

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Rafael G Hankishiyev _____ — PETITIONER
(Your Name)

vs.

ARUP Laboratories, et al _____ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U S Court of Appeals for the Tenth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rafael G Hankishiyev

(Your Name)

558 E Leland Ave

(Address)

Salt Lake City, Utah 84106

(City, State, Zip Code)

801-359-8919

(Phone Number)

QUESTION(S) PRESENTED

1. The most important issue of this case concerns national security, health care system, and public ethical values. ARUP Laboratories provides medical laboratory tests for millions of patients from many states. Managers of ARUP (Defendants) produced numerous falsified and fabricated (forgery) documents.
2. Defendants' Attorney Robert Rice's actions of falsifying documents: participation in (if not directing) the fabrication of Counseling Records, conducting "laundry" of fabricated papers during deposition, etc.
3. Fraud on the Court: Magistrate Judge Pead used Defendants' (including their Attorney's) unconscionable schemes to deceive, to make misrepresentations, and to submit fraudulent documents and false statements - as result, the impartiality of the District and, consequently, Appellate courts has been so disrupted that decisions were performed with prejudice, and against Laws.
4. ORDER AND JUDGMENT of US Court Of Appeals For The Tenth Circuit (Appendix A) is in conflict with U.S. Constitution: First Amendment (religion expression and free speech) and Fourteenth Amendment ("equal protection of the Laws").
5. ORDER AND JUDGMENT of US Court Of Appeals For The Tenth Circuit (Appendix A) is in conflict with U.S. Supreme Court's and Circuit Courts' decisions about "exhaustion of administrative remedies". Moreover, in accordance with fraud-on-the-court, Appellate Judges hide documents.

6. Appellate Judges' conclusions on "Summary Judgment on the Retaliation Claim" (page 5 - 7 of Appendix A) is in conflict with other Circuit Courts' rulings. Moreover, Judges defy Defendants' numerous falsifications and, as result, make erroneous inferences.

7. Deadly consequences of Defendants' retaliatory actions: Defendants'

suppression of free speech is psychological cause of the three violent deaths.

8. Constitutional Petition Clause right (since it includes the right to court access and the basic issue of this case is free speech) and due-process equal-protection right are violated. Moreover, through manipulating with rules and defying Defendants' fabrications, judges forced the victim of crimes to pay criminals.

9. Misrepresentations that judges used for conclusions are also in conflict with government institution's (UTAH DEPARTMENT OF WORKFORCE SEVICES) findings. Moreover, misrepresentations are made by mutilating and garbling of Defendants' confession of unlawful job termination.

Rafael Hankishiyev

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Rafael Rafael Hankishiyev

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emorandum in Support of Motion to Compel Cooperation in Deposition and Extend Discovery', document 56 filed 06/27/2016); e-mail from EEOC investigator (Exhibit F-2, attached to Plaintiff's Reply in Support of Objections to Defendants' "Exhaustion Administrative Remedies" Allegations, document 108 filed 06/21/2017); answers to interrogatories 8 and 9 (Exhibit P/L-2, attached to Plaintiff's Declaration of Defendants' Endless Non-stop Lies (Frauds-on-the-Court), document 100 filed 03/10/2017); Notice of Charge of Discrimination (Exhibit A, attached to Opposition to Plaintiff's Motion for Judgment on the Pleadings, document 99 filed 03/06/2017); Hankishiyev's medical record (Exhibit P/DD-2, attached to Declaration of Dying for Constitution, document 87 filed 01/30/2017) ; Utah Department of Workforce Services' Decision of Eligibility for unemployment insurance benefits, attached to Plaintiff's Motion for Appointment of Counsel, document 46 filed 03/02/2016

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

_____ Petitioner respectfully prays that a writ of certiorari issue to review the judgment below. _____

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

1.

Rafael Hankishiyer

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 25, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appendixes contain decisions of appellate, district, and magistrate judges. The citations (cases, statutes, rules, etc.), included in those documents, are applied to the false facts (Defendants' falsifications and fabrications). It is impossible to provide where citations and provisions appear because they appear in reference to falsifications and fabrications that are everywhere (on every page of Appendixes A, B, and C). Furthermore, since citations and provisions are applied to falsifications and fabrications, they are irrelevant. Furthermore, there is no constitutional provisions in Appendixes A, B, and C because magistrate, district, and appellate judges disregarded the main issue of this case – violation of Constitution.

