No. 24-640

In The

Supreme Court of the United States

PATRICIA A. ALLEN,
Petitioner,

v.

JANET L. YELLEN,
Official Capacity as Secretary of the Treasury,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR WRIT OF CERTIORARI

Patricia A. Allen, *pro se*
P.O. Box 23828
L'Enfant Plaza S.W.
Washington, DC 20026
(202) 288-4175
harryspikes@gmail.com

QUESTION PRESENTED

Whether, in a Title VII lawsuit, mixed Title VII claims, where causation evidence and facts supports the employee's Retaliatory Hostile Work Environment Claims under Title VII Anti-retaliation provision§ 2000e-3(a), which requires **the employee to prove she suffered *"objectively tangible" harm,"*** and the same causation evidence and facts support the employees Retaliatory Discrimination work assignment claims, based on prior Title VII protected activity and race, under § 2000e-2(a)(1), which do NOT require the employee to prove she suffered ***"objectively tangible" harm"***, did the trial court abused its discretion to relay to the jury Title VII Section§ 2000e-3(a) jury instruction (standard) provisions, and to exclude Title VII § 2000e-2(a)(1), jury instruction (standard) Provision, which deprived the jury of an opportunity to decide the retaliatory discrimination assignment claims, and to decide, under summary judgment standards, § 2000e-2(a)(1), with the application of ***objectively tangible harm*** **standard?**

QUESTION-CONSTITUTIONAL VIOLATIONS

Whether the employee, Petitioner {Allen} was denied a fair impartial jury trial under Title VII, the 5th Amendment, the United States Bill of Rights, District of Columbia Circuit prevailing case law, and the United States Supreme Court Authorities, in ***Muldrow,*** when the ***trial court***;

When, **(i)** omitted Petitioner's Title VII retaliatory discrimination assignment claims from the jury ***instruction,*** for jury deliberation?

When, **(ii)** omitted Petitioner's, Title VII retaliatory discrimination assignment claims from the jury (***verdict form***) for a decision on the employee's assignment claims.

When, **(iii)** instructed the jury on Title VII Anti-retaliation provision§ 2000e-3(a), the Petitioner's Retaliatory Hostile work environment claims, requiring the Petitioner to prove ***"objectively tangible" harm.***"

When, **(iv)** did not instruct the jury on Title VII Anti-discriminatory provisions § 2000e-2(a)(1), which does not require the Petitioner to prove ***"objectively tangible" harm,***"

When, **(v)** and decided that the employee's temporal proximity evidence {gap} for an inference of causal connection to the employee's assignment claims and the Defendants adverse employment action was too great, {*perhaps*} as reasons to omit causation evidence from the jury instruction that supported the employee's assignment claims?

Issue: For a fair jury trial, does Title VII and the 5th Amendment to the U.S. Constitution due process clause require jury instructions and jury verdict forms relaying to the jury the prevailing law in the circuit on any legal theory that has a basis in the law and the record and was actually argued to the jury?

PARTIES TO THE PROCEEDINGS

The parties are petitioner Patricia Ann Allen, and respondent, Janet L. Yellen, Official Capacity as Secretary of the Treasury. In the District Court, Allen pursued claims under Title VII of the Civil Rights Act of 1964, against the Secretary Yellen. Only the Discriminatory Assignment Claims under Title VII are at issue in this petition.

RELATED PROCEEDINGS

1. ***Chambers v. District of Columbia,***
35 F.4th 870 (D.C. Cir) Decided 6/03/ 2022.

2. ***Mark Townsend, v. United States et al.***
(No.15-C-01644) petition for En Banc, D.C. Circuit Court of Appeals. (January 27, 2021).

3. ***Muldrow v. City of St. Louis et al.***
No. 20-2975, 30 F.4th 680 (8th Cir. Apr. 4, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Patricia A. Allen respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, for Title VII Violations and 5th Amendment Violation denial of a fair trial.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Patricia A. Allen respectfully petition for writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINION BELOW

The District of Columbia Circuit's en banc decision (pet.App.39a,40a and 41a-42a, Rehearing *In Banc* 43 a,) is not published. The district court 's opinion (pet. A-226-A-260), is available

JURISDICTION

The District of Columbia Circuit Court of Appeals entered judgment on July 23,2024. See Pet. App.43a. On October 09, 2024, Chief Justice Robert grant Allen an extension until December 12, 2024 to file the petitions for writ of Certiorari. See **No.24 A331**.This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

Title VII Anti- Discrimination Provision, of the Civil Rights Act of 1964 Section 703(a)(1): (a) 42 U.S.C. § 2000e-2, provides: (a) Employer practices:

It shall be an unlawful employment practice for an employer:

> (1) 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, (or participation in other Title VII Protected Activity.)

Fed. R. Civ. P 59 (a) (1) (A), contains litigant rights to a new trial based on Judicial material erroneous ruling that resulted in a miscarriage of justice. Allen claims plain judicial error in jury instructions under Title VII Anti-Discrimination provision, sec. 703(a)(1). The U.S. Supreme Court has granted certiorari to clarify the standard for "plain error" review by the courts of appeals under **Rule 52(b).** See ***United States v. Olano*** 504 U. S. 908 (1992) decided (1993).

The United States Fifth Amendment Bill of Rights guarantees litigant's procedural and substantive due process rights to a fair and impartial civil jury trial.

Introduction

In *Muldrow v. City of St. Louis*, 601 U.S. 2024, this court reviewed a Title VII {summary Judgment Ruling} that required *Muldrow* to show "***materially significant disadvantage.***" for a viable Job transfer claim based on Title VII protected activity. This Court decided Title VII lawsuits, claiming discriminatory job transfer based on a protected activity, with respect to the terms {or} conditions of employment, came under Title VII Sec. 2000e-2(a) (1), and that ***Muldrow*** was not required to show transfer caused her to experience "***materially significant disadvantage,***" for a viable Title VII job assignment claim. *Id.* pg.1. The ***Materially adverse standard*** applies to Title VII retaliation action, citing *Burlington N.& S.R. Co. v White*, 584 U.S. 53. *Id* pg.3, referring the application of Title VII Sec. 2000e-3(a), antiretaliation provision standard of "*materially adverse,*" meaning that it causes "***significant harm.***" *Id* pg.8-9. The significant harm standard is coterminous with D.C. Circuit's {"***objectively material harm".***} The *Harm Standard* to be applied in the Title VII case determine the employee's burden of proof standard.

