

No. 25-6872

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

MIN TANG, Petitioner,

v.

ROBERT F. KENNEDY, JR., Respondent
Secretary of Health and Human Services,

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

Min Tang

Pro Se

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February 2026

QUESTIONS PRESENTED

This case concerns the standards governing judicial review of federal administrative retaliation determinations where evidentiary hearings were cancelled, the administrative record was left undeveloped, and the agency had previously granted full retroactive relief for related conduct. By affirming without independently reviewing the full administrative record and without addressing material evidence of regulatory noncompliance, the courts failed to exercise the judicial power vested in Article III courts to provide meaningful review of agency action.

1. Whether reviewing courts may affirm agency determinations without independently reviewing the full administrative record, including prior agency decisions granting full retroactive relief for the same related conduct.
2. Whether due process permits the EEOC administrative judges to cancel scheduled evidentiary hearings and issue merits decisions without developing a legally sufficient administrative record, and whether reviewing courts may uphold such determinations based on post hoc rationalizations.
3. Whether reviewing courts may uphold retaliation determinations while disregarding binding agency regulations governing documentation of review decisions and the resolution of regulatory and scientific disagreements, and while failing to address record evidence that completed professional work was reassigned in the absence of documented disagreement.

LIST OF PARTIES

Not all parties appear in the caption of the case on the cover page. The following is a complete list of all parties to the proceedings below.

PETITIONER:

Min Tang

RESPONDENT:

Robert F. Kennedy, Jr., Secretary, United States Department of Health and Human Services

LOWER COURT PROCEEDINGS:

United States District Court for the District of Maryland, Civil Action No. SAG-21-2739

United States Court of Appeals for the Fourth Circuit, Case No. 24-1220

RELATED PROCEEDINGS

Min Tang v. United States Department of Health and Human Services, Equal Employment Opportunity Commission, EEOC No. 531-2017-00281X.

Min Tang v. United States Department of Health and Human Services, Equal Employment Opportunity Commission, EEOC No. 531-2019-00247X.

Min Tang v. United States Department of Health and Human Services, Equal Employment Opportunity Commission, EEOC No. 531-2019-00560X.

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APPENDIX L — EEOC AJ Banks scheduled the hearing for September 6, 2023 but abruptly cancelled it without explanation. She issued her bench ruling on September 27, 2023.

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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 of United States Court of Appeal for the Fourth Circuit below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at *Appendix A* (No. 24-1220, decided June 13, 2025) 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* (No. 8:21-cv-02739-SAG, decided January 24, 2024) 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**:

(Not applicable.)

Tang v. United States of America, et al.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 13, 2025.

No petition for rehearing was timely filed in my case.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

For cases from state courts:
(Not applicable.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the United States Constitution, federal statutes, regulations, and agency policies are reproduced in the appendix to this petition, including:

U.S. Const. amend. V — Due Process Clause.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e-16(a) and (c) — Prohibiting discrimination and retaliation in federal employment.

Civil Service Reform Act of 1978, 5 U.S.C. § 2302(b) — Prohibited personnel practices.

Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A) and (E) — Agency decisions must be supported by substantial evidence and not arbitrary, capricious, or contrary to law.

Prescription Drug User Fee Act of 1992, Pub. L. 102-571, 106 Stat. 4491, as amended (21 U.S.C. §§ 379g–379h) — Establishing statutory deadlines for FDA drug reviews.

21 C.F.R. §§ 10.70 and 314.100(a) — Requiring complete and contemporaneous administrative records and governing timing and documentation of FDA action on drug applications.

FDA Manual of Policies and Procedures (MAPP) 4151.1 and 4151.8 — Re-review responsibilities and documentation requirements for drug applications.

29 C.F.R. Part 1614 — EEOC regulations governing federal-sector EEO complaints, hearings, and administrative judge authority.

Fed. R. Civ. P. 11(b) — Requiring that factual contentions have evidentiary support and are not presented for improper purpose.

Model Rule of Professional Conduct 3.3(a)(1) — Duty of candor toward the tribunal; prohibition against false statements of fact or law

STATEMENT OF THE CASE

I. INTRODUCTION

On June 13, 2025, the United States Court of Appeals for the Fourth Circuit issued an unpublished per curiam opinion affirming summary judgment against Petitioner in a Title VII retaliation case. **See Appendix A.** The panel stated that it had “reviewed the record and found no reversible error,” and dispensed with oral argument on the ground that the facts and legal contentions were adequately presented and that argument would not aid the decisional process.

This case presents a threshold constitutional and administrative question that neither the court of appeals nor the district court addressed: whether Article III courts may affirm agency personnel actions after the agency itself has formally conceded their unlawfulness and granted full retroactive relief, without addressing the legal consequences of that concession.

Here, the agency abandoned its prior justifications for the challenged actions and granted Petitioner retroactive relief, thereby conceding that those actions lacked a lawful basis under governing statutes and regulations. Nevertheless, the court of appeals affirmed the retaliation determinations by selectively crediting agency affidavits while disregarding binding regulations and record evidence, thereby sustaining agency action that the agency itself no longer defended.

That result was enabled by administrative proceedings in which Equal Employment Opportunity Commission (EEOC) Administrative Judges canceled or postponed scheduled hearings, failed to develop an evidentiary record, and issued bench decisions later upheld without independent judicial review. Together, these failures reflect a systemic breakdown in federal employment adjudication—one that permits conceded agency misconduct to survive judicial review, insulating unlawful personnel actions from independent Article III review.

A. Reinstatement of Patricia Hughes (April 2015)

On April 7, 2015, the Food and Drug Administration (FDA) reinstated Patricia Hughes—identified as the Responsible Management Official (RMO) in Petitioner’s 2011 EEO complaint (JA¹ 470 ¶5)—as Acting Branch Chief (JA 559). Hughes had not been selected during nearly two years of reorganization (JA 460 ¶13) and had last served temporarily as a supervisor from June 2011 to January 2012 (JA 454, 721–22 ¶¶ 2, 4). She held no supervisory role between February 2012 and April 2015 and prior to June 2011. Her reinstatement after more than three years’ absence departed from FDA’s prior structure. Once Hughes became Petitioner’s first-level supervisor in April 2015, four additional EEO complaints followed, three now before this Court.

B. HHS’s 2020 Acceptance Confirmed GS-13 and GS-14 Promotion

In March 2020, the U.S. Department of Health and Human Services (HHS) accepted the EEOC AJ’s binding finding that FDA unlawfully denied Petitioner’s GS-13 and GS-14 promotions², granting retroactive relief. DOJ and both courts continued to defend FDA’s denial of GS-13 for poor performance, disregarding the agency’s concession.

C. Escalating Retaliation (2015–2016)

From April 2015 through December 2016, Petitioner endured 27 documented retaliatory acts, detailed in Appendix E (Table of 27 Adverse Actions) and supported by contemporaneous Joint Appendix citations reflected in the District Court’s January 24, 2024 Order (JA 728-38). These acts formed a continuous, escalating pattern carried out or approved by the same supervisory

¹ Two Joint Appendices were filed: one of 688 pages on May 14, 2024, by Petitioner’s counsel, and another of 741 pages on October 7, 2024, by the Department of Justice. Both sets of JAs are contained in the Fourth Circuit docket. This Petition cites the DOJ JA numbering. It is unclear whether the Fourth Circuit reconciled citations between them. This distinction is relevant to the accuracy and completeness of the record considered.

² DOJ document production (Jan. 2023) confirms Petitioner’s GS-13 and GS-14 promotions effective in January 2011 and August 2015, and her occupational series as Series 0403 (Microbiologist) beginning in 2011, not as a Consumer Safety Officer. This contemporaneous personnel documentation confirms that Petitioner served as a scientific reviewer exercising independent professional judgment, the very role for which FDA’s protections for scientific dissent under MAPP 4151.8 and MAPP 4151.1 were designed. See App. F, Pet Ex- 18.

chain. Collectively, this conduct constituted a sustained retaliatory campaign for protected EEO activity, far exceeding the “materially adverse action” standard of *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53 (2006), and establishing an ongoing violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16(c).

Hughes and other FDA officials violated governing policies, weaponized assignments under PDUFA, 21 U.S.C. § 379h, created drug-safety risks, and manufactured a false “poor performance” record to deny GS-13. Despite HHS’s binding surrender correcting Petitioner’s grade and record, DOJ and both courts adopted FDA’s narrative, allowing the retaliation to persist.

II. APPEAL TO THE SUPREME COURT ON RETALIATION CLAIMS

Petitioner’s civil complaint presents four distinct retaliation claims (JA 40–43), arising from three EEO complaints EEOC Nos. 531-2017-00281X³, 531-2019-00247X⁴ and 531-2019-00560⁵ (Agency Nos. HHS-FDACDER-078-16, HHS-FDACDER-115-17, and HHS-FDACDER-078-18). These claims are substantiated by Defendant’s productions (pp. 1–2469) and the Joint Appendix (JA 1–741).

³ In EEOC Case No. 531-2017-00281X, the scheduled hearing was postponed and never rescheduled. See App. K. Despite the absence of a hearing, the Administrative Judge issued a bench decision. See ECF 36-36; JA 399–451.

⁴ DOJ has argued that EEOC Case No. 531-2019-00247X challenged only the numerical reduction of Plaintiff’s 2016 PMAP score from 2.2 to 1.99. That characterization is incorrect. DOJ’s own contemporaneous document confirms that Plaintiff challenged both the underlying 2016 PMAP rating and the subsequent further reduction. See Pet. Ex. 11. The courts nevertheless adopted DOJ’s narrower framing, despite contrary record evidence.