 Rafael Hankishiyev

STATEMENT OF THE CASE

1. Appellant/Petitioner's Opening Brief, Reply Brief, and most of docket documents demonstrate that, in order to hide evidences of age discrimination and retaliation, Defendants (managers of **medical** laboratory company) made falsifications in existing documents and produced not existing (forgery) documents. Here are some bold, most illustrative, examples. On page 2 of Exhibit OR-1 of Appendix D, Defendants wrote: "Rafael made it very clear that he does not want help in improving his personal skills (working with our Educational/Learning department" – deception confirmed by included in Complaint the Transcript Evaluation Summary, issued by Educational/Learning department, and U of U transcript of chemistry class, completed by recommendation of Educational/Learning department. Next, Exhibit P/R-1 of Appendix D illustrates the falsifications via comparing "Counseling History's of Counseling Report and Involuntary Termination Record. First line: "Insubordinate to management. Poor patient care." versus "Argumentative and rude; disregarded instructions". Second line: "Fall of 2011 (exact date unknown)" versus "11/2/11". Second line again: "Bea Layton, Kayleen Garrett" versus "Kayleen Garrett and Tyson Fuller". Second line again: "Insubordinate to management. Poor patient care. Negative attitude towards a co-worker (stating "I don't care) when bringing back an incorrectly handled specimen." versus "Not clarifying procedure when unsure". Third line: "Negative attitude toward ARUP" versus "Creating a bad work environment, offensive attitude". Next, Exhibits F-1 (ASCP Rules of 3-year validation) and P/R-2 (no certification mark on

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New Employee Checklist) of Appendix D demonstrate that CMP document (Exhibit P/DM-1) is forgery: 6-year validity ("valid October 27, 2010 through October 31, 2016") is impossible. Next, Exhibits OR-1, OR-2, and OR-3 of Appendix D demonstrate that during discovery the falsified Counseling Report (OR-1) was re-made into the more falsified Counseling Records (OR-2 and OR-3): handwritten date, level of action, ARUP numeration, etc. Impertinent falsification: it is clear that Counseling Records (OR-2 and OR-3) with level of action as "counseling" are falsifications made during discovery - both Counseling Report (issued on 06/20/2012) and Involuntary Termination Record (issued on 12/04/2012) have "warning" as level of action. Next, signature of Kaylene Garrett as department supervisor on Job Description: Processing Technician II (Exhibit OR-7 of Appendix D) confirms, among other indicators, that ARUP CONSELING RECORD of 2/22/2008 (Exhibit OR-6 of Appendix D) is forgery: Bea Layton was not supervisor of department before October 2011 and no document was produced and signed by Bea Layton in 2008. Next, Exhibit P/R-1 of Appendix D shows that in Counseling History of Counseling Report and Involuntary Termination Record (issued 06/20/2012 and 12/04/2012, and filed with court before discovery), "by whom" of 1st Discussion is Rhonda Butcher. During discovery objection, Plaintiff proved that the ARUP COUNSELING RECORD of 2/22/2008 (Exhibit OR-6 of Appendix D) was forgery. One of the proofs was the fact that Rhonda Butcher, having position of WFC (distributor of incoming specimens) might not conduct any, including written, counseling. In order to "fix" (re-falsify) the "by whom" falsification, Defendants

replaced that fabrication with another one: in ARUP COUNSELING RECORD of 2/22/2008, sent on 07/13/2016 (Exhibit OR-6 of Appendix D), they wrote "R. DENNISON and B. SHELTON". By Defendants' 06/20/2012 and 12/04/2012 falsifications, "by whom" on 02/22.2008 was Rhonda Butcher, but by 07/13/2016 falsification "by whom" on the same 02/22/2008 was R.Dennison and B. Shelton. Undoubtedly, 1st and 2nd Discussions are forgeries (docket and briefs have more details). 3rd Discussion, although it took place (in retaliation to age discrimination complain), is filled to repletion with falsifications. Repetitive falsifications and fabrications show that Defendants acted intentionally and by planned schemes to hide discrimination and retaliation. When they meditate to hide something else they will falsify and fabricate Laboratory Test documents. Any patient is put in jeopardy. Even single falsification, performed by health care management, is anti-humane and anti-moral crime (beside the security, legal, health care, community, nation and other issues).

2. During discovery, Plaintiff received Counseling Record (Exhibit OR-2 of Appendix D) from Defendants' a-attorney Rice. Comparison with Counseling Report (Exhibit OR-1 of Appendix D), issued on 06/20/2012 and included in Complaint, indicates that there are handwritten altering like date and level of action in Exhibit OR-2. Later, Defendants' attorney attached Exhibit J to Motion for Summary Judgment, document 89 of 02/03/2017. Exhibit J (Exhibit OR-3 of Appendix D) is the fabrication, remade from Exhibit OR-2, on the ARUP numerated form. So, before making OR-3, Defendants gave attorney the draft (OR-2) for evaluation ("will

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this falsification work?”). After lawyer Rice’s approval of draft forgery OR-2, Defendants concocted forgery OR-3. Draft fabrication (Exhibit OR-2) was among numerous irrelevant papers, sent to Plaintiff by attorney. During deposition, attorney was “laundering” the fabricated documents: pages 33 and 34 of deposition transcript (Exhibit OR-5 of Appendix D) and pages 69-74 (Exhibit OR-4). Almost all docket documents and Appellant’s Briefs contain Defendants’ attorney’s lies and misrepresentations. One of attorney’s most outrageous lies is recurrent false statement about 300-day period between 01/17/2013 and 02/19/2013 (Exhibit P/L-1 of Appendix D and Notice of Charge of Discrimination - Exhibit A of Appendix E). During second deposition, attorney Rice intimidated Plaintiff with blindness and attempt to kill. Attorney’s psychological and physical aggressive actions with using folder and metal chain are described in documents (number 65, 66, 71, 76, 97 filed 09/13/2016, 09/20/16, 10/31/16, 11/30/16, 03/02/17). Plaintiff requested investigation on lawyer’s violent actions and punishment. Judges defied requests and, even, facts (fraud-on-the-court). Moreover, judges made victim (Plaintiff) pay to offender (lawyer).

