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No. 22-668

**In the Supreme Court  
OF THE  
United States**



**NACHAIYA KAMA**

*Petitioner*

*v.*

**MEMORIAL HERMANN HEALTH SYSTEMS;  
TIRR MEMORIAL HERMANN**

*Respondents*



**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Fifth Circuit**



**PETITION FOR WRIT OF CERTIORARI**



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January 9, 2023



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## QUESTIONS PRESENTED



1. Should any law repugnant to the U.S. Constitution (*the Supreme law of this land*) prevail?
2. Has this Court ever extended liability to individual members of management, including coworkers in a Federal sexual harassment case?
3. Does the Constitution support “*Un-American*” practices under the equal protection clause in the workplace?
4. Whether the lower courts erred in the opinions below and expressed conflicting views on this issue?
5. Whether the lower courts erred in applying the legal standard(s) that this court set as precedence to all of Kama’s claims?
6. Is it proper for retaliatory actions to be taken against anyone for speaking up when they see wrong or inequality or injustice?

## LIST OF PARTIES



All parties do not appear in the caption of this 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:

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**In The Supreme Court  
OF THE  
United States**

**PETITION FOR WRIT CERTIORARI**

Petitioner Nachaiya Kama as stated in the above-captioned clause respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United State District Court for the Southern District Court of Texas (Houston Division) appears at Appendix B to the petition and is unpublished.

**JURISDICTION**

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was on October 13, 2022. No petition for rehearing was timely filed in my case.

This petition is timely filed according to the rules of this court.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED



U.S. Const. art. III, U.S. Const. amend. I, U.S. Const. amend. XIV § 2, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 et seq., Civil Rights Act of 1866, 42 U.S. Code § 1981.

### **DEFINITIONS:**

The term “OG” as used herein shall mean “Original.”

The term “Petitioner,” as used herein shall also mean “Kama,” “me,” “I,” “victim,” “crime victim,” “sexual assault survivor,” and “TIRR Memorial Hermann’s Patient,” and “Patient.”

The term “The employer,” as used herein shall mean, “TIRR Memorial Hermann,” “Memorial Hermann,” “agent(s),” “employee(s),” “Respondents,” “CEO Jerry Ashworth,” “Director Rebecca “Becky” Thayer,” “Clinical Nurse Manager John McLeod,” “Mr. John McLeod,” “Manager McLeod,” “Clinical Nurse Manager Arit Nwagboso,” “Manager Nwagboso,” “Arit,” “Joyce Williams – HR,” “Emerald Smart – HR,” “HR,” “Clinical Nurse Manager Nicholas Balidin,” “Judith Toscano,” “decisionmaker(s),” “adverse actors,” and “Opposing Counsel(s).”



The term “sexually inappropriate,” or “nonconsensual activity,” as used herein shall mean “rape,” or “sexual assault.”

The term “sex” as used herein shall mean “gender” or “consensual activity.”

The term “race” as used herein shall mean “segregation.”

The term “work-related injury” as used herein shall mean “neck injury,” or “personal injury.”

The term “job discrimination,” “discrimination,” as used herein shall mean “sexual harassment,” “gender discrimination,” “hostile work environment,” “race discrimination,” “color,” “national origin,” “disparate treatment,” and “discrimination.”

The term “HR Shared Services” as used herein shall mean “Joyce Williams,” “Emerald Smart,” “Human Resources,” and “HR”.

Chimamanda Ngozi Adichie in her Harvard address class of 2018, mentioned to all Harvard students about being alert to “*Tell the truth*” And in her own words, “*have a good bullshit detector as citizen leaders much is expected.*” ROA.1005.

## STATEMENT OF THE CASE

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This case is about sexual harassment/assault, race discrimination, abusive/hostile work environment, retaliation, and “unjust” termination, which violates Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, and the First and Fourteenth Amendments to the Constitution. ROA.568; ROA.1817; ROA.560; ROA.162-75.

Petitioner Kama was a new resident of Houston, Texas, a job seeker, and vulnerable. ROA.1740. On April 3, 2017, Kama received an invite via email from the employer’s recruiter Ms. Fariece Joiner to RSVP for a job fair respondent was having on April 4<sup>th</sup>, 2017. Kama responded and attended the job fair. ROA.1741. Kama met Clinical Nurse Manager John McLeod on the interview day who requested for her file from the recruiter – Ms. Joiner when he saw her. Manager John McLeod interviewed her. Kama was uncomfortable. Kama got the job but could not proceed because she needed to transfer her professional license to Texas state. Respondent told Kama to come back when she gets her license sorted. Manager McLeod, the recruiter, and Kama exchanged phone numbers. About 3 months later when Kama’s license was sorted out, she reached out to Ms. Joiner via phone and email but to no avail. ROA.1742-43. Then she reached out to Manager McLeod. Kama did not leave a message. However, the employer’s recruitment specialist Ms. Karen May reached out to Kama on August 2, 2017, ROA.1744-46. Ms. May introduced herself to Kama as the new recruiter who

replaced the former recruiter Ms. Joiner. She invited Kama to another job fair TIRR Memorial Hermann was having on August 8, 2017. Kama attended and she met Manager McLeod for the 2<sup>nd</sup> time during the scope of his employment at TIRR Memorial Hermann. He insisted that she brings her new license to his office. Mr. Arvin Jackson drove Kama to TIRR Memorial Hermann on August 10, 2017. Manager McLeod started the process of Kama's employment; stated to her he will be in touch and that Kama should not contact Ms. May. Manager McLeod called several times, but Kama ignored. ROA.1748. A few days later Manager McLeod showed up at Kama's job in TIRR Memorial Hermann Attire; at this time Kama was working at 24-hour fitness (I believe he got the address based on my resume in his possession) and offered her a ride home. Manager McLeod told Kama he needed to come in to charge his cell phone to use the GPS. Kama returned the kind gesture but unfortunately, he was sexually inappropriate and left with evidence. When Ms. May reached out to Kama to offer her the job with the employer, Kama initially rejected the offer but as a new resident, she begrudgingly accepted the position.

