No. 23-7621

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

KEVIN R GOLDEN - - - PRO SE PETITIONER / PLAINTIFF

Vs.

CITY OF LONGVIEW , et al Named Defendants THE CITY OF LONGVIEW ET-AL.

Individual & In Their Official Capacity; Rollin McPhee,

Dwayne Archer, Chi Ping Stephen Ha, Keith Covington,

Mary Ann Miller & Robyn Edwards.----- RESPONDENT(S) /

DEFENDANTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

QUESTION(S) PRESENTED

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A. Whether the court of appeals departed from this Court's holdings expressed in Reeves,,Harris,Celotex and Matsushita interpretation of Rule 56(c) of the Federal Rules of Civil Procedure in which the reviewing court ,on an opposed motion for summary judgment, review the "entire record" pursuant to Rule 56 context of summary judgment proceedings...

B. Whether the court of Appeals departed from this Court's holding expressed in Reeves mandating that....plaintiff's prima facie case of discrimination (as defined in McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802 (1973), ***combined with sufficient evidence*** for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, is adequate to sustain a finding of liability for intentional discrimination...

C. Whether the court of appeals departed from this Court's interpretation of Rule 52 (a)-(b) context of the Federal Rules of Civil Procedure in which the reviewing court's ministerial duty required attention to dispose of..... **"all the issues in the case 'appropriately and specifically' in special and formal findings of fact "** to make "separate" factual finding & conclusion of law upon presentment of a Rule 52 motion via request thereof or denovo.....

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ii.

PARTIES TO THE PROCEEDINGS

THE CITY OF LONGVIEW ET-AL.
Individual & In Their Official Capacity; Rollin McPhee,
Dwayne Archer, Chi Ping Stephen Ha, Keith Covington,
Mary Ann Miller & Robyn Edwards.

CORPORATE DISCLOSURE

Not applicable

LIST OF ALL RELATED CASES

1. United States Court of Appeals for the Fifth Circuit, Golden v. City of Longview etal , No. 22-40785 Judgment and non opinion November 09,2023

2. United States District for the Eastern District of Texas ,Golden v. City of Longview etal , No. 6:20cv00620 Judgment and memorandum

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A. 1. [W]hether The Court of Appeals' Decision Conflicts With This Court's Interpretation of Rule 56 Context of The Federal Rules of Civil Procedure In Which An Opposing Summary Judgment Involves An [ ] ***Entire Record*** Review In Lieu To Partial Reviewing Of The Evidence...

2. The Court of Appeals Conflicts With Its Own Precedent As Other Courts Of Appeals...

3.The Court Of Appeals Should Be Permitted To Reconsider Its Decision In Light Of This Court's Intervening Decision In Reeves ,Harris,Celotex and Matsushita.. . .**pp.15-26**

B. 1. [W]hether the court of appeals' decision conflicts with this Court's decision holding expressed in Reeves mandating that....plaintiff's prima facie case of discrimination (as defined in McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802 (1973), ***combined with sufficient evidence*** for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, is adequate to sustain a finding of liability for intentional discrimination...

2. The court of appeals conflicts with its own precedent as other courts of appeals...

3.The court of appeals should be permitted to reconsider its decision in light of this Court's intervening decision in Reeves v. Sanderson Plumbing Products, Inc., 530 US 133 - Supreme Court 2000 **pp. 26-36**

C. 1.[W]hether the court of appeals' decision conflicts with this Court's decision holdings expressed in Interstate Circuit, Inc. of the " Equity Rule 70 1/2 " and its own precedent by the later adopted Rule 52(a) of the Federal Rules of Civil Procedure ***requiring*** the district court to make **"separate"** findings of fact and conclusions of law in deciding all cases tried without a jury, that necessarily [p]rovides sufficiently detailed findings in which that of the court of appeals can ascertain the factual and legal basis for the district court's ultimate conclusion....

2. The court of appeals conflicts with its own precedent as other courts of appeals...

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Golden v. City of Longview etal No.22-40785 (2023)

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JURISDICTION

The Fifth Circuit's order was entered November 09,2023..[1] Pursuant to the extension of time granted for March 25,2024, this Petition is filed timely per such extension granted.. The petitioner received his documents from before the honorable clerk's office to correct the presentment of the writ and extended an extra 60 days in which the petitioner to correct.The statute conferring this Court's jurisdiction is 28 U.S.C. § 1254(1). The 5th Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c) ; Notifications are not required under Sup. Ct. R. 29.4.

[1] The 5tjh Circuit made no opinion and adopted the District Court's reasons to deny Golden's pursued 1983 Tort Claim against named individuals within his complaint and his ADA allegations against the defendant / respondent. **See Appx.(6) (5th Circuit No Opinion ruling) ...**

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2.

RELATED STATUTES AND RULES

42 USC SEC. 12101. ***[Section 2] provides in part :***

(b)PURPOSE

It is the purpose of this chapter—

(1)to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2)to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3)to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4)to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

14th Amendment to the U.S. Constitution: Civil Rights (1868)

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

42 U.S.C. § 12203 provides in part:

(a) No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this chapter.

Fed.R.Civ.P. 50 provides in part:

(a) Judgment as a matter of law

(1) In General. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

Fed.R.Civ.P. 56 provides in part:

(a) Motion for Summary Judgment or Partial Summary Judgment. 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. The court should state on the record the reasons for granting or denying the motion.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials;

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

Fed.Rule Civ.Proc. 52(a)-(b)

(a) FINDINGS AND CONCLUSIONS.

(1) *In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58

(b) AMENDED OR ADDITIONAL FINDINGS. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

42 U.S. Code § 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.

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STATEMENT OF THE CASE

I. Issue and basis for federal jurisdiction in the district court.

In the district court, jurisdiction existed under 28 U.S.C. § 1331 (federal questions). Petitioner Golden, brought an disability discrimination in employment claim under Title I ADA 42 U.S.C. § 12112(a) of his "mental disability" under 42 U.S.C. § 12102(1)(A), his retaliation claim under 42 U.S.C. § 12203(a)(ADA) and a failure to accommodate claim under 42 U.S.C. § 12112(b)(5)(A). Petitioner,Golden,also provided within his complaint pursuant to Federal Rule of Civil Procedure 8(a)(2), a 42 U.S.C. § 1983 Tort Claim remedy against each named individual defendant,supra,for discriminating against him because of his mental disability in violation of the 14th Amendment United States Constitution Of The Equal Protection Clause. A noncompliance of Rule 52 of the federal rules of civil procedure prohibits the petitioner from exercising such remedy of his § 1983 Tort Claim against named individuals within the complaint / pleadings..

II. Facts material to the question presented

Because the district court entered summary judgment, what follows are the facts [2] entire record as viewed in the light most favorable to Petitioner [3] w/ sufficient evidence of pretext. Rule 52(a)-(b) of the federal rules of civil procedure context as entertained accordingly per additional factual findings relevant to the equal protection clause claim in pursuit to receive relief to pursue further of his 1983 tort claim.

A. PRIMA FACIE...

(i). Intentional Discrimination & Retaliation Records :

1. The District Court found that Mr.Golden established both a *prima facie intentionally discrimination* [4]**See Appx (4) (Doc't 129 Motion**

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[2] The record below was sealed and contained in a joint appendix (not filed with this Petition) and is referred to herein by the page, line, paragraph and witness/document identifier in the joint appendix in text herein this petition.

[3] The presentment of such facts will be directed to support means of the *amended summary judgment proceedings* denying Golden's ADA Failure To Accommodate Claim and as to support his pretext defense in which *original summary judgment* was given before the respondent / defendant respectfully for the sake of not confusing and developing a clog argument.

