# 16-748-cv

# UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

**MATTHEW CHRISTIANSEN,**

***Plaintiff-Appellant,***

**-against-**

**OMNICOM GROUP, INCORPORATED, DDB WORLDWIDE COMMUNICATIONS GROUP INCOPORATED, JOE CIANCIOTTO, PETER HEMPEL, and CHRIS BROWN,**

***Defendants-Appellees.***

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

## PLAINTIFF-APPELLANT'S PETITION FOR HEARING EN BANC

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### A. *En Banc* Review is Inescapable as *Simonton* and *Dawson* Are Irreconcilable With Each Other and Today's Legal Landscape.

*En banc* review is appropriate when "the proceeding involves one or more questions of exceptional importance," FRAP 35(b)(1)(B), or when the decision of a three-judge panel "conflicts with a decision of the United States Supreme Court or the court to which the petition is addressed." FRAP 35(b)(1)(A). All reasons for *en banc* review exist here.

The issue of exceptional importance meriting review by this court is whether Title VII protects sexual orientation "because of…sex." This case, *Christiansen v. Omnicom***,** 852 F.3d 195, 2017 U.S. App. LEXIS 5278 (2d Cir. 2017), is the quintessential case for *en banc* review. As this petition shows, the hostile work environment alleged in this case stemmed from Defendant's general anti-gay animus. It was not merely a byproduct of the Defendant sex-stereotyping Plaintiff because the Defendant perceived him as nonconforming with respect to Plaintiff's masculinity/femininity. Consequently, this case is an appropriate vehicle for reconsidering *Simonton v. Runyon*, 232 F.3d 33 (2d Cir. N.Y. 2000) that is considered precedent on the issue since it clearly exemplifies the impracticable task courts are charged with to parse allegations of discrimination because of sex-stereotyping permitted by *Dawson v. Bumble & Bumble*, 398 F.3d 211, 217 (2d

Cir. 2005) from allegations of sexual orientation discrimination prohibited by *Simonton*.

Also, the sexual orientation issue was the issue before this panel leading to two of the three members providing a thorough concurring decision that *Simonton* is not good law and that sexual orientation should be protected. The panel agreed that *en banc* review is needed to resolve *Simonton*. Furthermore, this case is excellent for *en banc* review because *Hively v. Ivy Tech Cmty. College of Ind.*, 2017 U.S. App. LEXIS 5839 (7th Cir. Ind. 2017) *en banc* cited the *Christiansen* concurrence and rationale in its holding that Title VII does protect sexual orientation.

Additionally, *Christiansen* is the best case for *en banc* because it is the only case before this court where the EEOC, 128 members of Congress who cosponsored the Equality Act, and LAMBDA, among others, were amici supporting this appeal for Title VII protection. Particularly, the panel heard oral argument from the EEOC and its decision heavily relied upon the amici briefs.

This is a case of both national and local importance for this Circuit. Nationally, the Seventh Circuit in *Hively* and the EEOC in *Baldwin v. Foxx*, EEOC No. 0120133080, 2015 WL 4397641 (July 15, 2015) reversed precedent to hold that Title VII protects sexual orientation. Locally, this year four cases, including

this one, reached this Court on this same sexual orientation issue.[1] Reconciling the issue of sexual orientation and *Simonton* by this petition would give clarity to this Circuit's Courts, eliminate future piecemeal cases on the issue and provide employees and employers guidance regarding what discrimination is prohibited.

As the law stands, there is no protection against sexual orientation discrimination in Title VII under *Simonton* though non-conformity claims are permitted for gays, lesbians, and bisexuals under *Dawson*-a line that creates absurd results because the line between one's status as a sexual minority and one's gender non-conformity necessarily overlap. *Christiansen*, 852 F.3d 195, concurring, at *24 (*Dawson* conceded the lines blur); *Christiansen v. Omnicom Grp., Inc.*, 167 F. Supp. 3d 598 (SDNY 2016), *Boutillier v. Hartford Pub. Sch.*, 2016 U.S. Dist. LEXIS 159093, 2016 WL 6818348 (D. Conn. Nov. 17, 2016); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1159 (C.D. Cal. 2015) (collecting cases).

