

Case No. _____

IN THE SUPREME COURT FOR THE UNITED STATES

PATRICIA A. ALLEN

Petitioner,

v.

JANET L. YELLEN,

Official Capacity as Secretary of the Treasury

Respondent

**ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEAL FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**PETITIONER PATRICIA A. ALLEN'S APPLICATION TO
EXTEND TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT**


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APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A
WRIT OF CERTIORARI

TO: Honorable Supreme Court Justice, Brett M. Kavanaugh, Circuit Justice
for the United States Court of Appeals for the District of Columbia Circuit

Issues for the Court:

1. Whether Allen retains a constitutional right, under the 5th amendment to the Bill of Rights, to due process and equal protection of the law, to jury instruction that includes the applicable prevailing Supreme Court law and the prevailing applicable law in the D.C. Circuit relative to Allen's lawsuit reassignment claims.
2. Whether the trial Court failure to apply jury instruction that includes the applicable prevailing Supreme Court law and the prevailing applicable law in the D.C. Circuit relative to Allen's lawsuit reassignment claims, cause the jury to rule against Allen's claims in their totality?

INTRODUCTION

- I. Under this Court's Rules 13.5 and 22, Applicant Patricia A. Allen requests an extension of *sixty days* to file her petition for a writ of certiorari.
- II. Undersigned Counsel is not yet a member of the U.S. Supreme Court. During the sixty-day extension, counsel will prepare an application for

Supreme Court membership, with the aid of the required U.S. Supreme Court member sponsor, and to prepare Allen's Petition for Certiorari.

- III. Counsel is of the opinion that a denial of the petition for extension or the grant of the same will be based on review of the facts presented in this petition.

- IV. The petition will address the precedential decision of the U.S. Supreme Court's decision in *Muldrow v. City of St. Louis, State of Missouri*, and *Chambers v. District of Columbia*, and challenge the District of Columbia Circuit Decision in *PATRICIA A. ALLEN v. JANET L. YELLEN*, a copy of which is *attachment #1*. The ORDER, dated March 21, 2024, relevantly reads: "Moreover, to the extent that she has not waived or forfeited any argument based on Chambers v. District of Columbia, 35 F.4th 870 (D.C. 2022) (en banc) appellant has not shown any *Chambers*-based error let alone plain error, in the jury instructions or any other aspect of the case."

- V. The D.C. Circuit also denied Allen petition for rehearing en banc. **Attachment #2** dated July 15, 2024.

VI. The Circuit Mandate, filed July 23, 2024, issued a formal mandate, referencing the March 21, 2024 Order. *Attachment #3*. The Circuit's Orders are virtually silent relative to Allens' Assignment Claims and Allen's improper jury instruction claims; all of which were raised in Allen's D.C. Circuit filings.¹ The D.C. Circuit did not provide clarity to any of its Orders for Allen to use in her Petition for Certiorari.

1. Without an extension, the petition for a writ of certiorari would be due on October 14, 2024, which is a holiday- Columbus Day. The 60-day extension starts on October 15, 2024, making the due date, Friday December 13, 2024. See Rule 30.1.) This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for review, relative to *Muldrow v. St Louis* No.22-103 U.S. Supreme Court Argued Dec. 06, 2023, Decided April 17, 2024, *Id.* Pg.2 (Pp.5-11) and *Chambers v. Dist. of Columbia*, ___ F.4th ___, ___, 2022 WL 1815522, at *2 (D.C. Cir. June 3, 2022) (en banc). Both cases define the acts of an employer that constitutes a job transfer motivated by discriminatory animus, and concludes that such a transfer violated Title VII,