[4] "To establish a prima facie discrimination claim under the ADA, a plaintiff must prove: (1) that he has a disability; (2) that he was qualified for the job; [and] (3) that he was subject to an adverse employment decision on account of his disability." EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. LHC GROUP INCORPORATED 176 F.3d at 853 (5th Cir.2014).

Reconsideration pgs.8-11) as well as an ADA retaliation record .[5] **See Appx (4) (Doc't 129 Motion Reconsideration pgs.18-20)**

B. SUFFICIENT RECORD EVIDENCE...PRETEXT

(i). Discovery Proceedings.....of Keith Covington & Robyn Edwards Deposition hearing, Admissions and Affidavit statements :

a. Disciplinary Infraction : Insufficient Job Performances & Verbal Abuse....Pretext

1. KEITH COVINGTON :

Covington testified that he has been employed with the City of Longview for 15 plus years and has been via orientation specialized in being trained and skilled to interpret and to comply with the City of Longview's Policies, Rules, Regulations,Standards,Laws & Other Compliance Directives."**ROA". See Appx.2 (audio recording 12:10 - 13:40)** ..[6]

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[5] To prevail on a retaliation claim, Golden must prove: (1) he engaged in an activity protected by the ADA; (2) an adverse employment action occurred; and (3) a causal connection exists between the protected act and the adverse action. Seaman v. CSPH, Inc., 179 F.3d 297, 301 (5th Cir. 1999). the lower court found that the petitioner requested for reasonable accommodations ,was thus terminated and that an existing link existed between the request and the actual termination itself.

[6] **"ROA" (Record On Appeal)** is record reference thereof the petitioners cited appendices having been provided before the lower courts for initial review of an preserved record ..

Covington testified that when new employees have been instructed to do something; once , twice, three times that there is an ***"actual write up"*** and that Golden had way more than that.see **"ROA". See* Appx 2.(audio recording 48:04.04 - 48:23.15)** . Covington made an ***"observation report"*** on *August 01,2018* the day after July 31,2018 upon Golden having informed him of his disability and accommodations describing Golden's .....[ ] ***cognitive thinking and behavior*** ....

> ***i).*** *on 08/01/18 was "slow to speed in job performance* ***ii).*** *on 08/13/18 teach the plaintiff as if he had the 'mind' of a young child and struggling with "paying attention".* ***iii).*** *On 08/28/18 continues to "struggle with paying attention,struggles with expanding his knowledge of the job" , limits his intake of information,stays isolated from the rest of the group,never thinks for himself,does not include himself in discussion.* ***iv.)*** *on 09/11/18 "We" not only have to train him about signs,we also,"like a child" make him understand.* ***v).*** *On 09/12/18 has no 'sense' of prioritizing anything or to stay 'focus' on what he really needs to do,seems to have a "mental block" when it comes to multitasking.* ***"ROA". See*** **Appx.(12) ("Covington observation report")** .

Covington affidavit stated that Golden could not follow instruction and in the midst thereof [committed] ...***many inefficient job performances*** and that he could not do the job...and stated to have provided Golden "specific" accommodations of ***extra time, extra training & extra supervision***,moreoverly,Covington's affidavit stated that Golden's ...job performances did not improve but digressed. **"ROA".See Appx.(18) ("Covington affidavit")**.

Covington also testified that Golden was not given instructions to **email** him completions of his job assignments and that no email exists that were forwarded to him demonstrating Golden's job performances equipped with before and after pictures of the job description that was 'directly' forwarded to Covington's business email account in which Covington made [n]o comments as to Golden's Job performances [b]eing poor or otherwise. **"ROA".See Appx.2 (audio recording 1:14.00 - 1:15.58)** [7]. Covington's observation notes reflect that the adverse statements of Golden's abusive verbal language against Richard Comer & Steven Fleming were drafted on September 14,2018 of the day Golden was... **"off duty"**[8] from work and thus presented his "observation notes" and the adverse statements as proof to "validate"the disciplinary infractions before his supervisor Mr.Stephen Ha in which Mr.Ha drafted the pre termination letter on the very same date of September 14,2018 from those findings presented via Mr.Covington ."**ROA" See Appx.15 ("Mr.Ha drafted pre termination letter")** also see **"ROA" Appx.2 (audio recording 2:30:00 - 2:31:35)** [9]

Covington testified that the 'verbal abuse' disciplinary infraction was a ***"major violation"*** against company policy. Golden read,verbatimly,the company policy before Covington in regards to how major disciplinary infractions are to be[ing] disposed of which axiomatically would be a

[7] Golden presented emails that were directly forwarded from his business email account before Mr.Covington as well as Mr.Ha's business email accounts which included before and after pictures; subject to no comments from neither Covington or Mr.Ha making complaints as to Golden's job performances being poor per each of the completions of his job assignments,quite the contrary,Golden was given good recommendations subject to his work ethics and such documentations were provided for review before the lower court..**("ROA" See Appendix 19) (Email correspondences)...**

[8]For clarity purposes,the petitioner was not scheduled to work

[9] Covington testified to not giving Golden actual "Notice" of the adverse statements and to having proceeded with terminating Golden with accompanied observation notes documents before his supervisor Mr.Ha.

...[w]ritten disciplinary infraction report ("actual write up") that would require signatures from both parties & Covington testified that he complied with the policy in which a written report was filed and documented.."**ROA".See Appx 4.(audio recording 1:03.15 - 1:27:57.37)** and **"ROA". See Appx 23 (company policy to dispose of written disciplinary infractions)** . Covington also testified that Golden did not refute the verbal abuse accusations made against him which would have constituted an investigation. **("ROA".See Appendix .2 (audio recording 2:30:00 - 2:31:35)).**

2. ROBYN EDWARDS :

For 'admissions' purposes, Golden replayed the audio recording before Mrs. Edwards within the deposition hearing that involved both her as well as Golden's initial encounter with Edwards to reinstate her admissions given within the original audio recording that Golden ....[ ] did not have anything in his employee files as it relates to ....[ ] disciplinary infraction,***write ups***,complaints,***accommodations*** ,medical reports ext; that was a requirement according to company policy to being considered as documented events transpiring .**"ROA".See* Appendix 6 (audio recording 26:40 - 28:10).** [10] This audio recording shared of Mrs.Edwards displaying another employee's files in which Golden would have an idea of what particular part of data would be preserved within an employee file e.g. employee's work performances,conduct,disciplinary infractions,ect.and pursuant to disciplinary infractions [only] actual "write ups" and up would be included exempting written awareness notices. **"ROA".See Appx 4. (audio recording 1:03.15 - 1:27:57.37).** During Edwards deposition hearing,

[10] This audio recording was preserved on September 18,2018 within Mrs.Edwards office being the actual initial encounter between Golden and Edwards.