3. Clause 1 and 2 of this Statement of the case, Appellant’s Briefs and docket contain evidences of Defendants’ forgeries and falsifications of documents, and Defendants’ attorney’s deceptions, misrepresentations, and “laundry” of fraudulent documents. To mask pro-Defendants decisions (because of long time Rice/Pead relationship) and to justify adopting only Defendants’ motion, magistrate judge named Defendants’ fabrications of evidences as “material facts”, not lies (page 3 of

document 115 filed 08/16/2017 - Appendix C). Expectedly, district judge used for Defendants' fraudulent conduct the phrase-mongering false statement like: "Plaintiff has not construed these allegations as claims sufficient to give ..." (page 4 of document 120 filed 09/07/2017 - Appendix B). Appellate judges did not address Defendants' falsifications and forgeries (not at all, as if they had a selective eye-glasses). Above-mentioned facts constitute all elements of fraud-on-the-court: (a) Defendants' systematic and pervasive schemes of falsification of documents and performing forgeries, designed to undermine the judicial process; (b) Defendants acted knowingly with the purpose to hinder Plaintiff's fair adjudication of the case; (c) Defendants' actions of fabrication of evidence concern issues that are central to truth-finding process; (d) Defendants used the unconscionable plan of frauds calculated to interfere with Judges' ability to make impartial conclusions; (e) Defendants' fraudulent conducts unfairly hampered Judges' ability to proper evaluation of facts; (f) Defendants' fraudulent conducts are particularly egregious (repeated, intentional, documentary confirmed lies and fabrications, performed by managers of **medical** laboratory company). One of numerous particular examples of wicked lies illustrates the unconscionable scheme of fraud-on-the-court. The View Application Status of ARUP (Exhibit P/L-1 of Appendix D) demonstrates that Plaintiff applied for MLT and Technologist Trainee positions on 01/17/2013, 01/09/2013, 12/13/2012, 09/08/2012, 09/07/2012, 09/05/2012, etc. Moreover, Exhibits P/L-2 of Appendix E show that Defendants answered to Interrogatories 8 and 9 about job applications of 09/05/2012 and 09/07/2012. Notwithstanding, Defendants

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(their lawyer) repeatedly lied about 300 days' period between last job application and EEOC application (02/19/2013). In accordance with unconscionable scheme of fraud-on-the-court, magistrate judge Pead supported attorney's lie: "within 300 days after...Almond v. United Sch. Disc...." (page 20 of document 115 filed 08/16/2017 - Appendix C). District judge also confirmed that crude lie - "within 300 days...Almond v. United School Dist...." (page 2 of document 120 filed 09/07/2017 - Appendix B). Appellate Judges did not address "300 days" lies. Appellate Judges used the tactics of defying 'Defendants - Attorney - Magistrate - District Judge's deceptions as ground for supporting district court's undoubtedly unlawful decision. Appellate judges disregarded all falsifications, deceptions, and fabrications (did not even mention them) - the main part of fraud-on-the-court. In addition to fraud-on-the-court conduct, Appellate judges deprived millions patients of the right to live and to have access to the secure medical treatment (frauds are made by managers of **medical** laboratory company).

4. Decision of Appellate Court is in conflict with First Amendment and Fourteenth Amendment. The First Amendment guarantees freedom concerning religion. It forbids restricting an individual's religious practices. Instead of punishing Defendants for violation of the right for free religion expression, Appellate Judges support Defendants' justification of job termination on the basis of misrepresentation of "praying for management" and alleged lack of praying knowledge (page 3 of Appendix A). The First Amendment also guarantees freedom of expression by prohibiting restriction of the rights of individuals to speak freely.

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Lines 22- 23 of page 33, lines 3 - 7 of page 34 of deposition -Exhibit OR-5 of Appendix D, lines 13 - 14 of page 69, lines 5 -18 of page 70 of deposition - Exhibit OR-4 of Appendix D demonstrate that Plaintiff directly and succinctly said about fabrication nature of presented by attorney exhibits. By “review and identify all exhibits”, Court ordered to close eyes on fabrications and, therefore, participate in “laundry” of forgeries. Judges punished Plaintiff for saying what he saw (the use of terminology like rule 37, lesser sanction, etc. is just obvious camouflage). In addition to fraud-on-the-court (making decision on the basis of fabrications), punishing Plaintiff for identifying forgery as fabrication is violation of individual’s rights for free speech. Counseling Report (Exhibit OR-1 of Appendix D), issued in retaliation to Plaintiff’s age discrimination complain, is also violation of the right for free expression. Counseling meetings (with Defendants’ retaliatory accusations in bad attitude, deception, betrayal, rebellion, etc. for opposing age discrimination) are also violations of the free speech right. Every sentence of Involuntary Termination Record is also violation of the First Amendment. The 14th Amendment to the U.S. Constitution guarantees all citizens “equal protection of the Laws.” Defendants’ answers and responses to Plaintiff’s first (Appendix F) and second (Appendix G) sets of interrogatories and requests for production of documents to Defendants contain countless objections that Plaintiff tried to remember and use for deposition. Because of psychological distress, caused by Defendants, Plaintiff was not able to remember and reproduce all objections. Nevertheless, Court punished Plaintiff, not Defendants’ attorney, for “excessive objections” (page 4 of Appendix A). Whatever