¹ PER CURIAM ORDER, En Banc, [2064669] filed denying appellant's motion for oral argument [2047044-5]. It is FURTHER ORDERED that the petition for rehearing en banc be denied. [2052867-2]. Before Judges: Srinivasan, Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan and Garcia. [23-5153] [Entered: 07/15/2024 03:21 PM]

and no additional harm was required, because the discriminatory act itself was sufficient harm. Allen maintains that her supervisor's decision to deny Allen's transfer request and to reassign Allen's harasser to work alongside Allen was retaliatorily motivated. *Chambers* and *Muldrow*, once decided, is not precluded from review by the Supreme Court relative to the Circuit Court's post decisions relative to job assignment-transfer. The distinction between *Chamber* and *Muldrow* and *Allen's* lawsuit, is that Allen's assignment claims were presented to a jury without appropriate jury instructions, whereas *Chamber* and *Muldrow* was decided by the District Court at summary judgment. Prior to *Chamber* and *Muldrow*, D.C. Circuit decided a jury trial issue of Job Assignment. The case is *Czekalski v. LaHood*, 589 F.3d 449 (D.C. Cir. (12/29/2009)). The issue in *Czekalski* is the same issue in Allen's lawsuit, whether the trial court applied the correct jury instructions on the Job Assignment Claims. The D.C. Circuit decided that, for the assignment claims, *Czekalski* failed to present evidence that she suffered material employment adversity relative to the assignment. The D.C. Circuit, in deciding *Chambers*, overruled its previous decision in *Brown*, 199 F.3d at 457), holding that a job assignment claims under Title VII required evidence of material adversity. *Czekalski* is a prodigy of *Brown*. The fact that Allen's assignment claims were presented to the jury with sufficient

evidence that Allen supervisor's assignment decision, refusal to assign, and disparate treatment was motivated by discriminatory retaliation against Allen, because Allen maintained Title VII claims against both the supervisor and her assignee- harasser.

3. At all relevant times, Patricia Allen was an employee with the United States Bureau of Printing and Engraving, where she remains today, with more than 35 years of service, without incident, and with monetary awards for her service. Before the decisions challenged in this case, Allen's Supervisor, on December 03, 2008, assigned Allen to work in the same room with Allen White Co-worker. At the time of the assignment, Allen maintained a Title VII complaint of discrimination and retaliation against (i) the assigner, Allen's immediate Supervisor, (ii) the assignee, the White Co-worker, (iii) the Supervisor of Allen's immediate supervisor, and (iv) the director of the Agency, the U.S. Bureau of Printing and Engraving. Allen's immediate supervisor assigned Allen to work beside the White Co-worker, with actual knowledge of (v) the totality of Allen's pending- unresolved Title VII Complaint against Allen's Co-worker, her supervisor and others, (vi) because of the White Co-worker's documented history of workplace violence against Allen and other Black Co-workers, (vii) that Allen had, prior to the assignment, informed her supervisor that she was afraid the White Co-

worker might harm or kill Allen in the workplace, (viii) and the Supervisor overheard Allen telling other co-workers that Allen was afraid that the White-Coworker might come after Allen inside and outside the workplace. Allen's first line Supervisor, with notice of Allen's Title VII protective activities, also assigned Allen to perform a job and activities not part of her job description, and denied Allen's assignment request, but granted the same request of a female co-worker similarly situated as Allen, who was harassed by the same White Co-worker, in a manner almost identical to Allen's. These facts were tried before a jury. They were virtually undisputed and confirmed by Allen's supervisor's trial testimony.

The D.C. Circuit Court's decision in Czekalski v. LaHood, 589 F.3d 449 (D.C. Cir. (12/29/2009) is that upon which the District Court Trial Judge and Defendant relied

4. The Trial Court's memorandum -opinion and the Defendant's opposition to Allen's motion for a new trial, cited *Czekalski v. LaHood*, implying *Allen*, at trial, failed to present material adversity to sustain her assignment claims under Title VII, ignoring *Czekalski v. LaHood's* evidentiary burden of proving by the preponderance of the evidence material adversity under Title VII discriminatory assignment claims had been overruled in *Chambers*, which in effect overruled *Czekalski*.

5. ***Jury Trial:*** On November 08,2022, a jury returned a verdict against Allen’s Title VII Claims of retaliation, retaliatory hostile work environment and race-based discrimination.