On Tuesday, September 26, 2017, Kama received a new hire welcome letter via email from TIRR Memorial Hermann Human Resources. The email clearly states who had power and authority over Kama. It clearly states Manager McLeod's role during her employment with the employer as her "Manager." ROA.1749. Kama's first day was October 2, 2017, cultural day. On the first day Kama reported to

campus, on October 3, 2017, she told Manager McLeod verbally that she was uncomfortable working with him and that she would like to transfer to another unit or department. Manager McLeod refused and stated that Kama cannot transfer to another unit/department until after 1 (one) year, as she already committed. Kama spoke to a co-worker in a different department to see if she could transfer to the Information Systems Department (ISD) to avoid Manager McLeod. ROA.1750.<sup>1</sup>

*(Petitioner Kama has a degree in Computer Information Systems, Information Systems Management with a Minor in Studio Art - Photography and Cyber Security. Educated at the City University of New York and Harvard). ROA.80; ROA.84; ROA.984-90.*

Manager McLeod repeatedly intimidated, pressured, and harassed Kama to send him sexually explicit photos of her, because of his threats, and power/authority, Kama sent photos of another person, in hopes of appeasing him. ROA.1092-94.

In November 2017 at work, Manager McLeod called Kama for a patient-related matter in his office but only to find out he was seeking to be smooched and asked her seat on his lap. Kama refused. He told her he would stop by; He then stalked Kama to her

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<sup>1</sup> Kama worked with TIRR Memorial Hermann as a Clinical Care Coordinator and PCA.

home. Kama used her instincts and judgment to comply as he commanded for her safety and fear of losing her job. Manager McLeod was sexually inappropriate. Kama was able to use the camera in her possession as her witness to photographically document when Manager McLeod exposed himself in a lewd and shameful manner as evidence of the sexual assault, oppression, and abuse of power and authority. ROA.568.<sup>2</sup> See Affidavit of Prof. Sally Boon, ROA.831-32; and Mr. Temitope Adesemowo ROA.564-67.

Kama wore a ring on my left finger and often wore a Holy Rosary blessed by a co-worker Reverend Sister Chinwendu Nnokwutem, alias "Sister Chi," who Kama also confided in to dissuade Manager McLeod from boarding her, as Manager McLeod's harassment and threats continued to persist, Sister Chi came to bless Kama's living space because she was threatened and subjected to offensive lewd remarks. ROA.167-68. A degrading gender stereotyping of other female employees. See affidavit of Mr. Arvin Jackson ROA.1618-22; ROA.900; Prof. Sally Boon ROA.831-32; sworn statement from Mrs. Nkemjika Ejinima ROA.340-42; Mr. Brian Octave ROA.1802; ROA.335; Mrs. Alero Azazi ROA.561-62.

What kind of an employer preserves such an individual/decision-maker with managerial authority that jeopardizes the integrity of the company with such lewd, discriminatory comments, who thinks he is the alpha male to another/other women's or another man's wife's reproductive organ. Abomination!

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<sup>2</sup> Please see Appendix C – Pictorial Summary of Law and Facts.

ROA.248; ROA.1096; ROA.905; ROA.1090;  
ROA.1763.

On May 15, 2018, Kama took an emotional leave from work, due to the tortuous workplace stress, intimidation, threats, and intolerable abusive work environment. Clinical Nurse Manager Arit Nwagboso was aware of Kama's trip. ROA.1751. While away, Kama saw a therapist. ROA.334. See Affidavit of Mrs. Tope Sanni. ROA.563. And as advised she saw her doctor, ROA.333; ROA.931; ROA.997-99; ROA.1000-01. *Vance v. Ball State Univ*, 570 U.S. 421 (2013). This court held that "employees with powers are capable of creating an intolerable work environment."

*"If I see you talking to anybody, I will write you up,"* those were the words that came out of Manager McLeod's mouth when he came to border Kama while she was working. After a while she got used to the environment, Kama started enquiring from coworkers and discovered it was a pattern with Manager McLeod. Coworkers told Kama previous stories of how the employer condones Manager McLeod's misconduct. Kama asked Manager Arit Nwagboso and she confirmed it. A co-worker on the same unit who was hired before Kama came to Kama and told her *"John was boarding her,"* She wanted to leave also. In July 2018, we both went to senior management - senior vice president and chief executive officer Jerry A. Ashworth to get a letter of recommendation to avoid his sexual demands and abusive/hostile work environment. Kama advocated for her, and Manager McLeod retaliated with unwarranted write-ups for exercising free speech,

opposing sexual harassment, and going to higher management. ROA.1317. We received our letters of recommendation as requested respectively but respondent failed to act to address Manager McLeod's misconduct. ROA.582. Afterward, Kama reminded Manager Nwagboso of the transfer to her unit; she said *she could not help her*; On these grounds, Kama started looking for another job. ROA.1754. See affidavit of Mr. Brian Octave, ROA.1802. *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989). (Noting that a failure to correct the harassment are required for liability).

Kama resisted seating around the nursing station which was close to Manager McLeod's office and resisted going to his office or going alone when he calls her for a patient-related matter. Kama always sat at the back of the unit to do her work.

Other managers, co-workers, patients, and family members loved Kama for her friendly and humorous nature. Manager McLeod used some co-workers against her and work assignments to pepper her. On these grounds, Kama has two neck injury reports on the record from heavy assignments which did not comply with Occupational Safety and Health Act standards - OSHA. Manager McLeod spread rumors about her, to isolate her but her work performance and behavior contradicted his malicious libelous, and slanderous testimonies. ROA.897; ROA.919-20.

On January 11, 2019, Kama was discriminatorily fired for opposing sexual harassment, for wearing her affixed locator badge at eye level. The adverse actors "*Becky + John*" took Kama's locator badge at eye level.

ROA.2270; ROA.1381; ROA.1097-ROA.1104;  
ROA.1327-33.

Also, for constitutional practices such as exercising speech and expression; written complaint; for a racially discriminatory decision; for performance, and work behavior that met expectations for following the rules of the employer's policy, employee safety guidelines, and standards of conduct, and for obeying the law. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989). (Holding that employee in supervisory position with significant control over hiring, firing, or conditions of employment can be held personally liable under Title VII).

After Kama notified the employer's senior management - Director Rebecca "Becky" Thayer who held that position during the course and scope of Kama's employment and held that position in the time period relevant to this lawsuit. ROA.1277; ROA.570; ROA.1959<sup>3</sup>; and ROA.1813.

TIRR Memorial Herman's Clinical Nurse Manager Arit Nwagboso knew that the sexual harassment and harassing conduct was going on. But failed to escalate. ROA.322.<sup>4</sup> She was informed about the sexual assault/ harassment, unwelcome sexual advances, racial discrimination: (she also shared her experience of racial bias from the employer - Ms.

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<sup>3</sup> Email Conversations between higher Management. Becky Thayer and Joyce Williams.

