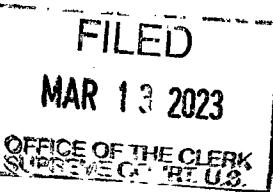


22-7143 ORIGINAL  
No. \_\_\_\_\_



**SUPREME COURT OF THE UNITED STATES**

Xunxian Liu,

*Petitioner,*

vs.

(Secretary of Department of Health and Human Services,

Director of Merit Systems Protection Board,

Attorney General of Department of Justice)

In case 22-5122

Director of Administrative Office of the United States of Courts

In case 22-5182

*Respondents.*

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On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for District of Columbia

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**PETITION FOR A WRIT OF CERTIORARI**

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## I. Questions Presented

There are many federal questions, stated Agencies' violations chronologically as follows:

### A. DHHS' violations

1. 5/21/2015, Responsible Management Official 1 issued Petitioner performance improvement plan, stating removing Petitioner's position without pre-notifying Petitioner RMO1's rating Petitioner's performance and infringing a DHHS/NIH's policy (APPENDIX A). Does RMO1 violate Petitioner's due process right of property clause in Amendments Five and Fourteen of Constitution and Section 1983?
2. 7/30/2015, RMOs 1/2, creating **Lie1**: RMO1's informing Petitioner RMO1's rating Petitioner's performance 5/8/2015. Does RMO1 injure Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (fraud-based statement (FBS)), 42 U.S. Code § 2000e-17 (full hearing without flaw (FLWF))?
3. Additional violations: **Lie1** is retaliation against Petitioner's EEO activity. Do RMOs (1 and 2) breach 42 U.S. Code § 2000e-3 other unlawful employment practices (a)?
4. Petitioner is not a White, and the Court, in CBOCS West, Inc. v. Humphries ruled that Section 1981 extends to retaliation claims. Does **Lie1** injure Petitioner's equal right "to enforce contracts" in Sections 1981(a) (intentional racial discrimination (IRD)) and 1983?
5. Without the pre-notification, Agency continued the full hearing from 7/31/2015 to 8/30/2015. Does Agency infringe Petitioner's due process right of property clause in Constitution and/or the FLWF rule in 42 U.S. Code § 2000e-17, and Sections 1981(a) (IRD), 1983?
6. 8/31/2015, RMO3's removal letter includes **Lie1**. Does RMO3 infringe Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (fraud-based decision (FBD)), the FLWF rule in 42 U.S. Code § 2000e-17, and Sections 1981(a) (IRD), 1983?

7. 1/23/2017, RMO4, designated **Lie1** was a meeting between RMO1 and Petitioner on 5/8/2015 when Petitioner did not see RMO1. Does RMO4 violate Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS), and Sections 1981(a) (IRD), 1983?

8. Petitioner filed a lawsuit In US District Court for Maryland (USDCM). RMO1 privately initially repeated **Lie1** to a judge (RMO6). Does RMO1 violate Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS), and Sections 1981(a) (IRD), 1983?

#### **B. MSPB's violations**

9. 2/2/2017, Administrative Judge (RMO5) affirmed DHHS's removal of Petitioner's position and the decision contains **Lie1**. Does RMO5 violate Petitioner's due process right of property clause in Constitution or breach 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBD) and Section 1981(a)?

10. Petitioner's lawyer repeatedly claimed in the hearing: RMO1 did not show Petitioner RMO1's rating of Petitioner's performance before issuing the PIP to Petitioner, whereas RMO5 ignored the claims. Does RMO5 infringe Petitioner's equal right, secured in Section 1981 (a): "to sue, be parties, give evidence" (IRD)?

11. In *Bolling v. Sharpe*, the Court stated "[liberty] cannot be restricted except for a proper governmental objective", defining due process. Including **Lie1** in RMO5's decision, does RMO5 deprive Petitioner's due process right protected by liberty clause in Amendments Five and Fourteen of the US Constitution?

#### **C. DOJ's violations**

12. 11/7/2017, RMO7 et al created **Lie2**, saying RMO7 was not investigating Petitioner's report of RMOs' (1/2) **Lie1** to cover **Lie1**. Do RMO7 et al violate Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS) and Sections 1981(a) (IRD), 1983?

13. 12/12/2017, RMO7 et al repeated **Lie1** in a USDCM's document. Do RMO7 et al dispossess Petitioner's due process right of property clause in Constitution or contravene 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS) and Sections 1981(a) (IRD), 1983?

14. 11/27/2018, RMO8 made **Lie3**: DOJ took no action on Petitioner's perjury report to Petitioner's FOI question to cover **Lie2**, relating to **Lie1**. Does RMO8 violate Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS), and Sections 1981(a) (IRD), 1983?

15. Petitioner continued making complaints in State Court and the case was removed to USDCM. RMOs 9/10, repeated **Lie1** on 12/17/2018. Does RMOs (9/10) violate Petitioner's due process right of property clause in Constitution or 42 U.S. Code § 2000e-2(n) (2) (D)/(C) (FBS) and Sections 1981(a) (IRD), 1983?

#### **D. AO's violations**

16. 6/22/2018, RMO6 suggested private hearing with RMO1 in RMO6's decision (question 8, APPENDIX B). Does RMO6 breach 28 U.S. Code § 144 - Bias or prejudice of judge and Sections 1981(a) (IRD), and deprive procedural due process protection of Petitioner?

17. RMO6 believed **Lie1**, not Petitioner's evidence (APPENDIX B). In *Ingraham v. Wright*, the Court stated liberty includes "right to obtain judicial relief", so litigants have procedural due process shield. Does RMO6 deprive Petitioner's liberty protection in Constitution and equal right: "to sue, be parties, give evidence" (Section 1981 (IRD))?