Title VII of the Civil Rights Act of 1964 forbids employers from discriminating on the basis of race, color, religion, sex, or national origin with respect to their employee's' "compensation, terms, conditions, or privileges of employment." 42 U.S.D. Sec. 2000e2 (a) (1). In *Chambers v. District of Columbia,* the District of Columbia Circuit established the prevailing standard of proof required for an employee's claims of Retaliatory discrimination Job Assignment under

Title VII Anti-discriminatory provisions § 2000e-2(a)(1). Once it has been established that an employer has discriminated against an employee with respect to that employee's "terms, conditions, or privileges of employment" because of a protected characteristic, the analysis is complete. The plain text of Title VII requires no more. Any additional requirement, such as ***Brown's*** (199 F.3d 446) demand for "*objectively tangible harm,*" is a judicial gloss that lacks any textual support. *See* ***Chambers v. District of Columbia, rehearing*** *en banc* decision, 35 F.4th 870, *Id* 174-175 (D.C. Cir) Decided 6/03/ 2022. Also cited 40 F 4th 870, *Id.* 875 (D.C.Cir.2022).

To be certain, the issue decided by the D.C. Circuit in ***Chambers*** is whether, under 42 U.S.C. § 2000e-2(a)(1) anti-discrimination provision an employee need to prove that the transfer or refusal to transfer, caused the employee to suffer "***objectively tangible harm,***" with respect to that employee's "terms, conditions, or privileges of employment" as the employee's burden of proof, either at summary judgment or jury trial. The D.C. Circuit answer is (NO), the employee need not prove ***objectively tangible harm***, under the historical {***objectively tangible harm doctrine***}.

Divisions in the circuits: The U. S Supreme Court decision in ***Muldrow v. City of St Louis***, sets an evidentiary standard under Title VII § 2000e-2(a)(1). The ***Muldrow*** standard eliminated the "***objectively tangible" harm,***" standard for job assignment claims. The ***Muldrow*** standard is that the employee need show {"some *disadvantage* or harm relative to a term or condition of employment"}.

Muldrow specifically held that the text of Title VII does not contain any requirement for an adverse employment action to have {"significant"} harm. District of Columbia Circuit decision in *Allen v. Yellen,* appears to be in indecision as to whether *Muldrow's* {"some *disadvantage* standard} applies to a {Title VII § 2000e-2(a)(1) retaliatory discrimination assignment claims} where Title VII § 2000e-3(a) evidence of retaliatory hostile work environment claim is the same evidence that support Allen's retaliatory discrimination Assignment claims. This suggest that the D.C. Circuit, relative to Allen's lawsuit, holds that ***Muldrow's disadvantage harm standard*** should {**not**}apply to a hostile work environment retaliation assignment claim. A conflict appears in D.C. Circuit 's rehearing *en banc* decision in ***Chambers v. District of Columbia's*** harm standard, explained in detail below. It is unclear as to whether the ***Muldrow*** "some harm" standard applies to hostile work environment claims, with causation evidence supporting both the Retaliation Hostile Work Environment Claim and the Retaliatory discrimination job assignment claims based on race and prior Title VII protected activity. The trial court' memorandum opinion that denied Allen's post-trial motion for a {new trial} and a {judgment as a matter of law}, addressed in detail Allen's retaliatory Job Assignment Claims. The Court decided the jury could not find for Allen's on the assignment claims. In contrast, the D.C. Circuit ruled, : 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" See DC ORDER, Doc. 2046126, (March 21, 2024), also See **39a 40.**

In ***Mark Townsend v. United States***, et al, No. 19-5259, the District of Columbia Circuit was presented with a question-issue- identical to the question presented in *Chambers.* To be most precise, whether {***objectively tangible harm doctrine***} applied to issues of alleged discriminatory job assignment (based on Age discrimination). The D.C. Circuit decided in *Townsend age discrimination lawsuit,* the same as in *Chambers:* § 2000e-2(a)(1): Under Title VII § 2000e-2(a)(1), for discrimination assignment claims} the employee need not prove he suffered objectively tangible harm for a viable Title VII cause of action.

STATEMENT OF THE CASE

Petition Patricia A. Allen is a Black Female with 35 years employment with the Bureau, as a Supply Technician, without incident, and with cash awards for good and excellent employment performance.

Allen asserts claim against Respondent for violations of Title VII of the Civil Rights Act of 1964 arising from her employment as a supply technician at the Bureau of Engraving and Printing.... Ms. Allen alleges that she experienced a *discriminatory and retaliatory hostile work environment from* 2008 to 2014. Petitioner Patricia A. {Allen}maintains the Respondent, Janet Yellen, through Allen's first line supervisor: (i) refused Allen's request to be assigned from her harasser and from the same cubicle in which he harassed Allen, (ii) Granted a similarly situated

employee request to be reassigned from the same person who harassed Allen, (iii) assign Allen and two other female employees, who had complained to Evans the harassment of which the three of them were victimized by the same harasser, to a work detail, not within their job description, and (iv) assigned Allen to work in the same cubicle with Allen's known harasser, when, at the time of the assignment, Allen maintained a Title VII harassment complaint of retaliation against both Evans, who ordered the assignment, and her harasser, with whom she was assigned to work, and of whom she feared might kill Allen in the workplace. Evans was fully aware of these facts when she ordered assignment four. By both parties, Allen's four assignment claims were argued to a jury, along with Allen's three Retaliatory Hostile Work environment claims. The jury instructions and jury verdict forms included the retaliatory hostile work environment claims. The jury instructions and jury verdict forms omitted the four Retaliatory Discrimination job assignment claims based on Allen's race and prior protected activity. The jury returned a verdict against Allen's Three Retaliatory Hostile Work Environment Claims. It was impossible for the jury to return a verdict on Allen's Retaliatory Discrimination Job Assignment Claims, because the jury was without instructions for deliberation on those claims, or jury verdict forms to render a verdict on the Assignment claims. The Trial Court's Memorandum Opinion below, found that Allens' evidence of a causal connection between Allen's Title VII protected Activity and the Alleged adverse employment action of allege retaliatory discrimination assignments was insufficient. See **A-255, N. 11, A-256,N13.**

Under an erroneous temporal proximity analysis, the court concluded the gap between Allen's alleged protected activity and Supervisor Evans' alleged adverse employment action was too great for the jury to find retaliatory discrimination assignment Title VII violation.

I. **Factual background**

Jury Trial Allen's Title VII retaliatory discrimination claims were tried to a jury over a five-day trial, from October 29, 2022 to 11/07/2022. On 11/08/2022 the jury returned a verdict for Defendant-Respondent, against all of Allen's claims.