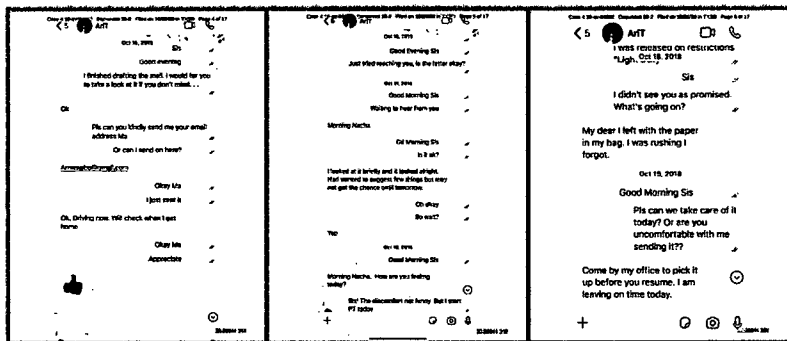
<sup>4</sup> A handwritten note from Manager Nwagboso.



Thayer with Kama), unsafe work environment, abusive/hostile work environment, defamations, offensive sexual lewd remarks from Manager John McLeod and disparate treatment discrimination, ROA.2466; ROA.318-20; ROA.321-22; ROA.2010; ROA.2035; ROA.329-31; ROA.1948; ROA.1751; ROA.1627; ROA.1766; ROA.2275.

On June 21, 2018, when Manager Nwagboso was informed and saw the photo in ROA.568; she told Kama *"You did not like it," "I would be quiet for your own safety."* Then, Manager Nwagboso told Kama she would transfer Kama to her unit (Patient Care Unit 3 - PCU3) to a 3 pm – 11 pm schedule. The record reflects that Manager Nwagboso identified her fellow colleague/Manager – John McLeod who denied coming to petitioner's home during the course and scope of her employment. ROA.1340-42. See Affidavit of Temitope Adesemowo. ROA.564-67.

Kama met Manager Arit Nwagboso at TIRR Memorial Hermann. They were close because she knew Kama was a victim, sexually harassed, oppressed, emotionally distressed, and intimidated.



In the conversation between Kama and Manager Nwagboso in the image above ROA.318-20; - the text/chat, the term "mail" and "letter" meant the letter Kama was drafting to the employer - HR Emerald Smart and Director Rebecca "Becky" Thayer. Kama and Manager Nwagboso were texting each other during the scope of employment regarding this matter and she suggested Kama used the word "discrimination" instead of sexual assault/harassment and suggested Kama send the 1<sup>st</sup> notice of written complaint to Ms. Thayer and HR Emerald Smart. ROA.329-31. ROA.570. See work schedule; ROA.1638; and ROA.1793. Ms. Thayer shared the email with a senior advisor, employee relations human resources Joyce Williams. ROA.1959. Ms. Thayer replied to Kama but did not meet with her even after she mentioned she involved HR, no one in HR reached out to Kama before she was fired unjustly. ROA.2472. As clearly stated in ROA.1641 - 4<sup>th</sup> written notice. *Carter v. South Cent. Bell*, 912 F.2d 832 (5th Cir. 1990). (The employer's knowledge of the Plaintiff's protected activity). *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003), this court held that circumstantial and direct evidence are both probative of employment discrimination and both or may be used to prove an employment discrimination case." The 2<sup>nd</sup> notice was written on November 27, 2018, during the course of Kama's employment. ROA.1813. The employer also received a 3<sup>rd</sup> Notice in January 2019, during Kama's appeal as advised by Manager Nwagboso, and the 4<sup>th</sup> notice after termination when the misconduct and stalking continued. ROA.1641. *Faragher v. Boca Raton*, 524

U.S. 775 (1998), this court held “employer’s liability for manager/supervisor sexual harassment.”

Manager McLeod was the Manager and supervisor in charge of the day-to-day supervision of Unit 4 or Patient Care Unit 4 (PCU4) where Kama was his subordinate and worked as his direct report. The employer intentionally failed to take remedial action, instead of removing the harasser, Kama suffered job detriment – was denied unemployment benefits, ROA.912; was denied the position she qualified for in the Information Systems Department (ISD) ROA.1927; several adverse actions were taken for engaging in a protected activity. ROA.1922-29; ROA.1968-69.<sup>5</sup>

Also, according to the employer’s standards of conduct, the employer does not dispute that they are accountable for their actions as written in ROA.1355;<sup>6</sup> Manager Nwagboso also admitted that the job detriment Kama suffered was done unjustly. ROA.2275. Kama appealed the unjust termination as advised by Manager Nwagboso. TIRR Memorial Hermann failed to reinstate and failed to take remedial actions again; failed to address the relevant facts stated on the appeal form ROA.909-10.

Manager McLeod’s stalking/harassing conduct continued to Kama’s new job. To increase safety and

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<sup>5</sup> The employer failed to reinstate after reporting the stalking and continuous harassing conduct which led to seeking a protective order and this legal action.

<sup>6</sup> “We accept responsibility for our actions and decisions and the impact they have on those we serve”.

security, in March 2019, Kama reported to the police ROA.1664; ROA.1817; quit her new job in April 2019, filed for a protective order in May 2019, ROA.1769; and notified again the employer's agent senior vice president and chief executive officer Jerry A. Ashworth, FACHE, chief nursing officer and chief operations officer Mary Ann Euliarte and senior advisor, employee relations HR Joyce Williams on June 12, 2019, ROA.1641. Again, the employer's agent failed to act to remove the harasser and failed to reinstate her. ROA.1968-69. *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989). (The court noted that a failure to correct the harassment is required for liability).

Manager McLeod intimidated and sexually harassed Kama during the course and scope of her employment and intentionally threatened Kama for opposing his misconduct and opposed violating the law. See Affidavits of Mr. Arvin Jackson ROA.1618-22; Prof. Sally Boon ROA.831-32; Mr. Brian Octave ROA.335; ROA.1802. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986), this court held that "without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor discriminates on the basis of sex." *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989). (Holding that employee in supervisory position with significant control over hiring, firing, or conditions of employment can be held personally liable under Title VII). *Vance v. Ball State Univ*, 570 U.S. 421 (2013), this court held that an employer is vicariously liable for a "supervisor's" harassment when the employer

has empowered that employee to take tangible employment actions against the victim.

### **A. Procedural History**

Kama suffered several forbidden discriminatory attitudes in the hands of leaders/entities that failed to follow their own promise and system strategy to value employees through workplace safety and to initiate exceptional leadership development, standard code of conduct, and policies, failing to abide by Federal Laws of which is an abomination in the era of the Federal Constitution that governs this land and in the era of Title VII of the Civil Rights Act of 1964 and Civil Rights Act of 1866.