There is a need for coherence as the sharp divide in the *Christiansen* panel alone proves, and that panel found at *11 that its District Courts are as divided as the panel with respect to *Simonton*. Strikingly, support for *en banc* review comes directly from the *Christiansen* concurrence. Although historically *en banc* review is disfavored in this Circuit as Chief Judge Katzmann clarified in *Ricci v.*

[1] *Cargian v. Breitling USA, Inc.*, No. 16-3592; *Magnusson v. Cty. of Suffolk*, No. 16-1876; *Zarda v. Altitude Express, Inc*., No. 15-3775.

*Destefano*, 530 F.3d 88 (2d Cir. 2008), in *Christiansen*'s concurrence he took the extraordinary step to urge it. Then, *Hively*, *en banc,* at *5, cited *Christiansen*'s concurrence and held that Title VII protects sexual orientation.

*Hively* further supports this petition because the Seventh Circuit's well-reasoned opinion exposed the deeply flawed reasoning in this Circuit's precedent and laid out a principled path to reexamine *Simonton* so intra-circuit inconsistencies can be authoritatively resolved. Indeed, *Hively en banc* cited this Circuit's concurrence and used its test that "but for" the sex then the discrimination would not have occurred. *En banc* review would determine whether this Circuit should align itself with the Seventh Circuit that confronted the same issue after this panel's opinion. Armed with a sister Circuit *en banc* decision using this Circuit's concurrence, *en banc* review should reconcile *Simonton* to secure and maintain uniformity in decisions here.

Also, the inconsistent decisions acknowledged by the panel that District Courts misapprehend *Simonton* could be resolved. The panel avoided any analysis of *Simonton* to provide the needed guidance and instead limited its holding that Title VII only protects sexual stereotyping under *Dawson*. The concurrence filled in the gaps by a sharp divide of two of the three panel members, Chief Judge Katzmann and Judge Brodie, by recognizing the Supreme Court's simple test that "but for the person's sex" the discrimination would not have occurred and finding

that Title VII does protect sexual orientation discrimination. *Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 711, 98 S. Ct. 1370, 55 L. Ed. 2d 657 (1978). It concluded that *Simonton* never addressed the arguments central to answering whether sexual orientation discrimination is sex discrimination and urged *en banc* review to reconcile *Simonton,* as well as explained how *Simonton* conflicts with *Holcomb v. Iona Coll*., 521 F.2d 130 (2d Cir 2008).

The concurrence shows that once a court analyzes *Simonton*, Title VII and the present case law occurs then it will conclude that the legal and societal landscape has changed over the past two decades and more since *Simonton,* when homosexuality was not only taboo but could be permissibly criminalized. *Bowers v Hardwick*, 478 US 186, 92 L Ed 2d 140, 106 S Ct 2841(1986). For instance, *Boutillier, supra.* did an analysis similar to Judge Katzmann's concurrence and found that *Simonton* never applied Title VII's "because of…sex" to its logical conclusion and it cannot be reconciled with *Holcomb, supra.,* then held that Title VII protects sexual orientation. *Boutillier*, at 22. Other courts also hold that sexual orientation claims are cognizable under Title VII. *EEOC v. Scott Medical Health Center*, No. 16-225, 2016 WL 6569233 (W.D. Pa. Nov. 4, 2016); *Videckis, supra.*; *Isaacs v. Felder Servs.,* 2015 WL 6560655, at *3 (M.D. Ala. Oct. 29, 2015). The District Court in *Christiansen, supra.* would have held the same but for being constrained by *Simonton* as precedent and despite providing logical

arguments proving otherwise. *Id* at 620. That court urged for *Simonton*'s reversal.