6. ***Jury Instructions Regarding Adverse Employment Action***

The trial Judge properly instructed the jury, under Title VII anti-retaliation provisions, requiring proof of adverse employment action. See the anti-retaliation provisions of 42 U.S.C. § 2000e-3(a).

7. The trial Judge improperly used the jury instructions regarding Adverse Employment action, for Allen’s reassignment claims, under Title VII Anti-discrimination provisions, which does not require proof of adverse employment action. See Title VII anti-discrimination provisions of Section § 2000e-2(a) (1).

8. Under Supreme Court rulings in ***Bostock***, Allen was and remains entitle to jury instruction that includes the applicable prevailing Supreme Court law and the prevailing applicable law in the D.C. Circuit relative to Allen’s lawsuit reassignment claims. See ***Bostock v. Clayton County***, No.17-1618 No.1623 No.18-107, *Id* at 1737, ***Justice GORSUCH delivered the opinion.***

9. The Trial Judge in Allen’s case concurred with ***Bostock***, in stating that *Allen* was and remains entitled to jury instruction that includes the applicable

prevailing supreme court law and the prevailing applicable law in the D.C. Circuit relative to Allen’s lawsuit reassignment claims. Relevantly, the Trial Court jury instructions read:

“Now you have heard the *evidence* and the argument of counsel, it is my duty to instruct you on the *law applicable to this case*. It is your duty as jurors to *follow the law* as I *shall* state to you, and to *apply that law to the facts* as you find them from the *evidence in the case*”). *R-172, Id. Pg.1.Final jury instructions*, (11/08/22).

10. The jury instruction uses the mandatory word, {shall} “... **it is my duty to instruct you on the law applicable to this case.**” This means that the Trial Court was without discretion to omit the applicable jury instructions.
11. The prevailing supreme court law for job assignment claims is cited in the Supreme Court holding in *Muldrow v. City of St Louis*² and the prevailing applicable law in the D.C. Circuit, in *Chambers v. District of Columbia*.³ Both *Chambers* and *Muldrow* speak to the burden of proof for job assignment claims. The burden of proof for the assignment claims is that the Plaintiff is not required to prove she suffered material adverse employment action. The employee need only to produce sufficient evidence that the reassignment was motivated by a protected Title VII activity.

² See *Muldrow v. St Louis* No.22-103 U.S. Supreme Court Argued Dec. 06, 2023, Decided April 17, 2024, *Id.* Pg.2 (Pp.5-11).

³ *Chambers*, 35 F. 4th 870,

12. The trial Court did not instruct the jury on the *law applicable to the case law and Supreme Court authority*. The applicable standard for determining an adverse employment action is not the applicable standard to determine the propriety of job assignment claims.
13. The trial Court jury instruction and jury verdict forms omitted any reference to Plaintiff's reassignment claims. The jury instructions required Allen to "proved by a preponderance of the evidence that she suffered an adverse employment action as a result of her reassignment." The jury returned a verdict against Allen on all of her claims. The jury was never given the opportunity to consider Allen's reassignment claims, as separate valid claims. For all of Allen's claims, apparently the jury found that Allen failed to prove by a preponderance of the evidence that she suffered an adverse employment action as a result of her reassignments. The jury instructions denied the jury the opportunity to decide Allen's assignment claims against the weight of the evidence, which deprived Allen a fair and impartial trial. Based on the undisputed facts, the trial judge committed reversible error, as a matter of law.
14. An alleged failure to submit a proper jury instruction is a question of law subject to *de novo* review; the choice of the language to be used in a particular instruction, however, is reviewed only for abuse of discretion." *Joy v. Bell*

Helicopter Textron, Inc., 999 F.2d 549, 556 (D.C. Cir. 1993). The trial Court, in Allen's lawsuit, had no discretion to abuse, because it is mandatory that he apply the prevailing applicable Supreme Court and Circuit Court authorities in the jury instructions relative to Allen's Assignment claims, and he did not. The Trial Court's failure to properly instruct the jury was prejudicial and affected the jury verdict against Allen. The jury instructions did not fairly present the applicable legal principles and standards for Allen's assignment claims. It would be a matter of constitutional and Civil rights violation for either relevant Court to surmise that the absence of the applicable jury instructions was not prejudicial and not outcome determinative for Allen. The Jury, in Allen's lawsuit, could not decide a claim not presented by the Trial Court in the jury instructions.