On November 1, 2019, at a meeting, respondent offered Kama money in exchange to deter protected speech, expression, and pursuit of justice to waive her constitutional rights. Kama declined. Kama filed this lawsuit on November 29th, 2019; and as time progressed in the lawsuit she filed her amended complaint on August 31, 2020, with updated facts that concern the equal protection clauses of the Constitution under U.S. Const. amend. I and U.S. Const. amend. XIV. Respondent filed an answer and did not oppose or raise any objection(s) to the amendment. After the preponderance of the evidence on record was filed, ROA.560; the respondent argues that the race claim under Title VII and the constitution should be voided – in other words, that my nation's constitution should be color-blind to a claim relevant under the equal protection clause, or to ignore the OG assertions on race/segregation before

this court of the following Chief Justices/Jurists: John Marshall, John Marshall Harlan, and Earl Warren.<sup>7</sup>

Kama was subjected to unfair prejudice by respondent's frivolous extension requests, moving dates, disobeying dates set by the district court such as deposition, and racial discrimination, ROA.668-702. In this regard, the district court took action and ruled setting this matter for trial on August 23<sup>rd</sup>, 2021. ROA.704.<sup>8</sup> Respondent continue to prejudice Kama; refused to produce documents (instead, were "cherry picking," testifying, altered evidence ROA.1893-94; and offered false statements to the court such as the unsworn "TIRR Investigation, June 3 - 4, 2019," filed by the respondent on the record is inaccurate. ROA.1338-43. *Trinsey v. Pagliaro*, 229 F. Supp. 647 (E.D. Pa. 1964). (Court noted that "Statements of counsel in their briefs or argument while enlightening to the Court are not sufficient for purposes of granting a motion to dismiss or summary judgment"). *Okoye v. University of Texas Houston Health*, 245 F.3d 507 (5th Cir. 2001). (Holding that unsworn statements are "not competent summary judgment evidence because [they do] not comply with the requirements" of Rule 56(e) Citing *Moore v. True Temper Sports, Inc.*, 523 F. App'x 280 (5th Cir. 2013)).

The District Court reset the trial date for December 7, 2021. ROA.1048. Kama submitted her Voir Dire on December 1, 2021. ROA.1878-91. On November 26, 2021, the District Court set a hearing

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<sup>7</sup> Our Constitution is OG.

"Memorial Hermann" and its agents and third parties discriminated against Kama before the Court. ROA.673-691.

for December 2, 2021. ROA.1877. After the hearing, the court had a summary judgment trial on December 6, 2021. After the hearing, The District Court entered its order and final judgment on December 14, 2021. ROA.1930-35.

After the final judgment was entered; Kama filed a motion to retain the case on the docket on January 7, 2021. The district court responded and signed a new order on January 13, 2022, ROA.1975. All issues presented were properly preserved. Kama appealed timely but unfortunately, during the appeal, Kama encountered obstruction in the administration of justice. See Appendix D. The Fifth Circuit *affirmed*.

On October 12, 2022, Kama discovered the unpublished opinion was posted on a website before it was filed in the circuit court. See Appendix D.

## REASONS FOR GRANTING THE WRIT



The Court should grant certiorari because the issue is of great legal/national significance, the lower courts have erred in the opinion below, and have expressed conflicting views, on this issue. This Court should address the following:

- A. To extend liability to individual members of management, including coworkers in a Federal sexual harassment case.
- B. Whether employers are liable for managers' and supervisors' misconduct, in sexual

assault/harassment, cases such as this because the fifth circuit held that respondent is not liable for manager's and supervisor's sexual assault/harassment case.

- C. Whether a claim can be brought to a federal court and also, especially if it violates the equal protection clause under the fourteenth amendment to the constitution and Title VII of the Civil Rights Act of 1964.
- D. Whether we can exercise expression in our legal pleadings and change the way we write the law in a mathematical format optional to courts that will accept pleadings in a mathematical format and pictorial format.

**I. This issue is of great legal/national significance.**

- A. Federal sexual harassment law has never extended liability to individual members of management, which will include – Directors, Managers, Supervisors, and other individuals including co-workers within the entity which will protect any employee working for an employer that employs even one employee.
  - a. This case will mark the beginning of a new era for sexual harassment claims against employers, especially employers that are notorious for protecting its pro-employer policies to make all businesses, regardless of size, subject to liability for sexual harassment claims.



- b. This case will expand the definition of “Sexual Harassment.” It will heighten the standard of all employers’ response to complaints, and places responsibility on not just employees who have managerial or supervisory authority but on individuals, rather than just companies, for failing to address sexual harassment.
- B. Whether this court should give legal practitioners the liberty to write law mathematically; just as Kama did in the district court. See Appendix C for the OG “Mathematical Response.”
  - a. The method is not only unique but straight to the point and will not waste the court’s time.
- C. The Federal law under Title VII of the Civil Rights Act of 1964 has never extended liability to an employer for libel in cases where the pretext being offered is intentional and a malicious act, because such acts are unconstitutional.<sup>9</sup>

According to Albert Einstein: “Necessity is the mother of all invention.” Under U.S. Const. art. III, this Court has judicial power with respect to the above-mentioned.

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<sup>9</sup> Which would be a violation under the first amendment to the Constitution. Even if the victim does not bring it as a claim; if the pretext is proven to be false the employer is strictly and vicariously liable for defamation because it was intentional and unconstitutional under the U.S. Const. amend. I. on grounds that our constitution is not color blind, but OG.

**II. The lower courts have expressed conflicting views on this issue and have erred in the opinions below.**

The lower court's decision is incorrect and contradicts Supreme Court precedent.

*“Sexual Harassment is about Power, the undue exercise of power by a superior over a subordinate.”* – Michael Crichton.

According to Muhammed Ali, aka Cassius Marcellus Clay Jr.: *“The law of Truth is simple,” The Voice of Truth is deep.*” ROA.1005.

