No. 22-147

IN THE

Supreme Court of the United States

RESHAWN ARMSTRONG,

Petitioner

v.

U.S. ATTORNEY GENERAL,

Respondent

On Petition for a Writ of Certiorari
to the United States Courts of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a Judge committed ex parte communication when he accepted information from an unnamed person other then the Plaintiff and Defendant's Counsel, so to use and intimidate the Plaintiff in removing certain claims from compliant, and should it be grounds to have case vacated and remanded?

2. Whether a Judge can disregard established Federal Rules of Civil Procedures, specifically FRCP 56a, to grant summary judgment when there are still numerous genuine disputes to material facts remaining which are unresolved?

3. Whether documents that show inconsistencies, contradictions, policy violations, a declaration statement, and also a sworn affidavit that an employer made statements that employees are valuable based on physical characteristic, specifically race and sex considered direct evidences and does it also show pretext?

4. Whether a plaintiff have made a prima facie case concerning employment discrimination when she's (1) a member of a protected class; (2) was qualified for the position sought; (3) was rejected for the position; and (4) the employer promoted someone outside of her protected class?

5. Whether the "similar situated in all material aspects" and that this burden remains with plaintiff at the prima facie stage to onerous?

6. Whether an employer is liable for the discriminatory acts of his or her supervisors who have the means to influence employment decision makers?

7. Whether the Eleventh Circuit should have reviewed grant of summary judgment as de novo?

8. Should this Court grant this petition and vacate the judgment and remand this case back to the lower court so Petitioner can be fully heard and finally have her day in court to resolve all genuine disputes of materials facts?

PARTIES TO THE PROCEEDING

For case number 20-10929 filed at the Eleventh Circuit, Petitioner Reshawn Armstrong (pro se) was the Appellant, Respondent U.S. Attorney General was the Appellee, and Elizabeth A. Holt was the Appellee's Counsel

RELATED PROCEEDINGS

Reshawn Armstrong v. U.S. Attorney General
No. 7:17-cv-01857-LSC (U.S. District Court Northern Alabama, Nov. 3, 2017)

Reshawn Armstrong v. U.S. Attorney General
No. 20-10929 (11th Circuit Court, Mar. 5, 2020)

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6,Petitioner Reshawn Armstrong is not a corporation; has no parent corporation, and no publicly held company holds 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ms. Reshawn Armstrong (pro se) respectfully files this petition for a writ of certiorari to review the judgments of the United States Court of Appeals for the Eleventh Circuit and U.S. District Court for Northern Alabama Western Division.

OPINIONS BELOW

The Eleventh Circuit's order denying panel rehearing and hearing en banc is at Appendix E, the Eleventh Circuit opinion (PER CURIAM) is not publish but is at Appendix D, District Court memorandum and opinion and order granting summary judgment is at Appendix B and C, and District Court order for pretrial conference and set bench trial is at Appendix A.

JURISDICTION

The Eleventh Circuit denied Petitioner's petition for panel rehearing and hearing en banc on January 12, 2022 (Pet. App. A). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

THE STATUTE INVOLVED

Title VII of the Civil Rights Act of 1964 *(42 U.S.C. 2000e et seq.) section 703 (a),* states "it shall be an unlawful employment practice for an employer; 1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or 2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

OTHER AUTHORITES INVOLVED

Federal Rules of Civil Procedures 56a states, "A party may move for summary judgment, identifying each claim or defense or the part of each claim or defense on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law".

INTRODUCTION

The Petitioner, Ms. Reshawn Armstrong, is a black female who currently works for the Department of Justice Federal Bureau of Prisons as a Senior Officer Specialists. Ms. Armstrong started her career with the Federal Bureau of Prisons in 2007 at FCC Coleman. Ms. Armstrong later transferred from FCC Coleman to FCI Tallahassee in 2009, and in August of 2012 transferred from FCI Tallahassee to FCI Aliceville located in Pickens County, Alabama, which is currently her assigned duty station. FCI Aliceville is a Federal Correctional Institution that houses female inmates. Ms. Armstrong transferred to FCI Aliceville to help with the activation of institution in preparation of incoming inmates and the training of newly hired staffs. During this time Ms. Armstrong joined the Disturbance Control Team (DCT) and earned her certification as a Basic Prisoner Transportation (BPT) Officer at FCI Aliceville. Ms. Armstrong continued her training and earned the following certifications in Central Inmate Monitoring (CIMS), National Crime Information Center and National Law Enforcement Telecommunications (NCIC/NLETS), Inmate Discipline Certification (IDC), and Case Management. Ms. Armstrong also has a Bachelor of Science degree in Criminology.