rule is manipulated by judges for justification of intentional bias decisions, it masks violation of Constitution: through “equal protection of the Laws”. Plaintiff paid Defendants \$8,723.09 - page 4 of Appendix A (actually, plus \$365.90) for the same (initially used by Defendants) objections. Entire litigation is Magistrate - District - Appellate Judges’ actions of depriving Plaintiff of his constitutional right for free expression and equal protection of the Laws. Through intentional erroneous decisions (including monetary transfers from Plaintiff to Defendants) judges demonstrate that the powerful corrupt ‘lawyer-judges’ coordination is above Constitution, Laws and The People.

5. In *Frderal Express Corp. v. Holowecki* (06-1322, February 27, 2008), the U.S. Supreme Court resolved a split among the circuits and ruled that a charging party can exhaust his or her administrative remedies under the Age Discrimination in Employment Act (ADEA) without filing a formal Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). *Holowecki’s* approach provides an expanded opportunity for Plaintiff to prove that he has exhausted his administrative remedies by writing in intake questionnaire “all applications were rejected because of my age (I’m 61 now)” - document 97 of 03/02/2017, exhibit P/S-1. Before U. S. Supreme Court’s decision, the US Court of Appeals for the Second Circuit ruled that the minimal written information required for a charge was contained in the intake questionnaire, moreover, the questionnaire also met the ADEA’s implicit requirement that the charge be intended to start the process of ADEA suit. In this case, Plaintiff’s complain about age discrimination in intake

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questionnaire intended and did activate administrative process - in the e-mail (Exhibit F-2 of Appendix E), EEOC investigator wrote: "Your charge of discrimination is here . . . We will then assign the investigation...". It is reported that *Holowecki's* approach has been applied to other statutes by the Tenth Circuit. However, in this case Tenth Circuit judges have hidden (did not even mention) e-mail confirming that Plaintiff "gave the EEOC an opportunity to conciliate the claim" and, moreover, EEOC activated administrative remedies process. Appellate judges' outrageous manipulations with U. S. Supreme Court's *Holowecki's* approach like "only questionnaire"/" both a formal charge and questionnaire" discussion are mere confirmations of fraud-on-the-court and depriving Plaintiff of his constitutional rights to speak up, to write, to file the lawsuit. Moreover, in Notice of Charge of Discrimination (Exhibit A of Appendix E) Plaintiff wrote: "I believe I have been retaliated against after I engaged in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended." For more than five decades, the ADEA of 1967 and Title VII of the Civil Rights Act of 1964 have been linked with common goal to combat bias in workplace. Jurisprudential examples of the joint evolution of Title VII and the ADEA are readily identifiable. Thus, the Court of Appeals for the Eighth Circuit wrote as follows in *Hase v. Missouri Division of Employment Security*: "Although *McDonnell Douglas* and *Burdine* dealt specifically with actions under Title VII, the guidelines they established are generally applicable to age discrimination actions as well." Moreover, in *Lorillard v. Pons*, 434 U.S. 575 (1978), an ADEA case concerning the availability of jury trials in actions

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for back pay, the Supreme Court observed that “there are important similarities between the two statutes . . . both in their aims - the elimination of discrimination from the workplace - and in their substantive prohibitions” *Id.* at 584. The Court continued:” In fact, the prohibitions of the ADEA were derived *in haec verba* from Title VII”. The affinity of Title VII and the ADEA was confirmed by the Court in *Oscar & Co. V. Evans*, 441 U.S, 750, 755-58 (1979) and another ADEA ruling. Thus, documentary evidences and legal statutes and rulings confirm that, in this case, Appellate judges erred in conclusion on exhaustion issue and “III Dismissal of the Discrimination Claim” (page 7 - 9 of Appendix A). Moreover, errors were made by the unconscionable scheme of fraud on the court: defying (hiding) real documented facts (like EEOC e-mail, for example).

