No. 21-7770

IN THE

SUPREME COURT OF THE UNITED STATES

Crystal Jackson – PETITIONER

VS.

Sheraton NY & Times Square Hotel et al – RESPONDENT(S)

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, Petitioner respectfully petitions for rehearing of the Court's Order entered on October 3, 2022, denying Petitioner's petition for a writ of certiorari.

GROUNDS FOR REHEARING

Although it is unusual for this Court to grant rehearing, this case warrants a review of the United States Court of Appeals for the Second Circuit judgment in this case. Rehearing is appropriate for this Court to review for the reasons discussed below.

Rule 10. of the Rules of the Supreme Court of the United States considers granting a writ of certiorari if;
(a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.
(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
(c) a state court or a United States court of appeals has decided an important question of federal law that has not been but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The United States Court of Appeals for the Second Circuit denied Petitioner's motion for an appeal under Title VII of the Civil Rights Act of 1964, Federal Rules of Civil Procedure Rule 26, Rule 26(a)(1), Rule 34, Rule 59 and Rule 60, on December 29, 2021. Petitioner then filed a motion for reconsideration and reconsideration en banc, which was also denied, on February 4, 2022. The issue here is,

Petitioner's case is remarkably similar to a case in which the United States Court of Appeals for the Second Circuit granted an appeal. *See, Rasmy v. Marriott International, Inc.,* No. 18-3260 (2d Cir. 2020). In fact, Petitioner's case and *Rasmy v. Marriott International, Inc.,* No. 18-3260 (2d Cir. 2020), are filed against the same defendant under Title VII of the Civil Rights Act of 1964. In *Rasmy v. Marriott International, Inc.,* No. 18-3260 (2d Cir. 2020), the United States Court of Appeals for the Second Circuit vacated the district court's summary judgment dismissal of plaintiff's claims brought under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981, alleging a discriminatory hostile work environment and retaliation for complaining about discrimination.

The United States Court of Appeals for the Second Circuit held; "a hostile work environment claim does not require a plaintiff to show that he or she had been physically threatened by the defendant or that his or her work performance has suffered as a result of the claimed hostile work environment; discriminatory conduct not directly targeted at the plaintiff can contribute to an actionable hostile work environment, and dismissal of plaintiff's retaliation claim by summary judgment was improper because plaintiff's submission in opposition to the motion presented disputed issues of material fact that should be resolved by a jury."

Petitioner raised the same issue as *Rasmy* to the United States Court of Appeals for the Second Circuit stating, Petitioner opposed to defendant's motion for summary judgment in district court because there are material facts in dispute that cannot be resolved with summary

judgment and opposing counsel also acknowledged and admitted in district court that the dispute turns on factual disagreements and cannot be resolved on a motion for summary judgment. Petitioner also cited *Rasmy v. Marriott International, Inc.,* No. 18-3260 (2d Cir. 2020). Yet, the United States Court of Appeals for the Second Circuit denied Petitioner's request for reconsideration and reconsideration en banc. Petitioner's case was no less deserving of being granted an appeal, particularly in light of *Rasmy*. The United States Court of Appeals for the Second Circuit decision in Petitioner's case and *Rasmy's* case is certainly inconsistent and conflicting. Specifically, granting *Rasmy's* appeal and denying Petitioner's appeal, when clearly both cases are closely related.

"If the record reflects the existence of any genuine issue of material fact, or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment is improper." *Snyder v. Cheezem Dev. Corp.,* 373 So. 2d 719 (Fla. Dist. Ct. App. 1979).

One of the reasons the federal district court decided to grant defendant's motion for summary judgment states "Rather, that comment, far removed in time and made by a coworker with no authority over the plaintiff, is the kind of "stray remark" that courts have found insufficient to constitute employment discrimination." The federal district court's decision also cited *McDonnell Douglas Corp.,* 411 U.S. at 802-04 (1973). The United States Court of Appeals for the Second Circuit affirmed the federal district court's decision and denied Petitioner's motion for an appeal. The United States Court of Appeals for the Second Circuit "has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter."

The United States Court of Appeals for the Fifth Circuit held; "Analyzing facts to this extent at the motion to dismiss stage mirrors the rigorous scrutiny that *Cicalese* prohibits. 924 F.3d at 768 (finding a district court erred by determining whether a derogatory statement was merely a "stray remark" at the motion to dismiss stage)." *See, Scott v. U.S. Bank National Assn,* No. 21-10031 (5th Cir. 2021).

