coming from bankruptcy with a lift Order, also allows 30 days.

Therefore, Petitioner had 30 days to continue the case in the District Court with the (App. DD pg. 142 Order Doc. #352). *See Hamilton v. Dayco Products, LLC and Mark IV Industries.* 2:07-2782-PMD-RSC /AKA: *Hamilton I*: (ECF No. 96, 96-1 thru 96-8) and (Docket-App. II @ pg. 207) as an attachment for reconsideration from the Bankruptcy Court. Appealing Fed. R. App. P. 4(a)(1) does not contain a 10-day time limit, neither does Fed. R. Civ. P. 60(b). See, Response Brief of Appellees in 4th Cir., Case No. 09-1999, *Id.* at (ECF No. 12, p. 26 of 33 @ ¶1); "*However, despite her early knowledge of the entries of judgment against her, Hamilton did not file her motion for reconsideration until August 31, 2009...final order.*" And (ECF No. 12, pgs. 10, 13 14 and 15 of 33). This is a lie in a brief to the 4th Cir, because (Docket-App. II pg. 207) at (ECF No. 96) facts show filed on August 11, 2009. The Attorneys violated Statutes, Fed. R. Civ. P. 60(b), Fed. R. Civ. P. 60(d), and 14th Amendment, 26 USC § 7206, Fed. R. App. P. 4(a)(1), 11 U.S.C. § 108(c), and or 18 U.S.C. § 245. Please *see* (App. X pgs.112-122) copy of Writ of Cert. No.10-115 @ Brief of Opposition page 115: "*In Question Presented number 1, Petitioner*

Hamilton asks the Court to address a finding not alleged, addressed, or appealed below. No cause of action related to OSHA was brought in the first instance, finally adjudged by the district court, or appealed to the court of appeals." Facts proving this was a lie: See *Hamilton I* at (ECF No. 1 @ Claim No.3), (ECF No. 96-6 pgs. 4, 5, and 6) filed: 08/11/09. Plus details with a copy of the brief was filed in Petitioner's 2nd lawsuit. See 2:15-cv-02085-PMD-MGB /*Hamilton II*, filed 05/21/15 at (ECF No.1-2, pg. 87, 88, of 99). Also, *Hamilton III* @ (ECF No.18-3; pgs.28, 30, 32, 34, 36, 38, 77, 78, 79 and 80 of 80). In *Hamilton IV* ECF No. 1-1 pgs. 93-thru-100 of 100. Now, violations on S.C. Code Ann. § 41-1-80 (1986) see false reporting. On the Workers Compensation – First Report Of or Illness "No Lost Time" *see*, facts in *Hamilton I* (ECF No. 54-19) filed 06/20/08 and *Hamilton II* at (ECF No. 1-2, Pg. 85 of 99). False statements and retaliation to cover up the pretext (get Mark IV's Chapter 11 approved), this pretext is the reason for many adverse actions against Pro Se Petitioner; to hide the lost time accident from OSHA and the government at any means necessary. In Washington D.C. torts it's Fraud § 22-3221 in this Court.

Please *see* (App. X pg. 118) copy of Writ of Cert. No.10-115 @ Brief of Opposition, filed August 23, 2010: "*It is unclear what issue Petitioner takes with the Bankruptcy Stay in Question Presented No 5 because nothing related to the stay or its removal has been appealed or even mentioned by Petitioner until this Petition.*" Now facts on this a lie: *see*, *Hamilton I* at (ECF No. 96-1 pgs. 1-4 of 4 & ECF No. 96-6 pgs. 4, 5, 6 of 6) filed 08/11/09. See SDNY-Bankruptcy ECF #352 (App. DD pgs.142-144) signed

July 17, 2009, and ECF #794 in (App. Y pgs. 123-125 and dated June 9, 2010). See (App. DD pg. 142): lifting the STAY to appeal in S.C. District Court. See (App. Y pg. 123) to Appeal in this Supreme Court. Both Orders directly related to the stay before Case No. 10-115 (2010) Writ of Certiorari. Fraud upon the Court continued by Attorneys: Murray, Templeton, and Schweitzer. Also, in attorneys' response to the 4th Cir. 09-1999 ECF No. 12 filed 10/08/2009 footnote 1, pg. 10. @ (App. X pgs. 112-thru-122) however, question 5 is on pgs. 117 & 118. Please *see* Writ of Cert. No.10-115 @ Brief of Opposition, filed August 23, 2010, (App. X pg. at footnote no. 18): "*The fact at issue for Petitioner was the date the Magistrate Judge recited...Petitioner takes issue with the typo...that puts her Social Security meeting and her termination on June 26 instead of June 29. Doc Nos. 96 and 96-3, Mot. to Reconsider.*" They used "96 and 96-3". Transparency shows Petitioner did not file with Soc. Sec. until after she was terminated. "96-3" letter from Soc. Sec. facts June 29, 2006 was the file date for Petitioner's appointment to complete an application on July 13th for SSDI. Using the wrong date (June 26, 2009) as filing for SSDI was intentional for dismissal. The morning of June 29, 2009, Petitioner was terminated after 29 years. Depression from being wrongfully terminated got worse. Later, on June 29, 2009 Petitioner became emotionally distressed, at the Soc. Sec. Office to file. See, *Hamilton IV* OBJECTION ECF 17 filed 09/09/2020. Fraud by the Charleston District Court was intentionally overlooked. Changing the date to (3) days before termination was deliberately a civil conspiracy to control dismissal. Judicial Estoppel involves a prior lawsuit and was used in *Hamilton I*