**1. “Memorial Hermann’s” proffered testimony is a pretext.**

The employer’s conflicting and contradictory testimony was merely a pretext to mask an unlawful discriminatory motive on the basis of sex and race. *Quinn v. Green Tree Credit Corp.*, 159 F.3d 759 (2d Cir. 1998). (Court Held that a strong temporal connection between the plaintiff's complaint and other circumstantial evidence is sufficient to raise an issue of fact with respect to pretext). The unjust termination was a premeditated ploy/constructive discharge. ROA.1893-98. Counsel’s statement for Joyce Williams (HR) is not a defense, but a pretext/perjury. ROA.1308-10. It is an excuse for breach of duty and failing to reinstate. ROA.1968. ROA.1969.<sup>10</sup>

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<sup>10</sup> William’s testimony/statement seems to be different from everyone who has testified in sworn statements on the record



The image above reflects on the record in ROA.1332; ROA.1677; is evidence that the employer's proffered non-discriminatory reasons for the termination were false. Kama and her co-worker in the image above worked in the same unit, shared the same Manager; performed the same job tasks and responsibilities, and had similar job performance evaluations. Her co-worker did not have her locator badge on and was not fired. The photo was taken in the scope of employment in May 2018. *Valadez v. Uncle Julio's Inc.*, 70 FEP Cases 451 (N.D. Ill. 1995).

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about the crime. Her declarations are not credible and so is Thayer's. It is a known fact that HR is for the employer and not the employee.

(Court noted where plaintiff produced evidence that other employee(s) had broken identical rules and were not terminated). The employer intended to make working conditions intolerable; in other words, set Kama up for failure for reasons to unjustly fire. All reports from January 6, 2019, were premeditated ploy/constructive discharge. For example in *Mays v. Williamson Sons, Janitorial Services*, 775 F.2d 258 (8<sup>th</sup> Cir. 1985) where the employer placed the plaintiff employee victim under surveillance to document a reason to discharge her after she reported sexual harassment). Also, the defamatory statement from the employer's agent Manager McLeod. ROA.1296. There all constitute direct evidence of discriminatory motive, intent, and pretext. *Edwards v. the United States Postal Services*, 909 F.2d 320 (8<sup>th</sup> Cir. 1990). (Court held/reserved district court's finding of "legitimate nondiscriminatory reasons" on grounds that the decision-maker gave conflicting and contradictory testimony such that the only conclusion to be drawn was that the stated reasons were a pretext for discrimination). *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975 (7<sup>th</sup> Cir. 2001). (Stating plaintiff must rebut defendant's legitimate reason for termination by presenting evidence demonstrating that it is merely a pretext for discrimination). *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

In addition, the employer's conduct surrounding the pretextual adverse employment actions: According to the employer, "*failure to follow policies, processes, guidelines, or performance standards*":

**A. The employer uses poor work performance and behavior as pretextual fact: All the employer's pretextual facts are contradictory because:**

- 1. On October 29, 2017, Kama was nominated for The Daisy Award for extraordinary nurses by a patient and their family members for an outstanding role, extraordinary skills, and compassionate care. ROA. 1708; and ROA.304.**
- 2. On October 8, 2018, Kama received a Letter of recommendation from Senior Vice President and Chief Executive Officer Jerry A. Ashworth, FACHE. ROA.1707; which also reflects on the record in ROA.582; and ROA.332.**
- 3. In November 2018, Kama received a gratitude card from a patient and their family members. ROA.1709; which also reflects on the record in ROA.313-15.**
- 4. On December 11, 2018, Kama received an Employee Merit Statement effective from November 25, 2018, while she was on light transitional duty whereas the employer admitted that she "Meets Expectations." ROA.1639; which also reflects on the record in ROA.911.**
- 5. A Declaration (sworn statement) from Mr. Peter Ezieke confirming all therein in the Letter of Recommendation from the Senior Vice President and Chief Executive Officer Jerry A. Ashworth, FACHE ROA.560; which also reflects on the record in ROA.1626.**

## **PRIOR**

6. Statement regarding work performance from Mr. Abhulime Ehiagwina (Chief Financial Officer – CFO) Kama’s former Director of Finance/Acting Chief Financial Officer at Emerging Market Telecoms Services - Etisalat. ROA.1724; which also reflects on the record in ROA.336-37.
7. Statement regarding work performance from Mr. Temitope Fatai (Business Executive Head) Kama’s former Senior Manager at Emerging Market Telecoms Services - Etisalat. ROA.1725; which also reflects on the record in ROA.338.
8. Statement regarding work performance from Mrs. Uyinmwen Iyamu Kama’s direct report Supervisor at Emerging Market Telecoms Services - Etisalat. ROA.1726; which also reflects on the record in ROA.339.

## **AFTER**

9. On several occasions, Kama received various comments from patients and their family members to whom she had the opportunity to deliver care according to Clinical Nurse Manager Andrea Barbee’s “Expect Care”. ROA.1710-11; ROA.1796; which also reflects on the record in ROA.313-15; ROA.575-80; and ROA.943-46.
10. On January 24, 2020, she received recognition from Executive Vice President Roberta

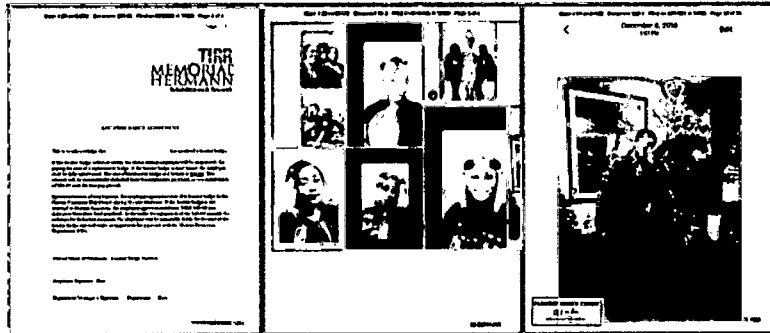
Schwartz and was nominated for an iCare Award by a patient and their family members. ROA.1721; which also reflects on the record in ROA.945-46.

11. On August 17, 2019, she received recognition from Executive Vice President Roberta Schwartz. ROA.1717; which also reflects on the record in ROA.347.
12. On August 4, 2019, at 1:05 pm, Kama received recognition from a patient, their family members, and former Director/Nurse Leader Ms. Paulette Baker – “for a job well done!” Nurse leadership rounding recognition. ROA.1720; which also reflects on the record in ROA.581.
13. On several occasions, she received various recognitions and comments from Clinical Nurse Manager Andrea Barbee whom she had the opportunity to work with and deliver in her own words “Expect Care” as stated in ROA.1718; to patients and family members. ROA.1715-16; which also reflects on the record in ROA.346; ROA.348; and ROA.351.
14. Kama also received a gratitude card from Clinical Nurse Manager Andrea Barbee. ROA.1797; which also reflects on the record in ROA.947.
15. On several occasions, she received various recognitions and comments from co-workers whom she had the opportunity to work with and deliver in Clinical Nurse Manager Andrea Barbee's words “Expect Care” as stated in ROA.1718; to patients and family members.