Golden verbatimly read the City of Longview policy " Fit for Duty " before Edwards [11] Edwards testified that pursuant to this portion of the policy, it specifically relates to where employees (Golden) were to inform their supervisor of their 'disability' if the disability impedes their ability to perform the essential duties of the job description. **"ROA".See Appx.(5) (audio recording 2:54:54.12 - 2:56:04.36)**. Pursuant to the second portion of the "fit for duty" policy, Edwards stated that.. [if] a supervisor recognized concern as it relates to Golden's mental disability affecting his job performance,that they (Covington) would be ....."**required** to report it to his supervisor (Stephen Ha.) and going forward would be presented to the City of Longview Human Resource Department." **"ROA".See Appx.(5) (audio recording 2:56:06.98 - 2:57:35.17)**. During the deposition hearing,Mrs.Edwards also testified that Golden did not come before her office having to file / present a discrimination case against Mr.Covington and then changed her testimony subject to stating that Golden pursued such a cause.. **"ROA" See Appx.5 (audio recording "31:44 - 46:30")**. Mrs.Edwards also made admissions that she called Mr.Golden on September 19,2018 having informed him as to receiving his personal email which included his medical records and an audio recording between him and Mr.Covington in order to establish, as proof, that Covington was informed of Golden's "ADHD" and also admitted that

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[11] An employee who becomes aware of a medical or mental condition (including medication) , which may affect his ability to perform the essential duties of the assigned position,must inform his immediate supervisor. (2). When it is suspected that the health condition of an employee constitutes a hazard to persons or property, or ***prevents the employee from effectively performing his essential assigned duties,*** the employee may be required by his director / manager to submit to a health examination. The employee *shall be placed on paid administrative leave pending results of such examination*. Authorization for disclosure of all reports to the City related to the employees' ability to perform the job shall be a condition of continued employment with the City. see **"ROA" appx (22) (Company policy)**

she presented the medical records along with the audio recording before her supervisor Mary Ann Miller (City of Longview Human Resource Director) in which they reached out to City District Attorney of Longview Terry Jackson for legal advice in which Jackson heard the audio recording. Edwards' admission,through what Jackson informed her,was that ....." [if] Mr.McPhee so chooses to terminate Golden that he could, though Covington was aware of Golden's ADHD ***" no discrimination existed ...[b]ecause Golden did not request for reasonable accommodations".*** **"ROA" See Appx.5 (audio recording "34:40 - 35:45")**

C. MATERIAL EVIDENCE OFFERED IN DISPUTE...

1. Golden provided an Unsworn Declaration Affidavit stating of the defendant not having provided accommodations during his employment **("ROA" See Appendix 1. Cited as secs.3,5,11,12 & 31) (petitioners sworn affidavit).**
2. Petitioner's "job performance" document which details what the petitioner would be required to do per the job description he was hired on to do.**("ROA".See Appendix 17) (job position description)**
3. The petitioner presented depositional testimony that the defendant commonly supervises into assisting to train newly hired employees that is not adverse to company policy or uncommon in practice , **("ROA".See* Appx.2) (audio recording 22:20 - 23:05).**The petitioner also presented a sworn affidavit asserting that neither of the supervisors within the department provided any extra supervision before the defendant. **("ROA"See Appendix 1 cited secs 11 & 21.) (petitioners sworn affidavit).**

4. The petitioner presented depositional testimony via defendant testifying .... [t]hat the ***idea*** of "training" was that [Golden] would be assigned to train with someone because he would be working with the employees and that it would be ***'impossible' for the defendant (supervisors)*****.....*** *to instruct and train the plaintiff per such reported inefficient job performances when the plaintiff has been assigned to train with appointed employees.* ***"ROA".See* Appx. 2 (audio recording 1:09:35 - 1:13:54).***[12]The petitioners affidavit asserted this as a customary routine in which all newly hired employees undergo.**("ROA".See* Appendix 1 sec.13 & 14) (appellant affidavit)** ...

D. 1983 TORT CLAIM...

Golden made a complaint of a 1983 tort claim against named defendants Rollin McPhee (Director) , Dwayne Archer (Assist.Director), Chi Ping Stephen Ha (Manager), Keith Covington (Assist.Manager),Mary Ann Miller (Human Resource Director) & Robyn Edwards (Human Resource representative).in their *individual* and *official* capacity pleading that said individual defendants discriminated against him because of his disability individuals and violated his 14th Amendment Due Process & *Equal Protection Clause* of The United States Constitution..42 U.S.C SEC.1983 U.S.C.A. 14th Amendment. The lower court made factual findings and conclusion of law per the 14th Amendment Due Process not being violated by terms of the petitioners 1983 tort claim and expressly made a" general denial" to the petitioners equal

[12] Statement given here was presented to show contradiction as to the extra supervision accommodation the defendant's sworn affidavit connotes having stated to provide[d] the petitioner "extra supervision"....

protection violation . **See Appendix 1 (Document 41) & Appendix 2 (Document 49-50).**The petitioner timely presented a Rule 52 motion thus requesting for the lower court to make a separate factual findings and conclusion of law relative to the equal protection constitutional violation and the lower court denied such Rule 52 motion as a substitute for the petitioners untimely objection in which would rehash its decision already addressed.**See Appendix 7 (Order Denying Rule 52 Mtn).** The lower court thus upheld such decision as to no constitutional violations being subject to petitioners 1983 tort claim. **See Appendix 2 (Doct.49-50 Order Denying 1983 Tort Claim).**

REASONS FOR GRANTING THE WRIT

A. 1. The Court of Appeals' Decision Conflicts With This Court's Interpretation of Rule 56 Context of The Federal Rules of Civil Procedure In Which An Opposing Summary Judgment Involves An [ ] ***Entire Record*** Review In Lieu To Partial Reviewing of The Evidence...

The panel's decision sharply conflicts with this Court's precedent rulings in Reeves,,Harris,Celotex and Matsushita.,moreover, its decision making exacerbates already irreconcilable conflicts in various circuit and district courts,infra, on the proper standard to be applied on motions for summary judgment in discrimination cases. This Petition is not simply

asserting "erroneous factual findings or the misapplication of a properly stated rule of law." [13] Rather, the panel has stated in this case in which this Court opines, as an incorrect rule of law for summary judgment motions. Moreover, the error in misusing the parameters of FRCP Rules 56 is of such constitutional magnitude that it implicates any litigant's Seventh Amendment right to a jury trial in civil cases.[14]

1. In Reevse id at 150,151 [15] this court opined that ("In the analogous context of summary judgment under Rule 56, [we] have stated that the court must review the record ***"taken as a whole."*** *Matsushita Elec. Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). It therefore follows that, in entertaining a motion for judgment as a matter of law, the court should [r]eview ***all of the evidence in the record***.").
2. In Harris id at 1776 [16]Where the [r]ecord taken ***as a whole*** could not lead a rational trier of fact to find for the nonmoving party, there is no `genuine issue for trial.'" *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (footnote omitted).

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[13] See Tolan, 572 U.S. at 559 (Alito, J., concurring); see also Salazar-Limon v. City of Houston, Texas, 137 S. Ct. 1277 (2017) (Alito, J., and Thomas, J., concurring).

[14] Craig M. Reiser, The Unconstitutional Application of Summary Judgment in Factually Intensive Inquiries, 12 U. Pa. J. Const. L. 195, 204-05, n.59 (Oct. 2009), citing City of Monterey v. Del Monte Dunes, 526 U.S. 687, 709 (1999).

[15] Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 147, 120 S.Ct. 2097, 2108, 147 L.Ed.2d 105 (2000)

[16] Scott v. Harris, 550 US 372 - Supreme Court 2007

3. In Celotex id at 331 [12] ("In determining whether a moving party has met its burden of persuasion, the court is obliged to take account of the entire setting of the case and [m]ust ***consider all papers of record as well as any materials prepared for the motion***.") ("citing 10A Wright § 2721, p. 44; see, *e. g.*, *Stepanischen* v. *Merchants Despatch Transportation Corp.*, 722 F.2d 922, 930 (CA1 1983); *Higginbotham* v. *Ochsner Foundation Hospital*, 607 F.2d 653, 656 (CA5 1979).") ("As explained by the Court of Appeals for the Third Circuit in *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238 (1983), rev'd on other grounds *sub nom.* *Matsushita Electric Industrial Co.* v. *Zenith Radio Corp.*, 475 U.S. 574 (1986), "[i]f . . . there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment . . . ." 723 F.2d, at 258.") id 331.

ADA Statutory Elements Failure To Accommodate...

a. To prevail on a failure to accommodate claim, Golden "must prove the following statutory elements : (1) [he] is a qualified individual with a disability; (2) the disability and its consequential limitations were known by the covered employer; and (3) the employer failed to make reasonable accommodations for such known limitations."Feist v. Louisiana, Dep't of Justice, Office of the Att'y Gen., 730 F.3d 450, 452 (5th Cir. 2013) (internal quotation marks omitted).