⁵ Plaintiff’s retaliation challenge based on the agency’s failure to end the OPPQ detail was raised in EEOC Case No. 531-2019-00560X, initially naming Johnson House as RMO; Hughes was later added as RMO after Plaintiff returned to her microbiology reviewer position under Hughes’s supervision.

In September 2022, the district court denied DOJ’s motion to dismiss, recognizing that Plaintiff plausibly alleged the OPPQ detail was motivated “at least in part, by reprisal.” JA 99. Without new facts or intervening law, the court’s January 2024 order reversed course, treating the same conduct as legally non-actionable.

EEOC Administrative Judge Modu’s March 6, 2020 Order required HHS to issue final agency orders in EEOC Case Nos. 531-2019-00247X and 531-2019-00560X, but HHS never complied. See App. J. The district court confirmed HHS’s noncompliance. See ECF 22, footnote 2 (JA 99).

Petitioner respectfully requests that this Court grant certiorari to review these retaliation claims, in light of substantial and un rebutted evidence demonstrating continuing retaliation following Petitioner's protected Title VII EEO activity.

III. PETITIONER'S BACKGROUND AND FEDERAL SERVICE

A. Educational Background

Petitioner earned a Doctor of Veterinary Medicine from Anhui Agricultural University (China), a Master of Science in Infectious Diseases and Preventive Veterinary Medicine from Nanjing Agricultural University (China), and a Doctor of Philosophy in Mucosal Immunology from the University of Saskatchewan (Canada), where she conducted research on IGF-1 and neonatal pig growth. In May 2010, she completed a Certificate in Clinical Pharmacology at the National Institutes of Health (Bethesda, MD) (JA 31-32 ¶12).

B. Federal Employment History per SF-50s (Defendant-Produced Record)

Petitioner's Federal Service and Performance Awards		
Period	Position/Office	Performance Awards/Note
1999-2002	Molecular Biologist, USDA, National Animal Diseases Center	Award (2000)
2002-2008	Research Fellow, NIH (Title 42)	Awards (2004, 2005)
2008-2010	Biologist, FDA/CDER/OBP	Awards (2009 x 2, 2010)
2010 - 2014	Consumer Safety Officer (Microbiology) FDA/CDER/OC	Awards (2011, 2013-2015)
2015-2016	Under Supervisor Patricia Hughes	Hughes unfairly rated Petitioner's PMAP 2015: 1.75 (JA 301) 2016: 1.99 (JA 299) Hughes proposed a removal Dec. 12, 2015, JA 682-695.
2016-2018	Detail to OPPQ	Award (May 8, 2018)
2018-2020	Returned to microbiology review	Hughes proposed Removal June 2019 Petitioner was removed on Jan. 9, 2020
2020 (March)	Agency conceded	Retroactive promotion to GS-13 in 2011 & GS-14 in 2015; JA 27-28 ¶ 3

Performance awards from multiple agencies over two decades demonstrate Petitioner's excellence, as shown above. Yet DOJ and both courts relied on Hughes's discredited 'poor performance' narrative notwithstanding HHS's 2020 concession.

IV. DEFENDANT'S VIOLATIONS OF EEOC AJ AND OFO ORDERS

A. EEO Complaints:

As hearings approached on Petitioner's original complaints (HHS-FDACDER-088-11-F; HHS-FDACDER-061-13), the FDA escalated retaliation by abruptly placing Hughes as acting branch chief, triggering four additional complaints, including: HHS-FDACDER-078-16 (2016), HHS-FDACDER-115-17 (2017), HHS-FDACDER-078-18 (2018). (ECF 36-JA 357-370, 384-388, 390-398), and HHS-FDACDER-062-19 (2019). The first three complaints (2016-2018) were expressly acknowledged in the district court's September 2022 Order (ECF-22 at 2-3, JA 97-98), and are incorporated in this petition.

B. Agency Noncompliance —Orders and Enforcement

Between March 2020 and June 2025, HHS repeatedly defied binding EEOC and OFO orders—failing to issue a final decision, renege on its formal concession of liability, ignoring multiple OFO noncompliance findings, and forcing Petitioner to file suit (Apps. D, G, H, J).

These repeated violations demonstrate the Agency's defiance of binding administrative orders. By disregarding this record, the lower courts rewarded noncompliance and undermined core due-process protections. This disobedience enabled continued retaliation—intensifying once Hughes was reinstated and culminating in 27 adverse actions (Appendix E) ignored by the courts. Supreme Court review is needed to correct this breakdown in enforcement.

V. CHALLENGE TO THE DISTRICT COURT'S OPINION (JA 728-738, Jan. 24, 2024)

A. Rebuttal to the District Court's Memorandum Opinion (JA 728)

The district court mischaracterized Petitioner's filings as mere 'administrative' matters (JA 728), disregarding their enforcement posture and constitutional implications. Petitioner filed formal federal-sector EEO complaints under Title VII, 42 U.S.C. § 2000e-16(c), alleging discrimination and retaliation. The court also omitted that Petitioner's first EEO complaint alleged both discrimination and reprisal—findings the EEOC Administrative Judge confirmed after a three-day hearing. (JA 668). These omissions produced a misleading account of the case.

The court also disregarded binding EEOC determinations, including the 2018 decision issued after a three-day evidentiary hearing establishing retaliation, and the 2020 final decision enforcing relief and awarding attorney's fees, treating them as irrelevant, thereby denying Petitioner the enforcement rights guaranteed by 42 U.S.C. § 2000e-5(g). This approach conflicts with 5 U.S.C. § 7703(c) and EEOC regulations requiring agencies to give effect to final EEOC decisions, including 29 C.F.R. §§ 1614.405(a) and 1614.503(a).

B. Fact Checks on the District Court's "Factual Background" JA 728-733

Fact Check-1. (JA 728–729): The District Court's six-sentence "Factual Background" misrepresented the record through selective omissions and distortions.

The court acknowledged Petitioner's race, national origin, and FDA position (ECF 43-6 at 3; JA 638), but omitted from the same page Petitioner's two doctoral degrees, master's degree, and multiple performance awards (JA 31, 453). At summary judgment, all reasonable inferences and record evidence must be viewed in the light most favorable to the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). This selective presentation improperly diminished Petitioner's professional standing and the probative force of her claims.

The court further downgraded Ms. Hughes's documented "strong opposition" to Petitioner's hiring (Order 9/26/2002, JA 97) to the weaker term "opposed," echoing Defendant's

denial (ECF 41-2 ¶ 1; JA 469), even though Hughes admitted “strongly oppose[d]” Petitioner’s hiring (JA 724, A to Q15). The court’s unexplained retreat from its prior finding—alignment with the agency’s mischaracterization—violated the duty of reasoned decision-making. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29 (1983).

The court also distorted the record by recasting Petitioner’s testimony—described elsewhere as clear and direct (ECF 36-3; JA 182)—as “evasive,” constructing a misleading credibility narrative. “On the same page (JA 643), the court ignored undisputed facts: (1) the EEOC stated Hughes strongly opposed Petitioner’s hiring, and (2) Dr. Don Obenhufer testified that Hughes said Petitioner had “significant difficulties with English.” The court also omitted that Petitioner ranked first among all candidates (JA 641).

Finally, the court cited Petitioner’s “minimally successful” 2011 rating (JA 644) while ignoring record evidence that she was “fully successful” in 2012 (ECF 43-6 at 13; JA 648) and again in 2013 and 2014 (JA 649), including the 2012 PMAP rating underlying Petitioner’s 2013 EEO complaint (ECF 41-1 ¶ 6; JA 454–55). By disregarding favorable evidence and crediting adverse inference, the court violated the rule that the non-movant’s evidence must be believed at summary judgment. *Tolan v. Cotton*, 572 U.S. 650, 657 (2014).

This selective citation and omission constitute improper credibility weighing at summary judgment, in violation of *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000), and *State Farm*. By crediting Hughes’s narrative while disregarding contemporaneous, corroborated evidence of bias, the court resolved factual disputes reserved for the jury.

Fact Check-2. The middle paragraph of JA 729 contains three sentences.

The district court stated that Petitioner was not hired at the GS-13 level, citing ECF 43-6 at 5-7 (JA 640–642), but omitted the same ECF at 33 (JA 668), where the EEOC Administrative

Judge expressly found unlawful discrimination based on national origin, race, and reprisal, in violation of Title VII, 42 U.S.C. § 2000e-16(a), and ordered retroactive promotions to GS-13 (Jan. 2011) and GS-14 (Oct. 2015). The court also omitted JA 27–28 (ECF 14 ¶ 3), confirming that the Agency fully implemented those orders on March 27, 2020, see App. I. The DOJ’s documents confirm GS-13 and GS-14 effective on Jan. 16, 2011 and GS-14 on Aug. 23, 2015, respectively, see App F, Exh. 18, establishing compliance under 29 C.F.R. § 1614.501(a).

At the time of the court’s opinion, the EEOC Office of Federal Operations had already ruled in August 2022, see App. G, that HHS failed to comply with the AJ’s Orders, yet the court ignored this binding OFO enforcement decision, contrary to 29 C.F.R. § 1614.503(g).

The court referenced Petitioner’s 2011 EEOC complaint and a “minimally successful” PMAP (ECF 41-2 ¶ 5), but omitted JA 470, where DOJ admitted Hughes was the Responsible Management Official (RMO) and that Petitioner alleged race, national-origin, and reprisal discrimination—material facts required by 29 C.F.R. § 1614.108(b).