The United States Court of Appeals for the Seventh Circuit held; "Instead of deciding whether a particular category of evidence is direct or indirect, the panel recites that evidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself or whether just the direct evidence does so, or the indirect evidence. Evidence is evidence. The attempt to so regiment evidence overlooks that, employment discrimination cases are often factually complex and require sifting through ambiguous pieces of evidence. And thus, we hold that district courts must stop separating direct from indirect evidence and proceeding as if they were subject to different legal standards. The judge looked at the evidence through the direct and indirect methods that courts often discuss in employment discrimination cases. *See, e.g., Andrews v. CBOCS West, Inc.,* 743 F.3d 230, 234 (7th Cir. 2014), *Zaderaka v. Illinois Human Rights Commission,* 131 Ill. 2d 172, 178–79 (1989). Admissions of culpability and smoking gun evidence were assigned to the direct method (the judge found no such evidence), while suspicious circumstances that might allow an inference of discrimination were assigned to the indirect method. The court did not try to aggregate the possibilities to find an overall likelihood of discrimination. One point of clarification may be helpful. The burden-shifting framework created by *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973), sometimes is referred to as an indirect means of proving employment discrimination. Today's decision does not concern *McDonnell Douglas* or any other burden-shifting framework, no matter what it is called as a shorthand. We are instead concerned about the proposition that evidence must be sorted into different piles, labeled direct and indirect, that are evaluated differently. Instead, all evidence belongs in a single pile and must be evaluated as a whole. That conclusion is consistent with *McDonnell Douglas* and its successors. With the rat's nest of surplus tests removed from the law of the circuit, we can turn back to Ortiz's claim and his supporting evidence. Stripped of the layers of tests, our analysis is straightforward." *See, Ortiz v. Werner Enterprises., Inc.,* No.15-2574 (7th Cir., Aug. 19, 2016).

As the United States Court of Appeals for the Seventh Circuit states "evidence must be considered as a whole, evidence is evidence." Petitioner has submitted copious amounts of emails and documents into evidence to the court that supports Petitioner's claims, as well as a list of numerous witnesses that can corroborate Petitioner's claims. Petitioner's reconsideration and reconsideration en banc statement included a request for trial under Federal Rules of Civil Procedure, Rule 59 and Rule 60, in light of new video information that Petitioner received after the district court's summary judgment decision in favor of defendant. This new video information indubitably would have made a difference in Petitioner's case, most likely resulting in a different outcome. However, Petitioner's request was denied. The Seventh Amendment to the United States Constitution guarantees the right to trial by jury.

Petitioner's reconsideration statement to the United States Court of Appeals for the Second Circuit also stated, opposing counsel did not submit discovery to Petitioner as required under Federal Rules of Civil Procedure, Rule 26, Rule 26(a)(1), and Rule 34. Petitioner never received pertinent information that was needed in order to effectively prepare the case. Petitioner received an incomplete discovery packet that did not include the (audio/transcript) that opposing counsel submitted to the court as evidence. Petitioner did inform the district court judge that Petitioner never received the (audio/video) evidence in the discovery packet prior to the district court judge's decision to grant summary judgment in favor of defendant. Yet, the district court judge granted defendant's request for summary judgment.

The Second Circuit decision departs from this Court's precedent and creates an inter- circuit conflict. The Second Circuit decision to grant *Rasmy's* appeal and deny Petitioner's appeal when both cases are remarkably similar creates conflict and would engender confusion in law. The Second Circuit not only denied and dismissed Petitioner's appeal, the Second Circuit also denied and dismissed Petitioner's Constitutional rights to a trial by jury. There are material facts and evidence that should be examined by a jury, the truth should also be determined by a jury and for these reasons, rehearing is appropriate.

CONCLUSION

The Court should grant the petition for rehearing, vacate the judgment, and remand for further proceedings.

Respectfully Submitted,

Crystal Jackson, Pro Se Plaintiff

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October 21, 2022

RULE 44.2 CERTIFICATE OF PRO SE PETITIONER

As the Pro Se Petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully Submitted,

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October 21, 2022

AFFIRMATION OF SERVICE

I, Crystal Jackson, declare under penalty of perjury that I have served a copy of the foregoing Petition for Rehearing upon Timothy Barbetta, Ford Harrison LLP, 366 Madison Avenue, 7th Fl. N.Y. N.Y. 10017 by the following method:

Check one

____ US Mail.
____ Hand delivery.
__✓__ FedEx, UPS, or other private carrier.

Date: October 21, 2022

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AFFIRMATION OF SERVICE

I, Crystal Jackson, declare under penalty of perjury that I have served a copy of the foregoing Petition for Rehearing upon Keya C. Denner, Ford Harrison LLP, 300 Connell Dr., Ste. # 4100, Berkeley Heights, N.J. 07922 by the following method:

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