18. Without discovery or hearing, RMO6 believed **Lies ½** (APPENDIX B), whereas RMO6 listened to RMO7's statement: admit RMO7 is the investigator in a conference on 10/10/2017. Is that "a proper governmental objective" or does RMO6 infringe 42 U.S. Code § 2000e-2(n) (2) (C) (FBD)?

19. 4/26/2019, Petitioner filed motion for Affidavit of reasonable opportunity for discovery under Rule 56 (d), whereas RMO11 denied the motion, saying this discovery is compelling. Does RMO11 violate Rule 56 (d), "a proper government objective" and Sections 1981(a) (IRD)?

20. 1/3/2020, RMO11 just repeated RMO6's corruptive decision without discovery or hearing (APPENDIX C). Was that "a proper governmental objective"? Did RMO11 violate Petitioner's equal right "to sue, be parties, give evidence" (Section 1981 (a) (IRD), Petitioner's procedural due process protection and/or 42 U.S. Code § 2000e-2(n) (2) (C) (FBD)?

21. RMO11 disregards importance of procedural justice, emphasizing that of personal performance or encouraging abuse of power: Petitioner's "assertions regarding 5/8/2015 meeting (**Lie1**) did not defeat summary judgment on his discrimination claims" (APPENDIX C). Does that violate the US Lawmakers' principle: suppress Officials' abusing powers and Sections 1981(a) (IRD)?

***Conflicts between or within lower courts or with Supreme Court's statements***

22. 5/4/2022, a judge of US District Court for District of Columbia (USDCDC) identified that all three lies (**Lies 1-3**) are lies (APPENDIX D). Does that conflict with judgments of RMO6 and RMO11? Or must one kind of judgment not be "a proper governmental objective"?

23. 11/21/2022, the US Court of Appeals for District of Columbia (USCADC) granted Appellees' motion for precluding Petitioner's claims, citing RMO11's decision and saying District Court for

District of Columbia did the preclusion (APPENDIX E); however, the judge (question 22) did not do that finally. Is that fact recognition error?

24. In *Allen v. McCurry*, the Court stated “once a court has decided an issue of **fact** or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case”. Are **Lies 1-3** facts?

25. Therefore, RMO11’s decision (8:18-cv-03468, ECF44, APPENDIX C), saying that Petitioner’s claim of **Lies 1/2** as frauds cannot be relitigated is wrong. Is the judgment “a proper governmental objective”?

26. APPENDIX E also ignores Petitioner’s claim of the judge’s (the judge appears in question 22) subjective mistakes (please see question 31), not discussing/affirming the decision from the most recent district court, unlike the court’s routine: discussing/affirming district courts’ decisions. Is that “a proper governmental objective”?

27. 1/19/2023, USCADC denied Petitioner’s motion to consolidate two cases (22-5182 and 22-5122) with substantial associations (APPENDIX F), whereas USCADC’s civil docket statement form (APPENDIX G) allows consolidation. Is that USCADC’s self-contradiction?

28. APPENDIX F denied Petitioner’s procedural motion of Petitioner’s appeal brief of accusing RMO6 and RMO11’s corruptive decisions, saying this is a new claim, whereas APPENDIX G shows Court of Appeals accepts original proceeding. Is that USCADC’s another self-contradiction?

29. Within USCADC, APPENDIX F dismisses Petitioner’s new claim in 22-5182, while APPENDIX E uses Petitioner’s-newly-claimed RMO11’s false judgment as collateral estoppel, to preclude Petitioner’s claim of **Lie1** in 22-5122. Is that “a proper governmental objective” or additional self-conflict?

30. 1/23/2023, USCADC twice denied Petitioner's petition for rehearing or petition for rehearing of Petitioner's claims en banc (APPENDIX H), while offered Chambers, who complained District of Columbia had transferred Appellant's position, rehearing en banc (Chambers v District of Columbia). Were Petitioner's appeals disparaged there?

**More deprivations/suppression of Petitioner's civil rights in lower courts**

31. The judge made two mistakes (APPENDIX D): **Lie1** has no harm to Petitioner's due process right in property clause in Constitution and cancelling hearing, so missed APPENDIX A's policy. Do these errors deprive/suppress Petitioner's liberty and equal right: "to sue, be parties give evidence"?

32. Additionally, USCADC denied all Petitioners' claims without explanation (APPENDIX H). Does that deprive Petitioner's right: petition the Government to fix a wrong and suppress Petitioner's equal right: "to sue, be parties, give evidence" (Section 1981 (a))?

33. Petitioner's hearing right, to hear whether **Lies 1/2** are lies or facts, or whether **Lie1** damages Petitioner's due process right of property clause in Constitution, was denied in the lower courts without good reason. Does any litigant have the right to hearing of either party-claimed dispute in facts?

## II. Table Contents

I. Question Presented.....	1-7
II. Table Contents.....	8-9
III. Table of Authorities.....	9-10
IV. Petition for Writ of Certiorari.....	10
V. Federal Officials' Opinions Involving Lies1-3.....	10-12
VI. Flaws in Jurisdictions.....	12-13
VII. Federal Laws Involved.....	13-15
VIII. Constitutional Provision Involved.....	15-16
IX. Statements of Facts.....	16-25
1. DHHS/NIH/NCCIH issued PIP to Xunxian Liu without pre-notification of rating Liu's performance to Liu.....	16
2. DHHS/NIH/NCCIH created Lie1 to cover the mistake.....	17
3. Lie1 stayed in the full hearing for termination of Liu's position.....	17
4. MSPB Court's decision contained Lie1.....	17-18
5. DOJ's Investigator created Lie2 to cover Lie1.....	18-19
6. RMO6 believed Defendants' statements, not Plaintiff's evidence.....	19-20
7. DOJ's FOI Official created Lie3 to cover Lie2.....	20
8. RMOs 9 and 10 redid Lie1 in a court document.....	20
9. RMO11 refused to enforce a decision under Rule 56 (d) and dismissed Liu's claims without "a proper governmental objective".....	20-21
10. Judge of US District Court for District of Columbia judged Lies1-3 as lies, but making two subjective mistakes.....	21-23
11. US Court of Appeals for District of Columbia denied Liu's appeal without "a proper governmental objective".....	23-25
X. REASONS FOR GRANT OF THE WRIT.....	25-27
1. To correct DHHS' erroneous deprivation of Liu's rights.....	25
2. To prohibit frauds and IRD in federal operations, increasing public faith in the Government.....	25-26
3. To avoid conflicts among governmental documents.....	26
4. To avert false denial of one's liberty without due process....	26-27
XI. CONCLUSION.....	27
APPENDIX A: AN NIH POLICY.....	2, 7, 11, 13, 22, 23, 25