The court likewise cited the 2013 complaint but omitted JA 454–455, showing that Qiu initially rated the 2012 PMAP “minimally successful,” later revised it to “fully successful,” yet still denied the GS-13 promotion, prompting a new EEOC complaint naming Qiu and Doleski as RMOs under EEOC MD-110, ch. 3 § I(B).

Both the district court and the Fourth Circuit ignored EEOC and OFO Orders granting two GS promotions. By treating those Orders as advisory, the courts nullified remedies mandated by 29 C.F.R. § 1614.502(a), contrary to *Frahm v. United States*, 492 F.3d 258 (4th Cir. 2007).

Fact Check-3. The last paragraph of JA-729 contains five material errors.

First, the court cited “Id. ¶ 7,” but ECF 41-2 ¶ 7 (JA 471) contains no reference to Doleski. Defendant admitted that Qiu—not Doleski—was Plaintiff’s first-level supervisor. Doleski’s July

21, 2023 deposition confirms he holds only a bachelor's degree and never earned a master's (Depo. 5:7-9; 6:9-11), yet the court nevertheless referred to him as "Dr."

Second, although the court acknowledged Plaintiff's "Fully Successful" ratings from 2012–2014 (ECF 43-6 at 13-14; JA 648-649), it omitted that Qiu initially rated Plaintiff "Below Fully Successful" and later revised the rating (ECF 41-1 ¶¶ 9-11; JA 459).

Third, the court noted LOR-1 but omitted that it was issued on September 29, 2014—two months after the alleged incidents—and not entered into Plaintiff's file until July 15, 2015, two days after Ensor's LOR (ECF 41-1 ¶ 12; JA 460; Pet Ex-1). Such delayed discipline, when linked to protected EEO activity, supports an inference of retaliation. See *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53 (2006); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). The court ignored the delay and evidence that the discipline was coordinated with Ensor.

Fourth, the court implied that Petitioner failed to invoke FMLA protection (ECF 41-2 ¶ 10; JA 471), despite Defendant's admission that Petitioner requested and was approved for intermittent FMLA leave (JA 471). The court disregarded undisputed evidence of statutory exercise under 29 U.S.C. § 2615(a)(2), the EEOC AJ's findings crediting medical harm (JA 652-653), and DOJ subpoenaed records showing a marked increase in psychiatric visits after protected EEO activity. Retaliation for exercising FMLA rights violates both the FMLA and Title VII. See 29 U.S.C. § 2615(a)(2); 42 U.S.C. § 2000e-3(a).

Fifth, the court cited LOR-2 for alleged failure to provide overtime information, but HHS records show that Barnes and Ensor pre-planned the LOR by on June 5 and 8, 2015 (App. F, Pet Ex-2). Plaintiff's July 9 and July 22, 2015 emails disproved Ensor's allegations, and a July 22 email confirmed that Hughes and Qiu refused to sign off on the PMA (Pet Ex-3). Hughes later confirmed the PMA supplement met the applicable deadline under Medical Device User Fee Act

Amendments (“MDUFA”), 21 U.S.C. § 379j et seq. (JA 465). By May 18, 2015, Plaintiff had already reported more than twenty hours of overtime, which Ensor acknowledged and directed her to log (Pet Ex-4). These contradictions support an inference of pretext. See *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 511 (1993).

In sum, LOR-1 (delayed) and LOR-2 (disproven) demonstrate coordinated retaliation⁶, yet the court overlooked documentary contradictions, disregarded binding EEOC findings, and ignored Defendant’s own admissions.

Fact Check-4. Four statements in the first paragraph of JA-730 conflict with the record.

1) although the court cited Ensor’s deposition (ECF 41-9, 7:5–16; JA-524), it ignored her incorrect claim that Petitioner produced BLAs from a CMC perspective (ECF 41-9, 7:12–13; JA-526). No Branch IV or DMA reviewer produced BLAs from a CMC perspective, and the court recognized Petitioner’s duties limited to microbiology quality review (JA-728–729).

2) the court stated that “Hughes again replaced Metcalfe as first-level supervisor,” citing ECF 41-10 (JA-528) and ECF 42-3 (JA-559), but neither supports that claim. The record shows Hughes’s supervisory role was temporary, from June 2011 to early 2012 (JA-454). The court further stated Petitioner “timely submitted assignments until April” (ECF 41-10; JA-528),

⁶ DOJ knew that Qiu issued a Letter of Reprimand (LOR) on September 29, 2014, based on two reviews that Qiu had already signed off in July 2014, but did not enter the LOR into Petitioner’s personnel file until July 2015. DOJ also knew that Ensor’s LOR was baseless and fabricated. During her deposition on May 8, 2023—conducted in DOJ’s presence—Ensor offered no defense for any of the seven fabricated incidents listed in her LOR when presented with Petitioner’s contemporaneous responses to each incident. DOJ’s own documents, p. 2189–2192 (App. F; Pet. Ex. 3), confirm that Ensor’s LOR lacked factual support. Despite this knowledge, DOJ continued to defend and rely on both LORs as legitimate discipline, supporting a reasonable inference that DOJ intentionally defended disciplinary actions it knew were indefensible. The district court compounded this error by omitting and failing to address Petitioner’s sworn declaration describing both LORs, ECF 42-1 ¶¶ 12, 18 (JA 460, 462), and by adopting DOJ’s distorted account rather than the undisputed record evidence before it. This chronology demonstrates coordinated retaliation inconsistent with federal anti-reprisal law, 29 C.F.R. § 1614.101(b), and FDA supervisory policy, FDA MAPP 4000.

confirming submissions through April 2015. That exhibit also showing Review 125147/202 was submitted May 29, 2015, but Hughes did not sign until September 1, 2015 (JA-528), missed the PDUFA timeline. The court omitted that Petitioner was then placed on administrative leave.

3) the court omitted that Ensor announced Hughes as Acting Branch Chief on April 7, 2015 (JA-559), roughly three months after the reorganization, and that Hughes had not been selected during the nearly two-year reorganization process (JA 460–461 ¶ 13).

4) while citing ECF 42-5 (JA-561), the court noted Ensor denied offering the detail but omitted that she had offered it months earlier (ECF 42-5; JA 561–562). The court also ignored ECF 42-4 (JA-560), showing Petitioner sought Ensor’s support for Dr. Metcalfe as secondary reviewer on the CDRH PMA-DP project without Hughes and reported she was on sick leave due to fear of Hughes’s appointment.

Conclusion. All four statements in JA-730 misstate the record and disregard exhibits (ECF 41-1, 41-9, 41-10, 42-3, 42-4, 42-5). As this Court held in *Anderson v. City of Bessemer City*, 470 U.S. 564, 573–74 (1985), and reaffirmed in *Tolan v. Cotton*, 572 U.S. 650, 657 (2014), a court may not misstate or selectively disregard evidence to reach a predetermined conclusion.

Fact Check-5. Errors in the second paragraph of JA-730 regarding Review No. 125147/202.

1) Mandatory documentation ignored. The court relied on Mr. Doleski’s deposition (ECF 36-21; JA 277–281) while completely ignoring binding authorities requiring contemporaneous documentation of regulatory decisions, including 21 C.F.R. § 10.70 (JA 583) and CDER MAPPs (JA 582-594). These authorities require FDA to preserve completed scientific reviews and to resolve disagreements through written documentation and formal dispute-resolution mechanisms. Prescription Drug User Fee Act (PDUFA), 21 U.S.C. § 379h requires the timely completion of reviews conducted under PDUFA. Deadlines imposed by 21 U.S.C. 379h are statutory constraints,

not internal targets. FDA's implementing regulatory and policies—including, 21 C.F.R. § 10.70⁷, MAPP 4151.1⁸ and MAPP 4151.8⁹—govern how such reviews must be documented and how regulatory or scientific disagreements must be resolved.

2) Filings and edits omitted. The court disregarded ECF 41-1 ¶ 19 (JA 462–463) and ECF 42-6 at 1 (JA 563), which show that Petitioner submitted the draft review on May 29, 2015, ahead of the June 15, 2015 PDUFA date. The record further shows that Petitioner addressed approximately twenty tracked edits and six email comments (ECF 42-6 at 6–10; JA 568–572). Despite this, Hughes and Ensor demanded a third media fill on June 12 and June 15 (JA 564–565), ignored Petitioner's PMC recommendation (JA 565), and delayed sign-off until September 1, 2015, even though revised review included a 3rd media fill data had been provided on July 1, 2015 (JA 528).

3) Drug-name error and mischaracterized deficiencies. Although the court cited ECF 42-6 at 6–10, it misstated what the document shows. The record reflects that Hughes changed the correct

⁷ Under 21 C.F.R. § 10.70, FDA must retain all completed review memoranda and individual professional opinions in the administrative file, including supervisory disagreements and their resolution. Reassigning or replacing completed reviews to remove or negate such opinions is inconsistent with this requirement and with FDA's own concept of "alignment," which permits differing scientific views but forbids their suppression.

⁸ FDA MAPP 4151.1 expressly requires that when a supervisor or secondary reviewer disagrees with a primary reviewer, the supervisor or reviewer must prepare a written memorandum describing the disagreement. JA-585 ¶ 8. The policy further provides that CDER "expressly prohibits retaliation in any form," including even the appearance of retaliation, against FDA reviewers for expressing professional scientific opinions. JA-586 ¶ 12. Scientific disagreements must therefore be resolved through documented, non-retaliatory procedures—not through reassignment, discipline, or exclusion of the dissenting reviewer.

