

No. 17-1628

**In The
Supreme Court of the United States**

MYOUNGCHUL SHIN, SEONGMIN CHO,
AND YONGSEON KIM,

Petitioners,

v.

UNI-CAPS, LLC, SANG H. KIM,
AND KYU SANG SHIM,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit and the District Court for the Central District of California properly applied the well-settled *McDonnell Douglas* test to settled facts.

2. Whether the Ninth Circuit and the District Court for the Central District of California properly applied the well-settled “economic reality” standard to settled facts.

CORPORATE DISCLOSURE STATEMENT

Uni-Caps, LLC has no parent corporation or publicly held corporation that owns 10% or more of its shares.

STATEMENT OF THE CASE

Petitioners Myongchul Shin, Yongseon Kim, and Seongmin Cho (“Petitioners”) are former employees of Respondent Uni-Caps, LLC (“Uni-Caps”). Respondent Sang H. Kim (“Respondent Kim”) is the President of Uni-Caps. Respondent Kyu Sang Shim (“Respondent Shim”) is the General Manager of Uni-Caps.

In February of 2014, Petitioners unilaterally decided that they would no longer work weekend shifts at Uni-Caps. (E.R. 2103-2104.) Uni-Caps warned Petitioners in writing that failing to appear for their scheduled shifts would subject them to termination. (E.R. 2104-2107.) Petitioners nonetheless failed to appear for their weekend shifts at Uni-Caps for two consecutive weekends. (E.R. 2106-2109.) After the second such weekend, Uni-Caps terminated Petitioners. (E.R. 2111.)

On summary judgment, the District Court for the Central District of California found that Petitioners were terminated for a legitimate, non-retaliatory reason – their failure to show up to work as scheduled. (E.R. 15-16.) The District Court’s ruling was affirmed by the Ninth Circuit on appeal. *Myoungchul Shin v. Uni-Caps, LLC*, 699 Fed.Appx. 681, 682 (9th Cir. 2017) (“[Respondents] had a legitimate nondiscriminatory reason for terminating [Petitioners]: their refusal to work weekends as assigned.”).

Similarly, on summary judgment, the District Court found that, under the totality of the circumstances, Respondent Kim and Respondent Shim were

not “employers” of Petitioners under the FLSA. (E.R. 17.) This ruling was affirmed on appeal by the Ninth Circuit. *Myoungchul Shin v. Uni-Caps, LLC*, 699 Fed.Appx. 681, 682 (9th Cir. 2017).

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ARGUMENT

Under Rule 10 of this Court’s rules, review on a writ of certiorari is typically only granted when a case presents a split of authority between United States courts of appeals or between a United States court of appeals and a state court of last resort, or a gross deviation from “the accepted and usual course of judicial proceedings,” or an important federal question that this Court has not decided. Supreme Court Rule 10.

Here, Petitioners claim that the Ninth Circuit’s unpublished memorandum decision of approximately two full pages in this employment discrimination case conflicts with this Court’s *McDonnell Douglas* decision.¹ (Petition, p. 9-11.) In reality, the Ninth Circuit correctly applied *McDonnell Douglas*, affirming the lower court’s ruling that Respondent had a legitimate, non-discriminatory reason for terminating Petitioners: “their refusal to work on weekends as assigned.” *Shin*, 699 Fed.Appx. at 682. Petitioners’ perception that the Ninth Circuit “stop[ped] short of stage three of the *McDonnell Douglas* framework,” is driven entirely by the fact that the Ninth Circuit, rendering a brief unpublished memorandum decision (rather than a full

¹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

signed, published decision), saw no need to labor through a point-by-point analysis, particularly given the fact that Petitioners failed to show even that they had engaged in FLSA-protected activity.

The third step supposedly “omitted” by the Ninth Circuit is a rejection of a claim of pretext – namely, that Petitioners failed to meet their burden of proving that the true reason for their termination was not their failure to show up to work, but instead retaliation for some FLSA-protected activity. Tellingly, Petitioners refer to their supposedly “compelling evidence” of pretext (to which Petitioners make no specific reference, and which, frankly, does not exist) as a reason for this Court to grant review. (Petition, p. 11.) As Rule 10 indicates, however, this Court does not ordinarily grant certiorari when the asserted error “consists of erroneous factual findings or the misapplication of a properly stated rule of law” – exactly what Petitioners’ complaints involve.

Petitioners’ other points of asserted error similarly involve only the application of well-settled law to the particular facts of this case. Petitioners contend that the Ninth Circuit erred by “overlook[ing] a totality of circumstances indicating that Respondent Kim was an employer.” (Petition, p. 13.) This Court is not usually in the business of reviewing the “totality of circumstances” and substituting its reading of the evidence for that of the court of appeals or the underlying trial court. Petitioners also contend that the Ninth Circuit “ignored compelling evidence demonstrating that Respondent Shim was also an employer under the

FLSA.” (Petition, p. 15.) No matter how compelling the evidence supposedly ignored, the Supreme Court does not ordinarily grant certiorari to correct “erroneous factual findings or the misapplication of a properly stated rule of law.”

This case involves only the fact-specific complaints of three dissatisfied plaintiffs. No significant or novel issues of law are involved. No circuit splits are implicated. No substantial public policies are at stake. This case does not even involve a single published decision by either lower court, and is of no significance to anyone beyond the litigants. Accordingly, Petitioners’ Petition merits nothing more than summary denial.

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CONCLUSION

For the foregoing reasons, Petitioners’ Petition for a writ of certiorari should be denied.

Respectfully submitted,

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