In or around March of 2015, Ms. Armstrong had applied for various job announcements for promotion within the Federal Bureau of Prisons to further her career with the Agency. Ms. Armstrong received notifications

from USA Jobs that her applications were selected as part of the Best-Qualified group (BQ group) and would proceed to the last stage of the hiring process which is the reference check stage. Ms. Armstrong informed both Warden Arcola Washington-Adduci (Warden Adduci) and Associate Warden Sekou Ma'at (AW Ma'at) she had applied for various job promotions within the Federal Bureau of Prisons. AW Ma'at asked Ms. Armstrong if she had applied for a lieutenant position at FCI Aliceville which Ms. Armstrong said no, but stated she had applied for lieutenant positions at other institutions. AW Ma'at then told Ms. Armstrong she is an excellent worker and valuable because she is a black female (physical characteristics) and should apply for a lieutenant at FCI Aliceville due to it being a female institution and its need of more female staffs. In August of 2015, after still not being hired for one of the many positions she applied for, Ms. Armstrong decided to request her reference checks and became aware Warden Adduci and AW Ma'at gave numerous false and derogatory reference checks to interfere with her applications for promotions which dated back to March of 2015.

Title VII of the Civil Rights Act of 1964 is a federal law that prohibits employers from discriminating against their employees on the basis of sex, race, color, national origin, religion, disability, reprisal, and most recently sexual orientation. This Title makes it unlawful for an employer to discriminate against an employee or applicant in hiring and firing; compensation, assignment,

classification, transfer, promotion, job advertisements, recruiting, testing, benefits, pay, disability leave, or any respect to an employee's terms, conditions, or privileges of employment.

STATEMENT OF THE CASE/FACTS

1. In 2015, the petitioner Ms. Reshawn Armstrong applied for various job announcements for promotion within the Federal Bureau of Prisons (FBOP).

2. AW Ma'at asked Ms. Armstrong if she had applied for lieutenant's position at FCI Aliceville which Ms. Armstrong stated no due to Ms. Armstrong was not interested in being a lieutenant at FCI Aliceville and therefore did not list FCI Aliceville on her applications.

3. AW Ma'at told Ms. Armstrong she's an excellent worker and valuable because she is a black female (physical characteristics) and tried to encourage Ms. Armstrong to apply for a lieutenant position at FCI Aliceville due to it being a female institution, its need of more female staffs, and the value he place on black females.

4. Ms. Armstrong did not list FCI Aliceville, but instead listed other institutions she was interested in being a lieutenant at, which Ms. Armstrong was

qualified and categorized as part of "best qualified" group.

5. The best qualified group are applicants with similar job related competencies or knowledge, and also skills and abilities who are selected to proceed to the last stage of the hiring process which is the reference checks stage.

6. The Federal Bureau of Prisons uses reference check form BP-A1076 to conduct interview with applicant's supervisors regarding job related skills and abilities of applicants.

7. In August of 2015, Ms. Armstrong became aware Management at FCI Aliceville, specifically Warden Adduci and AW Ma'at, had intentionally gave numerous false and derogatory reference checks to interfere with her applications for promotion within the Agency.

8. One of the questions asked on form BP-A1076 is if applicants had "any disciplinary action taken against them within the last two years, if known?" Form does not ask any questions regarding why disciplinary actions was taken, and/or if applicant is or was under investigations, due to any investigations stated on reference checks are inappropriate and against policy.

9. During the reference checks stage, Warden Adduci had stated Ms. Armstrong had an "open case" for question "any disciplinary actions within the last two years, if known?" and AW Ma'at had stated, "yes" to this same question. Also AW Ma'at gave inconsistent answers to this same question and also gave rating for Ms. Armstrong job and abilities skills that were inconsistence and which also contradicted her performance evaluations.

10. Ms. Armstrong had no disciplinary action taken against her in or before 2015, and has never been suspended since her employment with the Agency.

11. In 2017, after Ms. Armstrong exhausted her administrative remedies (confirmed by EEOC AJ), she filed civil action 7:17–cv-01857-LSC in the U.S. District Court for the Northern Alabama Western Division against the U.S. Attorney General.

12. Soon after Ms. Armstrong filed her evidences with the court, the District Court Judge committed ex parte communication with an unnamed person other than the Plaintiff and Defendant's Counsel, who alleged Ms. Armstrong did not exhaust her administrative remedies. District Court Judge then used this inaccurate information to verbally intimidate Ms Armstrong in removing certain claims from her complaint, despite the repeated notices in response to court order, that she intends to pursue all claims in compliant.