The court below clearly acknowledged Allen's assignment claims. Each assignment claim was addressed in the court's Memorandum Opinion denying Allen's motion for a new trial and a judgment as a matter of law. Ca.# 18-1214.A-226-A-260. The Court maintains that what proved fatal to those claims is Allen's failure to prove a causal connection linking the claims to the alleged adverse employment action. The court's conclusion was based on erroneous temporal proximity analysis. Trial evidence reveals the errors in the court's analysis.

The three retaliatory hostile work environment claims were tried and decided by the jury under the objectively material harm standard, Title VII Anti-retaliation provision§ 2000e-3(a).

Allens four retaliatory discrimination assignment claims under Title VII §-2000e-2(a)(1), were argued to

the jury, but decided by the District Court, under the objectively material harm standard, Title VII Anti-retaliation provision§ 2000e-3(a).

Four assignment Claims

ASSIGNMENT 1

1. On April 30, 2008 Supervisor Evans denied Allen's reassignment request: On the same day, April 30, 2008, Allen's supervisor, Julie {Evans} denied Allen's request to be reassigned from the same work cubicle as white co-worker, Andrew {Wilson}, when Allen reported to Evans Wilson kicked or threw a metal trashcan in the direction of Allen and co-worker, Foster; with their backs to Wilson. Tr.1075, *Id* at A-82. By refusing Allen's reassignment request, Evans forced Allen to remain in the same cubicle from April 30, 2008 until May 08, 2008. Wilson became angry at Allen and Foster who were listening to CNN aka, Bureau News Network (BNN) broadcast about Black presidential candidate, Obama. Wilson became angry, lost his temper, and kicked/threw the metal trashcan. Allen reported to Evans: ("As of this morning Andrew Wilson is still occupying his desk in 201-28A, where my desk is located... I am extremely disturbed, uncomfortable, frightened."). See Allen's May 08, 2008 Email, **A-173.**

At trial, Allen testified the metal trashcan barely missed contact with her head. The Court recognized Allen remained in the cubicle for eight (8) days. {"Apparently, Ms. Allen was still working in the same cubicle as Mr. Wilson on May 08, 2008, about a week after the trash can incident. *Id.* at {1075:5-13."} See

A-82. Evans defined Wilson's 4/30/2008 behavior: *"Irate behavior that demonstrated a lack of self-control and sound judgment"*, a violation of the Bureau Threat policy against violence, harassment and intimidation. **A-171.pg.2. Also see** Allen's EEO Complaint **6/19/2008, {" a metal trash can came flying toward us"}** ***Id*** **A-141.**

Facts: On June 04, 2008, Wilson expressed physically assaultive behavior toward Employee Ms. Rachelle {"Wright"}. Wright accompanied by Allen reported the totality of Wilson's behavior to Police Officer Henderson, the Bureau's EEO Division Representative, and her supervisor Evans. Wright reported that, while working in the same unit with Wilson and watching Bureau Broadcast Network (BNN) news about Black presidential candidate, Obama, Wilson became upset about the BNN Broadcast about Obama. Wilson approached Wright, pounding fist in hand, exclaiming (*"there was no fuc..ing way a Black man would become president."*)

ASSIGNMENT 2

On June 04, 2008 Supervisor Evans granted Rachell Wright's reassignment request, Tr. 1076 -L6-8, See A-83. { Q. So it is true that you removed Ms. Wright from Mr. Wilson' s presence because of Mr. Wilson's unprofessional behavior toward her, but you didn't do the same thing for Ms. Allen; is that correct.? See Evan's Tr. 1161-1162, A-106, L-24 -25, A-107, L-1-2, with an answer, YES, L12-13. Undisputed, Allen and Wright were similarly situated in the same workplace: (i) Evans supervised Allen, Wright and Wilson. (ii). Wilson's workplace

violence on April 30, 2008 and the June 04, 2008 was motivated by the broadcast of Obama, (iii) each event involved black females. (iv) on the same day of the respective incidents, Allen and Wright expressed their fear of Wilson and requested reassignment from Wilson workplace. (v) by Evans, Allen's reassignment request was *denied*; Wrights 's reassignment request was granted, (vi) Allen remained in the same cubicle, in which Wilson kicked/threw the metal trash can, for eight (8) days, from April 30, 2008 until May 08, 2008.

The Trial Memorandum Opinion addressed Allen's assignment Claim (s) of April 30, 2008 and June 04, 2008

The Court: ("Mr. Wilson was watching coverage of the 2008 election on the Bureau's internal news network, Bureau News Network ("BNN"), while Ms. Wright was at the back of the lab. ***Id.*** at 188:7–13, 222:10–12. Ms. Wright overhead Mr. Wilson say, "There's no [fucking] way a black man gonna become president," while punching his own hand. *Id.* at 188:7–13. Ms. Wright left the lab and reported the incident to Ms. Evans. *Id.* at 189:7–13. She also met with Ms. Allen the same day, and the two of them filed a police report. Id. at 189:24–190:3. At trial, Ms. Evans's testimony largely corroborated Ms. Wright's account of the incident. *Id.* at 969:9–19. The government does not dispute that Mr. Wilson made this statement. *Id.* at 1276:11–14.") See A-236.

The Court also found Wilson's June 04, 2008 statement {race based}: The Court: {"Although Mr. Wilson's statement was race-based, it did not involve a racial epithet. Nor did Mr. Wilson direct this

statement toward Ms. Allen—in fact, she was not present during this incident but only learned about it afterwards."} *See* Tr. 881:15–21."} See A-237.

ASSIGNMENT 3

Assignment of June 23, 2008. On June 23, 2008, Evans initially assigned to a clean-up detail the three Black Females who had complained to Evans Wilson's harassment; (i) Foster, (ii) Wright, and (iii) Allen. Only after Allen complained to Evans about the initial selection, Evans caused to be made additional selections of non-complainant employees to the Clean-up detail. Allen perceived the June 23, 2008 ***assignment*** an act of retaliation by Evans for Allen's prior protected activity. {"So I took upon myself to go and ask Ms. Evans why just the three of us. Why three females' Black women's that ... filed the complaint against Mr. Wilson. Why were we only asked to do the cleaning? See Allen's"} Tr. *Id* 810:3-6, **& A-257.**

The Court addressed the June 23, 2008 assignments with *Judicial Err of material fact*

The Court rule the June 23, 2008 assignment was not retaliatory, because Evans did not know about Allen's prior protective activity. ***The Court***: {"The *problem with this theory is that Ms. Evans testified that she first learned about Ms. Allen's 2008 EEO complaint four days after the clean-up duty had already occurred"*}.