ORDER (ECF No. 82 at page 17): "*Accordingly, the doctrine of judicial estoppel precludes Plaintiff from now claiming that she was capable of working at the time of her termination, and she is not a qualified individual under the ADA.*" (App. GG at pg. 170) Facts proved this is another lie. See ECF No. 74-2 pgs. 1 & 2; doctors visit 5/22/06 "may return now" and report signed 8/4/06. Plus, ECF No. 54-10 pg. 5, DOT: 6/29/06. Mark IV's doctor said return on 5/22/06, over a month before Petitioner's termination on 06/29/06. Mark IV was informed on 5/22/06 by Petitioner and their Occupational Nurse. But, a phone headset was requested by the nurse to help avoid pain while talking to customers and entering data at the same time. See *Hamilton II* ECF No. 1-2 pg. 45 of 99 from Russel Revell's deposition ECF 1-2 pg. 83. *See* letter from Soc. Sec. in *Hamilton I* at (ECF No. 96-3 pg. 2 of 2) filed 08/11/2009 and Order ECF No. 97 (App. CC pg. 140 & 141) dated August 13, 2009. See Response in No. 09-12795 (SMB), ECF Doc. #787, filed May 24, 2010, with reference to claims 916 and 917 for objections to be held until after a decision from the U.S. Supreme Court (App. Z pgs. 126-135). These willful discrimination claims also involved pre-petition actions on a complaint that started prior to Mark IV filing Chapter 11. Attorneys did not provide the first lift Order of July 17, 2009 See, *Hamilton IV* ECF No. 1-1 @ pg. 90 & (App. DD pg. 142-144) relieving the Stay. Also, no certificate of service. See *Hamilton II* @ ECF No.1-2 pgs. 63, 64, & 66 for docket information. (App. Y pgs. 123-125) which shows that this misconduct and act of fraud may be obstruction of justice. Mark IV got bankruptcy approval from the government and lied to our Supreme Court for dismissal of Petitioner's

lawsuit. Counsel had no ethical respect for this Supreme Court. Due Process appears to be missing with Pro Se litigation throughout the courts. Objective evidence is in documents proving the attorneys lied. With deceptive intent, these attorneys knew Pro Se cases would not be examined. The court enabled, corrupted, and compromised to protect their comrades. See, *Hazel-Atlas Co. v. Hartford Co.*, 322 US 238 "It is a wrong against the institutions set up to protect and safeguard the public, institutions in which **fraud** cannot complacently be tolerated consistently with the good order of society."- In *Peoples State Bank v. Hickey, 1989.* Also, "A **federal** court has inherent equitable power to vacate a judgment that is obtained by **fraud** on the court." In *Medina v. US*, 259 F. 3d 220 – The **FTCA** "permits the United States to be held liable in tort in the same respect as a private person would be liable under the law of the place where the act occurred." - In *Hansley v. Department* of Navy, 2021 (cit. omitted). The **FTCA** "represents a limited congressional **waiver** of sovereign immunity for injury or loss caused by the negligent or wrongful act of a Government employee acting within the scope of his or her employment." - *In Kelly v. US, 2013* (citations omitted). Also, In *Medina v. US*, 259 F. 3d 220 – Court of Appeals, 4th Circuit 2001- noting that the starting point of the discretionary function exception analysis is that "federal officials do not possess discretion to violate constitutional rights or federal statutes - In *Castro v. US*, 2010. *See, Hamilton IV: "ECF No. 1-1, pg. 3, 27, 28, 29, 44, 45, 46, 47, 54, 77, and 78. Silence or no corrective action, and no answer gave an open door to wavier of sovereign immunity. The Department of Justice*

received a "Jurat Certificate" with complaint ***Form #95; stamped May 30, 2019,*** *and evidence from* <u>*all three*</u> *previous lawsuits showing a continuous Pattern and Practice of Discrimination. Six months later no answer after exhausted administrative requirements were met; on* ***April 17, 2020*** *Petitioner filed (Hamilton IV).* Petitioner received a letter from the U.S. Department of Justice Criminal Section dated July, 16 2019; no help. Petitioner timely exhausted administrative remedies. Copies of the complaint showing a Pattern and Practice of Discrimination were also shipped and or emailed to others on Certificate of Service list.

<u>*District of S. C. 02:07-cv-02782-/ AKA:*</u>

<u>***Hamilton I***</u>:

Whether Charleston, SC District Court (USA-DOJ Management) engaged in multiple systematic acts of misconduct creating a Pattern and/or Practice of Discrimination depriving Black Pro Se Petitioner of Constitutional Rights? Multiple intentional negligent violations to 42 U.S.C. § 14141 took place by Charleston District Court employees. Magistrate Judge Carr falsified the date Petitioner-filed for Soc. Sec. Disability Insurance "SSDI" using June 26, 2006, being (3) days before termination of her job of 29 years 7 months, on June 29, 2006, but no prior "SSDI" lawsuit existed. Therefore, he intentionally used judicial estoppel to dismiss the case, because of a prior lawsuit involving "SSDI." The R & R for ECF No. 64 starts at page 171. See Appendix HH pg. 178 @ 9 lines down: "Additionally, it is undisputed that Plaintiff applied for (SSDI) benefits on June 26, 2006." Magistrate Carr disputed himself in his R&R (App. HH pg. 177): "After 41 weeks of paid leave the defendants terminated Plaintiff's employment on

June 29, 2006, because she could not work. That same day the plaintiff filed an application for Social Security Disability Insurance Benefits ...Aetna." Therefore, Petitioner filed the same day, no prior (3 days) existed for judicial estoppel to even be reviewed or compared to Soc. Sec. Petitioner provided information noting she did not file until after being terminated prior to the R & R being issued; Exhibit filed 06/20/08 of Affidavit ECF No. 54-3 pg. 6 & 3rd ¶: "*I filed with the Social Security Administration on June 29th immediately after being terminated and completed the application on July 13th 2006 because filing is a prerequisite...*" The falsification of this date is an obstruction of justice with "Fraud upon the Court"; using Judicial Estoppel to recommend dismissal.