6. In this case, Appellate court’s conclusion about “II Summary Judgment on the Retaliation Claim” (page 5 - 7 of Appendix A) is in conflict with U.S, Supreme Court’s and Circuit Courts’ decisions. In this case, judges intentionally disregarded the verbal discussions of age discrimination during counseling meetings, the internal and external nature of written complain, and, as result, named Plaintiff’s age discrimination complain as generalized employment complaints that do not amount to protected opposition to discrimination (page 6 of Appendix A). However, the Plaintiff’s phrases about ARUP’s real discrimination policy and hiring students (even without other confirmations of age discrimination) are consonant with the protection that Title VII’s anti - retaliation provision was intended to provide - *Burlington N. & Santa Fe Ry Co. V. White*, 548 U. S. 53, 59 (2006) (discussing the

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term "discriminate against" in Title VII's anti-retaliation provision, stating that "no one doubts that the term "discriminate against" refers to distinctions or differences in treatment that injure protected individuals"). Moreover, regarding "first element - protected opposition to discrimination", in *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee* (No. 06-1595, Jan 26, 2009), the Supreme Court states that any time an "employee communicates to her employer a belief that an employer has engaged in . . . a form of employment discrimination, that communication virtually always constitutes the employee's opposition to the activity". In this case, Plaintiff's discrimination complain on MLT application was much more than communication, it was both internal and external complain (since Plaintiff was representing his MLT application to review committee of collaborative program that included ARUP managers and representatives from agencies like education departments, EEOC, Labor union, etc.). Moreover, Plaintiff intended to speak out more details of age discrimination during interview - Plaintiff's intention is reflected in deposition transcript (because of fraud-on-the-court, Plaintiff does not have full accurate transcripts though he paid for depositions and Attorney's misconducts by court orders). Defendants barred Plaintiff's application and complain from Committee's review. Notwithstanding, it is protected opposition by intention: *EEOC v. PVNF, LLC*, 487 F.3d 790 (10th Cir. 2007) (complaining and "thinking of reporting supervisor to EEOC" is protected activity, even though a charge was never filed) - in this case, barred by Defendants; *Burns v. Republic Sav. Bank*, 25 F. Supp. 2d 809 (N.D. Ohio 1998) (female plaintiff's conversation with

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supervisor where plaintiff discussed her intent to see a lawyer was a protected activity under Title VII since a reasonable person in the position of the supervisor would understand that plaintiff was threatening to file a sex discrimination suit) - in this case, argumentative disputes about age discrimination during counseling meetings; *Knox v. Scope Hospitality Corp.*, 59 FEP Cas. (BNA) 455 (E.D. Va. 1992) (the plaintiff's letter to the defendant in which the plaintiff threatened to file an EEOC charge was a protected activity) - in this case, complain on application for collaborative program (with review committees from EEOC, education departments, labor union, etc.). Tenth Circuit Appellate judges' "protected opportunity" error (in this case) is also refuted by First and Second Circuit Courts: *Matima v. Celli*, 228 F.3d 68, 78-79 (2d Cir. 2000); *Accord Fantini v. Salem State College*, 557 F.3d 22 (1st Cir. 2009); *Hubbard v. Total Communications Inc.*, 347 Fed.Appx. 679 (2d Cir. 2009). For example, in *Matima v. Celli*, Second Circuit stated: "The law protects employees . . . in the making of informal protests of discrimination, 'including making complaints to management, writing critical letters to customers, protesting against discrimination by industry or society in general, and expressing support of co-workers who have filed formal charges". In this case, Plaintiff conveyed age discrimination through two counseling meetings, complain on MLT application, and intended to verbally (through the interview) inform members of Review Committee of MLT program (however, Defendants had hidden application from Committee and barred the opportunity to communicate with committee members). In this case, judges have hidden (did not address) Defendants' fraudulent actions of renaming

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the age discrimination complain into “comments”. Circuit Courts do not require plaintiffs to show that the employer had actual notice that a plaintiff participated in protected activity. In *Henry v. Wyeth Pharmaceuticals, Inc.*, 2010 WL 3023807 (2d Cir. Aug. 4, 2010), the court held that plaintiffs do not need to show anything more than general corporate knowledge that the plaintiff has engaged in protected activity”; *Thomas v. Geren*, No. 09-50877, 2010 WL 3377239 (5th Cir. Aug. 25, 2010) (genuine issue as to whether protected activity led to adverse action when decision maker did not know of protected activity, but “decision could have been tainted” by another supervisor’s knowledge of the protected activity); *Poer v. Astue*, 606 F.3d 433 (7th Cir. 2010) (retaliatory motive of a non-decision maker may be imputed to the company where the non-decision maker influenced the employment decision by concealing relevant information from, or feeding false information to, the ultimate decision maker); *Triola v. Snow*, 289 Fed.Appx. 414 (2d Cir. 2008) (holding that plaintiff satisfies the knowledge element when the plaintiff “complain[s] directly to another employee whose job it was to investigate and resolve such conflicts”; *Mullins v. Goodyear Tire & Rubber Co.*, 291 Fed.Appx. 744 (6th Cir. 2008) (plaintiff tried to report her supervisor for sexual harassment, but a manager expressly told her not to talk about other issues she had with her supervisor. Courts can impute “employer knowledge where plaintiff attempted to inform her employer of sexual harassment on several occasions, but the employer refused to listen”). In this case, Plaintiff complained about age discrimination directly to Supervisor Bea Layton, to department manager David Rogers and HR