However, now courts can use the *Christiansen* panel decision as an excuse to abandon any analysis that the *Boutillier, Christiansen* District Court and *Christiansen* concurring decisions made. That will perpetuate *Simonton* as bad law. *Garvey v. Childtime Learning Ctr.*, 2017 U.S. Dist. LEXIS 57201 (N.D.N.Y. Apr. 13, 2017) illustrates the perpetuation when that court flatly denied sexual orientation protection under Title VII by merely relying upon *Simonton* without any real analysis on the issue of sexual orientation, or sexual stereotyping for that matter. Conspicuously absent from *Garvey* is the *Hively en banc* decision that appeared weeks before it and weeks after this panel's decision because *Garvey* shows that if a court wants to deny protecting sexual orientation then it can claim *Christiansen* supports *Simonton* as precedent, and completely ignore as non-binding the sheer logic in the concurrence and *Hively*. Without *en banc* review, the misapprehension will continue as some District Courts will do as *Boutillier* and this panel's concurrence did to find for protection, some may follow the *Christiansen* District Court and argue against *Simonton* but reluctantly uphold it against protection and others may do nothing but hold that *Simonton* is the law as *Garvey* did and flatly deny protection.

There are more reasons why *en banc* review is appropriate to address *Simonton* and *Dawson*. First those cases create rules that have "proven to be

intolerable simply in defying practical workability." *Planned Parenthood of S.E. Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992). "[C]onsiderations of *stare decisis* should not deter" this court from revisiting prior and unworkable precedents. *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965). The "'illusory and artificial'" distinction, between "gender non-conformity discrimination claims and sexual orientation discrimination claims," *Hively*, 2016 WL 4039703 at *14 (quoting *Videckis, supra*. at 1159), "should not be kept on the books in the name of *stare decisis* once it is proved to be unworkable in practice; the mischievous consequences to litigants and courts alike from the perpetuation of an unworkable rule are too great." *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965). "[C]larification of the law in this area justifies reconsideration" of precedent where the judicial exclusion of sexual orientation discrimination from Title VII's coverage "has been the subject of continuing controversy and confusion." *Cont'l T.V., Inc. v. GTE Sylvania Inc.,* 433 U.S. 36, 47, 49 (1977).

Another reason for *en banc* review is that the panel decision stands in stark contrast with the United States Supreme Court decisions in *Obergefell v. Hodg*es, 135 S.Ct. 2584, 192 L. Ed. 2d 609 (2015) legalizing same sex marriages and *United States v. Windsor*, 133 S. Ct. 2675 (2013) protecting same sex marriages by deleting DOMA references limiting marriage to heterosexuals. Notably, *Windsor* comes from this Circuit supporting marriage equality in *Windsor v. United States*,

699 F.3d 169,182 (2d Cir. 2012). Although those decisions involved issues of marriage rights, they emphasize that the Federal Government must protect people regardless of their sexual orientation, and that is not limited to marriage. They are significant decisions in light of one of Title VII's main purposes, which is to have the anti-discrimination principles applicable to state actors extend their application to private actors. Moreover, *Simonton* and *Dawson* are conflict with the Supreme Court's "but for" test in *Manhart*, supra. that proves it is the sex, not the orientation of the person, that gets the protection and therefore homosexuals and heterosexuals get protected, not either heterosexuals or stereotypes.

*En banc* review would close the gap created by this Circuit promoting *Windsor* equality for same sex marriage protection but denying that equality at the workplace. When comparing *Obergefell* and *Windsor* in the Supreme Court and *Simonton* and *Dawson* in this Circuit we get unsound results where same sex employees marry on Sunday and get fired on Monday. *Hively* recognized and solved that dissonance by protecting sexual orientation under Title VII. *Id.* at *6. This Circuit should do the same.

Finally, the exceptional importance of this issue cannot be minimized when considering the number of citizens who identify as LGBT are Ten Million nationwide and One Million Forty Six Thousand Eight Hundred and Sixteen in this

Circuit alone.[2] Christiansen gives this court not one reason, but over One Million reasons why an *en banc* panel should answer once and for all whether this Circuit will protect sexual orientation under Title VII.