Undisputed, Evans was on same day notice that Allen and Wright engaged in Title VII protected

activity on June 04, 2008: {"Ms. Wright and employee Pat Allen, SAC Badge # 12818, were escorted by Stg. Henderson to the EEO Office, Room 606-A and we left there with EEO Counselor Mattie Wimberly, SAC Badge#14175, for counseling on the matter.") see Bureau's Offense /Incident Report, found at ECF#189, *Appendix 44a*. Evans confirms Allen and Wrights June 04, 2008 protective activity: ("I understood that they've gone to the EEO Office and talked to Andree Faulk"). See Evan's Tr. 969 ,9-25 and Appendix 45a. Evans even participated in Allen's Wright's protected activity, when they reported the same to Evans. Allen and Wright met twice with Evans, once on June 04, and again on 05, 2008. The next day, June 05, 2008 Evans met with Allen and Wright: {" I am writing to inform you that I am feeling very uncomfortable and scare due to the incident with Andrew Wilson Wednesday morning. ***Yesterday morning you mentioned to Patricia and I that Andrew did not mean to say what he said or look at me while condemning Obama.....***" See Wrights' *Uncontested Email*, ***A-174.*** Allen perceived Evans' statement an act of retaliation and an adaptation of Wilson's statement to Wright. Evan's statement caused Allen to suffer a panic attack, and Wright to suffer race-based violent nightmares. ***A-174.*** Undisputed, accompanied by Allen, Wright ***explained to Evans the totality of Wilson's behavior of June 04, 2008 to the EEOC division, to Officer Henderson, and to Supervisor Evans.*** The Court confirms Wright's protected activity, but omits Allen's opposition to what Allen believed was a Title VII violation by Wilson. :{" Ms. Wright left the lab and reported the incident to Ms. Evans. *Id.* at 189:7–13. She also met with Ms. Allen the same day,

and the two of them filed a police report. *Id.* at 189:24–190:3.")

Evans' false testimony caused the Court to find Evan's decision to assign Allen to the June 23, 2008 clean-up detail was not and could not be a retaliatory assignment, believing Evans learned about the protected activity four days after the June 23, 2008 clean up detail. The err was judicial, and extremely prejudicial to the outcome of Allen's trial, because it served as a reason for the court to omit the June 23, 2008 assignment from the jury instructions and verdict forms. The Court ignored the 18-day gap between Allen's June 04 and 05, 2008, protected activity and the June 23, 2008 assignment.

5. June 2008 Kentucky Employee Killings relevant to the Dec. 03, 2008 Assignment and Allen's prior Title VII Complaint

Shortly after June 25, 2008, when a Kentucky employee killed his supervisor and other co-workers, Allen asked Evans how could she know Wilson would not do the same at the Bureau. Evans also heard Allen expressed her fears to other Bureau's Employees that Wilson might come after her outside the workplace. *("I heard her talking to one of the other employees and saying she was afraid he was going to come after her after work")* . See Tr.1052-L 19-20 & Tr.1053, L 1-6,16-25. Tr 1054, L-Also. (A-59-60).

{"A. Yeah. I recall that –okay. This is after--- shortly after the initial kicking the can incident, there was a story in the news about a workplace shooting in Kentucky. And it was about—about two days

afterwards. And--okay. Ms. Allen asked how I could know that Andrew would not come in and do something similar. Q. Okay. And did that give you notice that Ms. Allen had a serious fear of Mr. Wilson? A. Yes. Q. Okay. Did that indicate to you that Ms. Allen thought Mr. Wilson might kill her in the workplace? A. Yes. Q. Okay. Now, what do you do—what do you think a supervisor should do when she has an employee who is afraid of another employee killing her in the workplace—what should you have done as Mrs. Allen's supervisor with that notice? ---A. Okay. I could---probably—may have done---following up with security/ You know, I had separated them, you know.... You know---but—yeah. Anyways, I – when I went by, I heard her talking to one of the other employees and saying she was afraid he was going to come after her after work." Evans' **Tr. 1052- 1054. A-59 – A -60.**

ASSIGNMENT 4

On December 03 2008, Evans Assigned Mr. Wilson to work in the same unit as Allen, with notice that Allen feared Wilson might kill Allen inside and outside the workplace, if given the chance. {" So—so you realized that Mrs. Allen was afraid that Mr. Wilson might kill her in the workplace from your statement and declaration that dated back to June 2008; am I correct" A. yes.} Evans Tr. 1074 L 22-25, 1075 l 1-4. A-82-A 83. See A-173. See also **Tr. 1052-1054. A-59 – A -60.** Evans ordered the 12/03/2008 assignment with (i) notice that on June 04, 025, 2008, Allen had participated in protected activity; (ii) with notice, that on June 19, 2008 Allen had filed an EEO Complaint at the Bureau's administrative level

against Wilson; See A-140 to 142, (iii) with notice of Allen's *July 22, 2008* EEO Complaint against Evans, Dr. Gupta and Juith Diaz-Myers. ECF.1-3 (A-14-16). (iv) Always, Evans and Dr. Gupta were with notice that Allen's EEO Complaints were pending and unresolved when they ordered the Dec. 2008 assignment.

Allen's Assignment Claims within the definition of Chambers

Chamber's allegations are the same as Allen's. ***Chambers*** claimed her transfer constituted unlawful sex discrimination and retaliation for filing discrimination charges, in violation of Title VII. Allen claim race and retaliatory discrimination motivated her assignments. In *Chambers, the* D.C. Circuit ruled:

> {"Employer that transfers employee or denies employee's transfer request because of employee's race, color, religion, sex, or national origin violates Title VII by discriminating against employee with respect to terms, conditions, or privileges of employment, overruling ***Brown v. Brody***,199 F.3d 446. Civil Rights Act of 1964 § 703, 42 U.S.C.A. § 2000e-2(a)(1)."} ***Id.*** 871.
>
> ***Chambers*** confirms the breath of § 2000e-2(a)(1), intent to strike at the entire spectrum of discrimination in job transfers, whether discrimination is economic or non-economic, tangible or

> intangible, subtle or overt. Allen's four assignments were subtle and non-economic. Nevertheless, this is the exact forms of discrimination § 2000e-2(a)(1) addresses and *Chambers* are design to prevent, and address with corrections. *Chambers* recognizes, as does Allen alleges, retaliatory discrimination transfers violate Title VII 2000e-2(a)(1). Therefore, Allen's assignment claims are covered by the antidiscrimination provision of Title VII, section 703(a) (1), which defines a Title VII violation within the meaning of an employer's decision to refuse an employee assignment request or reassign an employee based on Title VII characteristics, with respect to her...terms, conditions, or privileges of employment. ***Chambers***, Cite 40 4th 870, *Id* 874. Where Allen worked was a condition of her employment.