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manager Tom Topic (persons whose job it was to investigate and resolve the age discrimination complain), Plaintiff responded “when I see age discrimination I don’t have to shout I love ARUP” to Defendants’ accusations that “age discrimination complain is bad attitude, deception, betraying, rebellion, etc.”, Plaintiff tried to report the age discrimination, verbally and through MLT application, to members of review committee of collaborative program, but Defendants concealed the age discrimination complain from review committee and produced false information (up to forgery documents). The main confirmation of Defendants’ knowledge of protected activity is numerous falsifications and fabrications: if Defendants did not know that Plaintiff’s age discrimination complain was protected activity, they would not erase numerous false “insubordinate to management” accusations, concoct “does not know how to pray” fiction, make forgery ARUP Counseling Record of 2/22/2008, and produce many other fabrications. Appellate judges’ “has not presented evidence of casual connection” statement is intentionally erroneous (actually, contrary to the facts and Laws). All Courts recognize that for Plaintiffs in disparate treatment cases it is difficult to prove age discrimination by presenting Defendants writings like “We fire/not hire/retaliate you because you are old” (because managers use pretexts). See *Visser v. Packer Eng’g Assocs.*, 924 F.2d 655, 662 (7th Cir. 1991) (*Flaum J., with Bauer & Cudahy, JJ., dissenting*) (citing *Holzma n v. Jaymar-Ruby, Inc.*, 916 F.2d 1298, 1303 (7th Cir. 1990)) (“Just as age discrimination cases rarely present the trier of fact with a ‘smoking gun,’ they rarely present the district courts with evidence that points inescapably to the conclusion that there is no question of

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material fact concerning the role age played in . [the] decision to . . . terminate. . . .")

- in this case, material facts (documents of age, credentials, counseling report/records, threatening to terminate, firing, etc.) are presented; *Connell v. Bank of Boston*, 924 F.2d 1169, 1175 (1st Cir. 1991) ("Proof along these lines need not be of the 'smoking gun' variety and, in some factual settings, the mere showing of the falsity of the employer's stated reasons may, along with the other facts and circumstances in the case, give rise to a reasonable inference of age discrimination.") - in this case, numerous falsifications of dates, infractions, names, numerous fabrications - forgery documents, and many other falsities along with pretexts, retaliatory counseling, confirmations of age discrimination (like age, education and qualification documents, etc.), job termination; *Stone v. City of Indianapolis Public Utilities Div.*, 281 F.3d 640 (7th Cir. 2002) (holding that plaintiff can show indirect causation by showing "that after filing the charge only he, and not any similarly situated employee who did not file a charge, was subjected to an adverse employment action") - in this case, only Plaintiff and only after complaining age discrimination was subjected to adverse employment actions: barring application from review, counseling meetings, counseling report/records, etc., and, finally, job termination. In this case, judges also disregarded *Smith v. Xerox Corp.*, 371 Fed.Appx. 514 (5th Cir. 2010) (explaining that that the existence of a causal link is a "highly fact specific" and difficult question. The indicia of causation may be seen in factors such as (1) the employee's past disciplinary record - in this case, documents demonstrate that Plaintiff had good - to - excellent

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performance, attendance, and behavior, and that Defendants falsifications are pretexts for adverse actions, (2) whether the employer followed its typical policy and procedures in terminating the employee - in this case, counseling report (along with re-falsified counseling records), annual evaluation (conducted in December instead of legal September to make "time proximity" look longer, named Joint Performance Review, performed by two leads), falsifications in documents, forgeries are violations of employers typical policy, and (3) the temporal proximity between the employee's conduct and termination) - in this case, by ARUP rules, annual performance evaluations usually performed before September 17, however to hide the retaliation motive and to make "temporal proximity" look longer Defendants performed evaluation in December, 1 - 2 days before firing, moreover, for making the false story about " I don't know how to pray" look plausible evaluation was conducted by two leads and named as Joint Performance Review, plus "temporal proximity" and other manipulations with evaluation are combined with falsifications and fabrications. Furthermore, in this case , Defendants manipulated with policy much more than defendants in *Sprott v. New York City Housing Authority*, No. 94 Civ. 3818, 1999 U.S. Dist. LEXIS 19224, at *14 (S.D.N.Y. Dec. 15, 1999), (defendant attempted to explain that an allegedly retaliatory refusal to review a negative performance evaluation was in accordance with a neutral "channeling" policy. Defendant's explanation was inadequate, however, because despite its "repeated assertion" that the policy existed, it failed to present any other evidence of such a channeling policy). In regard to Defendants' attempt to make