<b>APPENDIX B: OPINION (8:17-CV-01398-TDC).....</b>	<b>4, 5, 10-13, 19, 20, 27</b>
<b>APPENDIX C: OPINION (8:18-CV-03468-PWG).....</b>	<b>5, 6, 10-13, 21, 23, 24, 27</b>
<b>APPENDIX D: OPINION (1:21-CV-00495-JMC).....</b>	<b>5, 7, 10-13, 22-24 27</b>
<b>APPENDIX E: JUDGMENT (22-5122) FROM USCADC.....</b>	<b>5, 6, 10, 12, 13, 23, 24, 27</b>
<b>APPENDIX F: JUDGMENT (22-5182) FROM USCADC .....</b>	<b>6, 7, 10, 13, 24, 25, 27</b>
<b>APPENDIX G: USCADC CIVIL DOCKETING STATEMENT.....</b>	<b>6</b>
<b>APPENDIX H: DENIAL ORDERS FROM USCADC.....</b>	<b>7, 10, 13, 25</b>

### **III. Table of Authorities**

#### **1. Cases Associated with Petitioner as Plaintiff or Appellant**

Liu v Secretary of DHHS (DC-432-15-1105-I-2, MSPB Court).....	3, 8, 11-13, 17-19, 25, 26
Liu v Bushnell, Liffers, Shurtleff (RMOs 1-3), DHHS (8:17-cv-01398) Appeal (18-1744).....	3-7, 8, 10-13, 18-20, 22, 24-27
Liu v Bushnell, Cusson (RMO 7), Shurtleff (8:18-cv-03468) Appeal (20-1042).....	5-7, 8, 10-13, 20-27
Liu v AO (1:21-cv-00494), Appeal (22-5182).....	6-13, 18-27
Liu v DHHS, MSPB and DOJ (1:21-cv-00495), Appeal (22-5122).....	1-13, 16-27

#### **2. Case laws in the US Supreme Court**

Bolling v. Sharpe, 347 U.S. 497 (1954) Due process of liberty.....	3-8, 11-15 18-26
Ingraham v. Wright, 430 U.S. 651 (1977) Liberty right to obtain judicial relief .....	4-8, 11-15 18-26
Allen v. McCurry, 449 U.S. 90 (1980), No relitigation of former judgment on facts/laws .....	6, 7, 11, 13, 21, 23
CBOCS West, Inc. v. Humphries 553 U.S. 442 (2008), Section 1981 covers retaliation .....	2, 17

#### **3. Statutes**

1. 28 U.S.C. § 144- Bias or prejudice of judge.....	3, 4, 12, 14, 15, 18, 19
2. 42 U.S.C. § 1981 – (Section 1981 (a) (IRD), Statement of equal rights.....	2-5, 7, 8, 14, 17-26

3. 42 U.S.C. § 1983 – (Section 1983), Civil action for deprivation of rights.....	2-4, 8, 10, 11, 14, 16-26
4. 42 U.S.C. § 2000e-2 Unlawful employment practices (n) (2) (C), FBD or FBS.....	2-5, 8, 10-14, 16-26
5. 42 U.S.C. § 2000e-2 Unlawful employment practices (n) (2) (D), due process right in employment.....	2-4, 8, 10-14, 16-26
6. 42 U.S.C. § 2000e-3 Other unlawful employment practices: retaliation (a).....	2, 8, 14, 15, 17
7. 42 U.S.C. § 2000e-17 Full hearing relating to governmental contracts.....	2, 3, 8, 10, 12, 15, 17, 22, 23, 26
8. Rule 56 (d) Affidavit of reasonable opportunity for discovery.....	5, 11, 12, 15, 20, 26

#### **4. Constitutional Provisions**

United States Constitution, Amendment One.....	7, 8, 13, 15, 18, 20-23, 25-26
United States Constitution, Amendment Five.....	2-8, 10-13, 15-26
United States Constitution, Amendment Fourteen, Section 1.....	2-8, 10-13, 15-26

#### **IV. Petition for Writ of Certiorari**

Xunxian Liu respectfully petitions the court for a writ of certiorari to review the judgments from USCADC (APPENDIXES E, F, H), which are associated with previous district courts' decisions (APPENDIXS B-D). Petitioner believes that his injustices since 2015 have not been obtained justice in these lower courts: US District Court for Maryland (two cases), The Fourth Court of Appeals (twice), US District Court for District of Columbia (one case) and USCADC (two separate appeals to claim his original problem). Petitioner's original problem is whether removal of his biologist position in DHHS/National Institutes of Health in 2015 was Constitutional and/or lawful. With so many proceedings, Petitioner's original problem has not been solved, but so many additional federal questions are generated.

#### **V. Federal Officials' Opinions Involving Lies 1-3**

RMO1, Scientific Director of DHHS/NIH/National Center for Complementary and Integrative Health then, Catherine Bushnell's proposing removal, full hearing step 1, starting **Lie1** (1:21-cv-00495, ECF1, att3); RMO2, Wendy Liffers is the drafter of the proposing removal.

