No. 16-1310

In the Supreme Court of the United States

HARLEY MARINE SERVICES, INC., PETITIONER

v.

DEPARTMENT OF LABOR, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

NICHOLAS C. GEALE
Acting Solicitor of Labor
ANN S. ROSENTHAL
Associate Solicitor
CHARLES F. JAMES
Counsel for Appellate Litigation
A. SCOTT HECKER
Attorney
Department of Labor
Washington, D.C. 20210

QUESTIONS PRESENTED

1. Whether the findings of an administrative law judge (ALJ) that petitioner was aware of Captain Joseph Dady's protected activity under the Seaman's Protection Act, 46 U.S.C. 2114, and that the protected activity was a contributing factor in petitioner's decision to fire Dady, are supported by substantial evidence.

2. Whether the ALJ's order reinstating Captain Dady was appropriate.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is not published in the *Federal Reporter* but is available at 2017 WL 370843. The final decision and order of the Administrative Review Board (Pet. App. 13a-23a) is available at 2015 WL 4674602. The decision and order and damage award of the administrative law judge (Pet. App. 24a-130a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 2017. The petition for a writ of certiorari was filed on April 26, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Seaman's Protection Act (SPA), 46 U.S.C. 2114, in relevant part, protects a seaman from retalia-

tion by his or her employer because the seaman has reported or is about to report to the Coast Guard a violation of maritime safety law. See 46 U.S.C. 2114(a). There are four elements to an SPA retaliation claim: (1) the seaman engaged in protected activity; (2) the employer knew of the protected activity; (3) the seaman suffered an adverse employment action; and (4) the protected activity contributed to the adverse employment action. See Pet. App. 4a (discussing 46 U.S.C. 2114, 49 U.S.C. 31105(b), and 49 U.S.C. 42121(b)).

Complaints under the SPA are filed in the "same manner as a complaint may be filed under subsection (b) of section 31105 of title 49," also known as the Surface Transportation Assistance Act of 1982 (STAA), Pub. L. No. 97-424, 96 Stat. 2097, and are "subject to the same procedures, requirements, and rights described in that section."[1] See 46 U.S.C. 2114(b). Accordingly, when a seaman files a complaint with the Secretary of Labor (Secretary) under the SPA, the Occupational Safety and Health Administration (OSHA) "shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit," notify the parties of its determination, and—if OSHA reasonably believes a violation has occurred—order appropriate relief. 49 U.S.C. 31105(b)(2)(A).

Either the employee or the employer may object to OSHA's adverse findings and request a de novo hearing before a Department of Labor administrative law judge

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[1] The STAA in turn incorporates parts of the whistleblower provision in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, 114 Stat. 61. See 49 U.S.C. 31105(b)(1) ("All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b).").

(ALJ). See 49 U.S.C. 31105(b)(2)(B) (allowing a party to file objections and request a hearing); 29 C.F.R. 1986.106-1986.107 (outlining procedures for hearings before ALJs). The ALJ may determine that a violation has occurred "only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint." 29 C.F.R. 1986.109(a). The ALJ's decision "become[s] the final order of the Secretary" unless a petition for review is timely filed with the Administrative Review Board (ARB), which has 30 days to decide whether to accept the case for review. 29 C.F.R. 1986.109(e), 1978.110(a)-(b). Final orders of the Secretary, whether from the ALJ or the ARB, may then be appealed within 60 days to the appropriate circuit court of appeals (either where the alleged violation occurred or where the complainant resided on the date of the alleged violation). 49 U.S.C. 31105(d); 29 C.F.R. 1986.112(a). The ARB reviews factual determinations of the ALJ under the substantial evidence standard, 29 C.F.R. 1986.110(b), as does the court of appeals, see 49 U.S.C. 31105(d) (providing for judicial review "conform[ing] to chapter 7 of title 5"); Pet. App. 3a.

2. a. This case concerns a whistleblower complaint filed by Captain Joseph Dady against his past employer. Between 1976 and 2010, Dady worked in the maritime and piloting industry, advancing from deckhand to a licensed pilot, and becoming a captain in 1990. Pet. App. 28a. Neither the Coast Guard nor any of Dady's employers, except for petitioner, ever reprimanded or disciplined him. By 2013, the date of the ALJ's decision, Dady had become president of the National Mariner's Association, which "seeks improvements of safety and

quality of life aboard towing vessels for limited tonnage mariners." *Id.* at 29a (citation omitted).