13. On August 30, 2019, the Respondent filed a motion for summary judgment that consisted of irrelevant and false materials which Ms. Armstrong disputed in her opposition to summary judgment with supporting documents on September 13, 2019.

14. The Court then after reviewing both motions for summary judgment and opposition to summary judgment, and also motions for sanction and hearing for judicial notice, entered an order on February 18, 2020 which informed parties of pretrial conference scheduled on March 23, 2020 in pre-paration for bench trail set for April 13, 2020. (Pett. App. A at 1a)

15. The day before Ms. Armstrong and the Respondent's Counsel were to meet to go over materials for pretrial conference, the District Court Judge all of a sudden issued a memorandum of opinion and order on March 3, 2020 which granted motion for summary judgment, despite the numerous genuine disputes of material facts that still exists. (Pett. App B at 3a and C at 44a)

16. The District Court stated Ms. Armstrong provided no evidence of discrimination and could not show a similarly situated comparator outside her protected classes treated differently; therefore she failed to make out a prima facie case.

17. Ms. Armstrong timely filed her appeal with the Eleventh Circuit and requested an oral argument due to the handling and complexity of her case created by the District Court.

18. On October 25, 2021 the Eleventh Circuit denied Ms. Armstrong oral argument request and affirmed District Court grant of summary judgment (without de novo review), that Ms. Armstrong provided no evidences of discrimination and could not show that a similarly situated comparator outside her protected classes was treated differently, due to compactors were not similar situated in all materiel aspects. (Pett. App. D at 46a)

19. On December 7, 2021 Ms. Armstrong filed a petition for panel rehearing and hearing en banc which was denied by the Eleventh Circuit on January 12, 2022. (Pett. App. E at 53a)

REASONS FOR GRANTING WRIT OF CERTIORARI

I. There is a split amongst the US Courts concerning the term "similar situated comparator" in an employment discrimination case which needs uniformity amongst the Courts:

The Eleventh Circuit stance that "similar situated comparators be similar in all material aspects" and this burden remains at the prima facie stage is to onerous, and undermines the McDonnell Douglas Analysis used by this

Court, which this Court did not intend for a prima facie case to be onerous; *Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981).*

Other Circuits are in conflict with the Eleventh Circuit such as the U.S. Court of Appeals for District of Columbia Circuit which uses a more common sense approach that aligns more with this Court. In *Brady v. Office of Sergeant at Arms, Case No. 06-5362 (March 28, 2008),* the district court granted summary judgment to the Office of Sergeant at Arms (House of Representatives) on grounds that the plaintiff could not show that a similarly situated employee outside his racial group was treated differently, and, therefore, had not made out a prima facie case of race discrimination. The plaintiff, a supervisor, was demoted after employees alleged that he sexually harassed them. The plaintiff, however, like many plaintiffs, was unable to find another supervisor, not of his race, who had faced similar charges to whom he could compare himself. The D.C. Circuit disregarded this issue, holding that the lack of a similarly situated comparator was unimportant and that the lower court's focus on the prima facie case was misplaced.

The D.C. Circuit reasoned that by the time the lower court considers an employer's motion for summary judgment, the employer will have asserted a legitimate, non-discriminatory reason for the challenged decision. The court held "that's important because once the employer asserts a legitimate, non-discriminatory reason; the question whether the employee actually made out a

prima facie case is 'no longer relevant". The court cited to Supreme Court cases that comport with this holding, such as *St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 510 (1993); Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); and U.S. Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 715 (1983)*

The D.C Circuit concluded its decision by stating: *"Lest there be any lingering uncertainty, we state the rule clearly: In a Title VII disparate-treatment suit where an employee has suffered an adverse employment action and an employer has asserted a legitimate, non-discriminatory reason for the decision, the district court need not-and should not-decide whether the plaintiff actually made out a prima facie case under McDonnell Douglas. Rather, in considering an employer's motion for summary judgment or judgment as a matter of law in those circumstances, the district court must resolve one central question: Has the employee produced sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race, color, religion, sex, or national origin?"*

Ms. Armstrong asserts to many victims of employment discrimination, especially in the Southeast Region of this Country (Florida, Alabama, and Georgia) can not even make it to a jury and/or bench trial due to the Eleventh Circuit stance that compactors be similar situated in all

material aspects and that this burden remains at the prima facie stage. This viewpoint allows an employer to use any differences they can find, whether it be relevant or not, whether years ago or days ago, and/or whether a compactor had chosen the color red instead of blue in order to justify its discriminatory motives, due to no concrete meaning of the term "similar situated compactors and whether it should be at the prima facie stage. This Highest Court can resolve this question once and for all, which will help ease the burden of future victims of discrimination to at the very least, have their cases make it to trial.