⁹ FDA MAPP 4151.8 reinforces this requirement by providing that professional opinions—whether from a primary reviewer, secondary reviewer, or supervisor—are of equal importance and may not be suppressed or overridden through adverse action or reassignment. JA-592. When alignment cannot be reached, the policy mandates escalation through established management channels and, where appropriate, invocation of the Differing Professional Opinion process—not replacement of the reviewer whose opinion is disfavored.

Taken together, 21 C.F.R. § 10.70, MAPP 4151.1, and MAPP 4151.8 require FDA to preserve completed scientific reviews and to resolve disagreements through written documentation and formal dispute-resolution mechanisms, rather than by reassigning or replacing reviewers to suppress dissent or retaliate.

drug name to an incorrect one (ECF 42-6 at 6; JA 568). The court asserted “additional deficiencies” without identifying any initial deficiency and omitted that, on the June 15, 2015 PDUFA date, Ensor demanded a third media fill (ECF 42-6 at 2–3; JA 564–565). The court also ignored record evidence that Petitioner explained—supported by regulatory and scientific analysis—why two media fills were sufficient and raised professional-opinion concerns (ECF 42-6 at 4–5; JA 566–567). Neither Hughes nor Ensor responded. Petitioner proposed a PMC to obtain third-media-fill data without missing the PDUFA deadline, but both again ignored her proposal (ECF 42-6 at 3; JA 565).

4) PDUFA deadline minimized. The court mischaracterized the June 15, 2015 PDUFA date as a “target,” despite its statutory mandate under 21 U.S.C. § 379h. Treating the deadline as optional disregards record evidence showing that a last-minute request made between June 12 and June 15, 2015, prevented timely completion (ECF 42-1 ¶ 19; JA 462–463).

5) The court also ignored ECF 42-1 (JA 529–530), which shows that despite concurrent assignments—including completion of a CDRH PMA-DP review on April 24, 2015 (JA 531–558)—Petitioner remained timely, completed additional reviews on May 21 and May 27, 2015 (JA 528), and met all deadlines until Hughes and Ensor intervened.

Conclusion. By crediting deposition testimony while disregarding documentary evidence and binding FDA regulations, the court failed to consider important aspects of the problem. See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Vitarelli v. Seaton* 359 U.S. 535, 539–40 (1959); *Butte County v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010); *Sierra Club v. EPA*, 828 F.2d 783, 792 (D.C. Cir. 1987).

Fact Check-6. Errors in the Last Paragraph of JA-730 regarding review 103234/5358. The courts misstated the record in three material ways:

1) Submission and PDUFA date. The court claimed Petitioner submitted her draft on June 12, 2015—four days before a “targeted” completion date, citing 42-7 at 5 (JA 577). In fact, Petitioner stated PDUFA deadline was June 16, 2015, and recommended approval (JA 577). The court omitted record evidence showing Petitioner sought an information request for additional two media fills (JA 573) per Ensor’s requirement for 125147/2020 (JA 564).¹⁰

2) Misleading review timeline and omitted response. The court stated that four days was insufficient for Hughes to complete review (ECF 42-7 at 6–7; JA-578–579). But ECF 42-7 at 6 (JA-578) shows Petitioner informed Ensor—using Hughes’s own prior standard applied to STN-103795/5510—that STN-103234/5358 could have met its PDUFA deadline despite two deficient media fills. Petitioner emphasized that none of her reviews had ever missed a PDUFA deadline and requested reassignment due to Hughes’s bias from pending EEO complaints. The court also omitted ECF 42-7 at 9 (JA-581), showing that Ensor—not Petitioner—had missed two PDUFA deadlines and that Petitioner requested an alternate secondary reviewer. Although the court cited *Id.* at 4–5 (JA-576–577) as Petitioner’s June 16, 2015 response, it ignored her same-day 2:05 PM written response to Hughes’s comments in the record (JA-576).

3) False completion date. The court stated the review was completed in September 2015, citing *Id.* at 8 (JA 580). In reality, JA-580 shows Petitioner questioned why Hughes disregarded

¹⁰ The district court acknowledged that Petitioner’s performance was “Fully Successful” from 2012–2014 and that her reviews were timely submitted and signed off through April 2015 (JA 729–730), undermining any performance-based justification. However, the court failed to credit evidence that the two reviews missing PDUFA deadlines resulted from Hughes’s retaliatory actions, notwithstanding the court’s recognition that Hughes undertook a series of actions aimed at removing Plaintiff, including targeting Plaintiff’s review work because English is not her first language (ECF 22 at 2; JA 97). The DOJ likewise ignored Hughes’s role in causing the missed PDUFA deadlines and her admission that the CDRH PMA did not miss its MDUFA deadline (JA 465). Both courts and DOJ further ignored that Hughes used this episode to impose three punitive actions in August 2015—denial of a grade-step increase (JA 464), termination of telework (JA 607–608), and alleged work deficiencies (JA 601–606)—in violation of 21 C.F.R. § 10.70 and MAPP 4151.1 ¶ 12 (JA 586), and contrary to MAPP 4151.8 (JA 592). Notwithstanding the courts’ and DOJ’s rejection of Petitioner’s claims, the agency itself had already conceded wrongdoing in March 2020 by agreeing to retroactively promote Petitioner to GS-13 effective 2011 and GS-14 effective 2015.

her own prior concerns and what the signed-off review differed from Petitioner's review. The court completely ignored ECF 41-1 ¶ 20 (JA 463–464) that confirms the reassigned review merely copied Petitioner's work and still lacked data from the second and third media fills, raising a drug-safety risk and was already functionally completed in July 2015. Reassigning a completed review violated FDA recordkeeping rules.

Conclusion. By crediting misstatements and omitting contrary record evidence, the court upheld retaliatory reassignment of completed reviews, contrary to FDA regulations and binding precedent. Between April and October 2015, while Hughes¹¹ served as acting supervisor, FDA committed ten retaliatory acts documented in DOJ's Joint Appendix (JA-741) and summarized here in Appendix E, Table of 27 adverse actions. Such reassignments constitute materially adverse actions under *Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53 (2006), and support an inference of retaliation under *Foster v. Univ. of Md.–E. Shore*, 787 F.3d 243.

Fact-Check 7. (JA 731, first paragraph). The Court erred in sustaining a 14-day suspension without pay that was caused by Hughes's own mistakes in Review 125058/242.

1) Hughes's sworn admission of error. Hughes admitted under oath that she "inadvertently" inserted typographical errors because she was a "poor typist" (JA 731 n.3). This March 13, 2023 admission concerns events in late 2015 and raises unanswered questions about when Hughes

¹¹ Although the courts and DOJ rejected Petitioner's retaliation claims, neither addressed multiple contemporaneous removal-related actions documented in the administrative record. ECF 43-13 (JA 682-695) records Hughes's initiation of a proposed removal in December 2015; ECF 43-11 (JA 678) reflects FDA's acquisition and circulation of Petitioner's medical records through FOH and discussion of alleged medical inability to perform in October 2015; ECF 43-10 (JA 676-677) shows FDA revising an AWOL charge to a focus-threat allegation while preparing removal specifications in December 2015. In addition, ECF 43-4 (JA 634-635) shows Petitioner placed on administrative leave without stated cause in December 2015, and ECF 43-11 (JA 679-681) reflects referral of Petitioner's employment matter to a criminal investigation in December 2015. See also Fn.11 (describing the retaliatory predicate used to justify these actions and the agency's March 2020 concession of wrongdoing).

recognized her error-proneness and what corrective steps—if any—she took before imposing discipline on Petitioner.

2) Bias and targeting. The Court ignored its own statement that Hughes strongly opposed Petitioner’s hiring and undertook a series of actions to remove her, including targeting her work for review (ECF 22 at 2; JA 97), demonstrating retaliatory motive, not performance.

3) Petitioner’s performance record. Before Hughes became her supervisor, Petitioner consistently met deadlines and earned fully successful ratings (JA 528, 531–558, 648–649, 729). On April 7, 2015—the day Hughes was announced as acting supervisor—Petitioner requested the same detail previously offered by Ensor (JA 561–562). Hughes then took three punitive actions in August 2015, after Hughes and Ensor missed the mandated June 2015 deadlines for Reviews 125147/202 and 103234/3538, and CDER PMA-DS original review (See Fn 11). These undisputed facts contradict any finding of insubordination and show the suspension stemmed from Hughes’s retaliatory animus.

4) The Court’s internal contradiction. Although the Court later acknowledged that Hughes was a poor typist (JA 731 n.3), confirming Petitioner’s account, it shifted blame to Petitioner and sustained a suspension based on Hughes’s documented errors—disregarding undisputed facts concerning Review 125058/242 (ECF 41-1 ¶¶ 24–26; JA 466–467).

5) Misrepresentations of the record. The Court repeatedly misstated the evidence by claiming that: (a) Review 125058/242 was submitted almost one month before the “target date,” when it was submitted approximately one month before the PDUFA date; (b) Petitioner “missed the point” of the submission (JA 708–709), without identifying any missed point; (c) *Id.* at 11–12 shows that Petitioner professionally responded to Hughes’s statement the same day at 2:23 PM, finalized the review on November 29, 2015, and repeatedly requested adherence to CDER MAPP

4151.8 (JA 714, 716, 718), contrary to the Court’s statement that “Plaintiff again disagreed”; and (d) Petitioner finalized the draft the same day as Hughes’s direction—not the following day—when no other supervisor existed (JA 717–718).