In the ECF #64 footnote 3: (App. HH pg.182) "*Plaintiff's illegal termination ...February 15, 2006, when she received her first SSDI benefit check. Her alleged illegal termination occurred later on June 29, 2006.*" Facts show that this is a lie. There was no first check on February 15, 2006. ECF No. 62-2 proves Petitioner was not even approved by Soc. Sec. for SSDI until Nov. 30, 2007. Evidence of the date being a material fact is transparent in "*Hamilton I*" (ECF No. 46-7, pg. 2 of 9, at ¶3), (ECF No. 54-9 pg.5), and (ECF No. 54-3, pg. 6 of 6). This fabrication of evidence by Magistrate Carr is Fraud upon the Court. The material fact of the wrong date being in R&R was part of a **Civil Conspiracy** (§1985) with Charleston District Court employees, the employer (Dayco & Mark IV), and attorneys (Murray, Templeton and Schweitzer). This is evidence of intentional misconduct: 18 U.S.C. § 242 False Report

and tampering with the administration of justice in Washington, D.C. §22-1805a and S.C. §15-3-530.

Judge Duffy was provided a timely "Plaintiff's Objection" to Magistrate Carr's R&R, with detailed evidence of the wrong date in "*Hamilton I*." *See*, 09/11/08 at ECF No. 74 pg. 12 and ¶ 1: "*The Court makes a misstatement of fact on page 9 stating that Plaintiff applied for SSDI on June 26 which was actually the 29th of June.*" The objection also included on page 6: "(3) the use of judicial estoppel is tailored to address the affront to the Court's authority or integrity..." The Petitioner's case does not meet the elements of Judicial Estoppel." Also, see page 10 of ECF No. 74, under **ADA** at the bottom of the page: "*The Plaintiff has presented a genuine issue of material fact as to if she is a qualified individual with a disability and whether the Defendant perceived her as disabled.*" Yet, Judge Patrick Michael Duffy on 02/10/2009 signed an ORDER, (App. GG pgs.149-thru-170 @ pg.170) ECF No. 82: "*Accordingly, the doctrine of judicial estoppel precludes Plaintiff from now claiming that she was capable of working at the time of her termination, and she is not a qualified individual under the ADA. Therefore, her claim of discriminatory termination in violation of the ADA fails as a matter of law.*" Judge Duffy also used the wrong date from (Magistrate Carr's fraudulent) date *See*, Appendix GG #82 pg. 151 @ 2nd ¶: "*on June 26, 2006, Plaintiff filed for long-term social security disability benefits, claiming that she was completely unable to work. ... June 29... made retroactive to March 15, 2006.*" Plus, page 152 in the footnote: "*The counterclaim is not before the Court on the present Motion, and therefore the Court does not address its merits in this Order.*" See

docket (App. II Pgs. 205-thru-207 or 02/10/2009-to-06/08/2009). Also, Fed. R. Civ. P. 56(c) was wrong with the date disputed over and over. Compare (App. EE -to- FF pgs. 45 –thru-48) Rule 41 is not on the Amended S.J., neither Petitioner's other 2 claims: **"IT IS FURTHER ORDERED AND ADJUDGED** that all remaining claims are dismissed without costs and with prejudice." It appears no final Order or final S.J. with other 2 claims still open.

Mark IV's Neurologist recommended during Petitioner's last visit "5/22/06" a good prognosis to return to work, saying, "May return now." Mark IV's Occupational Nurse also knew on 5/22/06, during doctor's visit, and we immediately informed Mark IV. This was over a month before job termination on 6/29/2006. Mark IV refused to buy a $100.00 phone headset, because of Title VII "ADA" on Failure to Accommodate. See ECF No. 74 pg. 11 @ 1st ¶. Mark IV did not want to acknowledge the need for an accommodation from the accident to OSHA. ECF No. 74 pg. 12 at line 5*: "The Court makes misstatement of fact on page 9 stating that Plaintiff applied for SSDI on June 26 which was actually the 29th of June.*" See ECF No. 62-3; Soc. Sec. confirmed Petitioner became a protected class member on September 15, 2005. Plus, Title VII ADA "Failure to Accommodate" was listed again in *Hamilton I* in ECF No. 36 counterclaim "Cause of Action" long before the dismissal.

Charleston District Court "USA" employees waited 100 days after issuing Order ECF No. 82 (Docket in Appx. II pgs. 205, 206 & 207), for SDNY-Bankruptcy Stay ECF No. 91 filed 05/19/2009, before issuing S. J. filed 05/21/2009 ECF No. 94 (App. FF pg. 147 & 148) two days after STAY. The Civil

Conspiracy, became obvious when Attorney Murray falsely reported on 05/21/2009 ECF No. 92 STIPULATION of dismissal that Petitioner Hamilton agreed to dismissal. She knew Petitioner did not agree and the "USA" officials would ignore the lie. No disciplinary action for lying intentionally, no accountability; Charleston District Court employees were in on the Civil Conspiracy. See *Hamilton I* ECF No. 91 filed 05/19/2009. Fed. R. Bankr. P. 8017 and Fed. R. Civ. P. 62(a) and See Docket (App. II pgs. 206 & 207) for the chronological time line of events. ECF No. 92 and ECF No. 94 should never happen in less than 10 days of filing 05/19/2009 ECF No. 91; with ADA claims in the S.J. More intentional misconduct during a bankruptcy cool off period, the Charleston District Court makes its own rules, laws, and Constitution. Mark IV, filed Chapter 11 in Southern District of New York "SDNY" 04/30/2009 at 5:03-PM; before Sum. J. was filed on **any** of the claims. It was also before the counterclaim dismissal without an Order for authority to issue S. J. (USA-DOJ) needs to reform the justice system with much help from Congress in revising IMMUNITY.