[12] Celotex Corp. v. Catrett :: 477 U.S. 317 (1986)

b. The District Court reviewed of the defendant not contesting the second qualification as to not being aware / informed of the petitioners disability and request for accommodations and of the defendant having provided evidence in which to challenge that the petitioner was ....[ ] not a 'qualified individual" for the job position & that [the defendant] provided the petitioner reasonable accommodations. The petitioner brought before the District Court's attention to the existing prima facie intentional discrimination and retaliation claims "record"[18] ,in addition thereto :

(i). [A]n ***affidavit*** stating that the defendant did not provide him any accommodations during his employment probationary training according to the "specific accommodations" the defendant's sworn affidavit connotes **"ROA" Appendix 7 (petitioner affidavit (sec.3,5,11,12 & 31)).**

(ii). [R]ecord audio testimonial evidence that no accommodations were present within the petitioners employee files as a requirement according to company policy if accommodations existed **.("ROA".See *Appendix 6) (audio recording 3:06:17.79 - 3:06:39.80)**

(iii). [R]ecord testimonial audio evidence offered in which the petitioner's discrimination complaint was denied relief subject to where [the petitioner] did not request for reasonable accommodations in which the adverse effect as to terminating the petitioner could be pursued as no discrimination did not exist according to the defendants investigation.....**("ROA" See Appx.5) (audio recording "34:40 - 35:45")**

[18] The petitioner did not present all the evidence redundantly in which to rehash the intentional discrimination and retaliation claims in which to support that no reasonable accommodations were provided before him because an actual adjudication of a prima facie record existed

(iv). Petitioner also presented record evidence to substantiate that **[if]** such selected accommodations [w]ere to be considered existing,that such accommodations,by record review,... [D]id not ***effectively*** work for the petitioner in light of the defendant's affidavit asserting that the petitioners work performance did not improve but digressed **("ROA" See Appendix 18) (defendants affidavit)** .The court was provided the defendant's *"written observation notes"* as to the actual dates the defendant took note of the petitioners work performances and behavior that was conducted soon after the defendant became aware thereof his disability and accommodations; .-i.e.the petitioner demonstrated that only a few weeks after the defendant became aware of the petitioners accommodations and disability, did the petitioners job performances digress under the [s]aid appointed accommodations the defendant swore to have provided the petitioner. **&**

(v). Petitioner also presented record evidence to substantiate that **[if]** such selected accommodations [w]ere to be considered existing,that such accommodations,by record review,... [D]id not satisfy ADA statutorial definition of what constitutes as an actual "reasonable accommodation"... as the appointed accommodations that the defendant asserted within their affidavit were merely "customarily "[19]

[19] The District Court rather focused **certain portions of record evidence** in which to drawing inferences that the petitioner seemingly was admitting that the defendant provided him accommodations when an affidavit along with the prima facie intentional discrimination and retaliation record proved quite the contrary, in lieu thereof. the petitioner was demonstrating,circumstantially, that [if] these "so-called" accommodations existed,the appointed

A 2. The Court of Appeals Conflicts With Its Own Precedence As Other Courts of Appeals...

Many Circuit courts,including the 5th Circuit,opine that Rule 56c of the Federal Rules of Civil Procedure involves a ... ***"full review of the [entire record] and not a partial review "...***

a. In Livingston the 5th circuit opined that (" When considering a motion for summary judgment, a court *"must view **'all facts and evidence'** in the light most favorable to the non-moving party.")* see *Juino v. Livingston Parish Fire Dist. No. 5*, 717 F.3d id at 433 (5th Cir.2013). The 5th Circuit further opined that (*"the court must "draw all reasonable inferences in favor of the nonmoving party" and "refrain from making credibility determinations or weighing the evidence.") id 433 supra citing Turner*, 476 F.3d at 343 [20]("When assessing whether a dispute to any material fact exists, we consider all of the evidence in the record but refrain from making credibility determinations or weighing the evidence.") Turner id. at 343 (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000) also see 5th Circuit Higginbotham [21]("We held that, on a motion for summary judgment, the district court must consider the record as a whole, not simply those portions of the record

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accommodations,by way of record evidence, demonstrated the defendants' elected accommodations of extra time,supervision and training were nothing more than what the defendant customarily does and were not "effective"according to ADA provisions requirement upon reasonable accommodations rendered.

[20] Turner v. Baylor Richardson Medical Center, 476 F. 3d 337 - Court of Appeals, 5th Circuit 2007

[21] Higgenbotham v. Ochsner Foundation Hospital, 607 F.2d 653 (5th Cir. 1979)

relied upon by the moving party or specifically pointed out in opposition to the motion by the nonmoving party.").

b. In 2nd Circuit Holtz[22] id at 69 ("Summary judgment is appropriate where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law," Fed.R.Civ.P. 56(c), i.e., "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.") (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986).) id.

c. In 6th Circuit Guarino id at 403 [23]("In order to preclude the granting of summary judgment, the non-moving party must show that there is doubt as to the material facts and that the record, taken as a whole, does not lead to a judgment for the movant.").

d. In 1st Circuit Smith [24] id at 115 ("Like the district court, we must view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor.").

e. In 11th Circuit Chapman [25] id at 1024 (" Under Federal Rule of Civil Procedure 56(c):[s]ummary judgment is appropriate if the evidence before the court shows that there

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[22] Holtz v. Rockefeller & Co., Inc., 258 F. 3d 62 - Court of Appeals, 2nd Circuit 2001

[23] Guarino v. Brookfield Tp. Trustees, 980 F. 2d 399 - Court of Appeals, 6th Circuit 1992

[24] Griggs-Ryan v. Smith, 904 F. 2d 112 - Court of Appeals, 1st Circuit 1990

[25] Chapman v. AI Transport, 229 F. 3d 1012 - Court of Appeals, 11th Circuit 2000

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In making this determination, the court must view all evidence and make all reasonable inferences in favor of the party opposing summary judgment.``).

f. In 4th Circuit Evans [26] id at 959 ("If, after reviewing the record as a whole, however, we find that a reasonable jury could return a verdict for Evans, then a genuine factual dispute exists and summary judgment is improper.") (citing *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510.) id.

g. In 9th Circuit Garrison [27] id at 1010 ("[W]e must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion, and may not affirm simply by isolating a specific quantum of supporting evidence.").

A 3. The Court of Appeals Should Be Permitted To Reconsider Its Decision In Light of This Court's Intervening Decision In Reeves,, Harris Celotex & Matsushita., . . .

*A party resisting summary judgment has the burden to designate the' **"specific facts" [t]hat create a triable controversy.*** 'See Crossley v. Georgia–Pacific Corp., 355 F.3d 1112, 1114 (8th Cir. 2004). The lower court's decision pursuant to Rule 56 (c) of the federal rules of civil procedure did not involve an entire record review where an existing prima facie record and

[26] Evans v. Technologies Applications & Service Co., 80 F. 3d 954 - Court of Appeals, 4th Circuit 1996

[27] Garrison v. Colvin, 759 F. 3d 995 - Court of Appeals, 9th Circuit 2014

additional record evidence created a triable controversy worthy to being presentable before a trier of fact.