6) Retaliation and pretext. The 14-day suspension was premeditated retaliation, not insubordination. Under *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 362 (2013), retaliation requires but-for causation; here, “insubordination” was mere pretext (JA 731). *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000), recognizes that shifting explanations are strong evidence of pretext. A suspension grounded in Hughes’s own admitted errors cannot withstand scrutiny.

In sum, the Court ignored ECF 41-1 at 5–6 (JA 456–457), showing that Hughes targeted four of Petitioner’s reviews in 2012, and ECF 41-1 ¶¶ 19–20 (JA 462–465), showing that Hughes again targeted two reviews in June 2015 (Fact-Checks 5 & 6), together with actions involving a CDRH PMA review, culminating in three disciplinary actions imposed in August 2015. The Court also failed to acknowledge that Hughes herself proposed the 14-day suspension based on her own admitted errors in Review 125058/242 (JA 731 n.3), and omitted ECF 43-3 (JA 623-33), which documents extensive deletions and the insertions of at least fifteen errors by Hughes.

Although Hughes prepared multiple versions of the reviews, she never disagreed with Petitioner’s regulatory recommendations in any review from 2012–2016. The three representative reviews identified by the district court (Fact-Checks 5–7) instead demonstrate that Hughes repeatedly violated 21 C.F.R. § 10.70 and MAPP 4151.1 and MAPP 4151.8 (See Fn 7-9) by escalating retaliation in the absence of any scientific or regulatory disagreement.

Fact Check-8. The last paragraph of JA-731—Hughes’s second specification for the 14-day suspension regarding Petitioner’s August 2015 leave—conflicts with the record.

1) Defendant's evidence (HHS-Doc 365¹²; Pet Ex-5) shows that on August 11, 2015, Hughes denied Petitioner's leave request and immediately notified Ensor, copying Shaunta Barnes. Ensor concurred and instructed Hughes to confirm whether the request was annual leave rather than FMLA-AL. Id. Yet, on August 25, 2015, Hughes conditioned approval of that same leave on completion of five reviews. This unexplained shift evidences retaliation, not supervision. The FMLA prohibits interference with or retaliation for exercising leave rights (29 U.S.C. § 2615(a)(1)–(2); 29 C.F.R. § 825.220). Courts likewise recognize that imposing onerous conditions or shifting justifications to penalize protected activity constitutes retaliation (*Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53 (2006); *Foster v. Univ. of Md.–E. Shore*, 787 F.3d 243, 252–54 (4th Cir. 2015)).

2) HHS-Doc p. 378 shows that on July 28, 2015, Ensor questioned whether Petitioner could be “forced” to take FMLA, while p. 379 reflects a July 27, 2015 notice that assigning a different second reviewer would improve productivity and health (Pet Ex-6). HHS-Doc p. 980 further confirms that on August 10, 2015, Ensor stated Petitioner's leave would not be denied if classified as sick or FMLA leave (Pet Ex-7). This evidence confirms that FDA—through Hughes, Ensor, and Barnes—violated federal law (5 U.S.C. §§ 6302–6303; 5 U.S.C. § 6122(b)).

3) The district court's third and fourth sentences omitted critical context from JA 482–483. Hughes caused the missed June 2015 PDUFA deadline for review 125147/202 (see Fact Check-5), then demanded Petitioner update it on August 25, 2015. On August 26, Petitioner provided

¹² HHS Doc. 365 confirms that Hughes denied Petitioner's August 2015 leave request within approximately ten minutes of its submission in ITAS. Pet. Ex. 5. That denial was later repurposed as Specification 2 supporting the 14-day suspension, a theory DOJ defended at summary judgment and on appeal. DOJ's own document, USA 5664, reproduces the same ITAS timing reflected in HHS Doc. 365.

completion dates for all five requested reviews, and confirmed earlier submissions (May 29; June 5, 9, 16; and July 1). Despite this, Hughes denied Petitioner's 88-hour leave at 9:00 a.m. before Petitioner's 1:29 p.m. response on Aug. 26 (JA 482–483).

4) The court's fifth through seventh sentences misstated facts while citing JA 484–485. On August 28, 2015, Petitioner informed Doleski that she had over 300 hours of leave, provided completion dates, and assumed approval absent a response. Later that day, she again sought Doleski's intervention because Hughes withheld approval authority—although Doleski¹³ was not the designated Leave-Approving Official in 2011–2012 (Pet Ex-8).

5) The court also omitted facts. On September 1, 2015, Petitioner submitted memos for CBE30-125289/125 and DMF-10304 (JA 485–486), well before the October 3, 2015 PDUFA date. Hughes admitted she mistakenly listed October 3 as the deadline (JA 486). On September 9, Hughes confirmed that 125289/125 had been reassigned on July 7, 2015, yet still listed it as pending on August 25 and gave no explanation for signing off that review without reviewing DMF-10304 (JA 486–489). The Court omitted Hughes's admitted errors.

6) On September 9, 2015, after completing all conditioned reviews, Petitioner again requested leave. Only one of the five reviews had been signed; four remained pending (JA 489–490). Ensor redirected Petitioner back to Hughes. On September 10, Petitioner resubmitted the Leave request and notified Acting OPF Director Doleski (JA 490–492). Hughes did not approve the leave until September 14, 2015, one day before scheduled travel (JA 493). The court

¹³ DOJ acknowledged that Doleski approved Petitioner's leave in 2011–2012, which Hughes nonetheless withheld, despite Doleski not being the designated Leave-Approving Official. See Pet. Ex. 8. DOJ later treated Petitioner's renewed request to Doleski for leave approval as insubordination and relied on it as Specification 2 for the 14-day suspension, without explaining why Doleski's approval was accepted in 2011–2012 but treated as a disciplinary violation in 2015.

overlooked Hughes's repeated denials and delays throughout August–September 2015, which prolonged uncertainty and required intervention—setting the stage for later pretextual discipline.

The 88-hour leave request was later misused as Specification-2 of the proposed 14-day suspension, issued February 12, 2016 (JA 184–186). The Court misstated the chronology and omitted supporting record citations, including ECF 41-1 ¶ 28-30 (JA 467–468); ECF 36-4 (JA 184–186); ECF 43-6 (JA 634–635); and ECF 36-17 (JA 253–254). The “Table of 27 adverse actions” (Appendix E) shows at least eight retaliatory actions against Petitioner between October 28 and December 17, 2015, all closely connected with Hughes being a supervisor.

Furthermore, the Court failed to acknowledge Defendant's own Admission, JA 475 ¶ 27 that Hughes and Ensor denied Petitioner's leave 27 times in 2015 — including 14 denials between August and September — and improperly denied three hours of FMLA leave on July 30 (JA 600). The Court also completely disregarded the record showing that in June 2015 Ensor denied the leaves that Petitioner had already taken in November - December 2014, (JA 599-600), and that Barnes explicitly instructed Hughes-Ensor to cease pursuing AWOL charge and instead concentrate on “threat assessments” and preparing the proposed removal (JA 676). These omissions reveal the Court's intent to minimize clear evidence of a continuing and premeditated pattern of retaliation by Hughes, Ensor and Barnes.

Fact-Check 9. The first paragraph at JA 732 contains four sentences addressing Hughes's third specification for the proposed 14-day suspension without pay and omits critical evidence.

1) Administrative Leave and Escorted Removal Ignored. The court overlooked undisputed evidence that Petitioner was placed on involuntary administrative leave on December 7, 2015 (JA 634–635), escorted by armed guards (JA 467 ¶ 28), and excluded from work for two months. Instead, it relied on an FDA investigator's conclusory description of Petitioner as “yelling,

demanding, and confrontational,” without a single supporting example (ECF 41-1 ¶ 29; JA 468), and ignored Hughes’s February 2016 proposal for a 14-day suspension (ECF 41-1 ¶¶ 29–30; JA 468). In citing ECF 36-13 at 3, 2, and 4–7 (JA 239, 238, 240–243), the court failed to address Hughes’s explanations (JA 238), her denial of Petitioner’s repeated requests for FDA policy justifying the asserted “inefficient use of FDA resources” (JA 240), her failure to answer Petitioner’s questions (JA 242), and Hughes’s mid-2015 PMAP reflecting retaliation (JA 243).

2) Credit-Hour Dispute Timeline Misstated. The court misstated the timeline of the credit-hour dispute, which began in October 2015—not November (JA 494). Petitioner questioned the newly imposed “blanket approval” requirement (ECF 41-6 at 1–2; JA 494–495) and its application despite prior approvals by Ensor and Hughes (JA 496). On November 13, Hughes claimed she had “explained” the requirement but provided no example (JA 498). On November 24, Petitioner asked Ensor to stop Hughes’s harassment and whether Ensor had initiated a root-cause investigation into missed PDUFA/MDUFA deadlines (JA 504). On December 1 - 2, Hughes again refused to provide explanations and continued denying credit hours (JA 505–507).

3) Record Citation Mischaracterized. The court cited Petitioner’s deposition testimony, ECF 36-3 at 79:16–21 (JA 152), for the claim that Petitioner “never corrected her timesheet.” That testimony establishes only that Petitioner questioned the legality of a blanket-approval requirement; it does not state that she refused or failed to correct a timesheet. By treating this testimony as evidence of noncompliance, the court portrayed Petitioner as insubordinate despite the absence of any such admission in the cited record.

Contemporaneous documents instead show coordination between management and Labor

& Employment Relations that is inconsistent with that portrayal. See ECF 44-1¹⁴ (JA 702–704).