## II. PROCEEDINGS LEADING TO THIS PETITION

On May 4, 2015, Matthew Christiansen, a gay male, sued under Title VII, in the Southern District of New York against his employer Omnicom, his supervisor and others [A3 see Dkt. #1]. Christiansen's allegations of sexual orientation at the workplace by his supervisor Cianciotto over a period of years include, among other allegations, Cianciotto "became openly resentful and hostile towards [Christiansen] because of his sexual orientation," "harass[ed], intimat[ed] and mistreat[ed]" Christiansen because he was a gay male and manifested hostility in the form of "offensive sketches and . . . pictures of [Christiansen] in a sexually suggestive manner", including posting n Facebook a

[2] A 2016 Gallup survey of 400,000 people nationwide cited by the Williams Institute calculated LGBT people as 4.1% of the population in 2016, or 10 million adults. Gary J. Gates, *In US, More Adults Identifying as LGBT*, Gallup (Jan. 11, 2017), www.gallup.com/poll/201731/lgbt-identification-rises.aspx. Gates' percentage breakdown of LGBT persons for states in this Circuit is: New York= 4.5% of state population which in 2016 was 19,745,289, per www.census.gov/ quickfacts/table/PST045216/36; Connecticut= 3.5% of state population which in 2016 was 3,576,452, per www.census.gov/quickfacts/table /PST045216/09; Vermont =5.3% of state population which in 2016 was 624,594, per www.census.gov/quickfacts/table/PST045216/50.

photo-shopped picture of Christiansen in a bikini with his legs in the air in the sexual "gay receiving" position and pictures of another gay employee as a dog urinating to reinforce his position that anyone with a disease will be mocked, just as he publicly accused Christiansen of having AIDS just because he was gay at an office meeting [A13-17,38,47]. Certifications from other gay employees confirm they were interrogated by Cianciotto to disclose their gay sex life and he accused them of being rapists and murderers because they were gay [A12-16]. They certified that Christiansen was visibly upset at work from the harassment [A13,15-16,38].

On March 9, 2016, the District Court reluctantly dismissed those allegations pursuant to Defendants' F.R.C.P. 12(b)(6) motions because it stated that *Simonton* constrained it to deny sexual orientation, against its better judgment; Christiansen filed a notice of appeal that day [A131-171]. On March 27, 2017, this Circuit held that Christiansen alleged a case for sexual stereotyping but not sexual orientation because *Simonton* denies Title VII protection. The concurring decision found that Title VII does protect sexual orientation, that *Simonton* never addressed sexual orientation properly and it urged *en banc* review and the entire panel declared that only *en banc* review could overturn *Simonton*.

## III. LAW AND ARGUMENT

### A. The Concurrence Found That Title VII Protects Sexual Orientation and *En Banc* Must Reconcile *Simonton* and *Dawson*.

The *Christiansen* panel found that *Simonton* and *Dawson* "merely hold" that sexual orientation alone does not support gender stereotyping claims. 852 F.3d 195, *12. In other words, this Circuit only protects sexual stereotyping claims. Implicitly acknowledging a problem with *Simonton* denying sexual orientation protection, the panel left it to the hard split concurrence of two of the three members to resolve the sexual orientation issue by their thorough decision.

The concurrence's deliberate and thorough analysis found that *Manhart*, supra. establishes that "but for" the person's sex then the discrimination would not have occurred, 852 F.3d 195, at *16, so that Title VII's prohibition "must extend to [discrimination] *of any kind* that meets the statutory requirements," *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80, 140 L. Ed. 2d 201 (1998) (emphasis added). With the "but for" test in place, the logic of *Loving v. Virginia,* 388 U.S. 1, 7-8, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) was applied in that if race-based classifications of interracial and intra-racial couples violate the Equal Protection Clause then "the same logic suggests that it is sex discrimination to treat all individuals in same sex relationships the same, but less favorably than individuals in opposite-sex relationships." 852 F.3d 195, at *18-19. The

concurrence explained that this Circuit's *Holcomb supra*. decided eight years after *Simonton* and *Dawson*, eliminates those cases by establishing that if Title VII protects interracial and intra-racial relationships under an associational theory then it should protect intra-sexual (same sex) relationships too. *see also Boutillier*, supra. In sum, *Simonton* and *Dawson* are simply illogical.