RMO3, Deputy Director of DHHS/NIH/NCCIH, David Shurtleff's decision, last step of full hearing including **Lie1** (*Id*, att5);

RMO4, DHHS' Attorney, Susan Andorfer's Agency Closing Arguments defining **Lie1** as a meeting (*Id*, att4);

RMO5, MSPB's Administrative Judge, Andrew Dunnnaville's decision copying **Lie1** (*Id*, att6);

RMO7, DOJ's Attorney, Evenly Cusson's et al creating **Lie2** (*Id*, att8); RMO7 et al repeating **Lie1** (*Id*, att9);

RMO6, Judge of the US District Court for Maryland, Theodore Chuang endorsing **Lies 1/2** (8:17-cv-01398, ECF31, APPENDIX B);

RMO8, DOJ's General Counsel, Arthur Gary making **Lie3** (1:21-cv-00495, ECF1, att10);

RMOs 9 and 10, DOJ's Attorneys, Robert Hur and Kelly Marzullo redoing **Lie1** (*Id*, att11);

RMO11, Judge of USDCM, Paul Grimm denying Petitioner's Affidavit (8:18-cv-03468, ECF32) for discovery of **Lies 1/2** (*Id*, ECF33) (question 19), replicating RMO6's Judgment, precluding Petitioner's claiming **Lies 1/2** as collateral estoppel (question 29) and encouraging abuse of power (question 21) (*Id*, ECF44, APPENDIX C).

Judge of the US District Court for District of Columbia, Jia M. Cobb identifying **Lies 1-3** as lies (question 22), but producing additional questions, saying **Lie1** has no harm to Petitioner's due process right, so cancelling hearing (1:21-cv-00495, ECF34, pages 11-14, APPENDIX D), resulting in missing the NIH policy (APPENDIX A) (question 26).

USCADC's granted Appellees' motion for precluding Petitioner's claiming **Lies 1/2**, wrongly saying the preclusion was performed by Judge Cobb (APPENDIX E). Although the judge spent 10 pages writing the preclusion, Judge Cobb eventually did not do the preclusion (1:21-cv-00495, ECF34, pages 1-10, APPENDIX D).

## VI. Flaws in Jurisdictions

MSPB AJ Dunnnaville's decision (2/2/2017) contains **Lie1** (page 10). Although Petitioner just realized **Lie1** is a lie on 1/23/2017, when Andorfer uploaded Agency's Closing Arguments (page 10), Complainant's Counsel said that any party's claim to AJ after close of court would be disregarded by the AJ.

Liu's hearing right, as one shall have hearing of one's-claimed disputes in a court at least once pursuant to procedural due process protection of any litigants, to hear whether **Lies 1/2** are lies or facts, or whether **Lie1** damages Petitioner's due process right of property clause of Constitution, was denied in the lower courts without any good reason as follows:

Judge Chuang believes Bushnell's initially repeating **Lie1** in their private communication without Plaintiff (page 7, paragraph 2, ECF 31, 8:17-cv-01398, APPENDIX B), and in last sentence of page 13, *Id* believes Cusson's **Lie2** (ECF 25, *Id*), writing there is no genuine disputes between the opposing parties and granting Defendants' motion for summary judgment (*Id*, ECF31, 6/22/2018);

Judge Grimm denies Nonmovant party, Plaintiff's Affidavit for discovery (8:18-cv-03468, ECF 32) in ECF33 of *Id* or described in page 11, copying the judgment from Judge Chuang, or granting Defendant's motion for summary judgment and cancelling the hearing (*Id*, ECF44, 1/3/2020, APPENDIX C);

Judge Cobb agrees that **Lies 1-3** are lies, but saying that Plaintiff had full hearing, required by 42 U.S.C. § 2000e-17, so that **Lie1** had no harm to Plaintiff's due process right, or hearing in

the case is not necessary (1:21-cv-00495, ECF 34, page 11-14, 5/4/2022, APPENDIX D). The judge not only ignored damages to Petitioner's civil right as **Lie1** appears in the full hearing documents, but also missed the NIH policy (APPENDIX A) without hearing. Moreover, RMOs1-11 had opposite opinions to that of Judge Cobb in whether **Lie1** violates Petitioner's due process right. Those RMOs created **Lies 1-3**, repeated **Lie1** for several times in court documents or in RMO1 and RMO6's private hearing, denied Plaintiff's Affidavit for discovery of **Lies 1/2**, cancelled hearings, and copied or believed those lies in their decisions. These operations are for covering Bushnell's mishap: not showing Petitioner her rating Petitioner's performance before issuing the PIP to Petitioner, which is needed by Exhibit 1. Therefore, **Lie1** does injure Petitioner's due process right; otherwise, the series of unlawful actions by RMOs1-11 are not understandable.

USCADC denied Appellant's two requests of hearing with no explanation (APPENDIX H, 1/23/2023). All the lower courts denied hearing of Petitioner's claims: whether **Lie1** is a lie and/or whether **Lie1** violates Petitioner's due process right of property clause in Constitution, without good cause. As right for hearing is a part of procedural due process protection in a court, which is due process right of liberty clause of Constitution, Petitioner's due process right of liberty of Constitution has been damaged in those lower courts.

Those jurisdictions including USCADC's ones (APPENDIXES B-F, H) have been executing deterring effects on Petitioner's right to petition the Government for a redress of grievance, producing over a half of federal questions (16-33) in this petition.