Between summer 2007 and his eventual termination in October 2010, Dady worked for Harley Marine Services, Inc. (HMS) as a tugboat captain in New York Harbor. See Pet. App. 14a-15a, 29a, 95a, 119a, 135a. He received exemplary performance reviews prior to his termination. See *id.* at 20a-21a, 116a.

Dady was a persistent safety advocate. While at HMS, he reported numerous concerns, including inadequate crewing, incidents of sewage runoff and steering system failures on HMS boats, and licensing issues. See Pet. App. 5a-6a, 8a-9a, 33a-45a, 85a-86a. Dady reported his safety-related concerns to Harley Marine New York (HMNY) General Manager John Walls, HMNY Operations Manager Brian Kelly, and HMS Head of Port Captains Scott Manley, as well as directly to the Coast Guard and the Transportation Safety Advisory Committee, of which he was a member. See *id.* at 8a-9a, 33a-45a. HMS stipulated that Dady's safety complaints constituted protected activity under the SPA.[2]

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[2] HMS stipulated that Dady engaged in protected activity in: (1) reporting to the Coast Guard in 2009 that HMS tugboats dumped raw sewage into New York harbor; (2) reporting a 2010 incident involving a steering failure aboard an HMS boat; (3) reporting concerns about inadequate training for qualified mechanics; and (4) requesting that a local union representative to complain to the Coast Guard about inadequate crewing of HMS vessels. Pet. App. 82a-83a, 85a-86a. The ALJ found that the protected activity under category (4) included internal reports to management that HMS's crew assignments violated a Coast Guard 12-hour work rule and made it difficult to post adequate lookouts. *Id.* at 86a. This finding was supported by the testimony of an HMS manager, John Walls, who

HMS management displayed animus toward Dady for voicing concerns about safety. Operations Manager Brian Kelly disparaged other employees who raised safety issues as being "as bad as Dady," Pet. App. 9a, 52a (citation omitted), and the ALJ later found that those statements were intended to belittle Dady and quiet others, *id.* at 128a. Similarly, an operations engineer for HMNY expressed displeasure that Dady had reported a steering failure incident to the Coast Guard, referring to him as "a pain in the ass." *Id.* at 9a (citation omitted). Dady testified that he was eventually convinced that "they were not happy with my active complaints one bit," *id.* at 52a, and the ALJ credited that testimony, *id.* at 128a.

In July 2010, Dady was interviewed by a Philadelphia newspaper concerning an incident in which a tugboat operated by a different company collided with an amphibious tourist boat (duck boat) and killed two of the duck boat's occupants. In the article, Dady commented on the accident's cause, and stated that it could have been prevented had a proper lookout been posted on the tugboat. See Pet. App. 8a-10a & n.4, 45a-51a. Walls later met with Dady and expressed the concerns of either HMS's President, Harley Franco, or Harley's sister Deborah Franco, about Dady's media participation. *Id.* at 10a, 50a-51a. Walls told Dady that he should not use HMS's name in any interviews. *Id.* at 51a. Walls also stated that "if Harley had any reason to terminate you, you would be terminated right now." *Ibid.* (citation omitted). The ALJ credited Dady's interpretation that Walls' statement constituted a threat and re-

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stated that "it was his understanding that improper lookout is a subset of the manning issue." *Ibid.*

flected Harley Franco's displeasure with Dady's expressing his views on lookout procedures and visibility problems. See *id.* at 10a, 18a-19a, 45a-52a, 98a. Walls' conversation with Dady occurred in late September or early October 2010; HMS terminated Dady on October 25, 2010. See *id.* at 48a, 51a.

b. On October 12, 2010, a loaded tanker barge attached to Dady's tugboat struck a pier. See Pet. App. 53a. At the time of the incident, referred to in maritime terms as an "allision," Dady was asleep in his bunk, and Mate William Odegaard was piloting the tugboat. See *id.* at 54a. Odegaard had already received either probation or a written warning for a previous allision in which a barge attached to his tugboat hit another, stationary ship. That prior allision occurred on March 24, 2010, less than seven months earlier. *Id.* at 79a.