II. The Eleventh Circuit and District Court for Northern Alabama Western Division Decision's Are Wrong.

The *Federal Rules of Civil Procedures 56a*, makes it clear that summary judgment shall not be granted for a movant when there are still genuine disputes to material facts remaining that shows the movant is not entitled to summary judgment as a matter of law, yet in Ms. Armstrong's case the District Court did the exact opposite of this rule, which the Eleventh Circuit affirmed. This Court has held a grant of summary judgment is only appropriate when there is no genuine dispute as to any material facts, and as such any grant of a summary judgment that violates Federal Rules of Civil Procedures 56a must be vacated; *Young v. United Parcel Service, Inc. 575 US 206 (2015).*

This Court has also held that a plaintiff' can show Prima Facie either through direct evidences and/or

circumstantial evidences which Ms. Armstrong has shown both.

III. When Direct Evidence Has Been Presented, The McDonnell Douglas Analysis Is Not Required.

A plaintiff can make a prima facie case with direct evidences, which direct evidence can be statements that reveal a discriminatory motive for the adverse employment action which proves discrimination without inference or presumption; *Warch v. Ohio Cas. Ins. Co., 435 F.3d 510, 520 (4th Cir. 2006) (quoting Taylor v. Va. Union Univ., 193 F.3d 219, 232 (4th Cir.1999) (en banc) (citation and internal quotation marks omitted).* Direct evidence "typically consists of clearly sexist, racist, or similarly discriminatory statements or actions by the employer.", *cited Coghlan v. Am. Seafoods Co. LLC, 413 F.3d 1090, 1095 (9th Cir. 2005). In Griffith v. City of Des Moines, 387 F.3d 733, 736 (8th Cir. 2004);* the Eight Circuit defined direct evidence as follows:

Direct evidence is evidence showing a link between the alleged discrimination and the challenged decision, sufficient enough to support a finding by a reasonable fact finder that an illegitimate criterion was motivated by discrimination. A plaintiff with strong direct evidences that illegal discrimination motivated the employer's adverse action does not need to demonstrate the McDonnell Douglas analysis. Ms. Armstrong had provided direct evidence of intentional discrimination which showed that her supervisors statements and actions were

inconsistent, contradicts, and false so to interfere with her applications for promotion with employment decision makers *(Staub v. Proctor Hospital 562 US 411 (2011).* Ms. Armstrong also provided a declaration statement from a co-worker and a sworn affidavit that her claims were true.

The fact is Ms. Armstrong made out a prima facie case through circumstantial evidences when she met all four (4) elements of the McDonnell Douglas Analysis, *(McDonnell Douglas Corp. v. Green 411, U.S. 792 (1973)*; and also through direct evidences provided to District Court in support of her all her claims which a reasonable jury and/or judge could have determine discrimination had occurred. At that time, District Court should have required the Respondent to give a legitimate non discriminatory reason why on **March 30, 2015** for job announcement HR-N-2015-0009-HON, did Warden Adduci state "open case" to question "disciplinary action within the last two years, if known; why on **April 1, 2015** (for the same job announcement HR-N-2015-0009- HON) did AW Ma'at state "yes" to question "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **April 3, 2015** for job announcement MEN-2015-0030-0002, did AW Ma' at state "yes" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **April 23, 2015** for job announcement HRN- 2015-0007-0044-EXC-LOM-0005, did AW Ma'at state "none" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms.

Armstrong's performance evaluations; why on **June 5, 2015** for job announcement WIL-2015-0035, did AW Ma' at state "unknown" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **July 7, 2015** for job announcement BSG-2015-0040- 0001, did AW Ma' at state "yes" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **July 30, 2015** for job announcement PHX-2015-0049, did AW Ma' at state "yes" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **August 19, 2015** for job announcement HR-N-2015-0007-LOM, did AW Ma' at state "yes" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; why on **September 15, 2015** for job announcement HRN-2015-0007-0105-MP-VIM, did AW Ma'at state "Unknown" to "disciplinary action within the last two years, if known" and gave rating that contradicts Ms. Armstrong's performance evaluations; and finally why were reports of repeated harassment and hostile work environment not investigated per Agency's policies; and why did Agency's Officials delete videos of incident concerning incidents of harassments, and finally why did Agency's Officials destroy (unauthorized) and/or lose official government records, specially months worth of pages from a bound logbook, when requested during discovery by Ms. Armstrong *(Burrell v. Dr. Pepper/Seven Up Bottling Grp, Inc., 482 F.3d 408 (5th Cir. 2007). See also Nasti v. CIBA*