Where an employee is required to work is a term, condition, or privilege of Employment

If an employer discriminatorily *changes* the space in which an employee must work, the "*conditions* in which he works" have been unlawfully altered. ***Herrnreiter v. Chicago Hous. Auth.***, 315 F.3d 742, 744 (7th Cir. 2002).

April 30, 2008 refusal to reassign: Evans decision to deny Allen reassignment request from Wilson's violence forced Allen to accept Wilson's race

based motivated assaultive behavior as a condition of Allen's employment, for eight (8) days.

Disparate treatment assignment of June 04, 2008. Evans decision to deny Allen's reassignment request deprived Allen of Equal Employment Opportunity to enjoy a peaceful harassment free environment, which was enjoyed by Wright. Allen reported Wilson coughed saliva into her face, in June 2011, and struck twice at her head with his steel cane on Dec.23,2012, and during the interim, followed her in the common areas of the Bureau, but not Wright.

The December 03, 2008 reassignment: Evans decision to reassign Wilson and Allen to work together, forced Allen to accept, as a condition of her employment, the fear that Wilson might kill Allen during the course of the reassignment.

Assignment Claims Argued to the Jury

At trial, both parties argued the assignment claims to the jury. See Memorandum Opinion denying Allen's post-trial motions. A-192-260. The instructions omitted reference to Allen's Four retaliatory discrimination assignment claims. See Jury Instructions, ***1a to 36a***. The jury was deprived the opportunity to consider the assignment claims during deliberation, and to render a verdict on the assignment claims. The Trial Court Memorandum Opinion denying Allen's post-trial motions, examined each of the four assignment claims in detail. A-226 to A-260.

Failure to submit a proper jury instruction is a question of law subject to de novo review. District of Columbia Circuit case law required the Court to submit to the jury, instructions and verdict forms for deliberation on the assignment claims and to reach a verdict on the assignment claims. See ***Czekalski v. LaHood***, 589 F.3d 449, 453-456 (D.C. Cir. 2009). The D.C. Circuit case law is that a party is entitled to an instruction on any legal theory that has a basis in the law and the record. *Lutkewitte v. Gonzales* **436 F.3d 248, 255**. Although the law does not require the instructions to contain specific language, ***Czekalski***, *Id.*455, *it* is legally and constitutionally mandatory that the instructions at least include the relevant legal theory and the relevant law and factual evidence in support of the legal theory. ***Czekalski***, citing ***Joy.*** 999 F.2d at 556 (quoting ***Miller v. Poresky***, 595 F.2d 780, 788 (D.C. Cir. 1978).

The Court's evidentiary analysis was wrong as a matter of Fact and Law and an abuse of judicial discretion

The Trial court committed reversable errors of fact and law because The Court's Temporal Proximity Analysis was wrong, and Deprived the Jury Of evidence of Causation for each Assignment Claim. The evidentiary analysis is plain error which deprived Allen her **5th** amendment due process rights to a Jury Trial on the Assignment Claims.

Plain error One Analysis

The Court, in reference to the June 23, 2008 Job Clean -up assignment: "("This sequence of

events is fatal to Ms. Allen's effort to attribute a retaliatory motive to Ms. Evans. *See* ***Bergbauer v. Mabus,*** 934 F. Supp. 2d 55, 79 (D.D.C. 2013) (noting that retaliation requires that "***the defendant kn[o]w*** of plaintiff's protected activity"). A-255.

The Court Errs: Evans notice Allen and Wrights' protected activity on June 04 and 05, 2008, 18 days next to June 23,2008. Evans testimony relative to the June 04 and 05 2008 protected activity is that ***("I understood that they've gone to the EEO office ")***, **Tr. 969 ,9-25.**

Plain error Two Analysis

The trial Court further erred in its Temporal Proximity analysis:

> The Court: ("The jury could have also reasonably *{found a lack of causal connection} between* the trash can incident on April 30, 2008 and the clean-up duty on June 23, 2008, which occurred about two months later. *See* ***Taylor v. Solis***, 571 F.3d 1313, 1322 (D.C. Cir. 2009) (observing that two months may be too distant to infer "retaliatory motive"). Tr. at 943:11–944:9.A 256, footnote 13.

The Court Errs: Again, Allen's protected activity was on June 04 and 05, 2008 , 18-day gap between the June 23, 2008 assignment, not a two months gap. **Evan's Tr. 969 ,9-25.**

Plain error Three Analysis

{Evans' inconsistent testimony misled the Court} relative to the June 23, 2008 Job Assignment:

The Court reasoned;" First, she argues that Ms. Evans retaliated against her by assigning her and other African-American women who had engaged in protected activity to a clean-up crew on or around June 23, 2008. The problem with this theory is that Ms. Evans testified that she first learned about Ms. Allen's 2008 EEO complaint *four days after* the clean-up duty had already occurred." A-255. Tr. at 972:16–22.

Court errs: Evans' testimony was false and inconsistent

Evans participated in Allen's protected activity on June 04 and 05, 2008, and acknowledged she did so. See Tr. 969 ,9-25. See (45a). On June 04,2008 Allen and wright visited the Bureau EEO Office and Evans and reported to them Wilson's race-based statement. See 44a. Did Evans specifically intended to mislead the jury and Court to believe she was without prior notice of Allens' and Wright protected. activity on June 04, 05, 2008, in which Evans participated. A-255. Tr. at 972:16–22.

Plain error Four Analysis:

> ***The Court:*** "...Likewise, Ms. Allen's passing argument that Ms. Evans retaliated against her by assigning her

> and Mr. Wilson both to work in the durability lab on December 5, 2008—over half a year since the trash can incident—is weak for the same reason. Tr. at 943:11–944:9. **Also see Note 13, A-256.**

Court Errs: There was {*No Gap*} between Allen's unresolved Title VII protected activity Complaints of June 19,2008 (A-140142) and July 22,2008, {A-14-16} against Evans, Wilson, and Gupta, and the Dec. 03, 2008 assignment. Allen's Title VII protected activities, unresolved, coexisted with the Dec. 03, 2008 assignment, leaving ***no*** proximity gap between the protected activity and the discriminatory assignment.