ROA.1712-13; ROA.1719; ROA.1722-23; which also reflects on the record in ROA.575; and ROA.944.

16. On June 15<sup>th</sup>, 2019, petitioner received an Honor Achievement Merit and Certificate of participation from management at work regarding Kama's participation in "The Mission of Yahwey Water Drive" (*"The Mission of Yahweh is a faith-based shelter that empowers, enriches, and restores the lives of homeless women and children, and provides outreach services to communities in need, since 1961"*). ROA.2052-2109.

**B. Locator badge:**



According to the employer, Kama was terminated for not wearing her locator badge<sup>11</sup> from December 1, 2018, to January 10, 2019. ROA.1296. The images above show three pieces of evidence on the record ROA.1381; ROA.905; and ROA.1680.

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<sup>11</sup> After Kama filed this lawsuit the employers' testimony changed.



- a. ROA.1381; Kama did not have any Locator Badge agreement with the employer during the course and scope of her employment nor was the document presented to her.
- b. ROA.905; Kama's locator badge was always affixed to her uniform; worn on the lapel at eye level according to the employers' locator badge policy and appearance and standard policy. ROA.848; ROA.880-81.
- c. ROA.1680; is a photo of Kama with her locator badge affixed on her uniform on December 8, 2018, with senior management during the course and scope of her employment with the employer. ROA.1103; ROA.848; ROA.1668-82; ROA.1327-33.

C. The employer uses informal malicious and intentional disciplinary actions as a pretextual fact: The actions were informal and not formal.

1. Informal Verbal Warning was unwarranted and lacks authenticity as it does not show Kama's name in the entered by column and no date entered either. ROA.1279; no acknowledgment and acceptance. Kama was misled by Manager McLeod to file taxes through the company when it was a phishing mail that he had been written up for prior to when he was hired. ROA.1631.
2. Informal Written Warning was unwarranted however, Kama acknowledged she complies with the employer's policy/standards of conduct ROA.1634; ROA.1377; ROA1277; during the course and scope of her employment and

disagreed with the defamatory testimony from a co-worker.<sup>12</sup> ROA.1635 ROA.1282.

3. Informal Final Written Warning was unwarranted because the employer retaliated against Kama for opposing working in an unsafe abusive/hostile work environment. Kama chose another unit to work overtime. She refused to perform hazardous work. On September 17, 2018, when she returned from her leave of bereavement;<sup>13</sup> she got to work and discovered an assignment switch (Manager McLeod tampered with her schedule ROA.1791-95.) Kama exercised her employee rights according to the employer's policy in the affirmative, she asked to go to another unit instead of PCU4 for safety reasons. Since she was a lawsuit-prone employee to the employer under surveillance Judith Toscano<sup>14</sup> reported the incident distorting facts. Kama never saw

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<sup>12</sup> Karla was a coworker and Manager McLeod's agent who worked on the employer's unit PCU4. She always unreasonably interferes with Kama work performance; a workplace bully who created an intimidating hostile work environment. She constantly sent defamatory emails about Kama to superiors. Kama reported her hostile behavior to Manager McLeod, but he deliberately failed to take remedial action and instead used her to pepper Kama because Kama opposed his unwelcome sexual advances. Manager Arit Nwagboso and coworkers confirmed the same based on her history before Kama was hired that she was troublesome and vindictive.

<sup>13</sup> Which Manager McLeod denied her, before and later granted because other managers intervened.

<sup>14</sup> Judith Toscano is an Operation Administration who acts on behalf of the Managers when they are absent or not on the schedule.

or spoke to Toscano ROA.1017;<sup>15</sup> (A violation of my staff rights according to the employer's policy ROA.847; and constitutionally a violation of the equal protection clause).<sup>16</sup> A few days later, Kama was called in for an investigation on the matter by Another manager Mr. Nicholas Balidin, and Manager McLeod, (Kama was surprised it was an issue) after hearing her side of the story, Manager Balidin asked Kama. . . "*Nacha, did you see Judith Toscano?*" I said, "*No.*" (No grounds for the write-up). In ROA.1288; Manager McLeod indicated that he spoke to Kama about a final on September 24, 2018. He did not. The documentation is a false statement because Manager Balidin signed the paper on September 20<sup>th</sup>, 2018, at the end of the paper. Manager McLeod intentionally and informally wrote Kama up and sent her a message on October 4, 2018, ROA.1317; (which contradicts what he wrote on the paper ROA.1288.) Kama disputed the unwarranted write-up. ROA.1815.

4. No Suspension: The employer failed to give Kama a mandatory 3-day suspension before intentionally terminating Kama's employment. Manager McLeod intentionally manipulated her work schedule to make it seem she was given a mandatory 3-days suspension before termination. ROA.1638; shows Kama's (employee) work schedule from December 1,

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<sup>15</sup> Racial Discrimination

<sup>16</sup> Toscano states she was ordered by Becky Thayer.

2018, to January 31, 2019, this document was printed on December 1, 2018, at 16:01, by Kama.

5. The employer placed Kama under surveillance to document reason(s) for discharge, especially on January 6, 2019. On January 6, 2019, the employer was short-staffed, and duties were hazardous to the workload on the Unit which violates OSHA – Occupational Safety and Health Act standards. Kama was assigned a 1:1 patient with other patients – a heavy workload. It is evident from her report to Manager McLeod in ROA.1321-22; ROA.1761-62; that the unit was a hazardous work environment, and it is a violation of the employer’s compliance with law and regulations ROA.964; health and safety in ROA.1369; and quality of care ROA.1359; ROA.1360.

The work assignment was not fair; another employee who had fewer assignments and was treated favorably; was watching TV in a patient room during the shift and was not reported on January 6, 2019. ROA.903. Kama was a victimized employee. The report from Ms. Melissa Lu ROA.1292; is meritless because the complaint is based on assumption. The report from Ms. Kelly Pham ROA.1294; is also the same because Kama asked for help. Ms. Pham did not ask for help. She only saw Kama taking care of her 1:1 patient (One to one patient) when she saw her in the patient’s room later at the end of the shift doing her assigned duties. ROA.2232-37.

A 1:1 or one on one patient is a patient who needs proper observation and special attention. The patient cannot be left alone. The Nurse assigned to the patient must seat in the room with the patient with a computer to observe and document the patient's behavior throughout the whole shift. Patients who need special attention cannot be assigned with other patients.