(a). ***Intentional Discrimination***. If an existing "prima facie" intentional discrimination record exists,the 5th Circuit opined that no reasonable accommodations were provided by the outcome of such existing discrimination,see Taylor opinions that ....."[T]he term ***`discriminate' [includes]*** ... **[n]*ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability....***") [28] (emphasis added); 29 C.F.R. 1630.9, App. (1995) ("Employers are obligated to make reasonable accommodations only to the physical or mental *limitations* resulting from the disability that is ***known to the employer***.") (emphasis added).[29] Additionally, the ADA The **Retaliation record** suffices Rule 56 context denying the defendants summary judgment as a matter of law which "specifically" represents the petitioner being terminated for engaging in the protected act for requesting for reasonable accommodation.-i.e the lower court found in light of the petitioners record evidence that the petitioner was denied reasonable accommodations in which the defendant retaliated

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[28] Taylor v. Principal Financial Group, Inc., 93 F. 3d 155 - Court of Appeals, 5th Circuit 1996

Id at 164

[29] See Taylor v. Principal Financial Group, Inc., 93 F. 3d 155 - Court of Appeals, 5th Circuit 1996

Id at 164. Feist v. Dept. Of Justice, Offc. Of The Atty. Gen., 730 F. 3d 450 - Court of Appeals, 5th Circuit 2013 id 453. ("The ADA prohibits covered employers from "discriminat[ing] against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). Discrimination includes failure to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability ... unless such a covered entity can demonstrate that the accommodation would impose an undue hardship." *Id.* § 12112(b)(5)(A).No record evidence has been offered as to such appointed accommodations being an undue hardship.§12112(b)(5)(A)

against [the petitioner] via termination of having to exercise his protected right requesting for accommodations.

Material Evidence In Dispute Under Rule 56 (c) ....

(c). Petitioners **affidavit** denying of the defendant providing accommodations.supra,

(d). Petitioner provided [a]dditional "specific facts" asserting that the defendants accommodations said to having been provided only after such request from the petitioner shows that they [were not] **"effective"**in which the defendant's sworn statement asserts of the petitioners job performances not improving but digressing. .See EEOC V. Argo Distributions LLC 555 F3d.462 id at 471 (5th Cir.2009) [30]. also see *Barnett v. U.S. Air.* 228 F.3d 1105, 1114 (9th Cir. 2000). "An appropriate reasonable accommodation must be [effective] , in enabling the employee to perform the duties of the position." *Id.* at 1115.

(e). Petitioner provided ...[a]dditional "specific facts" asserting that the defendants accommodations,according to record depositional testimony,do not satisfy the ADA statutorial

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[30] The Appendix to the ADA regulations explains:

The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. . . . [T]he employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.

29 C.F.R. pt. 1630, App., § 1630.9.

definition as to being a 'reasonable accommodation" as the accommodations the defendant sworn to having provide the petitioner ...***[w]ere merely "customary" to all newly hired employees***.See 29 C.F.R. § 1630.2(*o*)(1)(ii) (1996) [31]

(f). Petitioner provided ...[a]dditional "specific facts" asserting that the defendant stated of the petitioner not requesting for reasonable accommodations and thus found no discrimination in his presented complaint ultimately terminating the petitioner, in which [if] such request did not exist then the defendant had no obligation to provide the petitioner reasonable accommodations see Taylor v. Principal Fin. Group, Inc., 93 F.3d 155, 165 (5th Cir. 1996) [32]. The trier of fact could be able to assess the defendant's credibility and trustworthiness in light to having provided the petitioner reasonable accommodations [if] none were ever requested, according to the defendants investigations, which denied the petitioner relief subject to his discrimination complaint as the defendants investigations concluded that no discrimination existed ultimately terminating the petitioner.

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[31] (o) *Reasonable accommodation.*
(1) The term *reasonable accommodation* means: (ii) Modifications or adjustments to the work environment, ***or to the manner or circumstances under which the position held or desired is customarily performed,*** that enable an individual with a disability who is qualified to perform the essential functions of that position;

[32] ("[O]nce an accommodation is properly requested, the responsibility for fashioning a reasonable accommodation is shared between the employee and employer. Thus, it is the employee's initial request for accommodation which triggers the employer's obligation to participate in the interactive process of determining one.").

B. 1. The Court of Appeals' Decision Conflicts With This Court's Interpretation of Rule 56 Context Of The Federal Rules of Civil Procedure To Employers Nondiscriminatory Explanation For Its Decision .....

The Fifth Circuit misapplied the standard of review dictated by Rule 56. The court disregarded sufficient evidence favorable to Golden — the evidence supporting his prima facie case and undermining respondent's nondiscriminatory explanation — and failed to draw all reasonable inferences in his favor.

1. In Reeves [33] this court held ("A plaintiff's prima facie case of discrimination (as defined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, and subsequent decisions), combined with sufficient evidence for a reasonable factfinder to reject the employer's nondiscriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA.").

Reeves id. at 135

("The standard for judgment as a matter of law under Rule 50 mirrors the standard for summary judgment under Rule 56. Thus, the court must review all of the evidence in the record,") (citing cf., *e.g.*, *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587,) (" drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determinations or weighing any evidence,") (citing *e.g.*, *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555.) (" The latter functions, along with the drawing of legitimate inferences from the facts, are for the jury, not the court.") (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255.)

[33] Reeves v. Sanderson Plumbing Prods., inc., 530 u.s. 133, 147, 120 s.ct. 2097, 2108, 147 l.ed.2d 105 (2000)

(" Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. Pp. 14-16.") id.

B 2. The Court of Appeals Conflicts With Its Own Precedence ...

The 5th Circuit,opine that Rule 56 context of the Federal Rules of Civil Procedure involves a ... [prima facie] case of discrimination in [addition thereto sufficient evidence] showing that the proffered reason is pretextual is typically enough to survive summary judgment...

1. In 5th Circuit EEOC v. LHC Group, Inc. [34] id at 695 ("In the Rule 56 context, a prima facie case of discrimination plus a showing that the proffered reason is pretextual is typically enough to survive summary judgment.") (citing *Cf.* *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 146-48, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000)) (reaching a similar conclusion in the Rule 50 context, which "mirrors" the standard for summary judgment).also see 5th Circuit Sanstad [35] id. at 897

[34] EEOC v. LHC Group, Inc., 773 F. 3d 688 - Court of Appeals, 5th Circuit 2014

[35] Sandstad v. CB Richard Ellis, Inc., 309 F. 3d 893 - Court of Appeals, 5th Circuit 2002

(" Evidence demonstrating the falsity of the defendant's explanation, taken together with the prima facie case, is likely to support an inference of discrimination even without further evidence of the defendant's true motive.") (citing *Reeves*, 530 U.S. at 147-48, 120 S.Ct. at 2108-09.) (" Thus, the plaintiff can survive summary judgment by producing evidence that creates a jury issue as to the employer's discriminatory animus or the falsity of the employer's legitimate nondiscriminatory explanation.").id.

B 3. The Court of Appeals Should Be Permitted To Reconsider Its Decision In Light of This Court's Intervening Decision In Reeves & Matsushita As Well As Its Own Holdings :

Defendants Nondiscriminatory reasons :

a. Insufficient Job Performance.

Record evidence was introduced via defendant that the petitioner committed "many inefficient job performances" - i.e. [the petitioner] could not perform the essential duties of the job position. The defendant offered its letters of termination **("ROA" Appendices 15 & 16)** , Observation Notes **("ROA" Appendix 12)** and an affidavit in support thereof. **("ROA" Appendix 18).**

Petitioners Prima Facie Evidence "Combined" With Sufficient Evidence :

a. The petitioner is a ***"qualified individual"*** [36] (prima facie intentional discrimination) to perform the essential duties of the job description.see ADA, 42 U.S.C. § 12111(8) [37]

Non Compliance Company Policy / Falsity ...

b. [R]ecord depositional testimonial evidence substantiated that the petitioner per his poor job performance a "write up" would exist.see **("ROA"Appx 2.(audio recording 48:04.04 - 48:23.15).*id Keith Covington,supra,*** moreover,[R]ecord evidence substantiated that the petitioner had no inefficient job performances, verbal written or otherwise within his employee files as per company policy.see **"ROA".See* Appendix 6 (audio recording 27:00 - 28:20).** ***id Robyn Edwards,supra.*** [38] also see **("ROA"**

[36] Under 42 USC § 12111(8) the term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

[37] See EEOC v. LHC Group, Inc., 773 F. 3d 688 id at 697 - Court of Appeals, 5th Circuit 2014 (citing *Turco v. Hoechst Celanese Corp.*, 101 F.3d 1090, 1093 (5th Cir. 1996) (per curiam) (citing the ADA, 42 U.S.C. § 12111(8), which defines "qualified individual" as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position ...").