Plain error Five Analysis:

Disparate treatment assignment

The Court Erred in concluding Allen and Wright were not similarly situated. See A-248 Foot note 11. Allen and Wright were similarly situated in almost every respect. **(i)** they are Black Females, **(ii)** with the same supervisor, Julie Evans, **(iii)** they were both physically threatened with violence by the same Harasser; Wilson, under Evans supervision, **(iv)** in the same workplace, the Bureau, **(v)** under identical circumstances, that is to say, both times in which Wilson displayed violent behavior against them, the violence was associated with Wilson's concern about the Bureau Broadcasting Network airing the presidential candidacy of Black Democrat nominee, Barack Obama. Refusing an employee's request for a

transfer while granting a similar request to a similarly situated employee is to treat the one employee worse than the other") See ***Chamber,*** cite as 40 F.4th, *Id* 875, citing ***Bostock v. Clayton County***, U.S. 140 S CT 1731,1740, 207 L. Ed 218 9020).

There is no Proximity Gap between Supervisor Evans discriminatory attitude and discriminatory Assignment Decisions

Allen maintains, Evans displayed a discriminatory attitude when, on June 05, 2008, she stated directly to Allen and Wright, ("***that Andrew did not mean to say what he said or look at me while condemning Obama***"). Here, Evans adopted Wilson's exclamation, (*"there was no fuc..ing way a Black man would become president."*) with a factually equivalence of directing the same at Allen and Wright . The Trial court viewed Wilson's statement to be ***race based***, but discounted the racial impact the statement had on Allen, because the statement was not made by Wilson directly to Allen. (A-249). On June 05, 2008 Evans' statement was directed at Allen and Wright, with a serious impact on Allen, who, because of what Evans said, {***directly to Allen}*** caused Allen to suffer a panic attack. Evans' supervisory responsibilities included investigations of Allen and Wrights EEO Complaints at the administrative level and to report the Complaints to the Bureau's Security Division for an investigation, including Allen's EEO Complaints against Evans. Evans did not investigate Wright's EEO Complaint, she closed Allen's April 30, 2008 complaint the next day, May 01,2008, without an investigation, A-224,

she never informed the Bureau or the Bureau's investigation team, {The Violent Intervention Team,} of Allen's pending complaints against Evans and Wilson, although, she participated in all investigation related to Allen's EEO claims against Wilson, with decision making authority.

There is *Probative Evidence* of a supervisor's discriminatory attitude, at least when it is targeted directly at the plaintiff, as with Evans speaking directly to Wright and Allen. See." ***Morris,*** 825 F.3d at 670 where the D.C. Circuit decided that (" a jury may infer discrimination from , among other things, " evidence of discriminatory statements or attitudes on the part of the employer." See ***Aka* v. *Wash. Hosp.*** Ctr., 156 F 3d 1281 (D.C. Cir.1998) (En Banc Decision). (finding comments made two or three years prior to adverse employment action to be probative of intent). The probative value of previous discriminatory statements might also be bolstered by evidence that a supervisor has previously taken adverse employment actions as a result of discriminatory attitudes. This inference was never considered by the Court. Factually, had the court considered Evans' *Discriminatory Attitude,* likewise, the court would have had to consider Evans' discriminatory attitude coexisted with each of her assignment decisions, leaving no gap between Allen's protected activity and Evan's discriminatory assignments decisions for Allen. Mr. Wilson's racial animus, (***attitude***) is that he visited the Ku Klux Klan website, **A-242 ,** yelled "horsewhipping," "hang nooses," and "lynching mob". "[t]hey'regoing to hang nooses" next to statements such as "[t]he Democrat [c]andidate should be shot for treason" and "[y]ou

need to be shot in the head. *Id.* at 336:18, 329:1. A-243. Wilson's race-based attitude coexisted with all of Wilson's race based actions.

The Court deprived Allen the only evidence to Prove Her Assignment Claims

Allen Trial Court found there was (*NO*) evidence of causation to support Allen's Title VII Assignment Claims. The finding is clear substantial prejudicial error, that affected the jury inability to decide the Assignment Claims, because, based on the errors, the assignment claims were not part of the jury instructions. The close connection between Allen's protected activities and Evans' alleged adverse actions were the {***only***} evidence Allen had to prove her assignment claims were retaliatorily motivated because of her Title VII activity and or race. See ***Singletary,*** 225 F.Supp.2d at 56,57&58,where the D.C. Circuit held that a close temporal relationship {***may alone***} establish the required causal connection. ("The causal connection component of the prima facie case may be established by showing that the employer had knowledge of the employee's protected activity, and that the adverse personnel action took place shortly after that activity."); *accord* ***O'Neal v. Ferguson Constr. Co.,*** 237 F.3d 1248, 1254-55 (10th Cir. 2001). *See* ***United States Postal Serv. Bd. of Governors v. Aikens,*** 460 U.S. 711, 717, 103 S.Ct. 1478, 1482-83, 75 L.Ed.2d 403 (1983) (remanding a Title VII action because the district court's factual findings in favor of the defendant may have been "influenced by its mistaken view of the law"); ("When an appellate court discerns that a district court has failed to make a finding because of

an erroneous view of the law, the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings."). ***Pullman,*** 456 U.S. at 291, 102 S.Ct. at 1791. The district court in Allen's lawsuit, was influenced, partially by Evans, to make a finding because of an erroneous temporal proximity fact, with that source being the basis for the erroneous view of the law.

Allen's Prima Facie Evidence as a matter of fact are : (1) Allen, a black African American Female, a member of a protected class, engaged in Title VII protected activity, **(2)** Allen's supervisor ("Evans") was aware of Allen's protected activity, **(3)** because of her participation in Title VII protected activity, (4) her supervisor, against *whom Allen maintained a Title VII discriminatory retaliation complaint, as of July 22,2008, and thereafter,* retaliatorily discriminated against Allen for participating in the protected activity (*against the supervisor and her harasser*), and because of her race, **(4)** the discriminatory acts refusing her assignment request to be removed from her known harasser. There is a causal connection between Allen protected activity and the assignments with respect to the terms, conditions and privileges of Allen's employment. See ***Mc. Donnell Douglas*** 411 U.S. at 802, and ***Texas Dep't of Comm. Affairs,*** 450 U.S. 248, 253,101 Ct.1089(1981) for the four Elements for a Prima Facie evidentiary case of causation. See *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, *Id* 252-260. Defendant failed "to articulate, with clarity and reasonable specificity, a legitimate, non-discriminatory reason for the retaliatory discrimination assignments suffered by Allen. ***See St.***