4) Agency Admissions and Comparator Evidence Omitted. The court ignored Defendant’s Admission #24 (JA 474), admitting that Petitioner’s March–October 2015 credit time was approved by Metcalfe, Ensor, and Hughes without blanket approval. Contemporaneous management communications undermine the court’s portrayal of unilateral insubordination and show coordinated supervisory handling of Petitioner’s timekeeping issues. Defendant relied on ECF 36-12 (JA 236), a May 21, 2015 email from Melody Lescalleet, for Specification 3 of the suspension. Lescalleet forwarded her May 21 email to Hughes on December 1, 2015, yet the record provides no explanation for that forwarding.

HHS records (pp. 520–745 of 987) confirm that Hughes and Ensor applied blanket-approval rules only on November 17, 2015 and January 16, 2018, while Lescalleet and Candau-Chacon never applied it, notwithstanding Lescalleet’s May 21 email. Other evidence shows Candau-Chacon, Lescalleet, Ensor, and Hughes all earned and used credit hours throughout 2015 (Defendant Docs., UAS 3184–3244, UAS 3465–3517, UAS 3295–3349, UAS 3411–3462).

5) Pattern of Escalating Retaliation Ignored. The district court ignored undisputed evidence of escalating retaliation accelerating in late 2015, when management repeatedly pursued Petitioner’s removal¹⁵ and culminating in the February 12, 2016 14-day suspension. See Appendix E (Table of 27 Adverse Actions).

¹⁴ ECF 44-1 (JA 702) shows that Ensor sought to revise the rationale for denying Petitioner’s credit hours after learning that management had previously approved those hours without any blanket agreement. Ensor explicitly debated whether to “provide Cindy with a rationale” or to “simply stick with” the claim that no blanket approval existed. This contemporaneous exchange confirms that the denial was not based on any timekeeping rule, but on a post hoc justification adopted only after the original basis proved untenable. Despite this documentary evidence of prior approval, DOJ defended the altered rationale in both courts. Both Courts entirely omitted ECF 44-1, despite its central relevance.

¹⁵ DOJ and both Courts denied Petitioner’s retaliation claims. None, however, disputes that FDA’s retaliation escalated from internal removal proposals on October 28, 2015 (JA 678) and December 8, 2015 (JA 676) to a formal Proposed Removal on December 12, 2015 (JA 682–695). In total, FDA pursued removal three times within six weeks in 2015.

In sum, the court's paragraph at JA 732 lacks record support, ignores multiple ECF filings, and overlooks agency admissions directly relevant to Specification 3¹⁶. See *Stone v. FDIC*, 179 F.3d 1368, 1376–77 (Fed. Cir. 1999); cf. *Kloeckner v. Solis*, 568 U.S. 41, 44 (2012).

Fact Check-10: The second paragraph of JA 732 rests on legally improper record distortion.

1) The court omitted the fact that the 14-day suspension was without pay, materially minimizing the severity of the adverse action. Although the court cited ECF 36-4 (JA 184–186), it failed to acknowledge that Hughes proposed a 14-day suspension without pay. The court also omitted the final paragraph of JA 264, which confirms the suspension was without pay and followed extensive administrative leave. Together, these periods comprised nearly half of 2016.

2) The court reshuffled citations to mask repetition and conceal the most probative evidence. It repeated statements already made at JA 731–732 but cited different ECF filings without acknowledging their duplicative substance and without citing ECF 36-18 at 10 (JA 264), which establish the unpaid nature and timing of the suspension. Rather than addressing a distinct issue, the court merely restated the same conduct using different citations, avoided the substance of the adverse action, and made no findings on the three specifications underlying the 14-day unpaid suspension imposed in late 2015.

3) The court misstated the record concerning Petitioner's EEO filing and Administrative

¹⁶ The court's analysis improperly compartmentalized the three specifications supporting the 14-day suspension while ignoring undisputed timing and context. The suspension proposal issued on February 12, 2016 (JA 184–186)—just two days after Petitioner returned from more than two months of involuntary administrative leave, a fact Hughes confirmed (JA 264 ¶ last). That proposal did not arise in isolation. From April 2015, when Hughes became acting supervisor, through April 2016, Petitioner was subjected to a continuous sequence of adverse actions, including Hughes-Ensor's June 2015 reviews missing a PDUFA-mandated deadline, two Letters of Reprimand in July 2015, three punitive actions in August 2015, over two months of involuntary administrative leave, disclosure of her FMLA application, Office of Criminal Investigation involvement, proposed removals in October and December 2015, and a falsification charge. See Table of 27 Adverse Actions, App. E. By crediting each specification in isolation while disregarding this undisputed chronology, the court materially distorted the record.

Leave status, distorting the chronology. The court incorrectly stated that Petitioner filed her third EEO complaint on June 2 by citing ECF 36-28 at 6 (JA 362), when the filing appears at ECF 36-28 at 5 (JA 361), and the cited page merely attaches confirmation that the June 2, 2016 complaint challenged the 14-day suspension without pay. The court also misstated that Petitioner added claims on September 6 (citing ECF 36-30), when the record shows she was placed on Administrative Leave on September 2, 2016, sought an extension on September 8 due to resulting health damage, and remained on Administrative Leave through December 2016. See ECF 36-18 (JA 264); ECF 20-7 (JA 83–84).

In sum, by (1) omitting a material fact (“without pay”), (2) concealing key record paragraphs through citation reshuffling, and (3) misstating undisputed dates and filings, the district court’s factual account at JA 732 rests on the type of selective record treatment the Supreme Court has deemed clearly erroneous. *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Pullman-Standard v. Swint*, 456 U.S. 273, 286–87 (1982).

Fact Check 11. JA 732 (last paragraph) and JA 733 (first two lines) consist of six sentences, each of which distorts or omits material record evidence.

1) First sentence. The court minimized the record, despite citing ECF 36-23 at 5–6 (JA 300–301), by stating that Hughes reassigned “at least two” of Petitioner’s reviews, when Hughes herself confirmed that the reassignment at issue was the fourteenth instance since June 2015 (JA 301) and separately admitted that 7 of Petitioner’s 20 assignments had been reassigned (JA 264). The Court also failed to address Hughes’s admission, in the same ECF 36-23 it cited, that Hughes rated Petitioner’s 2015 and 2016 PMAPs at 1.75 and 1.99 (JA 298). The Court again omitted Hughes’s statements that Petitioner was on administrative leave (Dec. 2015 – Feb. 2016; Sept. 2 – Dec. 5, 2016) and suspension April 6-20, 2016. ECF 36-23 at 4 ¶ 1 (JA 299).

2) Second sentence. The court expressed no concern about Petitioner's 2016 PMAP being issued on June 21, 2017, citing ECF 36-18 at 2, 8. However, the Agency's Associate Director for Human Capital Management warned that issuing the rating so late—without documentation supporting a lower score—violated internal policy and weakened the Agency's legal position. See Pet. Ex. 13 at 4 (DOJ doc. p. 1479).

3) Third through sixth sentences. The court cited ECF 36-18 at 4–7, ECF 36-19, and ECF 36-33 at 2 (JA 384), yet mischaracterized Petitioner's 2016 PMAP claim as involving only a numerical downgrade from 2.2 to 1.9. That characterization ignores controlling evidence. The Agency's EEO Acceptance Letter (ECF 36-33 at 2 (JA 384)) confirms that Petitioner alleged a broader retaliatory scheme, including reassignment of completed reviews, inconsistent edits, insertion of errors into review memoranda, and deletion of information requests to create the appearance of deficient performance. DOJ's own document at p. 1423 (Pet. Ex. 11) further shows that Petitioner filed an EEO complaint over the PMAP rating and an additional score reduction.

Summary. Fact Checks 1–11 establish a sustained pattern in which the district court minimized, recharacterized, or omitted undisputed record evidence to reject Petitioner's retaliation claims—principally by emphasizing alleged insubordination while obscuring objective performance facts.

Neither the court nor DOJ disputes that Hughes rated Petitioner's 2015 and 2016 PMAPs at 1.75 and 1.99 (ECF 36-23 at 3; JA 298). DOJ's own filing (ECF 36-23 at 4 ¶ 1, JA 299) assess that Petitioner did not sign the final 2016 PMAP, while the record included signed PMAP documents (pp. 1607, 1613) and MAPPs 4151.8 and 4151.1 (pp. 1570-1582), reflecting an internal inconsistency in the government's presentation of the PMAP and governing MAPPs. Yet, when

assessing temporal proximity, the court omitted the 2015 PMAP from its five-point analysis (JA 736), distorting the causal timeline.

Although the court acknowledged that Petitioner's performance was "fully successful" from 2012–2014 (JA 729), it omitted undisputed evidence that she performed excellently for twenty months while detailed to OPPQ, when Hughes was not her supervisor, as confirmed by DOJ (ECF 36-3, 127:12–13; JA 180) and Jacquita Johnson House (JA 59; A to Q11). Petitioner's only alleged performance deficiencies coincided exclusively with Hughes's supervision, a causal inconsistency the court failed to address.

The court likewise minimized adverse actions by reducing Hughes's admissions that she reassigned a fourteenth review (JA 301) and reassigned 7 of Petitioner's 20 reviews (JA 264) to merely "at least two" reassignments, despite continued reassignment through termination.

Finally, the court omitted DOJ's concession that the Maria Candue-Chacon ("MCC") document contained disparaging remarks (JA 175), failed to address evidence of reassigned causative reviews, PMAP manipulation, missed PDUFA deadlines, and pretext (see Fact Checks 7–10), and ignored evidence that the Agency admitted wrongdoing in March 2020 (JA 28) and that DOJ records reflect a retroactive GS-14 promotion effective August 2015 (Pet. Ex. 18).