What is wrong with asking for help especially when the patient is a two-person assist? Kama asked Ms. Pham for help she did not ask Kama for help. The report from Ms. Debra Frost ROA.1319; – is hearsay because Ms. Pham lied. The documentation was created for the purpose of constructive discharge; therefore, it is a false report. All malicious reports from Karla Ubrina ROA.1312; are evidence of libel, harassment, conspiracy, and workplace bullying which Manager McLeod encouraged to pepper Kama for opposing his unethical and unlawful behavior. *Bouman v. Block*, 940 F.2d 1211 (9th Cir. 1991) (Holding that “retaliation claim was “reasonably related” to prior sex discrimination claim”)

D. The employer uses the staff activity report as a pretextual fact that is irrelevant: ROA.1382-91. This is immaterial to this case because:

1. There was no locator badge agreement
2. From the time the adverse actor and harasser - Manager McLeod checked, Kama was on light transitional duty from a neck injury - work-related. ROA.571; ROA.919; due to heavy

assignments<sup>17</sup> from October 4, 2018, to January 3, 2019, ROA.572; to follow-up with the doctor on February 7, 2019, so Kama's locator badge will be inoperative as she worked light duty on other units, but operative in her unit - PCU4.

3. The employer did not have a battery replacement when Kama requested one for her locator badge on January 5th, 2019. As stated in the dispute resolution process ROA.1324-25. *"On the 5<sup>th</sup> of January at the end of the shift, I noticed on the system that my name wasn't registered, and nobody brought it to my attention all day."* According to the locator badge policy, "The unit clerk or designee will verify at the start of each shift that all staff can be located from the master station." ROA.1380. Manager McLeod scheduled Kama to work on January 4 – 6, 2019 ROA.1638.<sup>18</sup> He also deliberately scheduled Karla Ubrina<sup>19</sup> as the Unit clerk for those days.
4. On January 10, 2019, the unit clerk Ms. Wanda Duckworth replaced Kama's battery. Karla intentionally did not do her job.

It is not Kama's duty to run the day-to-day supervision of the work environment and with

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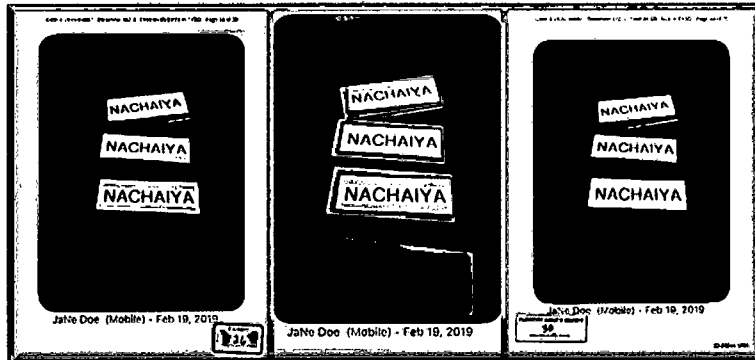
<sup>17</sup> Manager McLeod used heavy assignments as a tool for retaliation as punishment for opposing his unwelcome sexual advances and for complaining to Manager Nwagboso about the sexual assault and sexual harassment.

<sup>18</sup> As seen on the schedule, Kama was off for 3 days.

<sup>19</sup> Karla is not a Unit Clerk. She is a PCA – A nurse assistant.

ensuring a safe, productive workplace but the Manager's.

**E. Deceptive Practice.**



Aside from the employer's pretextual reason's given above, Kama was denied unemployment benefits due to the image above in ROA.1706; – false evidence presented during the unemployment investigation. ROA.912.

**2. Kama was qualified for the role and met the employer's job performance goal/expectations.**

In *Sempowich v. Tactile Sys. Tech.*, 19 F.4<sup>th</sup> 643 (4<sup>th</sup> Cir. 2021). (Court noted that, at prima facie stage, the inquiry regarding performance is not necessarily confined to the employer's perception of the employee's performance; finding an employee may establish this prong of her prima facie case by introducing evidence that raises a question of fact as to whether the employer's expectations were legitimate or genuine by pointing to positive reviews

or events that took place near the time of the adverse action). ROA.911; ROA.582; ROA.560; ROA.304.

Kama's work performance at other places as presented above are relevant in this case because respondent requested for them to seek evidence of prior bad acts. Also, it shows Kama's behavior, relationships with her superiors, and with other entities other than "TIRR Memorial Hermann." ROA.2052-2109.

**3. Is the employer not accountable/liable?  
(Respondent superior).**

In the case of *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986). This court held that "sexual harassment that affects tangible job benefits is an exercise of authority delegated to the supervisor by the employer, and thus gives rise to the employer's liability."

In *Faragher v. Boca Raton*, 524 U.S. 775 (1998) and *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998). This court held that "employers are vicariously liable. . . employers are strictly liable for the loss of tangible employment opportunities e.g. firing or other job detriments."

Also, in *Vance v. Ball State Univ*, 570 U.S. 421 (2013). This court held that "an employer is vicariously liable for a supervisor's harassment when the employer has empowered that employee to take tangible employment actions against the victim, i.e., to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different



responsibilities or a decision causing a significant change in benefits."

Kama reported to senior management and management and the employer knew Manager McLeod was a dangerous character and serial womanizer. ROA.1988; 1959. ROA.2207-75; ROA.2275; ROA.1355.

**4. "Memorial Hermann" is not entitled to Ellerth/Faragher's defense. I told them.**

In *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998). This court held that "an employer is not entitled to the defense unless the employee unreasonably failed to utilize the corrective measures offered by the company's anti-harassment policy,"

"Memorial Hermann" agents: Manager McLeod, Manager Nwagboso, Senior Manager Becky Thayer, HR: Joyce Williams and Emerald Smart, and other higher management that were notified had a wealth of knowledge of the misconduct before and after Kama suffered job detriment. In *Kauffman v. Allied Signal*, 506 U.S. 1041 (1992), this court held that "if a plaintiff suffered a job detriment it is sufficient to establish vicarious liability for the employer." *Carter v. South Cent. Bell*, 912 F.2d 832 (5th Cir. 1990). (The employer's knowledge of the Plaintiff's protected activity).