Mary's Honor Ctr v. Hicks, 509 U.S. 502, 510-11, 113 S. Ct. 2742. See *Burdine,* 450 U.S. at 254. See the burden of proof as set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792. The articulation of a non-discriminatory reason goes directly to the ultimate issue of causation. D.C. Circuit has remanded the lawsuits to the District court for reconsideration on the issue of causation, which is the ultimate issue in all Title VII lawsuits. See ***Figueroa v. Pompeo***, 435 F. Supp. 3d 160, ***Id.*** 163, (D.D.C. 2020). When prima facie evidence of a claims is undisputed, within the context of summary judgment, the claims maybe considered conceded under D.C. LCvrR 7 (h) (1), ***Pompeo***, 435, *Id.* 165. This is so, because Evans' failure to articulate a non-discriminatory reason against a prima facie evidentiary claim of discrimination, is the equivalence of articulating no reason at all. See ***Patrick v. Ridge***, 394 F. 311, 320 (5th Cir. 2004). Evans, on one hand, admitted she denied Allen's April 30, 2008 assignment request, See A-105, Tr.1160 L 18-20, but on the other hand, she claims notice of Allen's 8-day retention with Wilson. See A-82, Tr. 1075, L 19-24, and not the reason for the same. Evans admitted Disparate Treatment. On the same day, is it true that you removed Mr. Wilson- Ms. Wright from Mr. Wilson's presence? A. yes. See A-104., pg. 1159, Tr. L 24-25, pg. 1160, L-1 to-5.

Also see Tr. 1076. L-6 21. A-83.

Evans admit notice of Allen's fear that Wilson might kill Allen in the workplace; the existence of Allen's Title VII complaints against Evans; Wilson and Gupta, when she ordered the Dec. 03, 2008 job

assignment. {" So—so you realized that Mrs. Allen was afraid that Mr. Wilson might kill her in the workplace from your statement and declaration that dated back to June 2008; am I correct" A. yes.} Evans Tr. 1074 L 22-25, 1075 l 1-4. A-82-A 83. But, during the same trial, Evans backed away from her prior testimony: *Evans' testimony*: {" It is also true that in June, Ms. Allen explained to you that she was afraid that Mr. Wilson might kill her in the workplace; is that correct" A I don't know"} A-105.L-18-21. No reasonable jury could believe Evans forgot her contrary testimony, where she explained in detail her personal knowledge that Allen was afraid Wilson might Kill Allen in and outside the workplace. See Evans **Tr. 1052- 1054. A-59 – A -60, also infra, paragraph Five (5).** ***Gupta's response to Allen's Dec. 03, 2008 email***, in relevant part, (" Pat: Although we try is not always possible to confine you and Andy to different laboratories all the time..} Gupta's email, A-223.Gupta's response is not a non-discriminatory reason for the Dec.03, 2008 assignment. See A-173. Evans ordered the Dec. 03, 2008 assignment. Because Evans falsely testified, she was without notice of Allen's protected activity for the June 23, 2008 assignment, she failed to articulate any reason for the Assignment. Before the Dec. 03, 208 assignment, Evans recognized Wilson had demonstrated irate behavior and the lack of sound judgment, without provocation, against Allen on April 30, 2008, (' .. you became irate and kicked an empty trash can in the direction of Ms. Allen's chair") See A171. ("Your action demonstrated a lack of self-control and sound judgment"). A-172. A vicious 12/03/2008 retaliatory discrimination assignment is supported by these facts.

Evans presented nothing for Allen to rebut. ***Chambers'*** *burden* of proof standard is : {" Once it has been established that an employer has discriminated against an employee with respect to that employee's "terms, conditions, or privileges of employment" because of a protected characteristic, the analysis is complete"} See ***Chamber*** cite, 35.F.4th 870, *Id* 174-176 (D.C.Cir.2022).

Allen's Jury Instructions

("It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence in the case".) ***1a.*** The Court did not instruct the jury on Allen's Title VII retaliatory discrimination assignment claims under Sec.2000e–2(a)(1)] and ***Chamber v. The District of Columbia*** and ***Bostock v. Clayton County Standards for discriminating job transfer claims.*** For Allen's assignment claims, D.C. Circuit en banc decision in *Chambers* was the current applicable Circuit case law that addressed Title VII Assignment claims, and the legal standard for the assignment claims. The instruction did not address ***Chambers*** standard of proof for the Assignment claims, leaving the jury with absolutely nothing to follow relative to the assignment claims. The jury followed the instruction as given by the court, and deliberated on the instructions as directed by the court, with no reason to believe otherwise. The Jury was instructed *"to determine the facts in the case and to apply those facts consistent with the legal principles that "I will explain to you. You—and only you—are the judges of the facts."* **Preliminary Instruction**

(Adapted D.C. Std. Civ. Jury Instr. No. 1-2) See 2a.–{"It is your sworn duty as jurors to accept and apply the law as I explain it to you. "} *Id.* .2a. The jury instructions did not include one fact within the context of Allen's Assignment claims. The Word {"assignment" and Assignment Claims} were omitted from the entire jury instructions, leaving the jury with absolutely no possibility to deliberate on the assignment claims for a jury verdict on the claims. The entire jury instructions were based on the {Objectively Material Harm Standard} see-*Id 25a.* The instruction reference *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 56 (2006) (quoting 42 U.S.C. § 2000e–3(a)), in the Court's Memo. Opinion, ECF.28, A-253. Muldrow makes it clear; *White's dissuasive - reasonable employee* provision, is an *objective harm* standard for retaliatory discrimination, which is contrary to Title VII. Sec2000e–2(a)(1) anti-discrimination provision, applicable to Allen's assignment claims. See *Muldrow*, Cite as: 601 U.S. *Id.* pg. 3. (2024). (" The standard has an *objective and subjective component.* Not only must the plaintiff subjectively perceive the environment to be abusive, a reasonable person would also have to objectively conclude that the alleged conduct was so severe or pervasive to create an objectively hostile or abusive work environment"). ***Id 23a.*** Title VII § 2000e-3(a), is the wrong standard for Allen Retaliatory discrimination assignment claims.—This is the objectively tangible harm standard applied at summary judgment in *Brown v. Brody* 199 F.446 (12/21/1999), and also *Czekalski's* jury trial, cited 589 F.3d 449, *Id* 453- 456 (D.C. Cir. 2009)). The objectively tangible harm standard, in *Brown* and *Czekalski was overruled* in the District of Columbia Circuit

rehearing *en banc* decision in ***Chambers v. District of Columbia***, No. 19-7098. The current applicable Circuit case law to which Allen's was entitled is *Chambers'* burden of proof standard. *Chambers'* Standards required Allen provide *Prima Facie evidentiary* proof that Evans' decision to either (i) deny her assignment request, (ii) refuse her assignment request, (iii) assign her to work with her Harasser, (iv) the disparate treatment assignment, discriminatorily motivated base on her prior Title VII protected activity and or race. Allen exceeded Chamber's standards.