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“temporal proximity” look longer, in *Fischer v. UPS, Inc.*, 2010 WL 2994002 (6th Cir. July 27, 2010), the court upheld a jury award in favor of plaintiff’s retaliation claim finding there was sufficient evidence of a causal link between his prior lawsuit (filed in October, 2000) and his termination (February, 2003), despite the two year span. Defendants’ pretexts, fraudulent documents and actions are reflected in inference of *Hill v. Emory University*, 346 Fed.Appx. 390 (11th Cir. 2009): “that the employer’s offered reason was not the true reason for its decision either directly by persuading the court that a discriminatory reason is more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” Next two cases illustrate Defendants’ self-confessions in pretexts and retaliatory actions. In *Narvarte v. Chase Manhattan Bank*, No. 96 Civ. 8133, 2000 U.S. Dist. LEXIS 5836, at *7 (S.D.N.Y. May 4, 2000) (An employee complained of race and gender discrimination to the Human Resources Department on several occasions, and claimed retaliatory discharge when she was later terminated. The employer presented evidence that the employee had a record of poor performance and lateness. However, her supervisor’s statements - “Your days at [employer] are numbered because I hear you have been bad-mouthing me to Human Resources,” and “It won’t be long now” - prior to her termination were evidence that her termination was motivated by retaliatory intent, creating an inference of pretext). In *Harding v. Mem’l Sloan-Kettering Cancer Ctr.*, No. 96 Civ. 7351, 1999 U.S. Dist. LEXIS 9739, at *10-13 (S.D.N.Y. June 24, 1999 (After the filing of a complaint with the EEOC, an employee claimed that his supervisor gave

him a “written final warning” to sign, suspended him for not signing it, and overly scrutinized his work. Defendant argued that its actions resulted from the employee taking an unauthorized break and reacting loudly and angrily to the supervisor who approached him about it. Defendant further claimed that plaintiff had been disciplined throughout his employment history. However, plaintiff’s “detailed examples of possible retaliatory actions by the defendants” were enough to create an issue of pretext). In this case, in the last, conclusive, paragraph of Reason for Termination of Involuntary Termination Record (Exhibit E), Defendants directly and without ambiguity confess all elements of retaliation: “Rafael not only made very derogative comments towards ARUP on his application for the MLT program, but during his 6/20/2012 counseling session with HR, Rafael stated “do you want me to climb on the roof and shout “I love ARUP”. This type of anger and almost hatred toward ARUP is not healthy or acceptable”. Phraseology trick like naming Plaintiff’s opposition to age discrimination as “comments” does not hide the retaliatory intent of job termination. Moreover, it shows Defendants’ persistence in stifling open expression (and, pn violation of First Amendment to Constitution).

7. Defendants’ retaliatory actions (counseling, false accusations, intimidating, etc.) demonstrate that ARUP employees who wish to voice their thoughts and opinions face fierce opposition. Employees’ experience and knowledge of consequences of free speech prevent the voicing of their concerns. For making (during discovery) the forgery ARUP COUNSELING RECORD of 2/22/2008 (Exhibit OR-6 of Appendix D) Defendants used Plaintiff’s written explanation of his verbal complain about safety

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regulations (page 2 of Exhibit OR-6 of Appendix D). There was not such counseling (page 33-34 of deposition - exhibit OR-5 of Appendix D). As page 34 of deposition - Exhibit OR-5 of Appendix D shows, Plaintiff complained about safety regulations and, as result, was accused in deception and rebellion. Besides the fabrications and “laundry” of fraudulent papers, this event demonstrates ARUP’s suppression of voicing opinions, including concerns about safety issues. Employees know about free speech restrictions and are scared to express their opinions on safety regulations. As result, in 2015 ARUP employee died after falling inside the cold room (Exhibit OR-8 of Appendix D). Whatever are physical circumstances, the psychological cause of this death is oppression of open expressing concerns about safety regulations. Furthermore, restrictive free speech workplaces (like ARUP) depress employees’ ability for free expression of thoughts and opinions and peaceful communication outside workplace (family, school, community, etc). In 2016, at ARUP parking lot, husband killed his wife and himself (Exhibit OR - 9 of Appendix D). At least one of killed persons (wife) was employee of ARUP (workplace stifling open expression). Psychological cause of these two deaths is depriving employees from the right for free speech. Furthermore, for silencing employees’ voices Defendants used the frightful tools: falsifications fabrications. By disregarding psychological grounds of three deaths (retaliation, free speech oppression, fabrications, etc.), judges encourage more deaths/killings. And doing so, judges deprive The People of the right to live.

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8. The basic issue of this case is violation of constitutional right of employees of ARUP (including Plaintiff) for the freedom of speech (Defendants' retaliatory actions in response to Plaintiff's complain about age discrimination are parts of this issue). Besides the due-process/equal - protected rights, Plaintiff has the right of access to the courts via the Petition Clause - "to petition the Government..." - includes a right of court access. However, in this case, even most narrow opportunity - the right to file the lawsuit - is violated. By "IV Imposition of the Discovery Sanction" (page 9-10 of Appendix A), judges affirm that magistrate judge is the supreme justice, whose unlawful decisions cannot be questioned. Appellate judges use manipulations with citations to avoid the review of magistrate's anti-constitutional decisions (so-called discovery sanctions) because magistrate's conclusions (sanctions, rule 37, etc.) are grounded on unlawful actions: Rice/Pead deposition provocations, Defendants' excessive objections, Rice's psychological and physical threats, countless irrelevant papers, falsifications and fabrications of documents, "laundry" of documents, judge Pead's and judge Parrish's use of fabrications and abuse of power, making victim (Plaintiff) pay to offenders (Defendants), etc. For example, judges disregarded falsifications of Exhibits OR-1, OR-2, and OR-3 of Appendix D, Plaintiff's statements during deposition about exhibit's falsifications and named Plaintiff's statements about exhibit falsifications as "refusal to identify exhibits" - as result judges made Plaintiff pay to Defendants. Another example, Plaintiff used almost all types and number of Defendants' attorney's objections (Appendixes F and G) - as result, judges made Plaintiff pay