[38] Non compliance of company policy may be proof of pretext,e.g. Tyler v. Unocal Oil Co. of Cal., 304 F.3d 379, 396 (5th Cir. 2002) ("An employer's conscious, unexplained departure from its usual polices and procedures when conducting a RIF may in appropriate circumstances support an inference of age discrimination if the plaintiff establishes some nexus between employment actions and the plaintiff's age. ") id at 397

Appendices 11) (Defendants Corrective Actions Samples Policy / Rule) & ("ROA" Appendices 23) (Defendant's Corrective Action policy). This "sufficient evidence" was to be viewed along with prima facie intentional discrimination record / evidence of fact of the "qualified individual" ADA element that the lower court did not consider as to the petitioner's pretext defense that his job performances were not poor..

c. [R]ecord depositional testimonial evidence substantiated the defendant giving false / perjured testimony in which to uphold its nondiscriminatory purpose as it relates to the petitioner's poor job performances by denying the existence of the email transactions which provides the contrary. see **"ROA"Appx.2 (audio recording 1:14.00 - 1:15.58).** ***id Keith Covington,supra.*** the lower court was aware thereof **("ROA" Appendices 19) (Email Transactions Before The Defendant)** .[39] demonstrating discrimination at best.

Defendants Nondiscriminatory reasons :

b. Verbal Abuse Disciplinary Infraction....

Record evidence was introduced via the defendant that the petitioner violated disciplinary infraction company rule by making verbal abuse statements to employees. The defendant offered its letter of termination **("ROA" Appendices 15 & 16)** , Observation Notes **("ROA"**

[39] Perjured ,False & Inaccurate Statements Be Proof of Pretext see

Miller v. Raytheon Co., 716 F.3d 138 (5th Cir. 2013) id at 145 (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147, 120 S.Ct. 2097, 2108, 147 L.Ed.2d 105 (2000) ("In appropriate circumstances, the trier of fact can reasonably infer from the falsity of [an] explanation that the employer is dissembling to cover up a discriminatory purpose.").

Appendices 12) (Defendants Observation Notes) .and sworn affidavit from the actual employee involved of the petitioner's disciplinary infraction,in support thereof.

Petitioners Sufficient Evidence

Sworn affidavit :

a. The petitioner presented a sworn affidavit stating that he did not use any verbal abuse against the named employees and also asserted as to not having any verbal abuse disciplinary infractions against him directed to any employee(s) during his employment . **("ROA" Appendices 1 sec.16,18,19).**

Failure To Comply With Company Policy / False / Perjured Information :

b. [R]ecord deposition evidence substantiated that the "verbal abuse" disciplinary infraction was a ***"major infraction"*** and ...the defendant [s]tated to "having complied with the company policy" which [required] a ***reported "written"documentation*** of said disciplinary infraction **("ROA" *Appx 4.(audio recording 1:03.15 - 1:27:57.37)** ***id Keith Covington,supra,*** also see **("ROA". See Appendix 23) (" corrective action disciplinary").** [R]ecord evidence substantiated [no] "written / verbal written" disciplinary infractions within his employee files as required by company policy to be filed as documented. **."ROA".See* Appendix 6 (audio recording 26:40 - 28:10).** ***id Robyn Edwards,supra,*** [40] **"ROA".See Appx 4. (audio recording 1:03.15 - 1:27:57.37)** ***Id at Robyn Edwards,supra.***

[40] This audio recording was preserved on September 18,2018 within Mrs.Edwards office being the actual initial encounter between Golden and Edwards.

False / Perjury / Inaccurate Information :

c. [R]ecord deposition testimony was offered as to the defendant testifying that the [petitioner] ***did not ...refute against the allegations therefore which would have contributed to an ...actual investigation*** **("ROA".See Appendix .2 (audio recording 2:30:00 - 2:31:35))** ***id at Keith Covington,supra.*** Record evidence substantiated that the petitioner was **off duty** on the date in question in which such accusations were made and the defendant objectively drafted the pre-termination letter,on the very same date, subject to the verbal abuse disciplinary infraction the petitioner was off duty thereof .**("ROA" Appendices 12) (Defendants Observation Notes)** .[41]also see **("ROA" Appendices 15) (Defendants Pre Termination Letter) .**

Rule 56, in summary judgment motions, guards the Seventh Amendment right by a strict requirement for the ***absence of any "genuine disputes of material fact."*** [42]

When Rule 50's "reasonable jury" standard of review is improperly ***smuggled*** [43]into a decision at the [p]retext stage of a Rule 56 motion, courts not only abandon the non movant's "two-level

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[41] An affidavit was also issued in which supported that the petitioner was not aware of the adverse statements related thereto until after having returned back to duty a few days later.**("ROA " Appendices 1 (Petitioner's Affidavit sec.17).**

[42] 4 See Adickes v. S.H. Kress & Co., 398 U.S. 144, 148 (1970).

[43] The lower courts interaction into having to deny the petitioners "sufficient evidence" as to not being satisfactory of an existing pretext was if the defendant had provided counter evidence seemingly determined before a trier of fact (Rule 50) rather than a genuine issue of material fact (Rule 56) from which a jury trial may determine the defendant's trustworthiness and credibility..

protection" that a correctly-timed Rule 50 trial motion would provide,[44] but they also abandon Rule's 56's required absence of any "genuine dispute of material fact.....

EEOC V. LHC Group Incorporated **176 F.3d** 847, **853** (5th Cir. 1999) id at 702

> The result of such egregious error is that a jury is never allowed to "disbelieve" the employer's evidence that its action was nondiscriminatory, despite the axiom that a jury decides an employer's intent.[45] Credibility determinations belong to the jury.[46] The jury's disbelief of the employer is a "form of circumstantial evidence that is probative of intentional discrimination. . . ." [47] This rule was enunciated prior to Reeves in the earlier Eighth Circuit case, St. Mary's Honor Center v. Hicks:[48]

also see Matsushita, 475 U.S. at 587.

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[44] 5 Under Rule 56, a judge decides which facts are material and disputed, based on a cold record. In contrast, a Rule 50 motion for directed verdict is made at a live trial after the judge and jury have likely heard both sides or at least the plaintiff 's evidence.

[45] See Theresa M. Beiner, The Trouble with Torgerson: The Latest Effort to Summarily Adjudicate Employment Discrimination Cases, 14 Nev. L. J. 673 (2014) ("With the exception of disparate impact cases, all employment discrimination cases require a plaintiff to show the state of mind of the defendant-employer, or of one or more of its employees. In addition, because actors so rarely voice their discriminatory preference aloud, employment discrimination plaintiffs often rely on inferences from circumstantial evidence. Making inferences is a traditional jury function that courts have held is not well-suited for summary judgment.").

[46] 7 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573- 74 (1985).(" credibility determinations, the weighing of evidence, and the drawing of inferences from the facts are the function of the jury, and therefore the *evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor.*") Anderson, 477 U.S. at 255.

[47] Reeves, 530 U.S. at 147.