Those jurisdictions from the lower courts let Petitioner become an exception of the US laws and Constitution which are listed below:

## **VII. Federal Laws Involved**

1. 28 U.S. Code § 144 - Bias or prejudice of judge:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

2. 42 U.S.C. § 1981 – Section 1981 (a) – Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

3. 42 U.S.C. § 1983 – (Section 1983) - Civil action for deprivation of rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

4 and 5. 42 U.S.C. § 2000e-2 Unlawful employment practices (n) RESOLUTION OF CHALLENGES TO EMPLOYMENT PRACTICES IMPLEMENTING LITIGATED OR CONSENT JUDGMENTS OR ORDERS (2) Nothing in this subsection shall be construed to—

(C): prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction;

And (D): authorize or permit the denial to any person of the due process of law required by the Constitution.

6. 42 U.S.C. § 2000e-3 - Other unlawful employment practices (a) DISCRIMINATION FOR MAKING CHARGES, TESTIFYING, ASSISTING, OR PARTICIPATING IN ENFORCEMENT PROCEEDINGS:

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

7. 42 U.S.C. § 2000e-17 - Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan:

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

8. Rule 56 (d) WHEN FACTS ARE UNAVAILABLE TO THE NONMOVANT. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion (motion for summary judgment) or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

### **VIII. Constitutional Provision Involved**

United States Constitution, Amendment One:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment Five:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in

any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment Fourteen, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## IX. Statement of Facts

### 1. DHHS/NIH/NCCIH issued PIP to Xunxian Liu without pre-notification of rating Liu's performance to Liu

A. Respondent, DHHS' discrimination incidents began on 4/9/2015, when RMO1, Catherine Bushnell (Scientific Director of NCCIH, a sub-agency of NIH) rated Liu's performance in her lab (8:17-cv-01398, ECF1, Exhibit 16), but she should have emailed Liu a copy, in accordance with an NIH policy for protection of employees' due process right (APPENDIX A), though Liu was in China. Liu saw the rating document at the end of 2016. The rating is the basis for issuing PIP according to Exhibit 1, whereas PIP is directly related to potential deprivation of NIH employees' positions. Thus, RMO1 is recklessly indifferent of Liu's due process right in deprivation of Liu's property. However, Liu did not know the rating then.

B. Without showing her rating to Liu, Bushnell issued PIP to Liu on 5/21/2015 (1:21-cv-00495, ECF1, exhibit2, att2). The full PIP document can be seen in 8:17-cv-01398, ECF1, Exhibit 4, which talks about Liu's scores to completion of the PIP, associated with Liu's NIH position that will be removed if the score is 1. Again, RMO1 is recklessly indifferent of Liu's due process right in divesting Liu's property. At that time, Liu felt something was wrong, but Liu did not know anything about due process.

C. Liu filed informal discrimination complaint against Bushnell's issuing PIP to Liu to NIH

EEO Office on 6/9/2015, when Liu did not know that Liu's due process right had been violated.

**2. DHHS/NIH/NCCIH created Lie1 to cover the mistake**

D. On 7/30/2015, Bushnell proposed removal of Liu's position, containing **Lie1**, which says that she notified Liu her rating Liu's performance on 5/8/2015 (1:21-cv-00495, ECF1, exhibit2, att3, sentence 1). **Lie1** that was drafted by RMO2, Wendy Liffers (DHHS/NIH/NCCIH) and signed by Bushnell displays their malice/deceit against Liu's due process right of property clause in the US Constitution; hence, **Lie1** is also retaliation of Liu's informal complaint to NIH EEO Office, (42 U.S.C. § 2000e-3 (a) and question 4). RMO2 took the responsibility of **Lie1**, leaving NIH in 2018 after the investigation of Liu's report of the perjury to the Department of Justice in 5/2017 (please see sentence M).

**3. Lie1 stayed in the full hearing for termination of Liu's position**

E. On 8/31/2015, RMO3, David Shurtleff (Deputy Director of DHHS/NIH/NCCIH) made a decision, terminating Liu's biologist position in NIH. His decision includes **Lie1** (1:21-cv-00495, ECF1, exhibit2, att5, page 2) and he might have claimed that he had not known **Lie1** is a lie. Despite his claim, he was still recklessly indifferent of Liu's due process right, because he copied Bushnell's statements containing **Lie1**, but not checking authentication of the statements with Liu.

F. The full hearing, required by 42 U.S.C. § 2000e-17, began from Bushnell's proposing removal on 7/30/2015, ended on Shurtleff's decision on 8/31/2015. Both federal documents contain **Lie1**.

**4. MSPB Court's decision contained Lie1**

G. Liu filed a complaint about the removal to MSPB. On 1/23/2017, RMO4, Attorney of

DHHS, Susan Andorfer designated Lie1 was a meeting between Bushnell and Liu on on 5/8/2015 (1:21-cv-00495, ECF1, exhibit2, att4, page2) in Agency Closing Arguments; however, Liu did not see Bushnell on that day. Andorfer's designation makes Liu realize that Lie1 is a lie and shows her spite/deception against Liu's due process right of property clause in the US Constitution.

H. Sentences (A-F) generate federal questions 1-8.

I. On 2/2/2017, RMO 5, Administrative Judge, Andrew Dunnnaville (Merit Systems Protection Board) made an adverse decision to Liu's appeal of Shurtleff's decision. The decision includes Lie1 (1:21-cv-00495, ECF1, exhibit2, att6, page 2), displaying the AJ's malice/fraud against Liu's due process right of property clause in the US Constitution, as Liu's lawyer repeatedly claimed that Bushnell had not informed Liu her rating Liu's performance (8:17-cv-01398, ECF1, Exhibit 16) to Liu before issuing the PIP to Liu on 5/21/2015 during hearing in MSPB. The decision has a deterring effect on Liu's right to petition the Government for a redress of grievance.