Fraud upon the Court, by the court with Absolute Immunity is dangerous to justice. Attorneys can use employees from within the Charleston District Court for an "Inside Job" to control the outcome of claims. The fox, or Department of Justice "USA-DOJ", failed to watch the hen house or court house. The "USA" supervision or management team assumed too much, without appropriate checks and balance of who followed the policies or standards to ensure justice, no kind of accountability. Legal laws, policies, procedures, and or practices were not followed by the

shielded Charleston S. C. District Court employees. There is no Pro Se protection from systemic intentional misconduct. Many constitutional violations took place against this Black Pro Se Petitioner, but GOD kept her to file this petition. Let the material facts control fair legal decisions for all.

USA-DOJ employees deprived "Due Process" or the 4th, 5th or 14th Amendments and Statute in depriving Petitioner of the opportunity to be heard before dismissal. Fraud took place to ensure Petitioner would lose all claims. The Failure to Accommodate is completely separate from the Title VII ADA section Judge Duffy issued his Order #82 (App. GG pg. 149-170) on. Petitioner had already answered the counterclaim. See Docket in (App. II pgs.192 &194) for *Hamilton I* ECF No. 25 & 36. No over payment existed. Dismissal took place fraudulently, with ECF No. 94 (App. FF pgs. 147 & 148) by Deputy Clerk Newman "pursuant to Rule 41 of the Federal Rules of Procedure." No ORDER or hearing with a judge for dismissal. See Appendix EE (pgs. 145 & 146). This was an "inside job" against our 5th and 14th Amendments by an unauthorized employee, depriving liberty without due process: "deprived of life, liberty or property without due process of law." Petitioner was barred, again no ADA-"Failure to Accommodate" restitution caused by the Charleston District Court misconduct. More Extrinsic / Intrinsic Fraud on the Court.

Deputy Clerk Newman also Amended S. J. June 8, 2009 ECF No. 95 (App. EE pgs. 145 & 146) without any notification to Pro Se Petitioner. More changed than just removing the false statement Petitioner agreed: "**IT IS FURTHER ORDERED AND ADJUDGED** that all remaining claims are dismissed

without costs and with prejudice." This did not reappear in the Amended S. J. See (App. FF pgs. 148) and EE (pgs. 145 & 146). Deputy Clerk Newman abused her authority; 28 U.S.C. § 955. *United States v. Gaubert*, 499 US 315 – Supreme Court 1991 - If a "federal statute, regulation or policy" specifically prescribes a course of action for the federal employee to follow, the employee has no choice but to adhere to the directive - *In Re Katrina Canal Breaches Consolidated Litigation, 2009* (citations omitted).

Petitioner's remaining two claims were still barred: ECF No. 1 and ECF No. 36 confirmed (4) "Cause of Actions." Note: the case shows "*Date Terminated: 05/21/2009*" and Petitioner's Attorney Hunt was also terminated on 05/21/2009. Hamilton became a Pro Se litigant again. See (Docket in Appx. II pg. 184, 189,192,194 & 207): "06/08/2009 95. Pro Se cases need to be rechecked in Charleston, S.C. District Court involving all these "USA" employees review.

This is a Civil Conspiracy (§ 1985) and under the State of S. C. Const. Title 16, Chapter 5, 16-5-10 against Black Pro Se Petitioner. Nothing happened in the Charleston District Court from 06/08/2009 thru 08/11/2009, however, the Fourth Circuit Opinion (Case No. 09-1999 and ECF #17) counted this time period without any notification to pro se, as untimely. See (App. BB pgs. 137-139): "*As a preliminary matter, Hamilton's appeal is timely only as to the denial of her motion for reconsideration, which motion properly is construed pursuant to Fed. R. Civ. P. 60(b). See Fed. R. App. P. 4(a)(4)(A); see generally Dove v. CODESCO, 569 F .2d 807, 809 (4th Cir. 1978). As to the district court's denial of that motion, we find no abuse of discretion. See MLC*

Automotive, LLC v. Town of S. Pines, 532 F.3d 269, 277 (4th Cir. 2008) (standard of review). Accordingly, we affirm the district court's denial of Hamilton's motion for reconsideration, and dismiss for lack of jurisdiction Hamilton's appeal from the underlying judgment." Therefore, ignoring Fed. R. Civ. P. 72 and lack of jurisdiction also brings in whether the Charleston District Court's behavior violates S.C. Tort Claims Act § 15-78-10, §§§§, thru §15-78-220 and Federal Tort Claims Act ("FTCA") pursuant to 28 U.S.C. §§ 2671- 2680, and show deprivation of rights under the "Color of Law" or misconduct in office when they had no jurisdiction to act or proceed with misconduct. See, *United States v. Orleans*, 425 US 807 – SC (1976): "The FTCA "is a limited waiver of sovereign immunity, making the Federal Government liable to same extent as a private party for certain torts of federal employees acting within the scope of their employment." – in *Hodges v. US*, 2017 (citations omitted)"." False Report FTCA deprivation of rights under "Color of Law." 18 U.S.C. § 242. Normally a Statute, Bill of Rights' procedure is granted; however, no procedure prevented this unfair act from taking place. No checks and balances on facts or fair review took place in the Court's management techniques or monitoring practice to insure Equal Justice for Petitioner. Our ("USA/DOJ") monitoring evaluation failed too: "AMENDED SUMMARY JUDGMENT (mnew,) (erav,). modified on 09/11/2009 to replace damaged document per systems (erav,). (Entered: 06/08/2009)" This was a cover-up during a bankruptcy stay, because of Mark IV's Chapter 11. See (Docket in Appx. II pg. 206): 05/19/2009 91. Thanks to chronological transparency with the docket one can see the Charleston District

Court did not notify Pro Se Petitioner of the Amended S. J., nor was a notice sent to Pro Se about an appealing the 06/08/2009 entry. Yet, the calendar started counting down the "30" days for a timely appeal on ADA claims. See, Opinion (App. BB pg. 138): "...*Hamilton's appeal is timely only as to the denial of her motion for reconsideration* ..." However, in 4th Circuit No 09-1999 Petitioner also appealed the Bankruptcy Court's order lifting the stay being denied, but the (3) attorneys (Schweitzer, Templeton, and Murray) disagreed ECF No. 12 pg. 10 filed 10/08/2009.