To make logic of this issue, the *Christiansen* concurrence, at *24, created a "but for the sex" test to abolish sexual stereotyping under *Dawson*, *supra.*, noting that *Dawson* concedes that "[s]tereotypical notions about how men and women should behave will often necessarily blur into ideas about heterosexuality and homosexuality." 398 F.3d at 218. Simply put, there is no difference between sexual orientation and sexual stereotyping, which numerous cases agree. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989), *Oncale, supra*.

### B. Simonton and Dawson are Irrational and Actually Create the Prohibited Discriminatory Classes. They Must be Reversed.

Creating stereotypes creates artificial categories that should not exist under Title VII. *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 882 n.10, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985); *Hernandez v. Robles*, 7 N.Y.3d 338,394 (N.Y. 2006) ("[t]he government cannot legitimately justify discrimination against one group of persons as a mere desire to preference another group"). Yet that is exactly

what *Simonton* does by refusing protection to men and women because of their sexual orientation. Then *Dawson* tries to make sense of the illogical by creating stereotypes from discriminatory classes.

*Dawson* protects only people who do not fit a sexual stereotype, while those who fit it get no protection. Illustrating the illogic and resulting discrimination is a different example from what the cases usually provide. Take a traditionally feminine woman who has no problems at work for years until one Sunday she marries her lesbian girlfriend and on Monday puts her wife's picture on her office desk. To her supervisor's surprise, she is a lesbian! He starts to harass her, calls her butch and other names and refuses to promote her. Meanwhile, her lesbian colleague who has manly characteristics and did not wear makeup to work was harassed the same way. That colleague's case is in Federal Court and survived a motion to dismiss. Unlike her non-feminine lesbian colleague, the feminine lesbian gets no protection in this Circuit because she cannot allege that she does not fit a stereotype under *Dawson* since she is the stereotypical feminine woman, and under *Simonton* she is prevented from raising a sexual orientation claim. The same applies to a masculine gay male who suddenly puts his husband's picture on his desk. *Simonton* thus creates an "extravagant legal fiction" where "the law protects effeminate men from employment discrimination, but only if they are (or are believed to be) heterosexuals." *Hamm v. Weyauwega Milk Prod., Inc.,* 332 F.3d

1058, 1067 (7th Cir. 2003) *(Posner, J., concurring)*.

Once *Simonton* is examined, it is clear that it never properly analyzed sexual orientation and cannot be precedent. First, *Simonton* analyzed the discriminatory conduct by claiming it was limited to interpreting a statute, not making a moral judgment. *Id.* **4. Justice Scalia explains that limitation away by observing that laws encompass more than what Congress may have envisioned at the time because "… statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale, supra. at* 79; see also *Int'l Bhd. Of Teamsters v. United States,* 431 U.S. 324, 381, 97 S. Ct. 1843, 1878 (1977) (Marshall, J., concurring in part and dissenting in part) ("the evils against which [Title VII] is aimed are defined broadly"). *Simonton*, on the other hand, excludes a "comparable evil" by creating a subcategory called "homosexuals" as an unjustifiable court concern to exclude them from Title VII protection. That is contrary to Title VII's purpose to "to achieve equality of employment opportunities and to remove barriers that have operated in the past to favor an identifiable group of . . . employees over other employees." *California Federal Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 288 (U.S. 1987); *Griggs* v. *Duke Power Co*., 401 U.S. 424, 429-430 (1971); *McDonnell Douglas Corp*. v. *Green*, 411 U.S. 792, 800 (1973). As aptly said in *Vance v. Ball State Univ.*, 133

S. Ct. 2434 (U.S. 2013), "the context of Title VII… focuses on eradicating discrimination."

Next, *Simonton* contradicts itself by claiming that "sex" could not include sexual orientation because legislative amendments to Title VII to add sexual orientation were rejected; but then admits that post-legislative inaction does not prove the definition of "sex". *Id.* at **6 . Nevertheless, the Supreme Court has ruled that "[c]ongressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change." *Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990). See also Christiansen* (2d Cir.), *Hively*, supra. So the legislative inaction position is eliminated too.