Fact Check-12. JA 733, Second Paragraph, six sentences, contradicting Court's earlier decision.

1) September 2022 Findings. In its September 2022 Order (JA 96–104), the District Court acknowledged Petitioner's 20-month OPPQ detail from December 2016 to July 2018 (JA 99). The Court recognized that the detail placed Petitioner outside her microbiology expertise, occurred while microbiology vacancies remained open (JA 480), and was potentially relevant to retaliation.

2) January 2024 Omission and Mischaracterization. In its January 2024 Final Order (JA728–738), the Court omitted these findings and instead characterized the OPPQ detail as routine

(JA 733). The Court failed to address that Petitioner worked outside her field for nearly two years, ignored undisputed microbiology vacancies (JA 480), and did not reconcile that Petitioner was paid at GS-12 while the OPPQ detail was announced at GS-13/14 (JA 94–95). These undisputed facts undermine the agency’s explanation and directly contradict both Jacquita Johnson’s sworn affidavit (JA 58–59) and Petitioner’s affidavit testimony (JA 65–66 ¶ 8).

3) Overlooked Performance Evidence. The Court’s omission also disregarded substantial evidence confirming strong performance during the OPPQ detail. DOJ testimony confirmed excellent performance (JA 180). DOJ records documented proficiency consistent with FDA guidance (Def. Docs pp. 1040, 1042, 1061; Pet. Ex-14), high productivity—including completion of ten CC assignments within 30 days on two occasions (Pet. Ex-15; Def. Docs p. 1075)—and a 2017 PMAP above Level 3, with three critical elements rated Level 4 (Def. Docs pp. 1049, 1051, 1053, 1055–56; Pet. Ex-16). This record stands in sharp contrast to Hughes’s lower ratings in 2015 and 2016 (1.75 and 1.99, ECF 36-23 at 3 ¶ 6, 298).

4) Retaliatory Context Ignored. Despite an EEOC Order finding discrimination and retaliation in September 2018, FDA ignored Petitioner’s repeated requests to remove Hughes as her supervisor (Def. Docs pp. 505, 523; Pet. Ex-17). In 2019, Hughes proposed Petitioner’s removal by relying on reassigned reviews—including reviews 125147/202 (Fact Check-5) and 103234/5358 (Fact Check-6)—and other reassigned reviews already completed in 2018–2019 (Pet. Ex-9), along with two reprimands and a 14-day suspension. Petitioner was removed in early January 2020.

5) Clear Internal Inconsistency. The September 2022 Order acknowledged that the OPPQ detail was outside Petitioner’s field, occurred despite open microbiology vacancies, and was motivated “at least in part” by reprisal. The January 2024 Order omitted and mischaracterized

these same facts. This internal inconsistency constitutes clear error. By disregarding evidence of retaliation and misrepresenting Petitioner's employment history, the Court's final decision was arbitrary and unsupported by the record.

Summary. After twelve fact checks exposing material misstatements in the District Court's stated "Factual Background," Petitioner challenges the Fourth Circuit's June 13, 2025 Order, which summarily affirmed, stating it had "reviewed the record and [found] no reversible error" and dispensed with oral argument. The Fourth Circuit should clarify whether it endorsed the District Court's repeated factual errors—most notably, converting PDUFA-mandated statutory deadlines into mere "target dates," disregarding the agency's failure to meet two statutory deadlines in June 2015, and ignoring HHS's March 2020 concession, which retroactively corrected Petitioner's GS grade and position, directly undermined the performance narrative adopted by District Court and left undisturbed on appeal. Although these matters were squarely raised, DOJ offered no response, and both courts allowed that silence to stand.

The District Court's January 2024 Order (JA 729) acknowledged that Petitioner performed at a fully successful level from 2012 through 2014, yet in the same paragraph, cited two Letters of Reprimand without noting that Qiu's LOR concerned months earlier events or that Ensor's LOR was later proven baseless by Defendants' own documents (Pet. Ex.3). Both LORs were placed in Petitioner's official file in July 2015—just two days apart—although Qiu's LOR having issued in September 2014 (ECF 41-1 at 9 ¶ 12, at 11 ¶ 18; Pet. Ex.1).

Hughes admitted she reassigned 14 and 7 completed reviews (JA 301, 264) and oversaw the missed June 2015 PDUFA deadlines. These undisputed facts—ignored by DOJ and never reconciled with HHS's later surrender—cannot be squared with the District Court's September 2022 findings that Hughes strongly opposed Petitioner's hiring and targeted her review work (JA

97), or with the court's holding that Petitioner's 20-month detail was motivated, at least in part, by reprisal in violation of Title VII (JA 99).

The central question is why the January 2024 Order departed from prior findings and disregarded HHS's corrective surrender. By excusing DOJ's silence on missed statutory deadlines, reassigned completed reviews, and HHS's admission-by-conduct, the Fourth Circuit allowed a distorted performance narrative to stand despite documented evidence of retaliation and pretext. These errors shaped the District Court's subsequent legal rulings in Sections C and D below.

C. Rebuttal to District Court's Legal Standard, JA 733–734

Although the District Court accurately recited the governing standards under *McDonnell Douglas*, *Nassar*, and *Burlington Northern*, it fundamentally misapplied them. The Fourth Circuit compounded these errors by affirming without correction.

1) *Nassar* Causation Misapplied. *Nassar* requires “but-for” causation but expressly permits proof through circumstantial evidence, including temporal proximity, inconsistent explanations, and departures from policy. Here, the courts disregarded extensive circumstantial evidence—missed PDUFA deadlines, reassignment of completed work, and serial discipline following protected EEO activity—each supporting a reasonable inference of retaliation. By dismissing this evidence, the lower courts converted *Nassar* into a heightened evidentiary barrier inconsistent with Title VII.

2) Judicial Role Improperly Narrowed. Invoking the “super-personnel department” rationale, the District Court refused to scrutinize actions that violated EEOC orders, federal regulations, and statutory mandates. These were legally reviewable acts, not discretionary business judgments. Treating them as immune from review, the court abdicated its judicial function—an error the Fourth Circuit perpetuated.

3) Pretext Evidence Ignored. Respondent offered shifting explanations—first denying the existence of reviews or deadlines, then conceding both while asserting poor performance—despite PMAP ratings of “Fully Successful” and “Outstanding.” Under *McDonnell Douglas*, such inconsistencies are classic evidence of pretext. Both courts ignored these contradictions and resolved disputed facts against the non-movant.

4) Retaliation Standard Misapplied. *Burlington Northern* holds that retaliation includes any action that might dissuade a reasonable worker from protected activity. Reassigning completed reviews, denying new assignments, and imposing serial discipline meet this standard. By limiting retaliation to “ultimate employment decisions,” the lower courts applied an impermissibly narrow test that conflicts with controlling precedent.

Conclusion. The lower courts repeatedly misapplied controlling law by discounting circumstantial evidence, ignoring pretext, and minimizing statutory violations. Proper application of *McDonnell Douglas*, *Nassar*, and *Burlington Northern* compels reversal.

D. Rebuttal to the Court’s Analysis (JA 734–738)

Across Fact Checks 1–12, the court misread the record, omitted dispositive evidence, misstated sequences, credited facts contrary to evidence, and reconstructed a distorted narrative—undermining causation and disregarding retaliatory motive.

The court further erred by inventing a “fifth” adverse action: an alleged delay of Petitioner’s leave to visit China (JA 735). The leave denial was not a separate action but the second specification supporting the already-pled 14-day suspension. As Fact Check 8 shows, that specification was pretextual. HHS and DOJ records confirm Hughes denied the leave minutes after it appeared in ITAS on August 11 (Pet. Ex. 5), later conditioning approval on completion of five reviews—one reassigned 1.5 months earlier and two unsigned until weeks after Petitioner’s return.

Hughes also failed to act on Review 125147/202 (JA 482–83). Doleski approved leave even though he was not Leaving Approval Officer. See Pet. Ex. 8.

The court disregarded undisputed evidence by finding no temporal proximity (JA 736), despite missed PDUFA deadlines in June 2015, at least eighteen adverse actions between April and December 2015 (App. E, Table of 27 Adverse Actions), a twenty-month OPPQ detail beginning in December 2016 (JA 97), and an EEOC AJ's 2018 order granting retroactive relief on the 2011 and 2013 EEO complaints (JA 636–69).

Beyond temporal proximity, the remaining analysis (JA 737–38) rests on selective omission and internal contradiction. Although the court acknowledged that the twenty-month OPPQ detail was outside Petitioner's expertise and at least partly reprisal-motivated (JA 99), it later denied those facts without explanation (JA 733). The court's temporal-proximity analysis rests on a narrowed record. The court cited only ECF 14 ¶ 35 and, in fns. 4–5, limited review to the April 2018 OPPQ detail, excluding pre-April 2018 reassignment conduct, although DOJ's production reflects reassignment of completed reviews during the broader period alleged (see Fact Check-11). Although the court cited ECF 46 at 32–36, it ignored that evidence and never addressed controlling regulations—21 C.F.R. § 10.70 or FDA MAPPs 4151.1 and 4151.8—in its January 2024 Order.

Finally, the court disregarded undisputed evidence that completed reviews were reassigned. While it cited “at least two” (JA 732), Hughes confirmed reassignment of fourteen completed reviews since June 2015, along with two periods of administrative leave and a suspension (JA 301, 299, 264). The court also ignored HHS's March 27, 2020 surrender: Petitioner's retroactive promotions to GS-13 and GS-14 (JA 28), which independently confirm her performance and undermine the denial of retaliation underlying the 2016–2018 EEO complaints.