J. Sentence I engenders federal questions 9-11.

**5. DOJ's Investigator created Lie2 to cover Lie1**

K. Although Liu appealed the decision that contains Lie1 to MSPB, the Board was short of members to review the decision. On 5/19/2017, I filed a lawsuit against Lie1 in the US District Court for Maryland, which is 8:17-cv-01398. As Liu's claims also included discrimination claims, Secretary of DHHS was added as Defendant by Defendant party later.

L. RMO1, Bushnell initially repeated Lie1, material misrepresentation to Judge Theodore Chuang (Administrative Office of the US Courts), RMO 6 (please see sentence Q). Again, Bushnell exhibits her malice/deceit against Liu's due process right of property clause in the US Constitution. Bushnell's initially repeating Lie1 caused her prematurely stepping down from

Scientific Director of NCCIH in 2021 (the term maturity date is in 2022), because Liu reported Bushnell's violation to NIH in 2019, inducing DHHS to perform an internal investigation.

M. In 5/2017, Liu reported Bushnell, Liffers, and Andofer's perjury (**Lie1**) in MSPB Court to DOJ (sentence D), DOJ sent an investigator, Evelyn Cusson in June, 2017. In August 2017, she also represented as Defendants' Attorney (8:17-cv-01398, ECF 6).

N. Liu filed recusal of Cusson (8:17-cv-01398, ECF20) due to possible conflict of interest. On 11/7/2017, RMO7, Cusson (DOJ) et al created **Lie2**, additional material misrepresentation, saying Cusson was not investigating Liu's perjury report in 2017 (1:21-cv-00495, ECF1, exhibit2, att8), while she had admitted that she was the investigator in a telephone conference of 8:17-cv-01398, held on 10/10/2017 (8:17-cv-01398, ECF14). **Lie2** is for covering of **Lie1**, which is pertinent in deprivation of my property, so that Cusson et al show their spite/fraud against my due process right of property clause in the US Constitution.

O. On 12/12/2017, Cusson et al maliciously/deceitfully repeated **Lie1** (1:21-cv-00495, ECF1, exhibit2 att 9, page 2) against Liu due process right of property clause in the US Constitution.

P. Sentences (N, O) produce federal questions 12, 13.

#### **6. RMO6 believed Defendants' statements, not Plaintiff's evidence**

Q. On 6/22/2018, RMO 6 made a corruptive decision against Liu's complaints (8-17-cv-01398, ECF31, APPENDIX B), believing Defendant's statements, including Bushnell and RMO6's private communication for (Sentence L): **Lies 1/2**, but ignoring Liu's preponderant evidence and Cusson's statement in the telephone conference (sentence N). RMO 6 maliciously deprives Liu's due process right of liberty clause in the US Constitution: procedural due process protection of a party for obtaining "judicial relief" or without "a proper governmental objective". Despite Liu's appeal of the decision to the US Fourth Court of Appeals, that Court does not even discuss Liu's

claim of **Lie1** that damages Liu's due process right (8:17-cv-01398, ECF37). The decision (APPENDIX B) has a deterring effect on Liu's right to petition the Government for a redress of grievance.

R. Sentence Q induces federal questions 16-18.

**7. DOJ's FOI Official created Lie3 to cover Lie2**

S. Since Cusson's **Lie2** denied Cusson as the investigator of Liu's perjury report, Liu filed an FOI question to DOJ: who was the investigator to Liu's report. On 11/27/2018, RMO 8, Arthur Gary (DOJ) made **Lie3**, more material misrepresentation (1:21-cv-00495, ECF1, exhibit2 att 10), saying DOJ took no action on Liu's perjury report; however, facts indicate that Cusson is the investigator of Liu's report (sentence N) and that Liffers has left NIH as the Government's accounting for **Lie1** (sentence D). As **Lie3** is for covering of **Lie2** that is relevant to **Lie1** in deprivation of Liu's property; hence, RMO 8 is malicious/deceitful against Liu's due process right of property clause in the US Constitution.

T. Sentence S generates federal question 14.

**8. RMOs 9 and 10 redid Lie1 in a court document**

U. Liu continued making Liu's complaints in a State Court and the case was removed to USDCM again (8:18-cv-03468). Attorneys of DOJ, Robert Hur, RMO 9 and Kelly Marzullo, RMO 10 repeated **Lie1** on 12/17/2018 (1:22-cv-00495, ECF1, exhibit2, att11) with their spite/deceit against Liu's due process right of property clause in the US Constitution.

V. Sentence U causes federal question 15.

**9. RMO11 refused to enforce a decision under Rule 56 (d) and dismissed Liu's claims without "a proper governmental objective"**

W. RMO11, Judge of USDCM, Paul Grimm denying Liu's Affidavit under Rule 56 (d) (8:18-cv-03468, ECF32) for discovery of **Lies 1/2**, as Defendants proposed motion for summary judgment,

writing that Liu's Affidavit is for compelling discovery (*Id*, ECF33), which is not what Rule 56 (d) says.

X. On 1/3/2020, RMO 11, Paul Grimm (AO) made another corruptive decision against Liu's complaint (8:18-cv-03468, ECF44, APPENDIX C), accepting Defendants' **Lies 1/2** as facts, so that the judge precludes Liu's claims of **Lie 1/2** as collateral estoppel, but disregarding Liu's preponderant evidence against those lies.

Y. Moreover, the judge wrote: "the Court found that Plaintiff's assertions regarding the May 8, 2015 meeting (**the fake meeting is Defendant, Bushnell's lie (Lie1), which is related to Plaintiff's due process right of property clause in Constitution**) did not defeat summary judgment on his discrimination claims. The Court considered whether Plaintiff's job performance was satisfactory at the time he was terminated as an element of Plaintiff's prima facie case of discrimination and the Defendants' legitimate nondiscriminatory reason for terminating Plaintiff" (pages 7-8, *Id*, APPENDIX C, Boldface is Liu's explanation of the assertions). Judge Grimm's downgrading the importance of procedural justice inferior to that of personal performance violates the US lawmakers' principle: suppress Officials' abuse of their powers, Thus, the judge did not offer Liu procedural due process protection in that case. The decision was appealed to the Fourth Court of Appeals, and the Court affirmed the decision, not mentioning any claims of Appellant (8:18-cv-03468, ECF 48).