However, "acting within the scope of his office or employment." §§2680(h), 1346(b)(1) Sovereign immunity should be waived with being part of this civil conspiracy against this Pro Se. Plus, Amending S.J. and intentionally hiding it on the docket without notification to Pro Se, abusing authority on due process practices, participating in a civil conspiracy (SC Code § 16-5-10), and scheming to defraud. These acts should be constitutionally unacceptable. Judge Duffy, and others helped with violations under 42 U.S.C. §1981, § 1983, §1985 & § 1986, in Charleston District Court and 4th Cir. Court of Appeals knowing, yet neglected to prevent continued injustice with, Statutes, and other court procedures and laws.

Failed to notify this Pro Se litigant the clock started 06/08/2009 for a timely appeal with the Amended S. J. on "ADA" claims and dismissing during the STAY deserves double restitution. See (Docket in Appx. II pgs. 206 & 207). This should be a violation to Title VII, the 4th and 14th Amendments; depriving property, depriving due process of being heard prior to dismissal, and Bankruptcy fraud. The 4th Cir. in Case 15-2406 Opinion appears to be about

absolute immunity, being above the law or above pro se litigants' legal rights. *See* (Appx. P pgs. 78 &79); *"Judges possess absolute immunity for their judicial acts and subject to liability only in "clear absence of all jurisdiction." Stump v. Sparkman, 435bU.S. 349, 356-57 (1978). ...absolute judicial immunity ... (holding that a judge may "not be deprived of immunity because the action [taken] was in error, was done maliciously, or was in excess of his authority")."* Fraud is not legal and should not be immune. It appears a new precedent is badly needed on Absolute Immunity and Inherited Authority with Court employees'; their comrades are blindsided by immunity or loyalty to racism. The facts show constitutional rights were willfully intentionally deprived and statutes ignored. The laws of this land should be the same for every man or pro se "SSDI" woman. *See, United States v. Bishop, 412 US 346 – Supreme Court 1973: "The Supreme Court has defined "willfulness" as the voluntary, intentional violation of a known legal duty." – in US v. Alt, 1993 (citations omitted).* An Order lifting the stay, See (App. DD pgs. 142, 143, & 144) Order ECF No. 352 was submit with other new evidence appealing to Charleston District Court *Hamilton I*, coming from SDNY Bankruptcy Court in ECF No. 96-1 pgs. 1 thru 4 for reconsideration. Petitioner provided new evidence from Soc. Sec. (*Hamilton I* ECF 96-3 pg.2) proving Magistrate Carr erred with the wrong date that Petitioner filed for "SSDI." It is not (30)/ Thirty days from Order ECF No. 352 (App. DD pgs.142, 143 &.144) signed on July 17, 2009 to Appeal for Reconsideration ECF No. 96 dated August 11, 2009. Therefore, Petitioner filed timely appealing in Charleston, S. C. District Court. See Docket in (App.

II pg. 206): filed 08/31/2009 ECF No.91. According to 11 U.S.C. § 108(c) as provided in section 524 of this title "*If applicable non-bankruptcy law, ... period occurring on or after the commencement of the case; or (2) 30 days after notice of the termination or expiration of the stay..., as the case may be, with respect to such claim.*" Therefore Petitioner had 30 days to appeal for reconsideration or continue the case in the non-bankruptcy court; Charleston District Court with the bankruptcy lift Order ECF No. 352 issued July 17, 2009. See SDNY 09-12795 Order (Appendix DD pgs. 142, 143, & 144). Please note pg. 143: Second ¶ at "*1. Relief from the automatic stay is hereby granted pursuant to 11 U.S.C. § 362(d)(1) solely for the purpose of allowing the Movant to pursue an appeal in the South Carolina Litigation, and, if successful in such appeal, to proceed in the South Carolina Litigation for the purpose of liquidating Movant's claim,...establishing August 21, 2009 as the date by which proofs of claim must be filed).*" Going from a bankruptcy court to a District Court on appeal allows (30) days to appeal for reconsideration. Pro Se Petitioner filed timely.

Judge Duffy ignored new evidence disputing Magistrate Carr's R&R with the wrong date of June 26, 2009 and or ignored evidence from Soc. Sec. and S. C. OSHA whistleblower evidence. Facts in *Hamilton I*: ECF No. 96 exhibits: ECF No 96-1 thru 96-8. Racism has its own rules of procedures with pro se cases. No review on new evidence; ECF No. 97 DENIED filed 08/13/2009. See the Order stamped in App. CC (pg. 140). Inherited Authority allowed Charleston District Court employees to be above the law. No *de novo* review, no reason or any explanation; whatever "Master" say with Inherited

Authority. Evidence was provided to the court showing Petitioner filed with Soc. Sec. for "SSDI" only after being terminated from work, prior to both R & R; ECF No. 64 and Order ECF No. 82. Judicial Estoppel violated S.C. Const. Title 16 @ §16-17-410 Civil Conspiracy law, and may include 18 U.S.C. § 371 defrauding the USA and other federal laws, because they planned to use it with changing the date, and ignoring the facts.

The counterclaim although it was in retaliation against Petitioner for money from her before the Chapter 11 was filed April 30, 2009 in SDNY Case No. 09-12795-smb., this became a pretextual reason for Mark IV to hide their lawsuit to ensure approval in bankruptcy, because no overpayment was mentioned in the bankruptcy. Petitioner also filed timely with the 4th Circuit. The Notice of Appeal is on the *Hamilton I* docket ECF No. 99 filed 08/31/2009, confirmed less than 30 days. Again, the transparency with chronological order of when acts, filings or motions took place is vital to justice; if anyone uses it. Transparency must have rules for oversight to ensure compliance to laws with facts. See (Docket in App. II pgs. 207 & 208).