Neither Odegaard nor anyone else in the crew reported the October 12 allision to Dady or to HMS's accident hotline. See Pet. App. 56a. The next day, the barge loaded oil, and after checking that the draft of the loaded barge appeared correct, Dady led his tug and the loaded barge back into New York Harbor. See *id.* at 58a-59a. During that crossing, Dady noticed water breaching the barge. See *id.* at 59a. Aware for the first time of damage to the barge, Dady immediately called the HMS hotline and notified the Coast Guard. See *ibid.* Dady began pumping water from the barge as other HMS personnel arrived. *Ibid.* Eventually, Dady overheard Odegaard informing Walls of the previous night's allision and suggesting that it was a possible explanation for the current situation. *Id.* at 59a-60a. Dady determined that while the "void" tank of the barge had been pierced, "the vessel wouldn't go down anymore."

Id. at 60a. HMS officials were able to remove the oil and move the barge to safety. *Id.* at 2a, 60a.

Captain Richard Graham, at the time HMS's Director of Health, Safety, Quality, and Environment, see Pet. 10, was chosen by HMS management to conduct an internal investigation of the allision. See Pet. App. 61a-63a. His primary purpose was to determine why the allision occurred and why it was not reported on October 12. *Id.* at 63a. Graham did not dispute that Dady was not aware that the barge had been damaged until October 13 and had reported the event through the proper channels as soon as he became aware of it. *Id.* at 67a. Graham nevertheless faulted Dady for his crew's failure to report the incident, blaming him for failing to exercise command presence over and properly train them. *Id.* at 67a, 106a. Graham concluded that Dady failed to properly train the crew despite not having access to Dady's personnel file or training records, and despite not interviewing Odegaard, who was at the helm of the tugboat during the allision, or Captain Rex Nunemaker, who captained the towed barge and was seen on deck after the allision. *Id.* at 63a, 66a-67a, 104a-106a. No one told Graham that Dady did not supervise his crew. *Id.* at 67a. Graham did not investigate or consider the possibility that the crew, and particularly Odegaard, failed to report the accident not because they lacked training, but because they feared discipline for their own actions. *Id.* at 72a, 104a.

Captain Graham's report and recommendation to terminate Dady was reviewed by HMS executive management personnel, including President Harley Franco, General Manager Walls, and HMNY Operations Manager Kelly, who collectively decided to terminate Dady. Pet. App. 87a, 93a.

c. Following his termination, Dady filed a complaint with the Secretary alleging that he had been unlawfully dismissed for engaging in protected activity, including reporting numerous safety problems at HMS. The Secretary investigated the complaint, but determined it was without merit. Dady objected to the Secretary's adverse findings and requested a hearing before an ALJ. Pet. App. 2a-3a; see 49 U.S.C. 31105(b)(2)(B); 29 C.F.R. 1986.106(a).

On June 25, 2013, the ALJ issued a decision holding that HMS violated the SPA in terminating Dady and ordering reinstatement, backpay, and compensatory and punitive damages. Pet. App. 24a-130a. The ALJ noted that under the SPA's incorporated provisions, see note 1, *supra*, "a[n SPA] violation may be found only if the complainant demonstrates that protected activity was a contributing factor in the adverse action described in the complaint." Pet. App. 85a. He further stated that the complainant must establish that the person making the adverse decision had knowledge of the protected activity. *Id.* at 87a. In addressing the knowledge element, the ALJ found that the decision to terminate Dady was made by executive management at HMS, who were the "reviewers" of Graham's report, with the participation of Walls. *Ibid.* Because the decision to terminate Dady was made by executive management, the ALJ ruled that "the employer knowledge issue turns on whether they knew of the protected activity." See *id.* at 88a & n.5 (citing *Rudolph* v. *National R.R. Passenger Corp.*, No. 11-037, 2013 WL 1385560 (ARB Mar. 29, 2013)).