Z. Sentences (W-Y) result in federal questions 19-21, executing deterring effects on Liu's right to petition the Government to fix wrongs; sentence X also leads to federal questions 23-25.

**10. Judge of the US District Court for District of Columbia judged Lies 1-3 as lies, but making two subjective mistakes**

AA. Liu continued petitioning the Government to fix a wrong by initial complaint of NIH's

deprivation of Liu's biologist position without due process or with **Lies 1-3** in the US District Court for District of Columbia. Albeit Judge Jia M. Cobb recognizes all the three lies are lies (1:21-cv-00495, ECF 34, page 11, APPENDIX D), the judge makes subjective mistakes, not realizing the NIH additional policy of due process protection for NIH employees (APPENDIX A) due to the judge's cancelling hearing or saying **Lie1** has no damage of Liu's due process right in removal of Liu's NIH biologist position (*Id*), which is at least recklessly indifferent of Liu's due process right of liberty clause of the US Constitution: procedural due process protection of a party for obtaining "judicial relief". Both of the judgments are not "a proper governmental objective".

AB. Judge Cobb's cancelling hearing is a subjective mistake, as RMOs (1-11) are keeping **Lies 1-3** to cover Bushnell's mistake: not show Liu her rating Liu's performance before issuing the PIP to Liu (please see Flaws in Jurisdictions, pages 12-13). Something must be wrong. Indeed, notification of Supervisors' appraisal of Employees' performance to Employees before, at least several days ago, issuing the PIP to Employees is required by the NIH policy (APPENDIX A).

AC. The time interval between the notification of evaluation scores and the distribution of PIPs is very important in procedural justice, derived from property clause in the Constitution, as the interval gives Employees an opportunity to respond to or express different opinions from the unsatisfied evaluations which may not always be correct. In the US, one always has right to petition the Government to fix a wrong, which is guaranteed by Amendment One of the Constitution, to governmental adverse direction related to one's property, which is due process. Even if RMO1's 4/9/2015 evaluation of Liu's performance ((8:17-cv-01398, ECF1, Exhibit 16), had been fully correct, RMO1 deprived such an opportunity of Liu's, which is not procedural justice. Then RMOs (1, 2) used **Lie1** to cover the mishap, maliciously trampling Liu's right for

procedural due process protection. However, Judge Cobb asserted **Lie1** has no damage to Liu's due process right (1:21-cv-00495-ECF34, page 11, APPENDIX D), which is another subjective mistake.

AD. Liu has suffered from quadruple infringements of Liu's due process right: 1. RMO1 ignored NIH-promised due process right (APPENDIX A); 2. issued Liu the invalid pre-disciplinary due process notice due to **Lie1** (1:21-cv-00495, ECF1, exhibit2, att3, sentence 1); 3. RMO3 forced Liu to enter the improper post-disciplinary due process during 7/31-8/30/2015, because of **Lie1** in the pre-disciplinary due process notice; 4. sent Liu the false post-disciplinary due process decision (*Id*, att5), as it contains **Lie1**.

However, the judge totally disregarded the wrongful termination, saying that Liu still had the full hearing during the removal despite **Lie1** in the whole process (1:21-cv-00495, ECF 34, pages 11-14, APPENDIX D).

AE. Sentences (AA – AD) generate federal questions (22, part of 26 and 31), also executing deterring effects on Liu's right to petition the Government to fix wrongs, as the Court does not let Liu win the lawsuit, regardless of facts.

**11. US Court of Appeals for District of Columbia denied Liu's appeals without "a proper governmental objective"**

AF. In 5/2022, Liu appealed Judge Cobb's two subjective mistakes to USCADC, mainly focusing on **Lie1**'s damages of Liu's due process right of liberty clause in Constitution, as the judge had defined **Lies 1-3** as lies. The case number is 22-5122.

AG. On 11/21/2022, USCADC granted Appellees' motion for precluding Petitioner's claims, citing RMO11's decision (8:18-cv-03468, ECF 44, APPENDIX C), saying District Court for District of Columbia did preclusion (APPENDIX E), while Judge Cobb spent 10 pages writing preclusion; finally, did not do the preclusion (1:21-cv-00495, ECF 34, page 10, APPENDIX D).

AH. APPENDIX E ignored Liu's main claims of the mistakes, made by the most recent court (APPENDIX D), setting back to the previous decision that is not based on facts in USDCM (8:18-cv-03468, ECF 44, APPENDIX C).

AI. Sentences (AG, AH) are related to federal questions 23-26, part of federal questions 29, 30.

AJ. As RMO6's published decision (8:17-cv-01398, ECF31, APPENDIX B) contains a lot of defamation against Liu, Liu has filed a complaint against AO in USDCDC, which is 1:21-cv-00494. The claim was dismissed as the US did not agree with such a lawsuit. However, in Liu's appeal, Liu wrote brief in procedural motion, complaining that RMO6 and RMO11 did not give Liu's procedural due process protection in cases 8:17-cv-01398 and 8:18-cv-03468. The claims in Liu's appeal (22-5182) are different from those in 1:21-cv-00494. The case number is 22-5182 and Appellee is AO.