[48] St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

("At summary judgment, "[e]vidence demonstrating that the employer's explanation is false or unworthy of credence, taken together with the plaintiff's prima facie case, is likely to support an inference of discrimination even without further evidence of defendant's true motive.") (citing Laxton v. Gap Inc., 333 F.3d 572, 578 (5th Cir.2003). Id 580 ("'The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination.'") (citing Reeves, 530 U.S. at 147, 120 S.Ct. at 2108) (quoting St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 511, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993)). Id. Laxton further opines (sic) (" A plaintiff may establish pretext either through evidence of disparate treatment or by showing that the employer's proffered explanation is false or "unworthy of credence." ((citing .; Reeves, 530 U.S. at 143, 120 S.Ct. at 2106.).(" An explanation is false or unworthy of credence if it is not the real reason for the adverse employment action.") (citing *See* Sandstad v. CB Richard Ellis, Inc., 309 F.3d 893, 899 (5th Cir. 2002).). (" Evidence demonstrating that the employer's explanation is false or unworthy of credence, taken together with the plaintiff's prima facie case, is likely to support an inference of discrimination even without further evidence of the defendant's true motive. *Id.* at 897") (citing Russell, 235 F.3d at 223) . ("No further evidence of discriminatory animus is required because "once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation. . . .") (citing Reeves, 530 U.S. at 147-48, 120 S.Ct. at 2108-09.). ("The "rare" instances in which a showing of pretext is insufficient to establish discrimination are (1) when the record conclusively reveals some other, nondiscriminatory reason for the employer's decision, or (2) when the plaintiff creates only a weak issue of fact as to whether the employer's reason was untrue, and there was abundant and uncontroverted evidence that no discrimination occurred") (citing Russell, 235 F.3d at 223)

which cites (*Reeves*, 530 U.S. at 148, 120 S.Ct. at 2109) & *Rubinstein*, 218 F.3d at 400) [49] . ("A decision as to whether judgment as a matter of law is appropriate ultimately turns on "`the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.'") (citing *Wallace*, 271 F.3d at 220) [50](quoting *Reeves*, 530 U.S. at 148-49, 120 S.Ct. at 2109).)

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C. 1. The Court of Appeals' Decision Conflicts With This Court's Interpretation of Rule 52 of The Federal Rules of Civil Procedure In Which The Reviewing Court's [Ministerial Duty] [ ] Should Dispose of..... **"All The Issues In The Case 'Appropriately And Specifically' In Special And Formal Findings of Fact "** Made "Separately" of Such Factual Finding & Conclusion of Law " Upon Presentment of A Rule 52 Motion Via Request Thereof or Denovo.....

Lower Courts Ministerial Duty To Rule 52 :

Emphasizing the significance of findings in a bench-tried case, the Supreme Court noted that for a ***district court*** to satisfy its [duty], it [ ] should dispose of..... ***"all the issues in the case***

[49] Rubinstein v. Admr. of Tulane Educ. Fund, 218 F.3d 392

[50] Wallace V. Methodist Hospital Sys 271 F.3d 212 (5th Cir. 2001)

'appropriately and specifically' " in special and formal findings of fact. See Interstate Circuit, Inc. v. United States, 304 U.S. 55 (1938).[51] Rule 52(a) does not require that the district court set out findings on all factual questions that arise in a case. See Valley v. Rapides Parish School Bd., 118 F.3d 1047, 1053-54 (5th Cir. 1997).

[51] Id. at 55-56.

Rather, "the district court is expected to provide a clear understanding of the analytical process by which ultimate findings of material facts were reached." Ice Embassy, Inc. v. City of Houston, No. H-97-1096, 2007 WL 963983, at *2 (S.D. Tex. Mar. 29, 2007). Rule 52(b) permits a court, on motion filed "no later than 28 days after the entry of judgment," to amend its findings [or] " ***make additional findings***." FED. R. CIV. P. 52(b). Rule 52(b)'s purpose is, generally, to correct manifest errors of law or fact. See Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986)..

The later adoption of Rule 52 eliminated any confusion created by Rule 70½ by explicitly requiring that a court must find and state the facts at issue.[1] see F.R.C.P. 52(a)(1)[2]

2. The Court of Appeals Conflicts With Its Own Precedence As Other Courts of Appeals Per Rule 52 Context...

Many Circuit courts,including the 5th Circuit,opine that Rule 52 of the Federal Rules of Civil Procedure [r]equires the lower court to discuss [make 'separate' factual findings & conclusion of law] of all the substantial evidence contrary to its opinion....

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[1] See Hon. Gunnar H. Nordbye, Improvements in Statement of Findings of Fact and Conclusions of Law, 1 F.R.D. 25, 30 (1940) (relaying his experience as a judge asking counsel for help in framing the findings of fact); 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2578 (2d ed. 1994 & Supp. 1998).

[2] ***requires*** the district court to make **"separate"** findings of fact and conclusions of law in deciding all cases tried without a jury, and these must be sufficiently detailed that the court of appeals can ascertain the factual and legal basis for the district court's ultimate conclusion. See Velasquez v. City of Abilene, Tex., 725 F. 2d 1017 - Court of Appeals, 5th Circuit 1984 id at 1020.

a. In 5th Circuit Velasquez [3] id at 1020 ("Although the trial court is not required to recount and discuss every bit of evidence offered to it, it is required to discuss all the substantial evidence contrary to its opinion.[4]

b. In the 9th Circuit Abatie [5] id at 973 ("The court conducted a bench trial, but failed to make findings of fact on all contested issues.") *See* Fed.R.Civ.P. 52(a) (citing *Unt v. Aerospace Corp.*, 765 F.2d 1440, 1444 (9th Cir.1985))[6]

c. In the 3rd Circuit In re Frescati [7] id at 197 ("Federal Rule of Civil Procedure 52(a)(1) provides that "[i]n an action tried on the facts without a jury or with an advisory jury, ***the court must find the facts specially and state its conclusions of law separately.*** ") Fed.R.Civ.P. 52(a)(1).(" This is a mandatory requirement.") (citing *H. Prang Trucking Co., Inc. v. Local Union No. 469*, 613 F.2d 1235, 1238 (3d Cir.1980) (citing 9 Charles

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[3] See Velasquez v. City of Abilene, Tex., 725 F. 2d 1017 - Court of Appeals, 5th Circuit 1984

[4] The trial court offered a fairly thorough analysis, but did not discuss all the substantial contrary evidence. In Cross v. Baxter, 604 F.2d 875 (5th Cir. 1979), vacated on other grounds, 704 F.2d 143 (5th Cir. 1983), this circuit discussed the need for detailed findings of fact in voting dilution cases").

[5] Abatie v. Alta Health & Life Ins. Co., 458 F. 3d 955 - Court of Appeals, 9th Circuit 2006

[6] ("holding that factual findings made by a judge after a bench trial "must be explicit enough to give the appellate court a clear understanding of the basis of the trial court's decision, and to enable it to determine the ground on which the trial court reached its decision" (internal quotation marks omitted)).).

[7] In re Frescati Shipping Co., Ltd., 718 F. 3d 184 - Court of Appeals, 3rd Circuit 2013

Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2574, at 690 (1st ed.1971))[8]

d. In 8th Circuit DARST-WEBBE TENANT ASSN [9]id at 708 [10]

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[8] *Scalea v. Scalea's Airport Serv., Inc.*, 833 F.2d 500, 502 (3d Cir.1987) (*per curiam*).)..(" Typically, a Rule 52 violation occurs when a district court's inadequate findings render impossible "`a clear understanding of the basis of the decision,'") (citing *H. Prang Trucking*, 613 F.2d at 1238 (quoting Wright & Miller, *supra*, § 2577, at 697), and those "`findings are obviously necessary to the intelligent and orderly presentation and proper disposition of an appeal,'" (citing *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1178 (3d Cir.1990) (quoting *Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310, 317, 60 S.Ct. 517, 84 L.Ed. 774 (1940)). *See also Berguido v. E. Air Lines, Inc.*, 369 F.2d 874, 877 (3d Cir.1966) ("If a full understanding of the factual issues cannot be gleaned from the District Court's opinion, we would be obliged to remand for compliance with Rule 52(a)."). Although Rule 52 does not require hyper-literal adherence, *see Hazeltine Corp. v. Gen. Motors Corp.*, 131 F.2d 34, 37 (3d Cir.1942), "an appellate court may vacate the judgment and remand the case for findings if the trial court has failed to make findings when they are required,") (citing *Giles v. Kearney*, 571 F.3d 318, 328 (3d Cir.2009) (citing *H. Prang Trucking*, 613 F.2d at 1238-39).)...