***Hamilton II* / 2:15-02085: (Appendix R, S, & T)**

"This Petition includes an independent Action, filed because of "Fraud on the Court." See Hamilton v. Murray, filed May 21, 2015, (ECF No. 1-2, pg. 1 of 13); *"This action is brought to remedy "Fraud on the Court" a separate action ...court-to-court."* Also, noted in "Informal Brief" for 15-2406 *(Dkt. No. 8, pg. 12).* Magistrate Baker used her "inherent authority" to ignore an initial review of the Complaint to 28 U.S.C. § 1915 to recommend dismissal as frivolous.

See (App. S pgs.89-98) @ pg. 93; "This Court is not conducting an initial review of the Complaint pursuant to 28 U.S.C. § 1915." "[2] Further, Plaintiff's objection to the dismissal of the counterclaim against her, which sought damages for excess payments made to her, seems frivolous." See, "*see also Bardes v. Magera,* No. 2:08-487-PMD-RSC, 2008 WL 2627134 (D.S.C. June 25, 2008) (finding that a court must not screen a complaint pursuant to 28 U.S.C. § 1915(e)(2) when the plaintiff is a non-prisoner who paid the filing fee); *Pillay v. INS*, 45 F.3d 14, 16 (2nd Cir. 1995) (noting that where a pro se party filed an appeal and paid the filing fee, 1915(d) was not applicable but that "we have inherent authority to dismiss an appeal as frivolous."). Again, a Pattern or Practice of Discrimination against Pro Se Litigants with inherent authority. Whereas, between inherent authority and absolute immunity court employees are above the law of this land. See, *Hamilton I* at ECF No. 96-3 and *Hamilton III* see Affidavit, filed 06/12/18 ECF No. 18-2 pgs. 1, 2, 3 of 20 and ECF No. 18-2 pgs. 4, 5, and 6 of 20. The Charleston District Court misconduct helped Mark IV not take responsibility of Petitioner's (4) cause of actions against them with the counterclaim dismissal because, continuing proceedings with ADA claims while Petitioner was barred with the stay. This Pro Se was denied an opportunity to be heard before dismissal (No "Due Process" 4th, 5th, or 14th Amendments) of the counterclaim.

OSHA Form 300Å Summary of Work-Related injuries and Illnesses report for 2006 is at ECF No. 1-2 pg. 87 and 88 of 99 showing "0" days away from work and Murdaugh accident (she was hospitalized) one week before. The "root cause" for Petitioner's

accidents on 5/13/05 and 5/20/05 was water on the workplace's slippery waxed floor; unacceptable for OSHA. See, Deposition of Russell Revell confirms days away from work: ECF No. 1-2 pg. 45. Also, ECF No. 1-2 pg. 54 and 55. Therefore, "0" is impossible. On Mark IV's first report of injury form in *Hamilton I* at ECF 54-19, bottom left corner, "No Lost Time". Also located in *Hamilton II* at ECF No. 1-2 pg. 85. On pages 71, 72, 73, 77, 78, 79 and 87 of 99 confirms evidence on days missed and whistleblower evidence on review by OSHA. Magistrate Judge Baker skipped over many material facts; a copy of the docket from *Hamilton I* was included in *Hamilton II.* ECF No. 1-2 pg. 2 thru 15 of 99 to help with chronological order from the original complaint; *Hamilton I.* Cherry picking, while ignoring a significant fact is what Magistrate Baker did: *Hamilton II* ECF No. 1-2 pgs. 39, 40, 42, 45, 85,and 87 thru 99 concerning "lost time" accident and fraudulent information to the Supreme Court of the United States. See (App. S pg. 90): "*On February 10, 2009, this Court entered an Order granting summary judgment to Defendants Dayco Products LLC and Mark IV Industries. Id. at ECF No. 82. On May 21, 2009, a Stipulation of Dismissal was filed. Id. at ECF No. 92.*" Looking at the same dates on the Docket for *Hamilton I* (App. II pgs. 205 & 206), a bankruptcy STAY was issued or filed 05/19/2009 with ECF No. 91; yes "2" days prior to stipulation of dismissal. May 21, 2009 was very popular, because S. Judgement also took place on the same day, while the Petitioner was barred with the STAY. Maybe (App. S pg. 91) near end of page: "...judgment on June 6, 2009..." is their typo, because nothing is on the docket for that date (App. II pgs.206 & 207), but 06/08/2009 is listed for

Amended S. J. In the Standard of Review in (App. S pg. 93): "This Court is not conducting an initial review of the Complaint pursuant to 28 U.S.C. § 1915." Here we go with that "inherent authority" of the court in the last ¶. It appears pro se litigants, or Blacks, or SSDI class group (disability ADA litigants) are viewed as an underclass, or beneath reproach, for the Ivy League, but not only do we Pro Se Litigants need training to obtain justice, but the magistrate or elite "USA" need training to recognize the layman's terms, when material facts are included as evidence proving the allegations. Frivolous in these cases is either an excuse for some to push aside pro se, time consuming claims, or an excuse to do an injustice. No oversight, no effective auditing or reviewing cases for justice allows and promote injustice. Pro Se litigants deserve justice too. This pattern of oversight with bankruptcy STAY injustice by "USA" district court is more disparate treatment against Petitioner (Continuous Doctrine) injustice continued. See (App. S pg. 95): "*Chewning v. Ford Motor Co.*, 35 F. Supp. 2d 487, 489 (D.S.C. Dec. 18, 1998). Therefore, to the extent Plaintiff seeks $66 million, the Complaint lacks an arguable basis in law. Accordingly, it is frivolous and subject to dismissal." The claims #916 and #917 filed in the bankruptcy *SDNY 09-12795-smb (2010)* ECF No. 776 filed 05/07/10 was for $33 Million each. Petitioner seeks what she lost because of the defendants' fraudulent acts to steal justice with "Fraud on the Court." See (App. V pgs. 108, 109, & 110). Double restitution is painfully deserved. Cherry picking material facts, manipulating evidence, or intentionally skipping over material facts to recommend dismissal as frivolous is wrong, and continuous disparate treatment violating (§§§§