The employer is not entitled to and cannot gauge an affirmative defense under "Ellerth/Faragher" because "Memorial Hermann":

- a. Admitted that they broke the law by terminating Kama "unjustly." ROA.2275; and also, does not dispute liability for their breach of duty and intentional violations of the laws under Title VII claims in this case. ROA.1355; ROA.964.
- b. Kama did not fail to take advantage of any preventative or corrective opportunities provided by the employer because it is Kama's duty to play a key role in assuring compliance with "Memorial Hermann's" policy, and the law. ROA.1356.
- c. TIRR Memorial Hermann did not exercise reasonable care to prevent, correct, or take remedial action. The employer did not act promptly.
- d. The employer was negligent; as they intentionally failed to conform to a certain standard of care; breach of duty; and there is a causal connection between the employer's breach and the injuries the employer caused to Kama in this matter. In this regard, ROA.1308-10; on the record is perjury.
- e. Because of the corrective opportunities that Kama took; For example, Manager Nwagboso in the picture, in this case, is evidence that Kama took advantage of the employer's corrective opportunities, such as complying with policies and procedures and the law. ROA.964; ROA.1374-75. ROA.2125-2206. *Paroline v. Unisys Corp.*, 879 F.2d 100 (4th Cir. 1989). (Noting that a failure to correct the harassment are required for liability).

**5. The lower court's decision is incorrect because the record reflects the following:**

- a. Witness testimonies and sworn statements ROA.1981-2051; (Dkt. No.144 – Exhibit A).
- b. Kama's work performance as mentioned above as it reflects on the record in ROA.2052-2109. (Dkt. No.144 – Exhibit B).
- c. Kama's opposition during the course and scope of her employment to discrimination; sexual harassment as it reflects on the record in ROA.2110-24; and unwelcome sexual advances ROA.2125-2206. (Dkt. No. 144 – Exhibit C). *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).
- d. Kama's retaliation claim during the course and scope of her employment as it reflects on the record in ROA.2207-75. (Dkt. No. 144 – Exhibit D). *Bouman v. Block*, 940 F.2d 1211 (9th Cir. 1991)
- e. Emotional distress caused by the employer as it reflects on the record ROA.2276-2331. (Dkt. No. 144 – Exhibit E).
- f. Policy Compliance - ROA.2332-95. (Dkt. No. 144 – Exhibit F).

**III. The lower court invalidated Constitutional statutes and Federal Law.**

In *Marbury v. Madison*, 5 U.S. 137 (1803). Chief Justice John Marshall stated that “*a law repugnant to the Constitution is void.*”

In the case of *Brown v. Board of Education*, 347 U.S. 483 (1954). This court held that “*separate but equal*” treatment of races is unconstitutional.

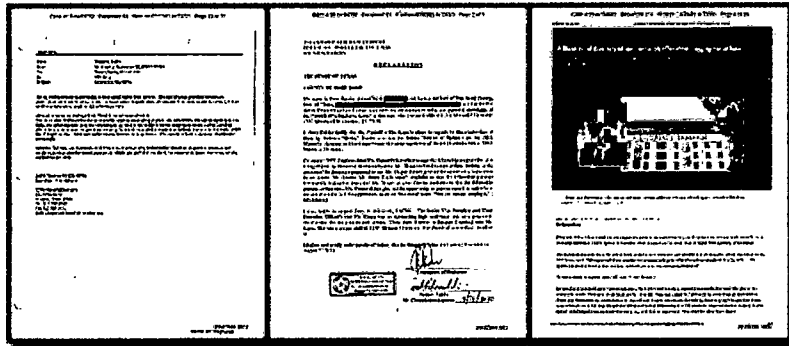
In *Vernon Hickerson v. Texas Honing, Inc.*, the court held that “*Title VII forbids an employer from discriminating.*”

It is constitutionally offensive and “*un-American*” to be racially profiled when created equal - ROA.1023; especially to Federal citizens who were not born American but have passionately embraced patriotism in our nation and are proudly happy to die as an American upholding the constitution. ROA.669; ROA.693; ROA.1012.

Kama's race claim is constitutionally accurate because our constitution is OG, and can be brought to a Federal Court under U.S. Const. amendment XIV, § 2 as the “unjust” termination was also a coverup for a racially discriminatory decision. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Bundy v. Jackson*, 641 F.2d 934, 943-44 (D.C. Cir. 1981) (This Court held that “. . . it is a Title VII violations where an employer created or condoned a substantially [racially] discriminatory work environment, regardless of whether the complaining employee lost any tangible job benefits”).

The Fifth Circuit entered a conflicting decision that conflicts with the equal protection of the laws. The record also shows the respondent's pattern and practice of racial discrimination against my fellow Americans: Mr., Peter Ezieke and Mr. Joseph B. Hill who were victimized by this

unconstitutional practice of disfiguring the constitution. *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003).



See ROA.560; ROA.668-702; ROA.1006; ROA.1806-11. *Bundy v. Jackson*, 641 F.2d 934, 94344 (D.C. Cir. 1981).

Management – Judith Toscano and senior management and director Rebecca “Becky” Thayer, racially profiled Kama; writing her up when they both did not see and talk to her. A defamatory statement that caused Kama to suffer job detriment. *Kauffman v. Allied Signal*, 506 U.S. 1041 (1992).

According to Justice Ruth Bader Ginsburg who recited and re-affirmed this court’s decision in *Marbury v. Madison*, 5 U.S. 137 (1803), “the Constitution is the highest law of the land” and isn’t it written in the 14<sup>th</sup> Amendment equal protection clause that “. . .and nor shall any state deny to any person the equal protection of the laws?” Because racial discrimination violates Title VII of the Civil Rights Act of 1964 and is unconstitutional, the

employer cannot bring a baseless argument that conflicts with the constitution.

Kama applied and was qualified for a job the employer was trying to fill but was intentionally rejected. ROA.1927; ROA.1968-69. Mr. Peter Ezieke qualified for the fellowship program, but the employer rejected him. Senior management - Director Rebecca "Becky" Thayer stated to Mr. Peter Ezieke "*You are not my employee.*" Undisputable "*profoundly offensive and un-American*"<sup>20</sup> to tell an employee or deter a subordinate from advancing in his career path. Mr. Joseph B. Hill is not exempted from the same similar situation and suffered job detriment for doing his job as it reflects on the record.

Based on the factual background herein in the statement of the case, all the above, and the contents in Appendix C herein the lower court's decisions have erred in the opinion below and expressed conflicting views on this issue. Kama prays this honorable court intervenes to reverse/remand so that justice can prevail.

With respect to all the above mentioned, Kama respectfully asks what will this honorable court do in the case of *Kama v. TIRR Memorial Hermann?*

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<sup>20</sup> Quoting Justice Ho

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