The ALJ found that decision-makers at HMS, including Walls and Kelly, were aware of Dady's protected activity. The ALJ noted Dady's frequent com-

plaints to HMS management as well as to the Transportation Safety Advisory Committee, Pet. App. 8a-9a, 52a, 89a-91a, and reasoned that Dady's reports to the Coast Guard concerning sewage overflow and steerage failure incidents, as well as his "persistence in addressing his inadequate crewing concerns," were circumstances that would lead a reasonable person to conclude that Dady had or likely would officially report his safety concerns to the Coast Guard, *id.* at 8a-9a, 89-91a.

The ALJ next found that Dady's protected activity was a contributing factor in the decision to terminate him. The ALJ found that temporal proximity between HMS's displeasure with respect to Dady's media statements (made in September or October 2010) about the duck boat incident and Dady's termination (October 2010) was indirect evidence that protected activity—Dady's complaints about lookouts and similar "subject matter"—influenced that termination. Pet. App. 10a, 95a, 98a. He also found that the manner in which Graham performed his investigation of the October 2010 allision was strong evidence that the allision was simply an excuse for Dady's termination. The ALJ concluded that the reason the crew failed to report the allision on October 12, 2010 was "not much of a concern for [Graham]," who assigned full responsibility to Dady without interviewing key participants and without any consideration of an obvious alternative theory. *Id.* at 101a-104a. In particular, the ALJ noted that Graham never interviewed Odegaard, even though Odegaard may already have been on probation from a prior allision, and may, along with other crewmembers, have wanted to "avoid discipline" for his actions. *Id.* at 104a-105a. The ALJ viewed HMS's reliance on Graham's re-

port in that context as additional circumstantial evidence that protected activity was a contributing factor in Dady's termination. *Id.* at 106a-108a. Finally, the ALJ found that HMS had not proved by clear and convincing evidence that it would have terminated Dady absent his protected activity, *id.* at 109a-117a, and noted that another terminated captain was not similarly situated to him, *id.* at 115a. The ALJ awarded Dady compensatory and punitive damages, and ordered him reinstated. *Id.* at 130a.

d. HMS appealed the ALJ's decision to the ARB.[3] On July 31, 2015, the ARB denied the appeal and affirmed the ALJ's order. Pet. App. 13a-23a. The Board affirmed the ALJ's findings that Dady established that his protected activities contributed to HMS's decision to terminate him, and that HMS failed to prove by clear and convincing evidence that it would have terminated Dady absent the protected activity. *Id.* at 18a, 21a.

e. The Court of Appeals for the Eleventh Circuit affirmed. Pet. App. 1a-12a. In an unpublished, per curiam opinion, the court determined that because the elements of protected activity and adverse action were not disputed, it needed only to consider whether HMS knew of the protected activity and whether that activity contributed to HMS's decision to fire Dady. It concluded that substantial evidence supported the ALJ's determination that HMS decision-makers knew about Dady's protected activity and that protected activity was a contributing factor in his termination. *Id.* at 8a-10a. The court noted that the company had earlier been

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[3] Dady filed a cross-appeal before the ARB. He sought "front pay" instead of reinstatement, and argued for higher punitive damages. Pet. App. 21a-22a. The ARB denied the cross-appeal, *ibid.*, and Dady did not renew it before the Eleventh Circuit.

displeased with media statements Dady made that related to the subject matter of his internal complaints, *id.* at 8a n.4, and that HMS officials had long been frustrated with his safety complaints, *id.* at 9a. The court rejected HMS's largely factual claims, finding that the ALJ had reviewed the record in "painstaking" detail, and had "reasonably concluded that the allision * * * was simply the first excuse Harley found to terminate Dady." *Id.* at 9a-10a.

ARGUMENT

Petitioner argues that only Captain Graham and Harley Franco contributed to the decision to terminate Dady, that they were ignorant of Dady's protected activity, and that contrary to the decisions of other courts of appeals, the decisions below improperly imputed the knowledge of other HMS officials to them. Pet. 15-16, 24-36. These contentions lack merit. Petitioner's arguments largely challenge factual findings properly affirmed under deferential substantial evidence review. The court of appeals' unpublished decision is correct and does not conflict with the decisions of this Court or any other court of appeals. The petition for a writ of certiorari should be denied.