1981, 1982, 1983, 1984, §1985 and/or §1986). Magistrate Baker overlooked the copy of Case No. 10-115 Brief in opposition to petition for Writ of Certiorari certified by the Library of Congress filed in *Hamilton II* on 05/21/15 ECF No. 1-2 pgs. 89 thru 99 of 99. Also skipped over ECF 1-2 pg. 71 of 99; a signed off Incident Investigation /Workers Compensation Report. Proof of the lost time accident pg. 72; Leave of Absence pg. 73 & 74; documents to and from S. C. Dept. of Labor, Licensing and Regulation, Division of Labor-OSHA at ECF No. 1-2 pgs. 77, 78, 79, 85, 87, and 88. In *Hamilton II* at ECF No.1-2 pg. 87 filed 05/21/15, evidence confirms the employer falsely reported "0" days away from work on OSHA's Form 300A, signed by the plant manager, Tom Green, on 01/12/07 for the year 2006. ECF No. 1-2 pg. 73 proves "LOA" (leave of absence) started "09-15-05" and was scheduled with an "unknown" ending because Mark IV's policy allowed up to a year, 09-15-06 with workers compensation *Hamilton I*. ECF No. 54-9 pgs. 1 & 7. This is biased conduct against Pro Se cases acting in bad faith 28 U.S.C. §1915 with inappropriate standard to recommend dismissal, taking money in filing fees a systematic change of policy abusing their authority. All (4) dockets confirm all filing fees were paid an "unjust enrichment" to the "USA" legal funds.

Petitioner filed Objections to R&R *Hamilton II* on 07/01/15 ECF No. 14 pgs. 7, 8, & 9: "*This court claims ...attorneys fraudulent acts do in fact show...barring her freedom of speech to the courts...violates Fed. R. Civ. P. 60(b)...Fraud...Hamilton complaint is not frivolous ...28 U.S.C. § 1331.*" "*CONCLUSION... A review ...28 U.S.C. § 1915 should take place...This claim is not frivolous by Constitutional law...void.*"

Also, included ECF No. 14 pg.10. Petitioner's Affidavit.

Judge Duffy should have recused himself after Judicial Complaint No. 04-11-90009 (2011). He had no respect for federal judicial ethics rules. *See* (App. K pg. 67, 68, 69 & 70). There was retaliation for filing Judicial Reports. It appears revenge or racism caused Retaliation against Black Pro Se Petitioner. Judge Duffy's Order ECF #15 (App. R pgs. 84-88): @ pg.87: "However, Plaintiff failed to make a single objection, much less a specific one." See some above Objections from ECF No. 14 pgs. 7, 8, & 9.

Normally one would be happy for a claim against them to be dismissed, but this was a setup to steal justice, deliberate financial and emotional harm for being a whistleblower to OSHA. See Order ECF No. 82 (App. GG pg. 152 @footnote): "*The counterclaim is not before the Court on the present Motion, and therefore the Court does not address its merits in the Order.*" See (App. GG pg.150) last ¶: "*On May 20, 2005...On June 26, 2006...continued pain and restrictions on what she was able to do at work... She also qualified for long-term disability benefits... retroactive to March 15, 2006.*" Facts show Judge Duffy was aware of accommodation request before dismissal this is Civil Conspiracy (§1985). Also, Mark IV refused to accommodate with a $100.00 phone headset. See the Affidavit in *Hamilton I* at ECF No. 54-2 pgs. 2 & 3 of 7. Medical Leave of absence ("LOA") was days away from work.

Petitioners' original complaint *Hamilton I* Claim No. 3 and ECF No. 1 pgs. 4 and 5 of 6; "*It's not my fault the company's doctor issued a disability form May 2005, requiring bed rest for more than (3) days, possibly causing review by Occupational Safety and*

Health rules and regulation. Regulations (Standards –29 CFR), Injury and illness recording and reporting requirements, - 1952.4 Reference EEOC Charge No. 14C-2006-01522". June 26, 2006 was disputed in the objections and a genuine material fact. S. Judgment was inappropriate with this date being a genuine disputed material fact to R&R; Fed. R. Civ. P. 56. However, without system accountability, following the facts where they lead the entire system is broken; judicially immune from justice.

Hamilton III / 2:18-cv-00622.

Petitioner, filed proof of claims ECF No. 18-2 pgs. 7, 8, 16-19. *See*, Letter ECF No. 20-1 pg. 55 from **OSHA Compliance Manager** dated July 15, 2009 concerning errors found during the Whistleblower investigation. On pg. 57; fax about form 300A log with confirmation; pg. 58 with "no lost time" on report; ECF No. 20-1 *Id.* pg. 56 medical records authorization requested: April 16, 2009; because the attorneys would not submit OSHA evidence during discovery. ECF No. 17-1 pg. 14, ECF No. 20-1 pg. 60 OSHA's Form 300A: showing "0" days away from work; pg. 61 Soc. Sec. confirmation of June 29, 2006 as the filing date; pg. 63 and 64 recommending return to work 5/22/06; pg. 92 "No Lost Time"; pg. 93 an email checking on benefits; pg. 98 (workers Comp) as acceptable absence; pgs. 100 – 104 details of investigation (Mark IV's at Petitioners home & church) on April 15 & 16, 2006 before termination; pg. 106 & 107 Worker Compensation "Leave of Absence" ending "unknown"; pg. 128.

Case No. 2:20-cv-01666 / Hamilton IV (App. D, E, F)

See, ECF No. 1 and 1-1 filed 04/17/2020, ECF No. 18 filed 09/10/2020, and ECF No. 27 filed 11/02/2020.