Specialty Chem. Corp., 492 F.3d 589, 594 (5th Cir. 2007) ("A court may infer pretext where a defendant has provided inconsistent or conflicting explanations for its conduct."); *Burrell v. Dr. Pepper/Seven Up Bottling Grp, Inc., 482 F.3d 408 (5th Cir. 2007) (shifting explanations can be evidence of pretext); Gee v. Principi, 289 F.3d 342 (5th Cir. 2002) (same); Aust v. Conroe Indep. Sch. Dist., 153 S.W.3d 222 (Tex. App.–Beaumont 2004, no pet.)* (shifting explanations given by the employer for its decision to terminate the plaintiff established a fact issue over whether its decision was motivated by unlawful discrimination); cf. Burton v. Freescale Semiconductor, Inc., 798 F.3d 222, 235-□36 (5th Cir. 2015) (reversing summary judgment for employer in discrimination case where two company witnesses gave different and shifting reasons for the decision to terminate the plaintiff).

In, *Haire v. Board of Sup'rs of La. State Univ. Agricultural & Mech. Coll., 719 F.3d 356, 365 n. 10 (5th Cir. 2013),* the court reversed summary judgment for the employer in a discrimination case, and held that, "evidence demonstrating that the employer's explanation is false or unworthy of credence is likely to support an inference of discrimination even without further evidence of defendant's true motive. (italics in original).

Also the Eleventh Circuit have repeatedly stated in other opinions that it reviews grant of summary judgments as de novo, yet in Ms. Armstrong's appeal it chose not to review de novo, but instead as an abuse of discretion.

The Eleventh Circuit affirmed the District Court decision that Ms. Armstrong provided no evidence of employment discrimination and could not show a similar situated comparator; therefore she failed to make out a prima facie case. The Eleventh Circuit should have reviewed Ms. Armstrong's appeal as de novo as it did with others, so to base their opinion on its own review of case, especially since the Eleventh Circuit denied Ms. Armstrong oral argument request. *(The 11th Circuit Court of Appeals reviews district court's rulings of summary judgment as de novo, construing all facts and drawing all reasonable inferences in favor of the nonmoving party. Jones v. UPS Ground Freight, Inc., 683 F.3d 1283,1287 (11th Cir. 2012)', The grant or denial of summary judgment is reviewed de novo, B&G Enters., Ltd. v. United States, 220 F.3d 1318, 1322 (11th Cir. 2000); Thornton v. E.I. Du Pont de Numours & Co., 22 F.3d 284, 288 (11th Cir. 1994). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, Whatley v. CNA Ins. Co., 189 F.3d 1310, 1313 (11th Cir. 1999). The court must view all evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party, St. Charles Foods, Inc. v. America's Favorite Chicken Co., 198 F.3d 815, 819 (11th Cir. 1999).*

IV. Most importantly to uphold the integrity and to ensure public trust in the US Courts Judiciary System

Again soon after Ms. Armstrong filed her evidences with the District Court, the District Court Judge committed ex parte communication with an unnamed person whom alleged Ms. Armstrong did not exhaust her claims and then used this inaccurate information to verbally intimate Ms. Armstrong in removing certain claims from her compliant.

Canon 1 of the code of conduct for United States Judges states, · A Judge Should Uphold the Integrity and Independence of the Judiciary ·An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. Canon 3(a)(4) · A Judge should not initiate, permit, or consider ex parte communications as authorized by law.

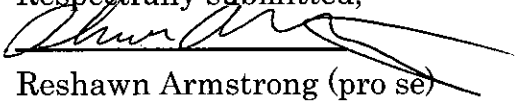
The Federal Rules of Civil Procedures are established rules which govern civil procedures in the U.S. District Courts. These rules are promulgated by the United States Supreme Court pursuant to the Rules Enabling Act in which the United States Congress have seven months to veto the rules promulgated before it becomes part of the FRCP. The Federal Rules of Civil Procedures provides structure in the US Courts system for the District Court Judges to follow.

The U.S. Courts Judiciary System, if no other place, should be the one place that the people of the United States of America can depend on when an injustice has occurred that violates the civil rights of a person. The U.S. Courts should be impartial, non-bias, follow the rules of all court procedure, be reasonable in its decision making, and uphold the laws equally, consistently, and in a uniform manner amongst all people of this Country, regardless of who the Plaintiffs and/or Defendants might be, and regardless to what region of this Country an employment discrimination had occurred and is filed, which this Highest Court can and should ensure the Lower Courts does exactly that.

CONCLUSION

For the forgoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



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