1. HMS rests its argument on its view that (1) no "person other than Capt. Graham and Harley Franco engaged in an act that proximately caused the decision to discharge Dady," and that (2) Dady failed to "establish that Capt. Graham or Harley Franco possessed knowledge of any of Dady's protected activity." Pet. 15-16. Those factual contentions directly contradict the findings of the ALJ, and the ALJ's findings are supported by substantial evidence. The ALJ found that "the decision to terminate [Dady] was apparently made

by executive management at Harley Marine, with participation by John Walls," Pet. App. 87a, and Operations Manager Brian Kelly, *id.* at 93a. The ALJ noted Walls' testimony that "executive management were 'reviewers' of Captain Graham's Internal Incident Investigation Report"; "that these Reviewers participated in making the decision to terminate [Dady]"; and "that [Walls] participated in the discussion by the reviewing group about Captain Dady's termination" and "agreed that Captain Dady should be terminated." *Id.* at 87a-88a (citing Tr. 266-269). The ALJ likewise noted testimony by Graham himself that "he did not terminate [Dady]," but rather only recommended termination to executive management. *Id.* at 88a.

Similarly, the ALJ found that HMS's executive management personnel were aware of Dady's protected activity. Among other evidence, the ALJ noted that Walls implied that "he knew [Dady] reported the steering failure to the Coast Guard"; that Dady testified that "he made frequent internal complaints to officials at Harley Marine, including Mr. Walls, about the issues involved in the protected activity"; that both Dady and Walls testified that Dady made frequent complaints about stationing lookouts on HMS boats; and that some of Dady's other complaints were directed to Brian Kelly, another "reviewer" of Graham's report. Pet. App. 89a-94a. Additionally, Dady testified that Walls told him that "Harley Franco—he used the name Harley Franco" was "not happy" with his media statements about lookout safety following the tourist duck boat crash. *Id.* at 51a (quoting Tr. 497). The ALJ found Dady's "account of the exchange" credible, and reasoned that because of the "overlap between the subject matter of the duck boat

article and the protected activity, the proximity between the conversation with Mr. Walls and the termination constitutes indirect evidence that the protected activity was a contributing factor in the termination." *Id.* at 98a.

The court of appeals accordingly was correct in holding that, contrary to petitioner's assertions, substantial evidence supported the ALJ's conclusion that decisionmakers at HMS knew of and acted based on Dady's protected activity. Pet. App. 9a. Substantial evidence review requires only "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 229 (1938). This is less than even a "weight of the evidence" or preponderance standard, "and the possibility of drawing two inconsistent conclusions" is thus not a reason to reverse an ALJ's findings. *Consolo* v. *Federal Mar. Comm'n*, 383 U.S. 607, 620 (1966). Here, the ALJ supported his findings with sufficient testimony in the record, and petitioner's continued factual challenges—including its argument that knowledge possessed by Dady's terminators was only "imputed" from others, Pet. 27—therefore merit no further review. See Sup. Ct. R. 10 ("[C]ertiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

2. Petitioner's contention (Pet. 26-35) that this Court's review is necessary to resolve a circuit split also lacks merit.

In petitioner's view, there is a circuit conflict over whether "the decision maker must be shown to possess" (1) "knowledge" and (2) "animus." Pet. 29-30. For example, petitioner asserts (Pet. 30) that decisions of the

Fourth and Eighth Circuits requiring knowledge of protected activity—*Conrad* v. *CSX Transp., Inc.*, 824 F.3d 103, 108-109 (4th Cir. 2016) (rejecting claim where employee failed to marshal evidence that any company personnel involved in disciplinary action were aware of protected activity); *Kuduk* v. *BNSF Ry. Co.*, 768 F.3d 786, 790-791 (8th Cir. 2014) (rejecting claim where "discharge decision-makers had no knowledge—actual or constructive—of [claimant's] protected activity")—are contrary to a decision of the Third Circuit. See Pet. 30 (citing *Araujo* v. *New Jersey Transit Rail Ops., Inc.*, 708 F.3d 152 (3d Cir. 2013)). But the Third Circuit's *Araujo* decision did not purport to dispense with a knowledge requirement, or even address the issue of knowledge at all. Both parties to that case conceded that the knowledge element was satisfied, see 708 F.3d at 157 n.4. Instead, the Third Circuit addressed the issue of motive, holding that "direct evidence" of an employer's retaliatory motive is not necessary to establish a prima facie case under the Federal Rail Safety Act of 1970, Pub. L. No. 91-458, Tit. II, 84 Stat. 971, and that circumstantial evidence of temporal proximity was enough to send the issue of "whether retaliation was a contributing factor to [a] disciplinary decision" to a jury. 708 F.3d at 156-162. Petitioner identifies no case where, contrary to *Conrad* or *Kuduk*, a court of appeals allowed a retaliation claim to proceed even when the available evidence indicated that personnel involved in the decision-making process were entirely unaware of protected activity.[4]