ECF No. 1-1 pg. 27 Priority mail to US-DOJ. ECF No. 1-1 pg. 28 & 29 reference to complaint or form #95 with USA/DOJ for FTCA dates and proof of filing. 28 U.S.C. § 2675. See, (App. D pgs.6) Again, the R & R in this case "*Hamilton IV*" Dkt. 15 pgs. 1 & 2, (Magistrate Molly H. Cherry) starts off using an inapplicable standard of review to uphold the scheme of the Charleston District Court's civil conspiracy and systematic pattern to recommend dismissal, ignoring material facts of constitutional violations to use frivolous; "Color of Law" needs a new precedent. Shipment of Form #95 and over a pound of evidence provided to U.S. Department of Justice dated 8-2-18, ECF No.1-1 pg. 27. See, ECF No. 1-1 pg. 29 of 100; letter from U.S. Dept. of Justice – Civil Rights Division dated July 16, 2019 acknowledging receipt of Petitioners correspondence. See, ECF No. 1-1 pg. 56. SDNY Mark IV's Case 09-12795-Doc. #776 Filed 05/07/10 listing claims for injury $33,000,000.00 two times. *See,* facts involving (OSHA) in Complaint "*Hamilton IV*" Dkt. No. 1 *Id.* #49, 60, 104, 106-thru-109, #121-thru-128, 132 & #176.

Fourth Circuit Court of Appeals:

See, Informal Opening Brief in 4th Cir. Case No. 20-2189, ECF No. 4 filed 11/30/2020. *Hamilton IV* ECF No. 1 and 1-1, ECF No. 18 filed 09/09/2020. Please notice in *Baptiste v. Morris*, 2020 (citations omitted). *Stern* was not based on the Bankruptcy Code at all; instead, the debtor sued a creditor on a common law tort claim to recover money damages for an injury that occurred before the bankruptcy case began. 131 S. Ct. at 2601.

Whistleblower to OSHA Retaliation by South Carolina-Eleventh Amendment waiver; no response

Whistleblower protection on Complaint No. 0256 interference with Public Policy to hide the "Lost Time" accident. Attorney Templeton helped file the Brief in Opposition to Petition for 10-115 Writ of Certiorari August 23, 2010. See (App. X pgs. 121 & 122). On December 8, 2010 Attorney Templeton was appointed Director of SC Department of Labor, Licensing & Regulation in the Governors' cabinet for S. C. home of claim No. 0256 OSHA Whistleblower file became missing (no longer required to retain), but thanks to FOIA some copies of the many material facts had been obtained from OSHA before Templeton's new job. Whereas, the courts electronic files show transparency inside the courts own records; *Hamilton I* @ ECF No. 96-6 pgs. 4, 5, & 6, Hamilton II @ ECF No.1-2 pg. 87, Hamilton III @ ECF No. 17-1 Pg. 14., Plus, Hamilton IV with evidence showing "0" would be impossible ECF No. 1-1 pgs. 17-thru 20, 50, 51, 52, 64, 65, 66, 71, 77, 85, 86, 88, 89, 90, 93-thru-100. "Fraud upon the Court" is sufficiently "conscience shocking" to strip a government official of Qualified Immunity, Absolute Immunity or Inherited Authority.

REASONS FOR GRANTING THE PETITION

A federal court may take judicial notice of the contents of its own records. In reviewing these incidents, considering the totality of the circumstances, this Court will find evidence of a Pattern and Practice of Discrimination against the justice system, statutes, or Constitution pertaining to abusing their immunity power/authority against Pro Se litigant concerning Title VII "ADA" receiving SSDI. Freedom from **discrimination** on the basis of

disability is a right secured by statute, see ADA, 42 U.S.C. §§ 12031 et seq., not by the Constitution."

This Petition shows Constitutional violations of 42 U.S.C. §§§§ 1981, 1982, 1983, 1985, §1986 and §14141, as well as, violations of state and federal statutes that arise out of multiple lawsuits. Retaliation by the Charleston District Court employees for filing two Judicial Complaints, of which our justice system failed to provide Equal Protection 42 U.S.C. § 1986. Violations to the Whistleblower laws for Complaint No. 0256 under "OSHA" abusing authority by inappropriately using 28 U.S.C. § 1915 against Pro Se cases. Also, violations under 28 U.S.C. §§ 2671 thru 2680(h) "Color of Law" state actors, especially 28 U.S.C. § 1346 (b) and 2680(h). This case shows how inherited authority or power is being used for injustice. This case shows immunity is being used as an excuse for wrongful and illegal acts by the Court itself. Our "USA" justice system needs reforming. The Executive Branch failed to monitor and protect this Petitioner from the Judicial Branch of USA intentional misconduct.

CONCLUSION

Enough is enough. The doctrine of qualified immunity 28 U.S.C. § 2680(h) is needed. Waiver of Sovereign Immunity shall apply to ensure justice for all. Attorneys knew their fraud did not matter, or cases are dismissed when the lies are discovered. Either way the guilty goes free and clear again, and again, and we Pro Se suffer from being deprived of justice; over and over. Whereas, equal justice is not available in Pro Se claims this system needs a major reform, but starting from the top within "USA-DOJ."

The Fraud on the court with Title VII ADA claims, counterclaim misconduct and, or First Amendment Retaliation was "cause for action", but comrades would not look at themselves, because of immunity. Our Executive Branch (USA) also failed.

The lofty looks of Magistrates shall be humbled. Exalting these attorneys or court employees above our laws are destroying our Justice System from within, by those sworn to uphold the laws without bias. Immunity belongs to those whom misconduct or acts are done in good faith; not those destroying our faith in the system with misconduct. Petitioner prays for God's Amazing Grace, and all appropriate orders and Judgments be vacated, remanded and, or reversed, and an Opinion issued in Petitioner's favor with various new precedents. Petitioner deserves restitution from disparate treatment by the USA.

Respectfully asking for justice in Jesus' name,

GERTRUDE C.F. HAMILTON
Pro Se
99 Elmwood Street
Walterboro, SC 29488
(843) 599-2257
trudyham1@aol.com

October 22, 2021