15. In *Muldrow*, the Supreme Court remanded Muldrow to the Trial Court for the application of the proper standards for Muldrow's assignment claims. The Court must remand Allen's lawsuit to the trial court for the application of the proper standard-jury instructions for Allen's Assignment Claims.

16. ***Jury Trial Instructions on material adverse employment:*** The Jury was instructed Allen's standard of proof was by the preponderance of the evidence that, because of Respondent action, Allen, for her retaliation

claims, must prove that she suffered material adverse employment consequences.

17. ***No Jury Trial Instructions on Allen's Assignment Claims:*** The Trial Court did not instruct the jury of the standard of proof for Plaintiff assignment claims, refusal to assign and disparate assignment claim(s). Allen presented competent trial evidence of each assignment. Most importantly, Allen presented trial evidence the December 03, 2008, as all others, were decisions by Allen's immediate supervisor, and that each assignment was discriminatorily and retaliatorily motivated.

18. The D.C. Circuit, in acknowledgement of Allen's claim that the Trial Court erred in not charging the jury with *Chambers'* type jury instructions relative to the assignment's claims, and ruled that Allen failed to present a *Chambers'* violation, but did not forfeit the right to prove a *Chamber's* violation. Thereafter, the D.C. Circuit remained un-opinionated as to Allens claim that a *Chambers'* violation lies in the undisputed fact that the Court did not charge the jury that Allen's assignment claims burden of proof did not require Allen prove "***adverse employment action.***"

19. Relevant here, are Title VII two provisions:

Provision One: Title VII Anti-retaliation provision(s). ***The antiretaliation provision of Title VII***, section 704(a), makes it an "unlawful employment practice

for an employer to discriminate against any individual because he has opposed any practice made an unlawful employment practice by this subchapter 42 U.S.C. § 2000e-3(a). Allen maintains the District Court applied the material adversity standards, the wrong standards, for Allen's reassignment claims.

20. *Provision Two:* Title VII Anti-Discrimination provision(s). Title VII does not include an "adverse employment action" requirement. Rather, Section 703(a)(1) of the Civil Rights Act makes it "unlawful ... for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a). An employer's decision to transfer an employee (or to withhold a transfer from an employee) is plainly a decision "with respect to" the "terms, conditions, or privileges of [the employee's] employment."

21. Each provision statutory proof standard, both at summary judgment, and at trial, oppositely different. One requires proof of material adverse employment consequences. see 42 U.S.C. § 2000e-3(a). The Other does not require material adverse employment consequences. See 703(a)(1).

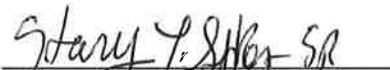
22. Trial evidence is that the trial Court instructed the jury on Title VII Anti-retaliation provisions. If the jury had consideration for Allen's assignment

claims, the jury decision against those claims was based on the material adversity jury instructions, absolutely without consideration of the proper standards under Title VII Anti-discrimination provisions, 703(a)(1).

23. In support of Allen's petition for 60-day extension, is an attachment synopsis of Allen's Petition for Certiorari. **See Attachment 4.** The attachment is assurance that, with revision in substance and form, will be timely submitted, and it also speaks to the merits of Allen's claims, for the court to consider grant of the extension. See Separate Affidavit of Service, **Attachment 5.**

24. For reasons, Allen's request that the due date for her petition for a writ of certiorari be extended to Friday, December 13, 2024.

Respectfully submitted, on October 3, 2024


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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5153

September Term, 2023

1:18-cv-01214-RC

Filed On: March 21, 2024

Patricia A. Allen,

Appellant

v.