[9] DARST-WEBBE TENANT ASSN. v. ST. LOUIS HOUSING, 339 F. 3d 702 - Court of Appeals, 8th Circuit 2003

[10] (" Again we note that this is a very complicated case, made even more difficult by the parties' failure to narrow the issues and specifically address each other's arguments. After reading the pleadings, briefs and documents in this case, it is clear that the district court faced a monumental task in resolving this dispute. However, we are constrained by F.R.C.P. 52(a) to remand this case to the district court for a more detailed explanation of how it reached its decision on Counts I, II, III, XIII, XVII, & XVIII.").

3. The Court of Appeals Should Be Permitted To Reconsider Its Decision In Light of This Court's Intervening Decision & Its Own Precedence...

Rule 52(b) permits a court, on motion filed "no later than 28 days after the entry of judgment," to amend its findings [or] " ***make additional findings***." FED. R. CIV. P. 52(b).

Findings Of Facts & Law Not Established For Record Review Pursuant To Raised Equal Protection Clause Claim Violation To Pursue § 1983 Tort Claim...

A. Equal Protection Claim Analysis :

In 5th Circuit Taylor [11]id at 473 ("To maintain his equal protection claim independently of his free exercise claim, Taylor must allege and prove that he received treatment different from that received by similarly situated individuals and that the unequal treatment stemmed from a discriminatory intent. ") (citing e.g., City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439-40, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985).) (""Discriminatory purpose ... implies that the decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effect on an identifiable group." Lavernia v. Lynaugh, 845 F.2d 493, 496 (5th Cir.1988) (internal quotation marks omitted).").

B. Requesting Lower Court Compliance FRCP 52 (a) -(b)...

The lower reviewing court gave a "general denial" pursuant to the petitioner's "equal protection clause" claim and a full scope of law and fact relative to the petitioner's "due process" violation

[11] Taylor v. Johnson, 257 F. 3d 470 - Court of Appeals, 5th Circuit 2001

claim in which to pursue relief of his § 1983 tort claim [12]. **see (Appendix 1) ("Document 41 Mag.judge)** .The petitioner requested for the lower court to make "additional factual findings & conclusion of law" by application of his *equal protection clause claim* as the court made no separate factual findings or conclusion of law as to whether the petitioners complaint / pleading presented supports such violation ,in lieu thereof, the lower court denied the petitioners Rule 52 motion subject to treating it as an untimely objection [13]subject to asserting it as rehashing

[12] 42 U.S. Code § 1983 Tort Claim :
In Kenneth M. Jones V. Mississippi Secretary of State., NO. 19-60116 (5TH CIR.2020) following the Iqbal #opinion rendered by the United States Supreme Court.... the appellee's ***complaint*** need only assert that not only did something unconstitutional happen[ed] to him,but that [each] of the defendant's... individually engaged in actions that caused the unconstitutional harm. Under Federal Rule of Civil Procedure 8(a)(2), [a] complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." The decision here rests primarily as to whether the appelle can "legally" exercise a 14th Amendment Equal Protection Clause (Constitutionally Protected Law) to pursue a separate but parallel violation against 'each' of the named defendant's provided therein his "complaint" pursuant to Sec.1983 in their own individual and official capacity.

[13] ***What constitutes a "proper objection"?*** [Federal Rule of Civil Procedure 72 and 28 U.S.C. § 636(b)(1) provide that such written objections are to be filed and served within *14 days* after service of a copy of the recommended disposition. The district court then conducts a *de novo* review of any portion of the report and recommendation that has been properly objected to.] ....As one district court in Michigan recently observed, "it is not the job of the Court to make arguments on [a party's] behalf" – parties cannot simply make an "argument in the most skeletal way, leaving the court to ... put flesh on its bones." Sands v. Brennan, 2018 WL 4356650, at *2 (E.D. Mich. Sept. 13, 2018) (quoting McPherson v. Kelsey, 125 F.3d 989, 995–96 (6th Cir. 1997)). ***Objections "must specifically identify" – indeed, "pinpoint" – those "specific findings that the party disagrees with."*** Leatherwood v. Anna's Linens Co., 384 F. App'x 853, 856–57 (11th Cir. 2010). If an objection is not specific enough, the district court may apply a clear error instead of de novo standard of review or, as noted in Sands, the objection may be waived altogether.

litigation already established-i.e. untimely objection had no effect to deny Rule 52(b) motion as no "separate" factual finding and conclusion of law existed to the equal protection violation according to the court of appeals interpretation of what the complaint / pleading must be present to pursue further. Taylor id supra.. see **(Appx.7) (Dist Ct deny rule 52 mtn)** and upheld its findings accordingly with no factual findings / conclusion of law separate .see **(Appx.2) (Dist ct final on mag judge ruling).**

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CONCLUSION

The 5th Circuit has decided an important federal question in a way that conflicts with relevant decisions of other circuit courts, this United States Supreme Court's precedent as well as its own in which would grant Golden Certiorari "In the Interest of Justice"..At least since Reeves,[14] scholars have bemoaned a seeming federal court reluctance to allow employment discrimination claims to go to trial. [15]

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[14] The problem seems to be, at least in part, that in Rule 56 motions for summary judgment, courts incorrectly borrowed part of Reeves' language regarding Rule 50 motions for directed verdict, and then compounded the error by failing to require Reeves' "two-level protection" for the Seventh Amendment right to a jury. In addition to the cases and articles cited above, decades of cases and scholarly articles support those who ask this Court to resolve these conflicts and inconsistencies among and within circuits in employment cases.

[15] Hon. Bernice B. Donald, J. Eric Pardue, Bringing Back Reasonable Inferences: A Short, Simple Suggestion for Addressing Some Problems at the Intersection of Employment Discrimination and Summary Judgment, 57 N.Y.L. Sch. L. Rev. 749 (2012-13).

PRAYER

WHEREFORE, PREMISES CONSIDERED Petitioner prays that the Court will enter an order granting writ of certiorari reversible before the Fifth Circuit to reconsider its non opinion matter and grant such other and further relief that the Court deems just and proper.

COMPLIANCE

Golden (pro se litigant) has made every reasonable attempt to comply with the Supreme Court Rules pre presentment of this petition. Golden is indigent,has a mental disability with limited ability in learning,thinking,concentrating & reading and presented such a petition in "paper form" in lieu of booklet form according to S.Ct.Rule 33.2.The petition itself is within the 40 page limitation,excluding pages afforded by the S.Ct.Rule,given in a 12 point font 10 point font for footnotes with 10 copies and 1 original.If any portion of the petition is of non compliance, please feel free to inform Golden in which corrections may be made before the Supreme Court Justices review respectfully.

CERTIFICATE OF SERVICE

I, Kevin R Golden, certify that today May 27, 2024, certify that the facts provided within this Writ of Certiorari , In Forma Pauperis,Application & Appendix before the United States Supreme Court is both true and correct as best known before the Golden providing 10 copies an original, a copy of the was delivered via email to the defendant / appellant as well as the 5th Circuit Court of Appeals Clerk's office under pro_se@ca5.uscourts.gov and mailed certified directly to the United States Supreme Clerk office :

Honorable Clerk Scott S. Harris

1 First Street, NE.

Washington, DC 20543

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Respectfully Submitted

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