AK. APPENDIX F denied procedural motion of Liu's appeal brief in 22-5182 that Liu accuses RMO6 and RMO11's corruptive decisions, stating legal theories in a new claim must be asserted in a district court. In Liu's request of rehearing (actually, there is no hearing for Liu's claims, please see question 33), Liu exhibits legal theories have already been asserted in USDCDC: the judges of USDCM cancelling hearing: saying **Lie1** has been cross-examined in MSPB, which is wrong and unfair (1:21-cv-00495, ECF21, sentence H), suggesting those judges are subjective in making such decisions.

AM. Additional legal theory: sentence B of *Id* indicates that Defendants who are heads of the US Government's Agencies, acting under color of the State law (sentence C of *Id*), cite RMO11's huge legal mistake: downgrade importance of procedural justice and encourage abuse of power, which is absolutely corruptive. That is probably why Judge Cobb did not preclude Liu's claims based on those corruptive decisions (1:21-cv-00495, ECF34, APPENDIX D).

AN. The above facts prove that Liu's appeals (22-5122 and 22-5182) are closely associated, whereas APPENDIX F denied Liu's request of the consolidation.

AO. Sentences (AJ-AN) lead to federal questions 27-28, and part of federal questions 29, 30.

AP. Additionally, USCADC denied all Liu's claims without "a proper governmental objective" (APPENDIX H), which resulted in federal question 32 to petition the Government to fix wrongs.

AQ. All the lower courts denied Liu's hearing right with no good reason: to hear whether **Lies 1/2** are lies or facts, or whether **Lie1** damages Petitioner's due process right of property clause of the Constitution, which causes federal question 33. Liu thinks his right to hearing, a part of procedural due process protection in US Courts, which is his due process right of liberty stipulated in the Constitution, is injured.

## X. REASONS FOR GRANT OF THE WRIT

### 1. To correct DHHS's erroneous deprivation of Liu's rights

AR. On 5/21/2015, RMO1 directly issued Liu the PIP, in which RMO1 states completion of the PIP is associated with Liu's NIH biologist position (8:17-cv-01398, ECF1, Exhibit 16), Liu's property with the Government, without pre-notification of appraisal of Liu's performance to Liu or without time interval between pre-notification and issuance of PIP. Therefore, this action of RMO1's violated Liu's right to protection by an NIH policy (APPENDIX A, sentence AB), Liu's right to request of the Government to fix a wrong and Liu's right to due process (sentences AB, AC). The NIH policy suggests two fundamental rights in Bill of Rights to anyone, warranted by Amendments One, Five and Fourteen of the US Constitution.

### 2. To prohibit frauds and IRD in federal operations, increasing public faith to the Government

AS. A bunch of federal officials (RMOs 1-11) created **Lies 1-3**, copied/repeated, covered

and/or endorsed them in federal operations: federal offices including offices in USDCM (please see IX Statement of Facts 1-9), perpetrating IRD against Liu (please see questions 4-8, 10, 12-17, 19-21).

AT. A governmental policy: *43 CFR § 20.510 - Fraud or false statements in a Government matter.*

*An employee shall not, in any matter within the jurisdiction of any department or agency of the United States, knowingly or willfully falsify, conceal or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry (18 U.S.C. 1001).*

To cover Bushnell's mishap: not showing her rating to Liu before issuing the PIP to Liu, these RMOs violated the policy, creating, copying/repeating, more covering and/or endorsing **Lies 1-3**, to Liu's surprise. Before 1/23/2017, when Liu realized **Lie1** as a lie (sentence G), Liu had good faith to the US Government, and his good faith was extended to the US Officials, which is why Liu did not notice **Lie1** as a lie during 7/30/2015-1/22/2017.

AU. Those RMOs also committed multiple times of IRD against Liu (sentence AS), which is banned by Section 1981(a), equal rights under the laws.

AV. These violations shall be corrected, in order to strengthen public faith in the US Government, the US Governmental policies and laws, and federal operations.

### **3. To avoid conflicts among governmental documents**

AW. There are a lot of conflicts among court's judgments, court's documents and laws, including rules and case laws (please see questions 19-30). Had all the judgments been based on facts and laws, there would have been no such conflicts.

### **4. To avert false denial of one's liberty without due process**

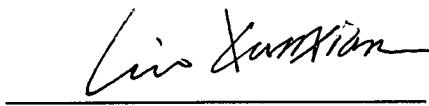
AX. Questions 31-33 indicate that the subjective mistakes, ignoring Lie1's damages to Liu's due process right of property clause in Constitution, are made by USDCDC (sentence AB), that Liu's right to hearing is denied by the lower courts and that Liu's right for petition of the Government to fix a wrong is suppressed by USCADC, which is not constitutional.

## X. CONCLUSION

AY. For the foregoing reasons, Mr. Liu respectfully requests that this Court issue a writ of certiorari to review judgments of USDCM (8: 17-cv-01398, APPENDIX B; 8:18-cv-03468, APPENDIX C), USDCDC (1:21-cv-00495, APPENDIX D) and USCADC (22-5122 or 1:21-cv-00495, ECF 39: entry of the judgment on 2/7/2023 (APPENDIX E); 22-5182 or 1:21-00494, ECF 41: entry of the judgment on 2/7/2023 (APPENDIX F) .

DATED this 17th day of March, 2023.

Respectfully submitted,



Xunxian Liu, *Pro se*

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In the basis of the jurisdiction, Petitioner, Xunxian Liu states seeking joint review under Rule 12.4.



Xunxian Liu

### Proof of Services

Petitioner, Xunxian Liu certifies that once the copy of the petition for a writ of certiorari is accepted by the Court, he will send a copy of the petition to T. Anthony Quinn, who is Appellees' Attorney of case 22-5122 and Kenneth Adebonojo, who is Appellee's Attorney of case 22-5182, respectively, to Civil Division, U.S. Attorney's Office for D.C. 601 D Street, NW, Washington, DC 20530

Xunxian Liu