VI. FDA'S SCIENTIFIC FRAMEWORK IS LEGALLY BINDING AND CRITICAL

The FDA performs a function unlike that of any other federal agency: its regulatory decisions must rest on independent scientific judgment, not policy discretion. To protect that judgment, Congress and the FDA established a binding regulatory framework that insulates scientific review from non-scientific interference.

Federal regulations require that FDA decisions reflect the considered scientific judgment of qualified reviewers. See 21 C.F.R. § 10.70. The agency implements those requirements through internal procedures, including MAPP 4151.1 and MAPP 4151.8, which govern how regulatory and scientific disagreements are documented and preserved in the administrative record, as well as prevent manipulation of scientific work for managerial or retaliatory purposes.

The Prescription Drug User Fee Act, codified at 21 U.S.C. § 379h, imposed statutory review timelines tied to user-fee funding. PDUFA did not alter the governing scientific standards or dispute-resolution procedures; it added statutory deadlines to the existing regulatory framework, not internal targets. Reassigning completed reviews or manufacturing delay conflicts with both the regulatory safeguards governing scientific decision-making and the statutory timelines Congress imposed.

This case illustrates the consequences when those protections fail. FDA reassigned completed reviews despite absence of any regulatory and scientific disagreement, last-minute requirements were imposed, and statutory deadlines were missed—actions later conceded by the agency to lack merit through its retroactive promotion of Petitioner to undo consequences of those actions, yet nonetheless defended by the Department of Justice and upheld below. When retaliation is carried out through manipulation of scientific processes, the harm extends beyond the individual employee and compromises the integrity of FDA regulatory drug review.

If allowed to stand, the decisions below establish a troubling precedent: that a federal agency may disregard its own binding scientific framework and weaponize statutory review mechanisms as disciplinary tools without consequence. Whether courts may approve retaliation embedded within an agency's scientific function is a question of exceptional importance warranting this Court's review.¹⁷

REASONS FOR GRANTING THE PETITION

A. The Decision Upholds Concededly Unlawful Retaliation of Exceptional Importance

This case presents the unusual circumstance in which the government successfully defended retaliation that the agency itself had already conceded—by March 2020—was unjustified. In 2020, HHS retroactively promoted Petitioner to GS-13 and GS-14, abandoning the performance-based rationales relied upon by DOJ and accepted by the lower courts. Yet those courts continued to uphold the very actions the agency had already repudiated.

When courts affirm retaliation after the agency's asserted rationale has collapsed, the failure is institutional, not merely analytical. Review is warranted to determine whether judicial deference may persist where the government itself has repudiated the factual and legal foundations of its defense.

B. The Courts Below Misapplied This Court's Retaliation Precedent

This Court has held that retaliation includes any action that “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). The decisions below conflict with that settled standard

¹⁷ The FDA has long recognized the need to insulate scientific judgment from external pressure. **Dr. Frances Kelsey's** refusal to approve thalidomide despite intense pressure exemplifies this principle, which is embedded in FDA regulations and procedures and remains essential to public trust. Here, however, the agency reassigned completed drug scientific reviews, imposed non-meritorious last-minute requirements, and missed statutory PDUFA deadlines—actions later acknowledged through retroactive promotions to lack substantive justification.

by limiting actionable retaliation to “ultimate employment decisions” and disregarding a sustained pattern of conduct—including reassignment of completed biotech drug reviews, serial administrative leave, selective discipline, and manipulated performance ratings—that plainly would deter protected activity.

Here, FDA management repeatedly removed Petitioner from completed regulatory work, denied continuity of assignments, imposed extended administrative leave, and then relied on the resulting disruptions to justify adverse personnel actions. Rather than assessing the cumulative deterrent effect of this course of conduct, the courts evaluated each action in isolation and dismissed them as non-actionable. That approach directly contradicts this Court’s retaliation jurisprudence and warrants review.

Permitting agencies to repurpose regulatory safeguards as punitive tools undermines retaliation law and erodes public confidence in the integrity of the drug-approval process. That systemic risk extends beyond this case and warrants this Court’s intervention.

C. The Decision Enables Retaliatory Weaponization of Drug-Safety Processes

This Petition presents an important question: whether courts may uphold retaliation where an agency invokes “drug safety” while violating its own scientific-continuity requirements and public-health safeguards.

As shown in the record, FDA management responded to Petitioner’s completed microbiologic reviews by repeatedly reassigning them to other reviewers, selectively demanding or disregarding media-fill data, and manipulating deadlines under 21 U.S.C. §379h —actions that

disrupted, rather than advanced, sterility and safety assessments. The agency caused disruptions were later recast as “missed” performance and used to justify discipline and removal.¹⁸

By approving this sequence, the decision below allows agencies to manufacture performance deficiencies through interference with regulated scientific processes and then rely on those disruptions to justify retaliation—undermining whistleblower protections and drug-safety oversight nationwide.

D. The Courts Endorsed a Distorted Record and Ignored Protected Safety Evaluation

The decisions below rest on a distorted record. Key affidavits omitted critical dates and safety requests, while documentary evidence of Petitioner’s protected safety evaluations to senior scientific leadership was ignored or mischaracterized. The courts accepted agency narratives that severed alleged “performance failures” from the agency actions that caused them—including reassignment of completed work and denial of necessary safety data.

When courts defer to agency explanations that omit undisputed record facts—and then rely

¹⁸ The record shows materially inconsistent application of media-fill requirements across three sterility-critical reviews. In 125147/202, management demanded a third media fill at the last minute despite Petitioner’s timely completion, delaying the review and causing a missed PDUFA date. See Fact-Check-5. By contrast, in 103234/5358, Petitioner submitted her review early and requested two media fills, yet Hughes reassigned the review Petitioner already completed and new reviewers adopted Petitioner’s analysis using only a single media-fill dataset. See Fact-Check-6.

In 125476/9 (vedolizumab), Petitioner completed her review 1.5 months early and repeatedly sought approval for request three media fills while requesting her completed review not be reassigned. Hughes nonetheless reassigned it one day before the PDUFA deadline; the reassigned reviewer relied extensively on Petitioner’s analysis despite using no media-fill data. See DOJ Docs 1638–1640, 1760, 1762, 1797–1798; HHS Docs 0133–39. Hughes’s affidavit, ECF 36-23 at 8 (JA 303), omitted both the reassignment and Petitioner’s repeated requests for not reassigning the completed review.

These inconsistencies involved sterility-critical safety data affecting public health, as shown in DOJ documents at 1549–51. Yet DOJ omitted the reassignment of completed reviews and disparate media-fill enforcement, demonstrating selective sterility standards used to retaliate against Petitioner. Hughes relied on those reassigned reviews to fail Petitioner’s 2015–2016 PMAPs and justify her proposed removal in June 2019.

on those omissions to deny relief—judicial review fails as a meaningful check on retaliation. This Court’s intervention is warranted to clarify the proper treatment of record evidence in retaliation cases involving complex regulatory functions.

E. EEOC Proceedings Systemically Denied Due Process by Cancelling Scheduled Hearings

This case also presents serious due-process violations arising from the administrative adjudication itself. In multiple EEOC proceedings, Administrative Judges formally scheduled evidentiary hearings, later postponed or cancelled them without explanation, and then resolved the cases through bench decisions on a paper record, without ever conducting the promised hearings. Such unexplained cancellations are not authorized by law and deprive complainants of the procedural protections guaranteed in retaliation cases turning on motive and credibility.

In one proceeding, a scheduled evidentiary hearing was postponed and never rescheduled. See Appendix K; ECF 36-35 (JA 399–451). In another, the hearing was cancelled outright without any stated reason. See Appendix L. In each instance, the Administrative Judge subsequently issued a bench decision based solely on written submissions, despite having previously determined that a hearing was warranted. EEOC procedures do not permit unexplained cancellation of scheduled evidentiary hearings followed by adjudication solely on a paper record.

These decisions relied selectively on agency removal materials and, in at least one case, misidentified the Responsible Management Official (RMO)—errors that underscore the risks of resolving disputed retaliation claims without testimony or cross-examination. Where factual disputes hinge on intent, credibility, and pretext, governing law does not permit adjudicators to cancel scheduled hearings without explanation and substitute unilateral paper review.

These procedural irregularities are fully documented in the administrative record and appendices. When adjudicators cancel evidentiary hearings without legal justification and resolve

disputed factual issues on a written record alone, the integrity of the administrative process is compromised. This Court's review is warranted to clarify the minimum procedural protections required before retaliation claims may be dismissed at the administrative level.

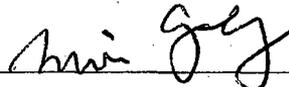
CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully submits that the decisions below were rendered in violation of federal law and fundamental due process. The record shows that the Department of Justice defended unlawful conduct by the Food and Drug Administration, and that both lower courts adopted those misrepresentations without meaningful independent review, resulting in the denial of a fair adjudication.

Petitioner therefore prays that this Court grant the writ of certiorari, vacate the judgment of the United States Court of Appeals for the Fourth Circuit, and remand the case for a full evidentiary hearing on all claims of retaliation, privacy violations, and regulatory misconduct.

Given the pervasive factual misstatements and procedural irregularities reflected in the record, Petitioner further requests that the case be reassigned on remand to a different district judge to ensure impartial review and preserve confidence in the judicial process.

Respectfully submitted,

/s/  _____

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