Failing on all counts, *Simonton* at **9 shifts its focus to *DeCintio v. Westchester County Med. Ctr., 807 F.2d 304 (2d Cir. 1986)* to hold that case was well-settled law in this Circuit that "sex" does not include sexual orientation. But *DeCintio* had nothing to do with sexual orientation. *DeCintio* dismissed a sex discrimination claim by male employees against their employer when a female employee received favorable treatment because of her affair with a supervisor. Based upon a heterosexual affair, the court dismissed the claim because "[w]e can adduce no justification for defining "sex," for Title VII purposes, so broadly as to

include an ongoing, voluntary, romantic engagement" and "voluntary, romantic relationships cannot form the basis of a sex discrimination suit under either Title VII. *Id.* at 307, 308. *DiCintio* actually meant to refuse to police private romantic affairs at the workplace under Title VII, not dismiss sexual orientation claims of same sex couples.

*Simonton*'s validity is undermined because it imaginatively repurposed *DeCintio*'s heterosexual office affair for the proposition that homosexual men and women are the same voluntary "sexual liaisons" or "sexual attractions". An office affair can be defined as a voluntary liaison, but homosexuality cannot be minimized to a voluntary romance to deny Title VII protection. Undergirding this position is the faulty theory that same-sex conduct and sexual orientation as a status can be divisible. In post-*Simonton* jurisprudence, the Supreme Court has repeatedly "declined to distinguish between status and conduct." *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez, 561 U.S. 661, 675 (2010).* This Circuit in *Windsor* declared that homosexuality is immutable. *Id.* at **33 and the Supreme Court similarly accepted that position in *Obergefell, supra., at* 2596.

### C. Using the "But for" Test of the Concurrence and *Hively* Resolves Title VII Protection as It was Intended and Eliminated the Antiquated *Simonton* and *Dawson*.

The fact is that we cannot segregate sexual orientation discrimination from sexual stereotyping as *Simonton* and *Dawson* propose. These cases create a judicial fiction that draw mythical lines between persons' conduct, status and the sex of their partner. The proper analysis is demonstrated best in *Baldwin v. Foxx*, EEOC DOC 0120133080, 2015 EEOPUB LEXIS 1905, 2015 WL 4397641 (July 16, 2015), where the EEOC drew upon a substantial body of judicial decisions and EEOC precedent to hold that "sexual orientation is inherently a "sex-based" consideration" that deserves Title VII protection. *Id.* at *13. The *Hively* and *Christiansen* concurrence accept the EEOC's position that the simple "but for sex" test appropriately naturally extends to sexual orientation discrimination claims. That is accomplished by keeping everything else constant, including the sex of the aggrieved employee's intimate partner, to reveal the discrimination would not have occurred but for the employee's sex.

Further, this Circuit's decision in *Holcomb*, supra. protects an "associational theory" of race discrimination under Title VII that Judge Katzmann in the concurrence here and *Hively* found extends to Title VII to protect employees regardless of whether it is race or sex association. Just as associational claims work to further protect the constitutional rights of interracial couples in *Loving*,

this theory can similarly protect the fundamental rights of same-sex couples extending from *Obergefell*. Given the dramatic shifts in both Title VII and constitutional jurisprudence since *Simonton* and *Dawson* were decided, they are unworkable, unsustainable, and must be reversed.

## IV. CONCLUSION

For the foregoing reasons, an *en banc* panel should hear this case, overrule *Simonton* and *Dawson* and remand the case to the District Court.

Dated: April 28, 2017

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**Certificate of Compliance and Certificate of Service**

This brief complies with the type-volume limitation of Fed. R. App. P. 35(b)(2)(A) because it contains under 3900 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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I hereby certify that I submitted this Petition for hearing En Banc electronically in PDF format through the Electronic Case File (ECF) system that all participants of this case are users of that service.

/s Susan Chana Lask

Dated: April 28, 2017

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