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[4] In *Marano* v. *Department of Justice*, 2 F.3d 1137 (Fed. Cir. 1993), cited by petitioner (Pet. 30), the Federal Circuit likewise did not dispense with a knowledge requirement in the context of Whistleblower Protection Act of 1989 (WPA), Pub. L. No. 101-12,

Similarly, petitioner overstates the extent to which the courts of appeals disagree over whether a whistleblowing claimant must present direct evidence of an employer's retaliatory motive. While the Third Circuit held that an employee need not present direct proof that the motive for an adverse action was retaliatory, *Araujo*, 708 F.3d at 158-159, it continued to require proof that "protected activity was a 'contributing factor' in the retaliatory discharge or discrimination," even if it was "not the sole or predominant cause." *Id.* at 158. Petitioner asserts that the Eighth Circuit disagrees with that decision, but petitioner's brief treatment of these cases (Pet. 30) belies more complicated Eighth Circuit precedent. While the Eighth Circuit has held that a district court "abused its discretion when it instructed [a] jury that [a claimant] need not establish intentional retaliation," *Blackorby* v. *BNSF Ry. Co.*, 849 F.3d 716, 722 (2017), the Eighth Circuit has also held that a "prima facie case does not require that the employee conclusively demonstrate the employer's retaliatory motive," *Kuduk*, 768 F.3d at 791 (quoting *Coppinger-Martin* v. *Solis*, 627 F.3d 745, 750 (9th Cir. 2010)). Though there may be some tension between those two statements, resolution of any such tension is best left to the Eighth Circuit. This Court does not grant review to resolve intra-circuit conflicts. See

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103 Stat. 16, claims. Rather, it held that where a whistleblower validly identified leadership problems in his local Drug Enforcement Administration (DEA) office, the DEA could not later reassign him to a different office in order to effect a "clean sweep" for an incoming supervisor, as that would "subvert[t] * * * the WPA's policy goals," and as the facts proved that "the content of [the employee's] disclosure was a contributing factor to his reassignment." 2 F.3d at 1139, 1143.

Wisniewski v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Finally, even if petitioner did identify conflict between other courts of appeals over the extent to which an SPA or similar whistleblowing claimant must provide direct evidence of an employer's knowledge or retaliatory motive, further review of this case would remain unwarranted. The decision in this case is unpublished and therefore is not the sort of ruling that contributes to a circuit conflict that might prompt review by this Court. Moreover, the court of appeals held that substantial evidence supported the ALJ's findings that the HMS executives who terminated Dady were actually aware of and animated by his protected activity. Pet. App. 8a-10a. It did not examine whether proof of knowledge or motive need be direct or could be merely circumstantial. Because the decision below does not implicate that issue, the petition for certiorari should be denied for that reason as well.

3. Petitioner also argues that the decisions below erred by ordering Dady reinstated. Pet. 24-25. However, as the court of appeals held, reinstatement is a "presumptive and automatic" remedy under relevant regulations. Pet. App. 11a-12a. Petitioner failed to argue before the court that these presumptive regulations were not controlling. *Id.* at 11a-12a & n.6. Petitioner asserts no conflict in the courts of appeals on this issue, and no other "compelling reason[]" justifies the Court's review. Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

NICHOLAS C. GEALE
Acting Solicitor of Labor
ANN S. ROSENTHAL
Associate Solicitor
CHARLES F. JAMES
Counsel for Appellate Litigation
A. SCOTT HECKER
Attorney
Department of Labor

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