

imposition of a sentence of 216 months' imprisonment.



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Pam HUBER, Appellee

v.

WAL-MART STORES, INC., Appellant

**National Chamber Litigation Center,
Amicus on Behalf of Appellant Equal
Employment Opportunity Commis-
sion, Amicus on Behalf of Appellee
Equal Employment Advisory Council,
Amicus on Behalf of Appellant.**

No. 06 2238.

United States Court of Appeals,
Eighth Circuit.

July 18, 2007.

Appeal from U.S. District Court for the
Western District of Arkansas—Ft. Smith
(2:04-cv-02145-RTD).

Carey Brian Meadors, Rebekah J. Ken-
nedey, Pryor & Robertson, Fort Smith, AR,
for Appellee.

James F. Bennett, Megan Heinsz, Dowd
& Bennett, CLayton, MO, Timothy C.
Mooney, Jr., Bryan & Cave, St. Louis,
MO, Eva C. Madison, Robert Scott Littler
& Mendelson, Fayetteville, AR, for Appel-
lant.

Shane Brennan, Robin S. Conrad, Na-
tional Chamber Litigation Center, Ann
Elizabeth Reesman, McGuinness &
Williams, Washington, DC, for Amicus on
Behalf of Appellant.

486 F.3d 480

ORDER

The petition for rehearing en banc is
denied. The petition for rehearing by the
panel is also denied. Judge Murphy,
Judge Bye, Judge Melloy, and Judge

Smith would grant the petition for rehear-
ing en banc. Judge Gruender, Judge Ben-
ton, and Judge Shepherd did not partici-
pate in the consideration or decision of this
matter.

MURPHY, Circuit Judge, with whom
BYE, MELLOY, and SMITH, Circuit
Judges, join, dissenting from denial of
rehearing en banc.

Because the panel's opinion renders a
statutory provision in the ADA superflu-
ous, overlooks EEOC guidance, and is con-
trary to the Supreme Court's admonition
in *US Airways, Inc. v. Barnett*, 535 U.S.
391, 122 S.Ct. 1516, 152 L.Ed.2d 589
(2002), that preferences are a valid means
to achieve the statutory goals, I respect-
fully dissent from the denial of an en banc
rehearing of this case.



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**UNITED STATES of America,
Plaintiff-Appellee,**

v.

James MORAN, Defendant-Appellant.

**United States of America,
Plaintiff-Appellee,**

v.

Pamela Moran, Defendant-Appellant.

Nos. 05-30215, 05-30226.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Dec. 4, 2006.

Filed April 2, 2007.

Amended July 6, 2007.

Background: Defendants were convicted
in the United States District Court for the