Janet L. Yellen, Official Capacity as Secretary
of the Treasury,

Appellee

BEFORE: Millett, Pillard, and Wilkins, Circuit Judge

ORDER

Upon consideration of appellant's amended brief and corrected appendix; appellee's motion for summary affirmance, the corrected opposition thereto, and the reply; and appellant's corrected motion for remand, the opposition thereto, and the reply, it is

ORDERED that the motion for remand be denied and that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court properly declined to consider appellant's list of undisputed facts and party admissions, which was not necessary to her motion for judgment as a matter of law or for a new trial and would have allowed her to significantly exceed the 45-page limit for that motion. Furthermore, appellant has not shown any error or abuse of discretion in the district court's denial of her motion for judgment as a matter of law or a new trial. See, e.g., Boodoo v. Cary, 21 F.3d 1157, 1161 (D.C. Cir. 1994) ("The court may not substitute its judgment for that of the jury," and "the jury's verdict must stand unless the evidence, together with all inferences that can reasonably be drawn therefrom is so one-sided that reasonable men could not disagree on the verdict.") (internal quotation marks omitted). Moreover, to the extent that she has not waived or forfeited any argument based on Chambers v. District of Columbia, 35 F.4th 870 (D.C. Cir. 2022) (en banc), appellant has not shown any Chambers-based error, let alone plain error, in the jury instructions or any other aspect of the case. Nor has she shown any other reversible error in the district court's rulings.



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5153

September Term, 2023

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5153**September Term, 2023****1:18-cv-01214-RC****Filed On: July 15, 2024**

Patricia A. Allen,

Appellant

v.

Janet L. Yellen, Official Capacity as Secretary
of the Treasury,

Appellee

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins,
Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, the absence of a request by any member of the court for a vote, and the motion for oral argument, it is

ORDERED that the motion for oral argument be denied. It is**FURTHER ORDERED** that the petition for rehearing en banc be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-5153

September Term, 2023

1:18-cv-01214-RC

Filed On: July 23, 2024 [2066089]

Patricia A. Allen,

Appellant

v.

Janet L. Yellen, Official Capacity as
Secretary of the Treasury,

Appellee

MANDATE

In accordance with the order of March 21, 2024, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

[Link to the order filed March 21, 2024](#)



Case No. _____

IN THE SUPREME COURT FOR THE UNITED STATES

PATRICIA A. ALLEN

Petitioner,

v.

JANET L. YELLEN,

Official Capacity as Secretary of the Treasury

Respondent

**ON APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEAL FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CERTIFICATE OF SERVICE

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I am a citizen of the United States, and over the age of eighteen (18) years, a member of the District of Columbia Bar. My mailing address is P.O. Box 23828 L'Enfant Plaza, S.W, Washington, DC 20026, and my office address is 1703 New Jersey Avenue N.W. Washington, DC 20001.

On this day of October 03, 2024, the foregoing documents, (i) Petition for 60-days extension to file writ of certiorari in the U. S. Supreme Court,(ii) and all attachments thereto, I executed this Certificate of Service, and I caused to be served a copy of the documents on the interested parties in the above- captioned action by placing a true copy thereof enclosed in a sealed envelop with postage thereon fully prepaid in the United States post office mail box at L'Enfant Plaza, in the District of Columbia.

On the date of the execution of this Certificate of Service, I caused to be served a copy of the following documents on the interested parties in the above-caption action via-e-mail transmission to the e-mail address listed below.

Pursuant to 28 U.S. Sec. 1746, I declare under penalty of perjury under the laws of the District of Columbia and the laws of the United States that the following is true and correct. Date of execution: October 03, 2024.

Respectfully submitted,

Harry T. Spikes, Sr

Counsel of Record (in D.C. U.S. Circuit)
Not yet a member of the U.S. Supreme Court.

DOCUMENTS SERVED

1. **APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE DISTRICT OF COLUMBIA CIRCUIT.**
2. **Proposed Petition for Certiorari.**

ADDRESS OF THE PARTIES SERVED

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2. Solicitor General of the United States Room 5616, Department of Justice 950 Pennsylvania Ave., N. W. Washington, DC 20530-0001 Elizabeth Prelogar, telephone number is 202-514-2203.

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