Reversable Error:

The court committed reversable error in, (1) in not instructing the jury on Chamber's standard for Allen's four retaliatory discrimination assignment claims, (2) excluding from the instructions and the Jury Verdict Forms any reference to Allen's Assignment claims, or even the phrase {Assignment Claims.} (3) Instructing the jury of the Material Adverse Harm Standard, which is the wrong standard for the Title VII Assignment Claims. See 1a to 36a; original, Ca.1:18 -cv-o1214, Doc. 72 , Filed 11/08/22 pg. 36 of 37. Reviewing, as a whole, the Jury Instructions and Verdict Forms clearly omits reference to Allen's assignment claims, See A37 to 38. Ecf. Doc. 176.

Allen's prima facie causation evidence was excluded from the jury for consideration on the Assignment Claims, as was the D.C. Circuit prevailing case law on the Assignment claims. The Supreme Court Authority is clear, {" only the written

word is the law, and all person are entitled to its benefit. "See ***Bostock v. Claton County, George,*** Cited as 140 S. Ct. ***Id.***1732 (2020). In ***Czekalski v. Lahood,*** , *Id at 454* , a jury trial, under the overruled objectively harm standards, the D.C. Circuit recognized *Czekalski's* rights to jury instructions on the Assignment Claims and special jury verdict forms for the assignment claims.

Minor and material judicial errors.

There are two types of errors; (1) harmless error, insufficient for reversal and a new trial, (2) and material prejudicial error, which may be sufficient for reversal and a new trial. 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 is reviewed only for abuse of discretion. See ***Czekalski v. Lahood*** 589 F.3d 449, *Id* 454 (D.C.Cir.2009), citing *Joy v. Bell Helicopter Textron, Inc.*, 999 F 2d 549,556 (D.C. Cir. 1993). Where the choice of language in the instructions makes reference to the claims to be decided by the Jury, the court may review the instructions for minor error. Minor error is where the language in the instructions gives the jury an opportunity to consider the claims tried to the jury for consideration on the prevailing Circuit Case Law and evidence in support of the claims, as consideration for a verdict on the claims. The harmless error rule does not apply to Allen's lawsuit. It is axiomatic that Allen's jury did not and could not (i) consider Allen's Title VII Assignment Claims, (ii) deliberate on the applicable D.C. Circuit case Law, for a verdict for the claims, when the instruction omitted any reference to

the Assignment Claims and the correct instructions for the assignment claims. The error in Allen's lawsuit is materially prejudicial. The error affected the outcome of the district court proceedings. The outcome of the judicial proceedings is that Allen was not provided a consummated trial on the Assignment Claims, and she was denied- completely- the opportunity for a verdict on the assignment claims. See *Muldrow ex rel. Estate of Muldrow v. Re-Direct, Inc.*, 493 F 3d 160, 168 (D.C. Cir. 20007) and *United States v. Olano*, 507 U.S.725, 734, 113 S.Ct.1770, 123 L. Ed.2d 508 (1993)' see Fed. Civ. 61.

MOTION FOR A NEW TRIAL

Following a jury trial, the court may grant a motion for a new trial "for any reason for which a new trial {"has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59 turns to case law and permits a new trial in those circumstances traditionally viewed as permitting a new trial") See District Court's memorandum Opinion, see Memo., ***A-228.*** The District of Columbia Circuit, in finding the District Court applied the wrong standard for Title VII Sec.2000e–2(a)(1)] discriminatory assignment claims, remanded the claims to the district court for the application of the correct standards: **(1)** D.C. Circuit rehearing *en banc* decision in ***Chambers v. District* of Columbia,** 35 F.4th 870 (D.C. Cit.2022), **(2)** D.C. Circuit, in ***Mark Townsend v. United States***, et al, No. 19-5259; (ii) (en banc) decision and **(3)** ***Muldrow v City of St. Louis, Missouri, et al.***, No.22-193. There is no meaningful distinction between the three lawsuits and Allen's, relative to the District Court's application of the wrong Title VII

standard, that could justify a denial of a remand for Allen.

No Forfeiture of Rights.

Allen's D.C. Circuit order of March 21, 2024, {**39a**}, recognized Allen's argument for a *Chambers'* violation, adopted in Allen's rehearing en banc order of July 15, 2024, {**41a**}, without elaboration in detail, the order 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. Cit.2022) (en banc), appellant has not shown any ***Chambers***- based error. Allen takes the court's order to mean that she has been granted the right to argued to the Supreme Court the Petitioner-Allen's alleged *Chambers-based violations.* However, a forfeiture does not preclude judicial review to avoid a miscarriage of justice and a 5th amendment violation. See ***Muldrow,*** Cit as :601 U.S., *Id* 11, (2024).

Constitutional Rights Violations

The **5th** amendment to the U.S. Bill of Rights, not only guaranteed Allen's rights to a fair trial, its demands Allen receive *(a trial)* on all legal claims in her lawsuit, for which she preserved for trial. Judicial Notice is that, for a jury trial, the 5th amendment has two procedural requirements. Requirement one; the parties present to the jury all claims the jury will ultimately be required to consider for a verdict on the claims. Procedural one was completed in Allen's lawsuit. Procedural two, is where the Court must provide the jury with proper instructions on the

claims tried to the jury and the applicable prevailing circuit case law and Supreme Court authorities for the claims. Procedural two is absent in Allen's lawsuit. The jury was not instructed on Allen's assignment claims. The jury was not provided verdict forms for a verdict for Allen on her assignment claims. Violation of the second requirement of the *5th* Amendment, is the legal equivalent of denying Allen a jury trial on the Assignment claims. This ***5th*** amendment jury rights violation is substantive. A trial on Allen's assignment claims is the cure for the violation.

CONCLUSION

The petitioner for a writ of certiorari should be granted.

Respectfully submitted,

Patricia A. Allen, *pro se*
P.O. Box 23828
L'Enfant Plaza S.W.
Washington, DC 20026
(202) 288-4175
harryspikes@gmail.com