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Defendants. Through defying (not even mentioning) Defendants' fabrications, judges apply any rules to Defendants' false arguments (actually, lies). The reason is discrimination. The legally injured person in this case is 67 -years old pro se Plaintiff with bad ethnic name and appearance, with numerous physical and psychological diseases, with memorizing and concentrating difficulties (results of psychological distress caused by Defendants), and without juridical knowledge (Exhibit P/DD - 2 of Appendix E). Offender is big rich company (suppressing free speech) with fabrication - skilled attorney (president of Utah bar and member/ex-member of committee of district court). To make the obvious pro-Defendants' decisions, judges have to and do selectively close eyes on Defendants' fabrications. The most significant and effective way of discrimination is depriving of right for the court access. The most significant and effective way of depriving right for court access is monetary punishment. The most significant and effective way of monetary punishment is the use of fabrications. Confirmations are in this case. The \$8,723.09 (page 4 of Appendix A) is not sanction, is not rule 37, is even not money; it is killing Liberty, and requires corresponding Justice.

9. As background, on page 3 of Appendix A, judges represented the false statement that ARUP terminated Plaintiff's employment because ARUP concluded that (a) Plaintiff's responses displayed a negative attitude toward ARUP and (b) Plaintiff's anger and almost hatred toward ARUP was not healthy or acceptable. The letter of UTAH DEPARTMENT OF WORKFORCE SERVICES (attached to PLAINTIFF'S MOTION FOR APPOINTMENT OF

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COUNSEL, document 46 filed 03/02/2016 - Appendix E) refutes judges' misrepresentations: "Based upon the information presented to this Department, it is determined that you were not at fault in your discharge from work. . . Your former employer is being notified and may appeal this decision". The written in Appendix A concocted reasons are pretexts because Defendants agreed with DWS' inference of "not at fault" and did not appeal DWS' decision. Furthermore, Defendants' cooked up story about "I don't know how to pray" is in accordance with Defendants' countless falsifications. What is outrageous is that judges don't refer to "I don't know how to pray" as pretext and do consider the medical laboratory company as religious institute (where poor praying technique is, probably, the business reason for firing). Furthermore, judges disregarded, again, the fact that Defendants started to use "negative attitude toward ARUP" as relation immediately after Plaintiff's age discrimination opposition (Exhibit OR-1, OR-2, OR-3 of Appendix D). Furthermore, judges' misrepresentations outweigh even Defendants' fabrications. For legalizing pretexts, judges selectively picked out couple false meaningless words (anger and hatred) from whole retaliation paragraph. During counselings (performed by Defendants in retaliation to Plaintiff's age discrimination complain), Defendants said that complaining is bad attitude, rebellion, betraying, and so on. Plaintiff responded that "when I see age discrimination you want me to climb on roof and shout 'I love ARUP'". It is obvious that there is no anger or hatred in not shouting "I love ARUP". Even Defendants consider whole retaliatory statement "Rafael not

only...” as reason for termination. All presented by judges statements are mutilating and garbling of facts, and judges’ inferences are based on the Defendants’ falsifications and fabrications. Judges compel Plaintiff to present, again, through the last paragraph of Reason for Termination of Involuntary Termination Record (Appendix E), Defendants’ confession of all elements (by any standard) of retaliatory reason of job termination: “**Rafael not only made very derogative comments towards ARUP on his application for the MLT program, but during his 6/20/2012 counseling session with HR, Rafael stated “do you want me to climb on the roof and shout “I love ARUP”. This type of anger and almost hatred toward ARUP is not healthy or acceptable”.**

REASONS FOR GRANTING THE PETITION

1. Millions of patients are in jeopardy unless Defendants (managers of medical laboratory company) punished for falsifications and fabrications.
2. Rewarding Defendants attorney (president of state bar and member/ex-member of committee of district court) for offensive and aggressive actions (falsifications, “laundry”, physical and psychological violence, etc.) sends unethical message to lawyers’ community.
3. Fraud-on-the-court undermines public trust in fair justice and juridical system..
4. Constitutional (First and Fourteenth Amendments) rights are undeniable and indisputable, however are violated by Defendants, lawyer and judges.

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5. No judges may oppose Supreme court' s rulings on "exhaustion administrative remedies" issues.
6. Judges in this case disregarded and violated Supreme Court's and many Circuit Courts' retaliation provisions.
7. Retaliation and oppression of freedom of speech as psychological cause of three killings call for severe legal actions.
8. Judges may not be above Laws and facts, and should not manipulate with rules to punish Plaintiff for filing lawsuit against powerful company.
9. Judges in this case disregarded DWS' findings, ASCP rules, EEOC e-mail, and many other evidences, and made decisions on the basis of Defendants' fabrications

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted,



Rafael G Hankishiyev

Date: June 7, 2018.